

PUBLIC AND PRIVATE ACTORS - MILITARY

II. CONCLUDING OBSERVATIONS

CERD

- Croatia, CERD, A/48/18 (1993) 90 at paras. 498 and 499.

Paragraph 498

The practice of illegal and arbitrary detention, disappearance, torture, deaths in custody and other human rights abuses by armed and paramilitary forces is of concern. Reports of prisons run by private groups who take non-ethnic Croatians into custody for the purpose of exchanging them for ethnic Croatians held by other forces is also of concern.

Paragraph 499

Deep concern is expressed over the reported use of Nazi insignia, in particular by elements of the army.

- Croatia, CERD, A/50/18 (1995) 36 at para. 168.

Great concern has been expressed concerning the earlier intention of the State party not to permit the military, civilian and police components of the United Nations Protection Force to remain in the country. It is considered that withdrawal may have the gravest implications for minority ethnic groups and displaced persons in the United Nations Protected Areas (UNPAs), the demilitarized zone and elsewhere.

- Peru, CERD, A/50/18 (1995) 41 at paras. 201 and 203.

Paragraph 201

As regards implementation of article 6, concern is expressed at allegations of excessive use of violence committed in the past towards the rural population (most of whom are of indigenous descent) by the army and various armed groups as a reaction to terrorism. The role of military courts in this respect needs further explanation and assessment. Concern is expressed over whether impunity is not given too much weight in respect of the prosecution of human rights violations by military and paramilitary groups.

Paragraph 203

Special efforts should be made within the armed forces to terminate any unlawful violence towards civilians, including persons belonging to indigenous communities, and to secure that perpetrators of human rights violations are brought to justice.

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- Guatemala, CERD, A/50/18 (1995) 58 at para. 307.

Concern is expressed at the numerous excesses by elements of the military and the civilian self-defence patrols (PACs) against indigenous peoples, including summary executions and other cruel, inhuman or degrading treatment, threats and forcible recruitment into the armed forces.

- Nigeria, CERD, A/50/18 (1995) 101 at para. 627.

Particular concern is expressed that Decree 12, which states "no act of the federal military government may be questioned henceforth in a court of law" and which ousts "courts of jurisdiction", can adversely affect proceedings invoking protection against racial discrimination.

- Chad, CERD, A/50/18 (1995) 106 at para. 659.

The ethnic aspect of human rights violations, the predominant influence of certain ethnic minorities close to the State within the administration and the army, and the growing antagonism between the north and south of the country are matters of concern.

- Colombia, CERD, A/51/18 (1996) 15 at para. 54.

Particular attention should be paid to the problem of unlawful orders in the military, police and law enforcement agencies. Instances of unlawful orders being issued and carried out should be investigated and those found to have committed illegal actions should be punished. Impunity should be eliminated. These matters should also be covered in the training programmes of the agencies mentioned.

- Russian Federation, CERD, A/51/18 (1996) 25 at para. 152.

The State Party should effectively enhance protection against any acts of racial discrimination through the competent national courts, in accordance with article 6 of the Convention, by strengthening the court system, the independence of the judiciary and the confidence of the population therein. The training of judges, lawyers, magistrates, law enforcement personnel and the military in human rights is recommended.

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- Brazil, CERD, A/51/18 (1996) 45 at paras. 303 and 308.

Paragraph 303

Special concern is expressed about the unfair treatment of the indigenous populations during land demarcation and distribution, the violent and unlawful means used to settle numerous land disputes and the violence and intimidation used against them by private militias and even occasionally by members of the military police.

Paragraph 308

The Government should put more vigorously into practice its determination to defend the fundamental rights of indigenous people, blacks, mestizos and members of other vulnerable groups, who are regularly the victims of serious intimidation and violence, sometimes leading to their death. The authorities should systematically prosecute those guilty of such crimes, whether they are members of private militias or State officials, and should take effective preventive measures, especially through training for the members of the military police. In addition, the State Party should ensure that the victims of such acts receive compensation and are rehabilitated.

- Burundi, CERD, A/52/18 (1997) 73 at para. 577.

Concern is expressed over reports that people, mostly of Hutu origin, are forced by the police to leave their homes and settle in regroupment camps, which are kept under the control of the army, in violation of article 5 (d) (i) of the Convention.

