

LEGAL RIGHTS - RIGHT TO A FAIR AND PUBLIC HEARING

IV. CONCLUDING OBSERVATIONS

CERD

- France, CERD, A/49/18 (1994) 20 at para. 144.

Concern is expressed that the implementation of the immigration and asylum laws could have racially discriminatory consequences, particularly in connection with the imposition of limitations on the right of appeal against expulsion orders and the preventive detention of foreigners at points of entry for excessively long periods.

- United Kingdom of Great Britain and Northern Ireland, CERD, A/51/18 (1996) 35 at para. 242.

With respect to articles 5 and 6, the adequacy of legal aid available to alleged victims of racial discrimination should be reviewed and all complaints of police brutality should be vigorously and independently investigated and the perpetrators punished.

- United Kingdom of Great Britain and Northern Ireland, CERD, A/52/18 (1997) 9 at para. 38.

Concern is expressed at the fact that asylum claims may *a priori* be considered to be unfounded, and thus be dealt with more swiftly when the claimants come from certain countries considered not to "generally give rise to a serious risk of persecution", and at the fact that no right of in-country appeal is granted to asylum seekers sent back to certain safe third countries. The definition of racial discrimination under article 1, paragraph 1, of the Convention includes the effect as well as the purpose of an act, and it is thus noted that the Asylum and Immigration Act of 1996, in its effects, may be contrary to the Convention.

- Guatemala, CERD, A/52/18 (1997) 14 at paras. 79 and 90.

Paragraph 79

Concern is expressed that the indigenous population does not enjoy effective protection and remedies in the national courts from violations of human rights and fundamental freedoms owing to the lack of interpreters and the insufficient availability of public legal defenders.

Paragraph 90

The State party should take measures to end the impunity of State officials who act illegally and

LEGAL RIGHTS - RIGHT TO A FAIR AND PUBLIC HEARING

guarantee the availability of remedies and due process for all members of the population.

- Peru, CERD, A/54/18 (1999) 21 at para. 151.

It is noted with concern that in the cases brought before the courts, it was reportedly entirely up to the plaintiff to prove discrimination.

- Uruguay, CERD, A/54/18 (1999) 41 at para. 431.

The State party should make additional efforts to facilitate equal access to the courts and administrative bodies for persons belonging to the Afro-Uruguayan and indigenous communities in order to ensure equality of all persons.

- Finland, CERD, A/55/18 (2000) 41 at para. 215.

It is of concern that in some cases the new accelerated procedure in the revised Aliens Act would result in the repatriation of an asylum-seeker while his or her appeal was still pending. The State party is recommended to take all available measures to guarantee the legal safeguards for asylum-seekers.

ICCPR

- Algeria, ICCPR, A/47/40 (1992) 61 at para. 297.

The suspension of the democratic process and, in general, regarding the blocking of democratic mechanisms is of concern. The Committee expresses doubts about respect for due process, especially before military tribunals, about the real possibilities for implementing the right to a fair trial, about the numerous cases of torture and ill-treatment which have been brought to its attention, and about the restrictions on rights to freedom of opinion and expression and freedom of the press.

- Islamic Republic of Iran, ICCPR, A/48/40 vol. I (1993) 44 at paras. 255, 256, 259, 265 and 267.

Paragraph 255

The extremely high number of death sentences that were pronounced and carried out, many of which resulted from trials in which the guarantees of due process of law had not been properly applied, is

LEGAL RIGHTS - RIGHT TO A FAIR AND PUBLIC HEARING

deplored.

Paragraph 256

The fact that a death sentence has been pronounced, without trial, in respect of a foreign writer, Mr. Salman Rushdie, for having produced a literary work and that general appeals have been made or condoned for its execution, even outside the territory of the Islamic Republic of Iran, is condemned. The fact that the sentence was the result of a *fatwa* issued by a religious authority does not exempt the State party from its obligation to ensure to all individuals the rights provided for under the Covenant, in particular articles 6, 9, 14 and 19.

Paragraph 259

The lack of respect for due process of law, particularly before the Revolutionary courts, where trials *in camera* tend to be the rule and where apparently no real possibility is provided to the accused to prepare a defence, is deplored. The lack of an independent Bar Association also has an adverse effect on the administration of justice.

Paragraph 265

Domestic laws should be revised with a view to curtailing the number of offences currently punishable by the death penalty and to reducing the number of executions. Public executions should be avoided and the accused should, in all cases, be provided with all necessary guarantees, including the right to a fair trial as provided for under article 14 of the Covenant.

Paragraph 267

Iranian legislation and practice should be brought into line with the provisions of articles 9 and 14 of the Covenant, which provide that all persons should have the right to a fair trial, including the assistance of counsel, the right to be brought promptly before a judge and the right to be tried in public. Urgent consideration should also be given to the abolition of the Revolutionary courts.

See also:

- Nigeria, ICCPR, A/51/40 vol. I (1996) 37 at para. 282.
- Georgia, ICCPR, A/52/40 vol. I (1997) 40 at para. 240.

- Ireland, ICCPR, A/48/40 vol. I (1993) 119 at para. 605.

It is noted that, under the current restrictive system, a proper legal defence could not be ensured for many persons. Access to legal assistance is an essential right under the Covenant.

LEGAL RIGHTS - RIGHT TO A FAIR AND PUBLIC HEARING

- Egypt, ICCPR, A/48/40 vol. I (1993) 139 at para. 708.

The multitude of special courts in Egypt is of concern. From the point of view of legal consistency in the judicial procedure and procedural guarantees it is important that special courts exist as an exceptional measure, if at all.

- United States of America, ICCPR, A/50/40 vol. I (1995) 52 at paras. 283, 288 and 298.

Paragraph 283

It is of concern that excludable aliens are dealt with by lower standards of due process than other aliens and, in particular, that those who cannot be deported or extradited may be held in detention indefinitely.

