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IV. CONCLUDING OBSERVATIONS

ICCPR

- Argentina, ICCPR, A/50/40 vol. I (1995) 35 at para. 157.

It is of concern that accused persons are held in detention in the same facilities as convicted persons, and that the grounds for judicial authorization of telephone tapping may be too broadly drawn.

- United States of America, ICCPR, A/50/40 vol. I (1995) 52 at paras. 285, 287 and 299.

Paragraph 285

The Committee is concerned about the practice which allows male prison officers access to women's detention centres and which has led to serious allegations of sexual abuse of women and the invasion of their privacy.

Paragraph 287

The serious infringement of private life in some states which classify as a criminal offence sexual relations between adult consenting partners of the same sex carried out in private, and the consequences thereof for their enjoyment of other human rights without discrimination is of concern.

Paragraph 299

Existing legislation that allows male officers access to women's quarters should be amended so as to provide at least that they will always be accompanied by women officers.

- Russian Federation, ICCPR, A/50/40 vol. I (1995) 65 at paras. 380 and 399.

Paragraph 380

That actions may continue which violate the right to protection from unlawful or arbitrary interference with privacy, family, home or correspondence is of concern. It is of concern that the mechanisms to intrude into private telephone communication continue to exist, without clear legislation setting out the conditions for legitimate interferences with privacy and providing for safeguards against unlawful interferences.

Paragraph 399

Legislation should be passed on the protection of privacy, and strict and positive action should be taken to prevent violations of the right to protection from unlawful or arbitrary interference with privacy, family, home or correspondence.

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- United Kingdom of Great Britain and Northern Ireland, ICCPR, A/50/40 vol. I (1995) 72 at para. 418.

The powers under provisions permitting infringements of civil liberties, such as of extended periods of detention without charge or access to legal advisers, entry into private property without judicial warrant, imposition of exclusion orders within the United Kingdom, etc., are excessive. Reports regarding the continuation of the practice of strip searching male and female prisoners in the context of the low security risk that now exists and in view of the existence of adequate alternative search techniques are disturbing.

- United Kingdom of Great Britain and Northern Ireland (Hong Kong), ICCPR, A/51/40 vol. I (1996) 13 at para. 64.

With respect to article 17 of the Covenant, note is taken of the Law Reform Commission's review of the Telecommunication Ordinance and the Post Office Ordinance. It is of concern that those ordinances can be abused to intrude on the privacy of individuals and their amendment is urgently needed.

- Slovakia, ICCPR, A/52/40 vol. I (1997) 58 at para. 384.

The absence of judicial guarantees with respect to telephone-tapping during the pre-trial investigation of a crime is of concern. The interception of confidential communications should always be subject to control by an independent judicial authority.

- Jamaica, ICCPR, A/53/40 vol. I (1998) 15 at para. 88.

Wire-tapping remains an exceptional administrative measure and the current administrative rules are insufficient to secure compliance with article 17 of the Covenant. Therefore, the Jamaican authorities should either discontinue wire-tapping or adopt precise legislation governing its administration, which should include appropriate mechanisms for judicial oversight.

- Belarus, ICCPR, A/53/40 vol. I (1998) 26 at para. 151.

Reports of arbitrary infringements of the right to privacy, in particular of abuses by the authorities in regard to wire-tapping and house searches, are of concern. Moreover, it is noted with concern that, under article 20 of the Law on Investigative Activities, decisions on the legality of such activities are

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in the competence of the General Procurator, without court review. Investigative activities affecting the right to privacy should be conducted in accordance with article 17 of the Covenant, and the competence to decide upon requests for and the legality of such activities should be transferred to the courts.

- Lithuania, ICCPR, A/53/40 vol. I (1998) 30 at para. 174.

The extensive powers exercised by immigration officers in respect of illegal immigrants in border areas are of particular concern. The powers of entry and search exercised by immigration officers should be clearly defined and judicially controlled in order to ensure compliance with article 17 and other provisions of the Covenant.