- Yugoslavia, CERD, A/53/18 (1998) 45 at para. 203.

The disproportionate use of force by law enforcement agencies and the military against the Albanian population in the province of Kosovo and Metohija has resulted in numerous violations of the right to life, destruction of property and displacement.

- Rwanda, CERD, A/55/18 (2000) 31 at para. 144.

Concern remains that impunity prevails, notably in some cases involving unlawful acts committed by members of the security forces. The State party should continue to address impunity through the judicial process. The State party is urged to make additional efforts to respond adequately to and prevent unlawful acts committed by members of the military or civilian authorities.

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- Slovenia, CERD, A/55/18 (2000) 45 at para. 246.

Although the initiatives to sensitize and train civil servants and public officials on human rights and racial discrimination are welcomed, concern remains that these efforts are still insufficient. It is recommended that the State party strengthen its human rights sensitization and training programmes, especially with regard to law enforcement and military personnel.

- Argentina, CERD, A/56/18 (2001) 18 at para. 56.

It is noted with concern that there have been reports of police brutality committed on a variety of pretexts, on grounds of race, colour or ethnic origin. In the courses and seminars organized to provide human rights education for members of the police, armed forces, immigration and prison officials, particular attention should be given to the dissemination and implementation of the Convention.

- Bangladesh, CERD, A/56/18 (2001) 21 at para. 71.

Reports of human rights violations by security forces present in the Chittagong Hill Tracts affecting the tribal population, including reports of arbitrary arrests and detentions, and ill-treatment are of concern. It is recommended that the State party implement effective measures to guarantee to all Bangladeshis, without distinction based on race, colour, descent, or national or ethnic origin, the right to security of person and protection by the State against violence or bodily harm.

- Sudan, CERD, A/56/18 (2001) 40 at para. 213.

Deep concern is expressed about the forced relocation of civilians from the Nuer and Dinka ethnic groups in the upper Nile region and reports that the relocations involved significant military force resulting in civilian casualties. The State party is urged to uphold the fundamental economic and social rights of the Nuer and Dinka in the upper Nile region including the right to personal security, to housing, food and to just compensation for property confiscated for public use.

- Liberia, CERD, A/56/18 (2001) 70 at paras. 436 and 440.

Paragraph 436

Grave concern is expressed about the numerous reported instances of discrimination based on ethnicity. Reports of extrajudicial killings, allegations of torture and rape, and the lack of

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accountability of perpetrators, including government security forces, for these abuses are of particular concern.

Paragraph 440

The State party should guarantee swift and thorough investigation and prosecution of acts of violence against persons belonging to ethnic and racial groups.

ICCPR

- Peru, ICCPR, A/47/40 (1992) 69 at para. 343.

The terrorism which appears to form part of the daily life in Peru is of concern. The atrocities perpetrated by insurgent groups is condemned, and the scale of terrorist violence, which shows no consideration for the most basic human right is disturbing. Nevertheless, excessive force and violence used by the military, the para-military, the police, and armed civilian groups is also censured. The great number of complaints of extrajudicial executions and disappearances attributed to the security forces is troubling. In this respect, the absence of civilian control over the military and para-military groups, especially in the zones under their control, which in some cases amounts to impunity, is of deep concern. In particular, it is regretted that those groups can be tried for acts of violence only under military law. Combatting terrorism with arbitrary and excessive State violence cannot be justified under any circumstances.

- Colombia, ICCPR, A/47/40 (1992) 83 at paras. 393 and 394.

Paragraph 393

Concern is expressed at the ongoing violence, causing a rate of homicide, disappearances and torture which, although decreasing, is unacceptable. The murders of sectors of the population in so-called social cleansing operations ("*limpieza social*") is of special concern. Moreover, the phenomenon of impunity for police, security and military personnel is also of concern. In that connection, the measures that have been taken do not seem to be sufficient to guarantee that all members of the armed forces who abuse their power and violate citizens' rights will be brought to trial and punished. Military courts do not seem to be the most appropriate ones for the protection of citizens' rights in a context where the military itself has violated such rights. The persistence of paramilitary groups also causes concern. Furthermore, full guarantees do not exist for adequate implementation of the provisions of article 4 of the Covenant regarding states of emergency.