Paragraph 288

The impact which the current system of election of judges may, in a few states, have on the implementation of the rights provided under article 14 of the Covenant is of concern. The adoption by a number of states of a merit-selection system is welcomed. The fact that in many rural areas justice is administered by unqualified and untrained persons is also of concern. The lack of effective measures to ensure that indigent defendants in serious criminal proceedings, particularly in state courts, are represented by competent counsel is also noted.

Paragraph 298

Appropriate measures should be adopted as soon as possible to ensure to excludable aliens the same guarantees of due process as are available to other aliens and guidelines should be established which would place limits on the length of detention of persons who cannot be deported.

- Ukraine, ICCPR, A/50/40 vol. I (1995) 57 at para. 317.

The Procurator's functions during the investigation process as well as throughout the trial do not ensure the minimum requirements contained in articles 9 and 14 of the Covenant. Furthermore, cases of administrative detention, in particular of vagrants, denial of access of detainees to legal counsel and long periods of pre-trial detention are matters of great concern.

- Latvia, ICCPR, A/50/40 vol. I (1995) 62 at para. 348.

Concern is expressed at the fact that the new Code of Criminal Procedure has not been enacted. The role of the Prosecutor under the Law on Prosecutor's Supervision, enacted on 19 May 1994, runs counter to the principle of equality of arms in criminal trials and does not protect in a proper way the

LEGAL RIGHTS - RIGHT TO A FAIR AND PUBLIC HEARING

right to personal security.

- Russian Federation, ICCPR, A/50/40 vol. I (1995) 65 at para. 405.

In order to address the lack of confidence in the local government authorities, the Government should consider inviting a greater international presence, including from the Centre for Human Rights, to assist the Special Multilateral Commission established to investigate recent events in Chechnya in improving the effectiveness of human rights investigations and ensuring fairness of trials until such time as the judiciary is functioning properly. Such a measure would make clear that the Government is committed to ending human rights violations both by submitting itself to international scrutiny and by drawing on international expertise toward this end.

- United Kingdom of Great Britain and Northern Ireland, ICCPR, A/50/40 vol. I (1995) 72 at paras. 424, 429 and 432.

Paragraph 424

It is noted with concern that the provisions of the Criminal Justice and Public Order Act of 1994, which extended the legislation originally applicable in Northern Ireland, whereby inferences may be drawn from the silence of persons accused of crimes, violates various provisions in article 14 of the Covenant, despite the range of safeguards built into the legislation and the rules enacted thereunder.

Paragraph 429

In the context of the elaboration of a peace settlement for Northern Ireland, further concrete steps should be taken so as to permit the early withdrawal of the derogation made pursuant to article 4 and to dismantle the apparatus of laws infringing civil liberties which were designed for periods of emergency. Specific efforts should be made to enhance in Northern Ireland confidence in the administration of justice by resolving outstanding cases and by putting in place transparently fair procedures for the independent investigation of complaints.

Paragraph 432

The Criminal Justice and Public Order Act of 1994 and the equivalent legislation in Northern Ireland should be reviewed in order to ensure that the provisions which allow inferences to be drawn from the silence of accused persons do not compromise the implementation of various provisions in article 14 of the Covenant.

- Sri Lanka, ICCPR, A/50/40 vol. I (1995) 75 at para. 456.

LEGAL RIGHTS - RIGHT TO A FAIR AND PUBLIC HEARING

The provisions of the Special Presidential Commissions of Inquiry Act which permit the acceptance of evidence otherwise inadmissible in a court of law and which stipulate that any decision adopted by a Commission established under the Act is final and conclusive and may not be called into question by any court and tribunal are matters of serious concern in view of the fact that the findings of these Commissions can lead to a penalty of civic disability being imposed by Parliament on those subject to an investigation.

- Spain, ICCPR, A/51/40 vol. I (1996) 24 at para. 177.

It is of concern that proof obtained under duress is not systematically rejected by courts.

- Zambia, ICCPR, A/51/40 vol. I (1996) 29 at para. 196.

Section 43 of the Constitution, which restricts the right of individuals to pursue civil remedies against the President in the courts for anything done in his private capacity, is incompatible with the provisions of article 14 of the Covenant.

- Nigeria, ICCPR, A/51/40 vol. I (1996) 37 at paras. 264 and 265.

Paragraph 264

All the decrees establishing special tribunals or revoking normal constitutional guarantees of fundamental rights or the jurisdiction of the normal courts which violate some of the basic rights under the Covenant should be abrogated and any trials before such special tribunals should be immediately suspended.

Paragraph 265

Urgent steps should be taken to ensure that persons facing trials are afforded all the guarantees of a fair trial as explicitly provided in article 14 (1), (2) and (3) and to have their conviction and sentence reviewed by a higher tribunal in accordance with article 14 (5) of the Covenant.

- Peru, ICCPR, A/51/40 vol. I (1996) 48 at paras. 350, 351, 357 and 363.

Paragraph 350

The deepest concern is expressed over the Decree law which contains a very broad definition of terrorism under which innocent persons have been and remain detained. It establishes a system of trial by "faceless judges", in which the defendants do not know who the judges are who are trying them

LEGAL RIGHTS - RIGHT TO A FAIR AND PUBLIC HEARING

and are denied public trials, and which places serious impediments, in law and in fact, on the possibility for defendants to prepare their defence and communicate with their lawyers. Under Decree Law 25,659, cases of treason are tried by military courts, regardless of whether the defendant is a civilian or a member of the military or security forces. In this connection, it is of deep concern that persons accused of treason are being tried by the same military force that detained and charged them, that the members of the military courts are active duty officers, that most of them have not received any legal training and that there is no provision for sentences to be reviewed by a higher tribunal. Those shortcomings raise serious doubts about the independence and impartiality of the judges of military courts. The Committee emphasizes that trials of non-military persons should be conducted in civilian courts before an independent and impartial judiciary.

Paragraph 351

The absence of systematic review of the convictions pronounced as a result of trials before the military courts which have not met the requirement of a fair trial is of concern.