- Zimbabwe, ICCPR, A/53/40 vol. I (1998) 35 at para. 227

Steps should be taken to ensure that the authorization of the Postmaster-General to intercept any postal articles or telegrams on grounds of public security or the maintenance of law and to deliver these items to a specified State employee is subject to strict judicial supervision, and the relevant laws should be brought into compliance with the Covenant.

- Italy, ICCPR, A/53/40 vol. I (1998) 50 at para. 336.

Legislation passed to regulate the collection and use of personal computerized data along with another measure subjecting wire-tapping to strict control assist in the implementation of article 17 of the Covenant.

- Japan, ICCPR, A/54/40 vol. I (1999) 36 at para. 169.

The Committee is deeply concerned at many aspects of the prison system in Japan which raise serious questions of compliance with articles 2, paragraph 3 (a), 7 and 10 of the Covenant, including harsh rules of conduct in prisons that restrict the fundamental rights of prisoners, such as freedom of speech, freedom of association and privacy.

- Chile, ICCPR, A/54/40 vol. I (1999) 44 at paras. 211 and 216.

Paragraph 211

The criminalization of all abortions, without exception, raises serious issues. A legal duty imposed

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upon health personnel to report cases of women who have undergone abortions may inhibit women from seeking medical treatment, thereby endangering their lives. The State party has a duty to take measures to ensure the right to life of all persons, including pregnant women whose pregnancies are terminated. Therefore, exceptions to a general prohibition of all abortions should be introduced and the confidentiality of medical information should be protected.

Paragraph 216

Legislation that criminalizes homosexual relations between consenting adults involves a violation of the right to privacy protected under article 17 of the Covenant and may reinforce attitudes of discrimination between persons on the basis of sexual orientation. Such laws should be amended so as to abolish the crime of sodomy as between adults.

- Canada, ICCPR, A/54/40 vol. I (1999) 48 at para. 238.

Identification techniques, such as fingerprinting and retinal scanning, of people relying on social assistance are intrusive measures affecting the right to privacy. Steps should be taken to ensure the elimination of such practices.

- Lesotho, ICCPR, A/54/40 vol. I (1999) 51 at para. 267.

Safeguards for the exercise of the power to intercept mail and tap telephones, with independent supervision of such activities, is urged.

- Mexico, ICCPR, A/54/40 vol. I (1999) 61 at para. 329.

Measures should be taken to investigate allegations that women seeking employment in foreign enterprises are subjected to pregnancy tests and are required to respond to intrusive personal questioning, and that some women employees have been administered anti-pregnancy drugs. Such measures should ensure that women whose rights to equality and to privacy have been violated in this way have access to remedies and should prevent such violations from recurring.

- Poland, ICCPR, A/54/40 vol. I (1999) 65 at paras. 355 and 356.

Paragraph 355

As regards telephone tapping, a system of independent monitoring should be introduced.

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Paragraph 356

The reference to sexual orientation that was originally contained in the non-discrimination clause of the draft Constitution but has now been deleted from the text could lead to violations of articles 17 and 26.

- Romania, ICCPR, A/54/40 vol. I (1999) 68 at para. 375.

Provisions which penalize homosexual relations between consenting adults restrict the right to privacy and should be amended.

- Republic of Korea, ICCPR, A/55/40 vol. I (2000) 29 at para. 149.

The extensive use of wiretapping raises serious questions of compliance with article 17 of the Covenant. The lack of adequate remedies to correct of inaccurate information in databases or to prevent its misuse or abuse is also of concern.

- Hong Kong Special Administrative Region (China), ICCPR, A/55/40 vol. I (2000) 40 at paras. 243 and 244.

Paragraph 243

The Interception of Communications Ordinance, which was passed in June 1997 in order to restrict the power of the authorities to intercept communications, has not yet been brought into effect, and this is of concern. Section 33 of the Telecommunication Ordinance and Section 13 of the Post Office Ordinance still continue to be in force, thus allowing the authorities to violate the right to privacy under article 17 of the Covenant.

Paragraph 244

The State party must ensure that both its law and practice protect the rights guaranteed under article 17.

- Congo, ICCPR, A/55/40 vol. I (2000) 43 at para. 286.