Paragraph 394

The State party should intensify its action against all violence resulting in human rights violations. It should eliminate impunity; strengthen safeguards for individuals *vis-à-vis* the armed forces; limit the

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competence of the military courts to internal issues of discipline and similar matters so that violations of citizens' rights will fall under the competence of ordinary courts of law; and disband all paramilitary groups. Finally, emergency legislation should be brought into conformity with article 4 of the Covenant.

- Yugoslavia, ICCPR, A/47/40 (1992) 103 at para. 469.

In view of the serious situation prevailing in the State party, the Government should take all necessary measures to stop violations of human rights, particularly those relating to the right to life and the prohibition of torture. These measures should include re-establishment of control over the army, dissolution of paramilitary militias and groups, punishment of those guilty of violations and the adoption of measures to prevent a recurrence of such abuses.

- Venezuela, ICCPR, A/48/40 vol. I (1993) 61 at paras. 307, 308 and 310.

Paragraph 307

The serious human rights violations, such as enforced and involuntary disappearances, torture and extrajudicial executions, that were committed during the attempted *coup d'état* in 1989 and early 1992 are of concern. The failure to take sufficient steps to punish those guilty of such violations is disturbing, and it is of concern that members of the police force and the security services and military personnel are likely to go unpunished as a result. Judicial investigations into such cases have clearly been too slow, especially where members of the armed forces are concerned.

Paragraph 308

The possibility that civilians may be tried by military courts is a matter of concern.

Paragraph 310

The State party should take whatever steps are necessary to combat all human rights violations, in particular those that may have been committed during the various states of emergency. The State party should see to it that all members of the armed forces and the police who have committed violations of the rights guaranteed by the Covenant are tried and punished by civilian courts. Training courses should also be organized for members of the police, the armed forces and the security forces as well as for other law enforcement officials, so as to better acquaint them with basic human rights principles and norms.

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- Croatia, ICCPR, A/48/40 vol. I (1993) 75 at paras. 360 and 362.

Paragraph 360

Long-standing discrimination against and harassment of ethnic Serbs residing within Croatia is of concern. Members of the military were often seen in public, including in Bosnia and Herzegovina, wearing fascist emblems.

Paragraph 362

Responsibility must be accepted for the acts of the military in other territories as well as in Croatia. Clear instructions should be issued to all military personnel as to their obligations under the Covenant. The foregoing had to be borne in mind in the context of support afforded, directly or indirectly, to local Croatian militia in Bosnia and Herzegovina. Those responsible for violations of human rights should be brought speedily before the courts. In that regard, the existing distinctions between military and civil jurisdictions should be reviewed so that military personnel might be tried and, if found guilty, punished under normal civil jurisdiction.

- Egypt, ICCPR, A/48/40 vol. I (1993) 139 at para. 706.

Military courts should not have the faculty to try cases which do not refer to offences committed by members of the armed forces in the course of their duties.

- Cameroon, ICCPR, A/49/40 vol. I (1994) 36 at para. 192.

The infringements of the right to life by representatives of the security forces, the army and even paramilitary groups in respect of civilians is deplored.

- El Salvador, ICCPR, A/49/40 vol. I (1994) 38 at paras. 215, 216 and 222.

Paragraph 215

Grave concern is expressed over the adoption of the Amnesty Law, which prevents relevant investigation and punishment of perpetrators of past human rights violations and consequently precludes relevant compensation. It also seriously undermines efforts to re-establish respect for human rights in El Salvador and to prevent a recurrence of the massive human rights violations experienced in the past. Furthermore, failure to exclude violators from service in the Government, particularly in the military, the National Police and the judiciary, will seriously undermine the transition to peace and democracy.

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Paragraph 216

Continuing human rights abuses by the military and security forces are of concern. In this context, the lack of full and effective control by civilian authorities over the military and the security forces is noted with concern.

Paragraph 222

All necessary measures should be taken to ensure that human rights are respected by the military. Continuing vigorous action is urged in order to ensure that persons closely associated with human rights abuses do not re-enter the police, army or security forces.

- Togo, ICCPR, A/49/40 vol. I (1994) 44 at paras. 251 and 262.

Paragraph 251

The composition of the army, whose members are almost exclusively recruited from only one of the ethnic groups in Togo, depriving other groups of the opportunity for equitable participation, is of concern. Such composition, whatever its historical background, together with the apparent lack of full and effective control by civilian authorities over the military and security forces, is a particular cause of anxiety.