Paragraph 357

Note is taken of Decree Law 25,499 of 1992, according to which repentance of one's association with a terrorist organization and information concerning such organizations or which lead to the identification of other persons involved can lead to a reduction in sentence. It is of concern that the law may have been used by individuals to denounce innocent persons in order to avoid prison sentences or to reduce their length, a concern that is supported by the fact that there are at least seven draft proposals - one of them from the Defensor Público and another from the Ministry of Justice - and a Decree Law 26,329 attempting to solve the problem of innocent people being prosecuted or having been convicted under the anti-terrorist laws.

Paragraph 363

The system of "faceless judges" should be abolished and public trials for all defendants, including those charged with terrorist-related activities, should be reinstated immediately. The Government of Peru should ensure that all trials are conducted with full respect for the safeguards of fair trial provided by article 14 of the Covenant, including in particular the right to communicate with counsel and the right to have time and facilities to prepare the defence and the right to have the conviction reviewed.

- Peru, ICCPR, A/52/40 vol. I (1997) 28 at paras. 155 and 156.

Paragraph 155

Note is taken of the measures adopted by Peru to pardon persons convicted of terrorism. Notwithstanding its satisfaction at the release of 69 persons, pardon does not provide full redress to the victims of trials conducted without regard for due process of law. The need to establish an effective mechanism, at the initiative of the State, to revise all the convictions handed down by the

LEGAL RIGHTS - RIGHT TO A FAIR AND PUBLIC HEARING

military tribunals in treason and terrorism cases is repeated.

Paragraph 156

It is regrettable that Peru extended the system of "faceless judges". This situation, which undermines the judicial system and will again lead to the conviction of innocent persons without a proper trial, is of profound concern.

- Bolivia, ICCPR, A/52/40 vol. I (1997) 35 at para. 207.

National laws in conflict with the Covenant remain on the books, in particular the Coca and Controlled Substances Law (Law No. 1008). The Committee is particularly concerned that articles 86 and 116 of this law remove the investigating process from judicial control, that the right to bail is severely restricted, that articles 74 and 125 deny the right of detainees who are ill to be treated with humanity, and that other provisions undermine the presumption of innocence (arts. 82 and 117), the right to an impartial tribunal (arts. 82 and 127), the right of defence (art. 117), the right to be tried in one's presence (art. 113) and the right to challenge any aspect of the process (art. 128).

- Colombia, ICCPR, A/52/40 vol. I (1997) 44 at paras. 281, 284 and 303.

Paragraph 281

Impunity continues to be a widespread phenomenon. The broadening of the concept of service-related acts by the Higher Adjudication Council to enable the transfer from civilian jurisdiction to military tribunals of many cases involving human rights violations by military and security forces reinforces the institutionalization of impunity in Colombia, since the independence and impartiality of these tribunals are doubtful. The military penal system lacks many of the requirements for a fair trial spelled out in article 14, for example the amendments to article 221 of the Constitution allowing active duty officers to sit on military tribunals and the fact that members of the military have the right to invoke as defence the orders of a superior.

Paragraph 284

The regional judicial system, which provides for faceless judges and anonymous witnesses, does not comply with article 14 of the Covenant, particularly paragraph 3 (b) and (e).

Paragraph 303

The regional judicial system should be abolished and the Government of Colombia should ensure that all trials are conducted with full respect for the safeguards for a fair trial provided for in article 14 of the Covenant.

LEGAL RIGHTS - RIGHT TO A FAIR AND PUBLIC HEARING

- Slovakia, ICCPR, A/52/40 vol. I (1997) 58 at para. 381.

Civilians may be tried by military courts in certain cases, including betrayal of State secrets, espionage and State security. The Committee recommends that the Criminal Code should be amended so as to prohibit the trial of civilians by military tribunals in any circumstances.

- France, ICCPR, A/52/40 vol. I (1997) 62 at para. 410.

The continued application of the anti-terrorist laws which provide for a centralized court with prosecutors having special powers of arrest, search and prolonged detention in police custody for up to four days (twice the normal length), and according to which an accused does not have the same rights in the determination of guilt as in the ordinary courts is of concern. Furthermore, concern is expressed that the accused has no right to contact a lawyer during the initial 72 hours of detention in police custody and that no appeal is provided for against the decisions of the Special Court. Many hundreds of people are being detained, investigated and tried for committing acts of terrorism or related offences. Anti-terrorist laws, which appear to be necessary to combat terrorism, should be brought fully into conformity with the requirements of articles 9 and 14 of the Covenant.

- India, ICCPR, A/52/40 vol. I (1997) 67 at para. 439.

Preventive detention is a restriction of liberty imposed as a response to the conduct of the individual concerned, and the decision as to continue detention must be considered as a determination falling within the meaning of article 14, paragraph 1, of the Covenant, and proceedings to decide the continuation of detention must, therefore, comply with that provision. The question of continued detention should be determined by an independent and impartial tribunal constituted and operating in accordance with article 14, paragraph 1, of the Covenant.

- Jamaica, ICCPR, A/53/40 vol. I (1998) 15 at para. 82.

The state of current legal aid representation remains of concern. This is particularly disturbing for cases involving capital punishment, where unavailability of legal aid amounts to a violation of article 6 *juncto* article 14 of the Covenant. Therefore, the State party should monitor, on a continuing basis, the availability and quality of legal aid representation, and should ensure that experienced counsel is assigned to individuals accused of capital and other serious offences. It is emphasized that adequate remuneration of lawyers acting under the Poor Prisoners' Defence Act at all stages of arrest and subsequent proceedings would greatly assist in providing a proper defence of clients in a proper manner. Legal aid should be available for obtaining the presence of defence witnesses for the purposes of trials.

LEGAL RIGHTS - RIGHT TO A FAIR AND PUBLIC HEARING

- Iraq, ICCPR, A/53/40 vol. I (1998) 18 at para. 104.