The secrecy of correspondence is to be guaranteed, and violations of such secrecy are to be punished.

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- Denmark, ICCPR, A/56/40 vol. I (2001) 34 at para. 73(16).

It is noted that under the Aliens Act, Immigration Authorities may require DNA testing of an applicant and the persons with whom the applicant claims family ties on which a residence permit is to be based. DNA testing may have important implications for the right of privacy under article 17 of the Covenant. Such testing should only be used only when necessary and appropriate to the determination of the family tie on which a residence permit is based (art. 23).

- Venezuela, ICCPR, A/56/40 vol. I (2001) 49 at para. 77(19).

The legal duty imposed on health workers to report cases where women have undergone abortions may deter women from seeking medical treatment, thereby endangering their lives. The State party must adopt the necessary measures to guarantee the right to life (article 6) for pregnant women who decide to terminate their pregnancies, including amending the law to create exceptions to the general prohibition of all non-therapeutic abortion. The State party should protect the confidential nature of medical information.

ICESCR

- Panama, ICESCR, E/1992/23 (1991) 24 at para. 135.

The justifications for the actions carried out by the Panamanian and United States forces in Tocumen, San Miguelito and Panama Viejo in early 1990, which affected over 5,000 persons, were unacceptable under the terms of the Covenant as grounds for forcibly removing people from their homes. During the actions concerned, a large number of houses were demolished, in spite of the affected persons having lived in the area for more than two years. Additionally, these evictions had not been accompanied by legal eviction orders. Evictions carried out in this way are not only an infringement upon the right to adequate housing but also on the inhabitants' rights to privacy and security of the home.

- United Kingdom of Great Britain and Northern Ireland (Hong Kong), ICESCR, E/1997/22 (1996) 58 at para

It is of concern that the Sex Discrimination Ordinance does not protect those individuals whose right to work is violated by inappropriate account being taken of their sex lives.

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CEDAW

- Namibia, CEDAW, A/52/38/Rev.1 part II (1997) 82 at para. 120.

Immediate action should be taken to combat domestic violence, including legal measures such as amending the law on rape and extending it to include marital rape. The State courts should have sole jurisdiction in cases of sexual violence, and victims should be given better privacy and protection during court proceedings.

- Singapore, CEDAW, A/56/38 part II (2001) 51 at para. 71.

The efforts made to combat violence against women, including the criminal and evidentiary procedures protecting the privacy of victims, the broadening of the definition of violence in the Women's Charter and the Government's multidisciplinary and inter-agency approach to victims of family violence involving the courts, police, hospitals and social service agencies, are noted with appreciation.

CAT

- Bulgaria, CAT, A/54/44 (1999) 18 at para. 162.

All prisoners' correspondence addressed to international bodies of investigation or to settlement of disputes should be excluded from "censor checks" by prison personnel or other authorities.

See also:

- Italy, CAT, A/54/44 (1999) 19 at para. 169.

CRC

- Norway, CRC, CRC/C/29 (1994) 27 at paras. 162 and 176.

Paragraph 162

The Committee notes that although an opting-out system exists for children wishing to abstain from compulsory religious education, this requires their parents to submit a formal request exposing the faith of the children involved and as such may be an infringement of their right to privacy.

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Paragraph 176

The State party should reconsider its policy on religious education for children in light of the general principle of non-discrimination and the right to privacy.

- Nicaragua, CRC, CRC/C/43 (1995) 10 at para. 61.

Measures should be taken, on an urgent basis, to ensure the protection of the child from information and material injurious to his or her well-being and to protect the child's right to privacy.

- Libyan Arab Jamahiriya, CRC, CRC/C/73 (1998) 9 at para. 57.

Cases of abuse and ill-treatment of children, including rape and sexual abuse within the family, should be properly investigated, sanctions should be applied to perpetrators and publicity should be given to decisions taken in such cases, with due regard given to protecting the right to privacy of the child.

See also:

- Iraq, CRC, CRC/C/80 (1998) 15 at para. 78.
- Thailand, CRC, CRC/C/80 (1998) 35 at para. 174.