Paragraph 262

Specific measures should be taken to ensure that human rights are respected by the military and security forces. Vigorous action should be taken to ensure that persons closely associated with human rights abuses do not re-enter the police, army or security forces. Urgent steps should be undertaken to ensure that the composition of the army equitably represents various ethnic groups of the Togolese population, including currently underrepresented minority groups, and that the army remains subject to the control of the elected civil government.

- Burundi, ICCPR, A/49/40 vol. I (1994) 58 at para. 361.

The massacres following clashes between Hutus and Tutsis that have occurred in Burundi since the consideration of the initial report in October 1992 and the increasingly serious obstacles to the peaceful coexistence of the various elements of the Burundi population is deplored. The attempts to restore civil peace, to assuage the tensions of daily life in society and to redress the balance in the various State institutions, particularly the army, the police, the gendarmerie, the security forces and the judiciary, so as to make them more representative of the various elements of the population, have clearly failed. The pattern of gross violations of human rights in the form of numerous summary executions, disappearances and instances of torture which occurred following the events of autumn 1993 is also deplored. The army, the police, the gendarmerie and the security forces have continued to be responsible for many violations of human rights.

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- Argentina, ICCPR, A/50/40 vol. I (1995) 35 at paras. 153, 154, 156, 158 and 159.

Paragraph 153

Amnesties and pardons have impeded investigations into allegations of crimes committed by the armed forces and agents of national security services and have been applied even in cases where there exists significant evidence of such gross human rights violations as unlawful disappearances and detention of persons, including children. Pardons and general amnesties may promote an atmosphere of impunity for perpetrators of human rights violations belonging to the security forces. Respect for human rights may be weakened by impunity for perpetrators of human rights violations.

Paragraph 154

In the latter connection, it is regretted that evidence presented to the Senate against members of the armed forces, proving that they have engaged in extrajudicial executions, forced disappearances, torture, or other violations of human rights, may in some cases prevent the promotion of those accused but does not in itself cause their dismissal.

Paragraph 156

Cases of excessive use of force, torture and arbitrary or unlawful detentions committed by members of the police and the armed forces are of concern. It is of concern that there is no clear mechanism for investigating complaints of police violence to ensure there will be no reprisals against complainants, that where provincial administrations are lax in dealing with allegations of police violence the federal authorities do not ensure compliance with the Covenant, and that the perpetrators of acts of police violence generally are not punished and the victims are not compensated.

Paragraph 158

The members of the armed forces or security forces against whom sufficient evidence of involvement in gross human rights violations exists should be removed from their posts.

Paragraph 159

Recent allegations of murders committed by the military during the period of military rule and the State party should take action on the findings.

- Paraguay, ICCPR, A/50/40 vol. I (1995) 42 at para. 214.

The restriction on voting for students of military schools seems to be an unreasonable restriction on article 25 of the Covenant on the right to participate in public life.

- Haiti, ICCPR, A/50/40 vol. I (1995) 46 at paras. 230, 232 and 236.

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Paragraph 230

The effects of the Amnesty Act, agreed upon during the process which led to the return of the elected Government of Haiti, are of concern. Despite the limitation of its scope to political crimes committed in connection with the *coup d'état* or during the past regime, the Amnesty Act might impede investigations into allegations of human rights violations, such as summary and extrajudicial executions, disappearances, torture and arbitrary arrests, rape and sexual assault, committed by the armed forces and agents of national security services. An amnesty in wide terms may promote an atmosphere of impunity for perpetrators of human rights violations and undermine efforts to re-establish respect for human rights in Haiti and to prevent a recurrence of the massive human rights violations experienced in the past.

Paragraph 232

The failure to screen and exclude human rights violators from service in the military, the police force and the judiciary will seriously weaken the transition to security and democracy. It is of concern that human rights violations by members of the armed forces, agents of security services and members of former paramilitary groups still occur. The lack of full and effective control by civilian authorities over the military is of particular concern. It is also of concern that the composition, command and number of the armed forces is not clearly defined.