It is noted with concern that special courts, which may impose the death penalty, do not provide for all procedural guarantees required by article 14 of the Covenant, and in particular the right of appeal. It is also noted that in addition to the list of offences which are under the jurisdiction of the special courts, the Minister of the Interior and the Office of the President of the Republic have discretionary authority to refer any other cases to these courts. In that regard courts exercising criminal jurisdiction should not be constituted other than by independent and impartial judges, in accordance with article 14, paragraph 1, of the Covenant. The jurisdiction of such courts should be strictly defined by law and all procedural safeguards protected by article 14, including the right of appeal, should be fully respected.

- Cyprus, ICCPR, A/53/40 vol. I (1998) 33 at para. 191.

The new law on prevention of violence within the family has not produced the expected positive results and the State party is urged to adopt appropriate measures to improve the situation. A reform of the law on evidence should take into account the possibility of eliminating obstacles to a spouse providing testimony against another spouse on domestic violence.

- Uruguay, ICCPR, A/53/40 vol. I (1998) 38 at para. 242.

Where the trial judge is the same judge who has supervised and/or ordered investigations, and who subsequently charged the defendant, serious concerns are raised about possible impartiality of the trial. True impartiality should be ensured.

- Finland, ICCPR, A/53/40 vol. I (1998) 40 at para. 265.

Concern is expressed that, after due notice, a person charged before the Finnish courts with certain offences may be tried *in absentia*, if his or her presence was not necessary, and sentenced to a fine or up to three months imprisonment with no possibility for retrial after 30 days. Unless the person has clearly agreed to this procedure and the court is fully informed of the offender's circumstances, this method of trial could raise questions of compatibility with article 14(3)(d) and 14(3)(e) of the Covenant. This procedure should be reviewed.

LEGAL RIGHTS - RIGHT TO A FAIR AND PUBLIC HEARING

- Algeria, ICCPR, A/53/40 vol. I (1998) 52 at para. 357.

The Committee deplores the apparent routine acceptance by trial court judges of confessions extracted under duress, even when there is medical evidence of torture, and calls on the State party to take all necessary measures to redress this situation.

- The Former Yugoslav Republic of Macedonia, ICCPR, A/53/40 vol. I (1998) 55 at para. 377.

The Committee expresses serious concern at ethnic violence involving the police in Gostivar on 7 July 1997, in the course of which three persons lost their lives and hundreds were wounded. It is also concerned at indications that all fair-trial guarantees were not met in dealing with local officials. These events should be thoroughly investigated by an independent body, those found responsible should be subjected to appropriate penal or disciplinary sanctions, and all necessary measures should be taken to prevent their recurrence anywhere within the country.

- Belgium , ICCPR, A/54/40 vol. I (1999) 26 at paras. 83 and 86.

Paragraph 83

The Committee is concerned that suspects do not at present have access to counsel and to medical visits from the moment of arrest. The Committee is also concerned about the non-application of judicial guarantees in administrative tribunals and other non-judicial entities. Suspects should be promptly informed of their rights in a language they understand.

Paragraph 86

The current jurisprudence of the Court of Cassation stating that no judicial guarantees apply to the pre-trial stage is inconsistent with the Covenant; consequently, these guarantees should be extended to the pre-trial stage.

- Libyan Arab Jamahiriya, ICCPR, A/54/40 vol. I (1999) 32 at para. 134.

Serious doubts arise as to the independence of the judiciary and the liberty of advocates to exercise their profession freely, without being in the employment of the State, and to provide legal aid services. Measures should be taken to ensure full compliance with article 14 of the Covenant as well as with the United Nations Basic Principles on the Independence of the Judiciary and the Basic Principles on the Role of Lawyers.

LEGAL RIGHTS - RIGHT TO A FAIR AND PUBLIC HEARING

- Japan, ICCPR, A/54/40 vol. I (1999) 36 at para. 168.

Under the criminal law, there is no obligation on the prosecution to disclose evidence it may have gathered in the course of the investigation other than that which it intends to produce at the trial, and the defence has no general right to ask for the disclosure of that material at any stage of the proceedings. In accordance with the guarantees provided for in article 14, paragraph 3, of the Covenant, the State party should ensure that its law and practice enable the defence to have access to all relevant material so as not to hamper the right of defence.

- Austria, ICCPR, A/54/40 vol. I (1999) 42 at para. 189.

The nature and functions of the autonomous administrative tribunals continue to raise questions in connection with the requirements of "due process" under article 14 of the Covenant. The principle of independence of all courts and tribunals should be fully implemented.

- Chile, ICCPR, A/54/40 vol. I (1999) 44 at para. 205.

The wide jurisdiction of the military courts to deal with all the cases involving prosecution of military personnel and their power to conclude cases that began in the civilian courts contribute to the impunity which such personnel enjoy from punishment for serious human rights violations. The jurisdiction of military courts to try civilians does not comply with article 14 of the Covenant. The jurisdiction of the military courts should be restricted to trials only of military personnel charged with offences of an exclusively military nature.

- Guyana, ICCPR, A/55/40 vol. I (2000) 53 at para. 354.

Strict compliance with procedural safeguards must be ensured in all criminal cases.

- Kyrgyzstan, ICCPR, A/55/40 vol. I (2000) 57 at paras. 395, 396, 405-407 and 416-418.

Paragraph 395

The detention of persons on mental health grounds and the apparent lack of possibility of challenging such detention is of concern.

Paragraph 396

Persons detained on mental health grounds should have prompt access to judicial review.

LEGAL RIGHTS - RIGHT TO A FAIR AND PUBLIC HEARING

Paragraph 405

The lack of full independence of the judiciary (art. 14, para. 1) is of concern. In particular, the applicable certification procedure for judges, the requirement of re-evaluation every seven years, the low level of salaries and the uncertain tenure of judges may encourage corruption and bribery. That trials may be held in camera in circumstances not permitted by article 14, paragraph 1 is of concern.