- Japan, CRC, CRC/C/79 (1998) 25 at para. 182.

Additional measures, including legislative ones, should be taken to guarantee the child's right to privacy, especially in the family, in schools, and in childcare and other institutions.

- Nicaragua, CRC, CRC/C/87 (1999) 54 at para. 232.

Legal reform should be continued and the appropriate resources should be allocated in order to establish practical procedures and regulations to protect children from harmful information and, to guarantee their access to appropriate information and their right to privacy.

- Grenada, CRC, CRC/C/94 (2000) 72 at para. 403.

Insufficient efforts have been made to protect the right to privacy of child victims of abuse. Cases of domestic violence, ill-treatment and sexual abuse of children should be properly investigated within a child-friendly judicial procedure, and sanctions applied to perpetrators, including treatment, with

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due regard given to protecting the right to privacy of the child.

See also:

- South Africa, CRC, CRC/C/94 (2000) 81 at para. 440.
- Georgia, CRC, CRC/C/97 (2000) 18 at para. 117.

- South Africa, CRC, CRC/C/94 (2000) 81 at para. 455.

The Committee is concerned about the length of time taken before juvenile cases can be heard and the apparent lack of confidentiality accorded to such cases. The State party should use deprivation of liberty only as a measure of last resort and for the shortest possible period of time; protect the rights of children deprived of their liberty, including the right to privacy; ensure that children remain in contact with their families while in the juvenile justice system.

See also:

- Grenada, CRC, CRC/C/94 (2000) 72 at paras. 411 and 412.
- Georgia, CRC, CRC/C/97 (2000) 18 at para. 145.
- Suriname, CRC, CRC/C/97 (2000) 84 at para. 508.

- Djibouti, CRC, CRC/C/97 (2000) 96 at para. 555.

The State party is urged to address the sexual and reproductive health-care needs of older children, including those married at a young age and those in vulnerable situations. The State party should provide access to information about sexual and reproductive health. Services in this area should be user friendly and address the concerns and need for confidentiality of adolescents.

- Marshall Islands, CRC, CRC/C/100 (2000) 89 at paras. 509 and 510.

Paragraph 509

Noting that the State party's general approach is more welfare oriented rather than child rights based, concern is expressed that the principles of the best interests of the child (art. 3) and the right to life and development (art. 6) are not fully reflected in the State party's legislation, its administrative and judicial decisions, or its policies and programmes relevant to children. Further, the principle of respect for the privacy of the family, guaranteed by the Constitution and customary practice, may limit interventions within the family which, in accordance with article 9 of the Convention, may be in the best interests of the child.

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Paragraph 510

The general principles of the Convention, in particular the provisions of articles 3 and 6, should be appropriately integrated in all revisions to legislation as well as in judicial and administrative decisions and in projects, programmes and services which have an impact on children and should guide the determination of policy-making at every level and in particular actions taken by social welfare institutions, courts of law and administrative authorities.

- Turkey, CRC, CRC/C/108 (2001) 18 at para. 126.

It is recommended that cases of domestic violence and ill-treatment and abuse of children, including sexual abuse within the family, be properly investigated within a child-sensitive inquiry and judicial procedure in order to ensure better protection of child victims, including the protection of their right to privacy, and the elimination of virginity tests.

See also:

- Guatemala, CRC, CRC/C/108 (2001) 47 at para. 264.
- United Republic of Tanzania, CRC, CRC/C/108 (2001) 71 at para. 397.

- Democratic Republic of the Congo, CRC, CRC/C/108 (2001) 31 at para. 196.

Instances of abuse and neglect of children should be properly investigated within a child-sensitive inquiry and judicial procedure in order to ensure better protection of child victims, including the protection of their right to privacy.

- United Republic of Tanzania, CRC, CRC/C/108 (2001) 71 at para. 419.

The State party should use deprivation of liberty only as a measure of last resort and for the shortest possible period of time; improve the conditions in detention facilities; protect the rights of children deprived of their liberty, including their right to privacy; and ensure that children remain in contact with their families while in the juvenile justice system.