Paragraph 236

The State party's obligation under article 2, paragraph 3, of the Covenant to ensure that victims of past human rights violations have an effective remedy is emphasized. It is strongly recommended that the Commission on Truth and Justice initiate its work as soon as possible and that other mechanisms be set up to investigate human rights violations by members of the police, the armed forces and other security services and the judiciary to ensure that persons closely associated with human rights abuses do not serve in those offices.

- Yemen, ICCPR, A/50/40 vol. I (1995) 49 at para. 252.

The general amnesty granted to civilian and military personnel for human rights violations they may have committed against civilians during the civil war is noted with concern. In this regard it is noted that some amnesty laws may prevent appropriate investigation and punishment of perpetrators of past human rights violations, undermine efforts to establish respect of human rights, contribute to an atmosphere of impunity among perpetrators of human rights violations, and constitute impediments to efforts undertaken to consolidate democracy and promote respect for human rights.

- Russian Federation, ICCPR, A/50/40 vol. I (1995) 65 at paras. 382, 386, 389 and 400.

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Paragraph 382

It is of concern that conscientious objection to military service, although recognized under article 59 of the Constitution, is not a practical option under Russian law and note is taken in this regard of the draft law on alternative service before the Federal Assembly. The possibility that such alternative service may be made punitive, either in nature or in length of service, is of concern. The allegations of widespread cruelty and ill-treatment of young conscript-soldiers is of serious concern.

Paragraph 386

Concern is expressed over the jurisdiction of the military courts in civil cases. Persons detained by members of the armed forces are said to be able to raise complaints before the Military Procurator's Office in charge of the detention centre where they were held. This would appear to create a situation in which the army is entrusted with the judgment and sentencing of the crimes committed by its own members. It is of concern that such a situation may cause miscarriages of justice, particularly in the light of the Government's acknowledgement that the army, even at the highest levels, is not familiar with international human rights law, including the Covenant.

Paragraph 389

The excessive and disproportionate use of force by Russian forces in Chechnya, indicating grave violation of human rights, is deplored. The fact that no one has been made responsible for the inhumane treatment of prisoners and other detained persons, that investigations on charges of human rights violations by Russian forces, including killing of civilians, have so far been inadequate, that civilian installations such as schools and hospitals were destroyed by government forces, and that a large number of civilians have been killed or displaced as a consequence of the destruction of their homes is further deplored.

Paragraph 400

Stringent measures should be adopted to ensure an immediate end to mistreatment and abuse of army recruits by their officers and fellow soldiers. Every effort should be made to ensure that reasonable alternatives to military service be made available that are not punitive in nature or in length of service. All charges brought against conscientious objectors to military service should be dropped.

- United Kingdom of Great Britain and Northern Ireland, ICCPR, A/50/40 vol. I (1995) 72 at para. 420.

Notwithstanding the establishment of mechanisms for the external supervision of investigations of incidents in which the police or military are allegedly involved, especially incidents that result in the death or wounding of persons, concern is expressed at the fact that the investigations are still carried out by the police and are thus lacking sufficient credibility.

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- Spain, ICCPR, A/51/40 vol. I (1996) 24 at paras. 176 and 186.

Paragraph 176

Concern is expressed over the numerous reports received regarding the ill-treatment and even torture inflicted by members of the security forces on persons suspected of acts of terrorism. It is of concern that investigations are not always systematically carried out by the public authorities and that when members of the security forces are found guilty of such acts and sentenced to deprivation of liberty, they are often pardoned or released early, or simply do not serve the sentence. Moreover, those who perpetrate such deeds are seldom suspended from their functions for any length of time.

Paragraph 186

Legislation on conscientious objection should be amended so that any individual who wishes to claim the status of conscientious objector may do so at any time, either before or after entering the armed forces.

- Guatemala, ICCPR, A/51/40 vol. I (1996) 33 at paras. 220, 232, 242 and 244.

Paragraph 220

Various segments of the population, particularly persons who are or were members of the armed forces or government officials, or who hold economic power, continue to take advantage of a climate of impunity resulting in the most serious human rights violations and this is an obstacle to the rule of law in the State party.

Paragraph 232

The information received of cases of summary executions, disappearances, torture, rape and other inhuman or degrading treatment or punishment, arbitrary arrests and detention of persons by members of the army and security forces, or paramilitary and other armed groups or individuals (notably the civil self-defence patrols (PACs) and former military commissioners) is noted with alarm.