Paragraph 406

The time limits ensuring expeditious commencement of criminal trials is noted with approval, but that the courts may, under the Code of Criminal Procedure, reach no decision at the end of a trial, but rather remit the case to the prosecutor for further inquiries, is of concern.

Paragraph 407

The procedure described in the preceding paragraph should be abolished.

Paragraph 416

The functions of the National Communications Agency, which is attached to the Ministry of Justice and has the discretionary power to grant or deny licences to radio and television broadcasters, are of concern.

Paragraph 417

The tasks and competences of the National Communications Agency should be clearly defined by law, and its decisions should be subject to appeal to judicial authority.

Paragraph 418

Restrictions on the holding of public meetings and demonstrations, which exceed those permitted by article 21, and the lack of appeal procedures in case of denial of permission, are of concern.

- Ireland, ICCPR, A/55/40 vol. I (2000) 61 at para. 447.

In regard to proposed changes to the law regarding asylum-seekers, the State party should ensure that the grounds on which detention may be authorized and the right of access to judicial review of detention decisions are in full conformity with the provisions of article 9 of the Covenant.

- Kuwait, ICCPR, A/55/40 vol. I (2000) 65 at paras. 465, 468 and 469.

Paragraph 465

The State party should ensure that the provisions of article 6 of the Covenant are strictly observed and that the death penalty is not imposed except for crimes that can be seen to be the most serious crimes, following proceedings in which all the guarantees for a fair trial under article 14 of the

LEGAL RIGHTS - RIGHT TO A FAIR AND PUBLIC HEARING

Covenant are observed.

Paragraph 468

Concern is expressed about the number of persons still detained under prison sentences handed down in 1991 by the Martial Law Courts. These trials did not meet the minimum standards set by article 14 of the Covenant, in particular the principles of equality before the courts, impartiality of the tribunal, the presumption of innocence, the right to have adequate time and facilities for the preparation of a defence, and other rights of due process under article 14, paragraphs 3 and 5, of the Covenant.

Paragraph 469

The cases of persons still held under sentences described in the previous paragraph should be reviewed by an independent and impartial body, and compensation should be paid pursuant to articles 9, paragraph 5, and 14, paragraph 6, of the Covenant, where appropriate.

- Trinidad and Tobago, ICCPR, A/56/40 vol. I (2001) 31 at para. 72(6).

The extension of legal aid, both in terms of geographical distribution and of the tribunals before which it is available, as well as the raising of fees so as to attract higher quality advocates, will increase the State party's compliance with article 14.3 (d).

- Denmark, ICCPR, A/56/40 vol. I (2001) 34 at para. 73(18).

Asylum-seekers are entitled to have the assistance of legal counsel.

- Peru, ICCPR, A/56/40 vol. I (2001) 45 at paras. 76(4), 76(11) and 76(12).

Paragraph 76(4)

The fact that "faceless" courts have been abolished as the Committee has recommended, that the offence of terrorism has been transferred from the jurisdiction of the military courts to that of the ordinary criminal courts; and that the state of emergency affecting areas of the national territory has been rescinded, are welcomed.

Paragraph 76(11)

The fact that Peru has released some of the persons convicted of the crime of terrorism on insufficient evidence and has pardoned them is appreciated. However, a pardon does not constitute full compensation for the victims of proceedings in which the rules of due process have been breached and in which innocent persons have been found guilty. The State party must establish an effective

LEGAL RIGHTS - RIGHT TO A FAIR AND PUBLIC HEARING

mechanism for the review of all sentences imposed by the military courts for the offences of terrorism and treason, which are defined in terms that do not clearly state which conduct is punishable. The State party must also release immediately all persons whose situation has now been decided by the Pardons Board.

Paragraph 76(12)

The fact that the military courts continue to have jurisdiction over civilians accused of treason, who are tried without the guarantees provided for in article 14 of the Covenant, is deplored. In this context, reference is made to General Comment No. 13 on article 14 and it is emphasized that the jurisdiction of military courts over civilians is not consistent with the fair, impartial and independent administration of justice.

- Uzbekistan, ICCPR, A/56/40 vol. I (2001) 59 at para. 79(15).

It is noted with concern that military courts have broad jurisdiction. This is not confined to criminal cases involving members of the armed forces but also covers civil and criminal cases, when in the opinion of the executive exceptional circumstances of a particular case do not allow the operation of the courts of general jurisdiction. The State party has not provided information on the definition of "exceptional circumstances". The fact that these courts have jurisdiction to deal with civil and criminal cases of non-military persons, in contravention of articles 14 and 26 of the Covenant, is of concern. The State party should adopt the necessary legislative measures to restrict the jurisdiction of the military courts to trial of members of the military accused of military offences.

- Croatia, ICCPR, A/56/40 vol. I (2001) 65 at para. 80(16).

The heavy backlog of cases awaiting hearing before the Croatian courts, particularly in civil matters, is of deep concern. The delays in the administration of justice are apparently compounded by the application of the statute of limitations to suspend or discontinue cases that, for reasons often not attributable to the litigant in question, have not been brought on for hearing. The State party is urged to accelerate its reform of the judicial system, *inter alia* through simplification of procedures, training of judges and court staff in efficient case management techniques.

- Syrian Arab Republic, ICCPR, A/56/40 vol. I (2001) 70 at paras. 81(8) and 81(15)-81(17).

Paragraph 81(8)

Note is taken of the delegation's explanations that the death penalty is rarely imposed and even more rarely carried out. Serious concern still remains at the number of offences punishable by the death penalty and at the absence of any information on the number of death sentences imposed in the past

LEGAL RIGHTS - RIGHT TO A FAIR AND PUBLIC HEARING

10 years and the number of executions carried out during the same period. This situation is particularly disturbing in the light of precise, consistent reports alleging that a large number of death sentences have been passed and executions carried out following unfair trials in which the accused were sentenced although evidence was used that had been obtained through confessions which had been made under torture. The State party is called upon to ensure respect for articles 6, 7 and 14 (3) (g) of the Covenant and the number of offences punishable by the death penalty should be reduced.

Paragraph 81(15)

Certain aspects of the appointment of judges, which pose problems with regard to article 14, paragraph 1 of the Covenant, remain of concern. This is the case of the four-year renewable term of the members of the Supreme Constitutional Court (article 141 of the Constitution), which as currently formulated, may compromise their independence *vis-à-vis* the executive branch. There is also concern that proceedings may be held *in camera* in circumstances not authorized by article 14, paragraph 1. The State party should take appropriate measures to ensure and protect, at all levels, the independence and impartiality of the judiciary.

Paragraph 81(16)

The procedures of the State Security Court are incompatible with the provisions of article 14, paragraphs 1, 3 and 5. The public nature of proceedings before the State Security Court is not guaranteed. Allegations, to which the delegation did not respond, that the Court has rejected complaints of torture, even in flagrant cases, and that some legal representatives have withdrawn in protest against the failure to respect the rights of the defence are of concern. Moreover, it is noted that the State Security Court's decisions are not subject to appeal. The State party should ensure that the procedures of the State Security Court scrupulously respect the provisions of article 14, paragraphs 1 and 3 of the Covenant and should grant accused persons the right to appeal against the Court's decisions (article 14, paragraph 5 of the Covenant).

Paragraph 81(17)

Questions on the composition and jurisdiction of military courts received summary responses, and the delegation's explanation that the procedures of military courts do not differ from those of civil courts is noted. The numerous allegations that the procedures of military courts do not respect the guarantees laid down in article 14 of the Covenant remain of concern.

- The Netherlands, ICCPR, A/56/40 vol. I (2001) 76 at para. 82(12).

The use of anonymous witnesses in the State party's criminal procedure is of grave concern. Use is made of hearing witnesses in the preliminary examination, prior to the trial, without the accused, counsel or the prosecutor being present. The identity is accordingly known only to the examining magistrate, and is subsequently unknown even to the trial judge. While not excluding the use of anonymous witnesses in appropriate instances, this practice is too broad and raises difficulties in

LEGAL RIGHTS - RIGHT TO A FAIR AND PUBLIC HEARING

terms of article 14 of the Covenant. The State party should make greater efforts to safeguard the right of a defendant to a fair trial through means which, while protecting witness identity in appropriate and necessary cases, provide a greater opportunity for the evidence to be tested and contested. The State party should show why ordinary means of protecting witnesses, such as police security or witness protection and relocation programmes, are considered inadequate in cases where anonymity is allegedly required on account of threats to the witness.

- The Netherlands (Antilles), ICCPR, A/56/40 vol. I (2001) 76 at para. 82(19).

It is of concern that there is a sizeable backlog in the revision of outdated and obsolete legislation, in particular in the provisions of the Antillean Criminal Code. Particularly in the area of criminal law, legal certainty and clarity are of particular importance in enabling individuals to determine the extent of liability for specific conduct. The State party should proceed with the proposed revision of the Criminal Code at the earliest opportunity.

- Czech Republic, ICCPR, A/56/40 vol. I (2001) 83 at para. 83(20).

While acknowledging the change in the Code of Criminal Procedure which will abolish unconditional prison sentences under the system of punishment orders, it remains of concern that this system of punishment orders raises serious issues under article 14, particularly with regard to the right to defence. The State party should ensure that the rights under article 14 of persons on whom punishment orders are imposed are fully respected.

- Guatemala, ICCPR, A/56/40 vol. I (2001) 93 at para. 85(20).

The wide jurisdiction of the military courts to hear all cases involving the trial of military personnel and their powers to decide cases that belong to the ordinary courts contribute to the impunity enjoyed by such personnel and prevent their punishment for serious human rights violations. The State party should amend the law to limit the jurisdiction of the military courts to the trial of military personnel who are accused of crimes of an exclusively military nature (articles 6, 7, 9 and 14 of the Covenant).

ICESCR

- Philippines, ICESCR, E/1996/22 (1995) 30 at para. 115.

Particular concern is expressed at the use of criminal-law provisions to deal with problems arising from the inadequacy of housing. The criminal conviction of squatters and the restrictions on the right of due process in the case of evictees is noted. While the illegal occupation of land or the usurpation

LEGAL RIGHTS - RIGHT TO A FAIR AND PUBLIC HEARING

of property rights by persons otherwise unable to obtain access to adequate housing is not condoned, in the absence of concrete measures to address these problems, the State party should not resort, in the first instance, to measures of criminal law or to demolition.

- Canada, ICESCR, E/1999/22 (1998) 63 at para. 426.

Enforcement mechanisms provided in human rights legislation need to be reinforced to ensure that all human rights claims not settled through mediation are promptly determined before a competent human rights tribunal, with the provision of legal aid to vulnerable groups.

- Honduras, ICESCR, E/2002/22 (2001) 33 at para. 152.

Given that mining concessions may have a significant impact on the enjoyment of article 12 and other provisions of the Covenant, the Committee recommends that applications for mining concessions be advertised in all the localities where, if granted, they will take place, and that opposition to such applications be allowed within three months (not 15 days) of their publication in the relevant locality, in accordance with principles of procedural fairness.

CAT

- Peru, CAT, A/50/44 (1995) 11 at paras. 68 and 73.

Paragraph 68

The legislation intended to repress acts of terrorism does not meet the requirements of international agreements concerning a fair, just and impartial trial with minimum safeguards for the rights of the accused (for example, "faceless" judges, serious limitations on the right of defence, lack of opportunity to take proceedings before a court, extension of the period of incommunicado detention, etc.).

Paragraph 73

The procedure relating to terrorist offences should be reviewed for the purpose of establishing a prosecution system which is effective but which preserves the independence and impartiality of the courts and the right of defence, with the elimination of so-called "faceless trials" and the holding of detainees incommunicado. The military courts should be regulated to prevent them from trying civilians and to restrict their jurisdiction to military offences, by introducing the appropriate legal and constitutional changes.

LEGAL RIGHTS - RIGHT TO A FAIR AND PUBLIC HEARING

- Jordan, CAT, A/50/44 (1995) 23 at para. 175.

The authorities are expected to consider abolishing exceptional courts such as the State security courts and allow the ordinary judiciary to recover full criminal jurisdiction in the country.

- Armenia, CAT, A/51/44 (1996) 17 at para. 99.

The Government should consider the possibility of establishing an effective and reliable judicial review of the constitutional rights of those who are illegally detained.

- Germany, CAT, A/53/44 (1998) 19 at para. 193.

All evidence obtained directly or indirectly by torture should be strictly prevented from reaching the cognizance of deciding judges in all judicial proceedings.

- Yugoslavia, CAT, A/54/44 (1999) 6 at paras. 45 and 51.

Paragraph 45

One of the essential means in preventing torture is the existence, in procedural legislation, of detailed provisions on the inadmissibility of unlawfully obtained confessions and other tainted evidence. The absence of detailed procedural norms pertaining to the exclusion of tainted evidence can diminish the practical applicability of these general principles. Evidence obtained in violation of article 1 of the Convention should never be permitted to reach the cognizance of the judges deciding the case, in any legal procedure.

Paragraph 51

In order to diminish the recurrence of torture, the State party should legally and practically ensure the independence of the judiciary, the unrestricted access to counsel immediately after arrest, the shortening of the length of police custody to a maximum period of 48 hours, the shortening of the period of pre-trial post-indictment detention, strict exclusion of all evidence directly or indirectly derived from torture, effective civil redress and a vigorous criminal prosecution in all cases of torture and breaches of article 16 of the Convention.

- Iceland, CAT, A/54/44 (1999) 8 at para. 60.

Legislation concerning evidence to be adduced in judicial proceedings should explicitly exclude any evidence made as a result of torture.

LEGAL RIGHTS - RIGHT TO A FAIR AND PUBLIC HEARING

- Tunisia, CAT, A/54/44 (1999) 11 at para. 103.

The relevant legislation should be amended to ensure that no evidence obtained through torture shall be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

- Venezuela, CAT, A/54/44 (1999) 16 at paras. 142 and 147.

Paragraph 142

Legislation must provide for the hearing and trial in the ordinary courts of any charge of torture, regardless of the body of which the accused is a member.

Paragraph 147

The State party should regulate procedures for dealing with and deciding on applications for asylum and refugee status which envisage the opportunity for the applicant to attend a formal hearing and to make such submissions as may be relevant to the right which he invokes, including pertinent evidence, with protection of the characteristics of due process of law.

- Malta, CAT, A/55/44 (2000) 10 at para. 44.

The completion and the expected presentation to Parliament of the new Asylum Act which provides, *inter alia*, for: (i) the removal of the geographical exception limiting the granting of asylum to European refugees; (ii) the appointment of a commissioner to decide asylum cases; (iii) the right to appeal the commissioner's decision before an independent appeals board; and (iv) the fact that asylum seekers cannot be deported before a final decision has been taken in their case is welcomed.

- Finland, CAT, A/55/44 (2000) 12 at para. 53.

The practice of making all statements of the accused available to the judge who, according to the law, must take into account only the statements made freely, as required by article 15 of the Convention, is noted with satisfaction.

- Uzbekistan, CAT, A/55/44 (2000) 19 at paras. 80 and 81.

Paragraph 80

The failure to apply the Supreme Court's plenary court decision excluding evidence obtained by

LEGAL RIGHTS - RIGHT TO A FAIR AND PUBLIC HEARING

torture is of concern. It is noted that in practice, criminal prosecutions in the State party do not seem to respect the principle of the presumption of innocence and have an inquisitorial character incompatible with article 11 of the Convention.

Paragraph 81

The State party should ensure in practice absolute respect for the principle of the inadmissibility of evidence obtained by torture.

- Belarus, CAT, A/56/44 (2001) 19 at paras. 45 and 46.

Paragraph 45

The following is of concern:

The lack of an independent judiciary, with the President of the State party maintaining the sole power to appoint and dismiss from office most judges, who must also pass through a probationary initial term, and whose tenure lacks certain necessary safeguards.

Presidential Decree No. 12 which restricts the independence of lawyers, subordinating them to the control of the Ministry of Justice, by introducing obligatory membership in a state-controlled Collegium of Advocates, in direct contravention with the UN Basic Principles on the Role of Lawyers.

Paragraph 46

Measures should be taken, including the review of the Constitution, laws and decrees, to establish and ensure the independence of the judiciary and lawyers in the performance of their duties, in conformity with international standards.

- Australia, CAT, A/56/44 (2001) 22 at paras. 52 and 53.

Paragraph 52

The apparent lack of appropriate review mechanisms for ministerial decisions in respect of cases coming under article 3 of the Convention is of concern.

Paragraph 53

The State party should consider the desirability of providing a mechanism for independent review of ministerial decisions in respect of cases coming under article 3 of the Convention.

LEGAL RIGHTS - RIGHT TO A FAIR AND PUBLIC HEARING

- Canada, CAT, A/56/44 (2001) 24 at paras. 58 and 59.

Paragraph 58

It is of concern that the public danger risk assessment, without interview or transparency, is carried out prior to the refugee determination procedure, and, if a person is considered a security risk, this person is not eligible to have his case examined in-depth under the normal refugee determination procedure. In addition, it is noted that at present both the review of security risk and the review of the existence of humanitarian and compassionate grounds are determined by the same governmental body. The alleged lack of independence of decision-makers, as well as the possibility that a person can be removed while an application for humanitarian review is underway, may constitute obstacles to the effectiveness of the remedies to protect the rights in article 3(1) of the Convention.

Paragraph 59

The effectiveness of the remedies to protect the rights granted by article 3(1) of the Convention should be enhanced. Noting the assurances that the proposed new Immigration and Refugee Act provides for a pre-removal risk assessment "available to all persons under a removal order", the State party is encouraged to ensure that the proposed new legislation permits in-depth examination by an independent entity of claims, including those from persons already assessed as security risks. The State party is urged to ensure that obstacles to the full implementation of article 3 are removed, so that an opportunity is given to the individual concerned to respond before a security risk decision is made, and that assessments of humanitarian and compassionate grounds are made without demanding a fee from a person who seeks protection.

- Cameroon, CAT, A/56/44 (2001) 28 at para. 65.

The imbalance between the large number of allegations of torture or ill-treatment and the small number of prosecutions and trials is of concern. The absence of legislative provisions rendering evidence obtained through torture inadmissible, pursuant to article 15 of the Convention is also a matter of concern.

- Georgia, CAT, A/56/44 (2001) 35 at paras. 81 and 82.

Paragraph 81

Concern is expressed over the following:

Amendments to the new Criminal Procedural Code shortly after its entry into force, compromising some of the human rights protections previously provided for in the code, particularly the right of judicial review of complaints of ill-treatment.

LEGAL RIGHTS - RIGHT TO A FAIR AND PUBLIC HEARING

Certain powers of the procuracy and the problems created by its methods of functioning, which raises serious concerns regarding the existence of an independent mechanism to hear complaints; as well as doubts as to the objectivity of the procuracy, and the objectivity of the courts and medical experts.

Paragraph 82

In order to ensure that perpetrators of torture do not enjoy impunity, urgent steps be taken to: i) establish an effective and independent complaints mechanism; ii) make provisions for the systematic review of all convictions based upon confessions that may have been obtained through torture; iii) make adequate provisions for compensation and rehabilitation of victims of torture.

- Bolivia, CAT, A/56/44 (2001) 40 at paras. 95 and 97.

Paragraph 95

It is of concern that refugees from Peru are being returned to their country of origin without compliance with procedural formalities that would have enabled them to present reasons why they were afraid of being returned to their country of origin.

Paragraph 97

Adequate measures should be adopted to ensure that no person can be expelled, returned or extradited to another State where there are substantial grounds for believing that that person would be in danger of being subjected to torture. Steps must be taken to ensure that these persons have the possibility of explaining these grounds in impartial and adversarial proceedings whose findings are subject to review by a higher authority.

- Kazakhstan, CAT, A/56/44 (2001) 52 at para. 129.

Measures should be taken, including the review of the Constitution, laws, and decrees, to establish and ensure the independence of the judiciary and defence counsel in the performance of their duties, in conformity with international standards. The State party should review cases of convictions based on confessions that may have been obtained through torture or ill-treatment, and ensure adequate compensation to victims.

CRC

- Myanmar, CRC, CRC/C/62 (1997) 25 at para. 180.

Particular attention should be paid to using deprivation of liberty only as a measure of last resort and for the shortest possible period of time; to ensuring humane conditions of detention, taking into

LEGAL RIGHTS - RIGHT TO A FAIR AND PUBLIC HEARING

account the specific needs of children, including separation from adult detainees; to the rights of the child to legal assistance and judicial review; to due process of law; and to the full independence and impartiality of the judiciary. Training programmes on the relevant international standards should be organized for all those professionals involved with the system of juvenile justice. An independent monitoring mechanism, national and/or international, should guarantee the full implementation of those rights. Finally, international assistance in the area of the administration of juvenile justice should be considered from the High Commissioner/Centre for Human Rights and the Crime Prevention and Criminal Justice Division of the Secretariat.

- The Former Yugoslav Republic of Macedonia, CRC, CRC/C/94 (2000) 45 at paras. 267 and 268.

Paragraph 267

Concern is expressed that Centres for Social Work are currently authorized to make decisions relative to the placement of a child with one parent, without judicial review.

Paragraph 268

The State party is urged to consider the use of alternative mechanisms with regard to implementation of the Convention's provisions concerning the family environment and alternative care or to increase the resources available to the Centres for Social Work. The State party should establish a mechanism providing for judicial review of situations requiring the placement of a child with one parent.

- Islamic Republic of Iran, CRC, CRC/C/97 (2000) 8 at para. 74.

Concern is expressed that persons under 18 may be prosecuted for crimes in the same manner as adults, without special procedures; are potentially liable for the same penalties as adults; may be subject to deprivation of liberty without due process; and, apart from facilities in some large cities, may be held in detention with adults.

- Saudi Arabia, CRC, CRC/C/103 (2001) 71 at para. 391.

The importance of setting up an independent mechanism with a mandate to regularly monitor and evaluate progress in the implementation of the Convention is emphasized. The guarantees of non-discrimination, religious freedom and due process laid down in domestic law without independent and effective mechanisms to monitor their application do not on their own ensure the enjoyment of these and other fundamental rights.

LEGAL RIGHTS - RIGHT TO A FAIR AND PUBLIC HEARING

- Palau, CRC, CRC/C/103 (2001) 79 at para. 479.

The State party should take all effective measures to implement a juvenile justice system in conformity with the Convention, in particular articles 37, 40 and 39, and of other United Nations standards in this field, such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty. The State party should establish social services to support judges and guarantee the rights of children (especially the right to a fair hearing) in traditional disciplinary measures.

- Guatemala, CRC, CRC/C/108 (2001) 47 at para. 284.

In line with its own previous recommendation and with that of the Special Rapporteur on the independence of judges and lawyers (see E/CN.4/2000/61/Add.1), the Committee recommends that the State party continue reviewing its law and practices regarding the juvenile justice system in order to bring it as soon as possible into full compliance with the Convention, in particular articles 37, 40 and 39, as well as with other relevant international standards in this area, and that it expedite the adoption of the Children and Adolescents Code of 1996 which guarantees due process of law for children and social and educational correctional measures.