Paragraph 242

The State party should endeavour to bring to justice perpetrators of human rights abuses, notwithstanding the positions they may have held, in accordance with the Covenant. The State party should investigate allegations of human rights violations, past and present, and act on the findings of its investigations, bring to justice those suspected, punish the perpetrators and compensate the victims of such acts. Persons found guilty of having committed human rights violations should be expelled from the armed or security forces and punished accordingly.

Paragraph 244

All necessary measures should be taken to ensure that human rights are respected by members of the

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army, the security forces and the police. Vigorous action should be continued to ensure that persons responsible for human rights abuses not re-enter the police, army or security forces. Immediate steps should be taken to disband paramilitary and other groups, particularly the PACs.

- Nigeria, ICCPR, A/51/40 vol. I (1996) 37 at para. 279.

The continuation of military government and rule by Presidential decrees which suspend or override constitutional rights and which are not open to review by the courts are incompatible with the effective implementation of the Covenant.

- Brazil, ICCPR, A/51/40 vol. I (1996) 44 at paras. 311, 312, 315, 317, 324, 325 and 327.

Paragraph 311

The cases of summary and arbitrary executions committed by security forces and by death squads, frequently involving members of security forces, against individuals belonging to particularly vulnerable groups that include street children, landless peasants, indigenous people and trade-union leaders, are of deep concern.

Paragraph 312

The prevalence of torture, arbitrary and unlawful detention, death threats and acts of violence against prisoners committed by security forces and in particular by the military police is of deep concern.

Paragraph 315

The practice of trying military police accused of human rights violations before military courts is of concern and it is regretted that the jurisdiction to deal with these cases has not yet been transferred to the civilian courts.

Paragraph 317

It is of concern that when members of State security forces are accused of human rights violations, witnesses are not afforded protection against reprisals, intimidation, threats and harassment.

Paragraph 324

Immediate and effective steps should be taken to prevent and combat human rights violations by members of the security forces, especially cases of summary and arbitrary executions, torture, excessive use of force and arbitrary detention. These steps should include the education and sensitization of law enforcement officials, particularly the military police, about human rights. Campaigns and programmes should be developed accordingly and the systematic incorporation of human rights education in all training activities ensured.

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Paragraph 325

It is imperative that stringent measures be adopted to address the issue of impunity by ensuring that allegations of human rights violations are promptly and thoroughly investigated, that the perpetrators are prosecuted, that appropriate punishments are imposed on those convicted, and that victims are adequately compensated. Members of the security forces convicted of serious offences should be permanently removed from the forces and those members of the forces against whom allegations of such offences are being investigated should be suspended from their posts pending completion of the investigation.

Paragraph 327

All complaints of misconduct by members of security forces should be investigated by an independent body and not by the security forces themselves. Formal mechanisms for receipt and investigation of such complaints should be established in all areas of the country and their existence publicized. Such mechanisms must make provision for effective protection of complainants and witnesses against intimidation and reprisals.

- Peru, ICCPR, A/51/40 vol. I (1996) 48 at paras. 347, 350, 359 and 360.

Paragraph 347

The amnesty, which absolves from criminal responsibility and all forms of accountability all military, police and civilian agents of the State who are accused, investigated, charged, processed or convicted for common and military crimes for acts occasioned by the "war against terrorism", is of concern as this makes it practically impossible for victims of human rights violations to institute successful legal actions for compensation. Such an amnesty prevents appropriate investigation and punishment of perpetrators of past human rights violations, undermines efforts to establish respect for human rights, contributes to an atmosphere of impunity among perpetrators of human rights violations and constitutes a very serious impediment to efforts undertaken to consolidate democracy and promote respect for human rights and is thus in violation of article 2 of the Covenant. In this connection, this type of amnesty is incompatible with the duty of States to investigate human rights violations, to guarantee freedom from such acts within their jurisdiction and to ensure that they do not occur in the future.

Paragraph 350

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

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conducted in civilian courts before an independent and impartial judiciary.

Paragraph 359

Immediate measures should be taken to release innocent prisoners and provide them with compensation and to systematically revise, on a non-discretionary basis, convictions handed down by the military tribunals in treason and terrorism cases, particularly convictions based on lack of identification documents or on evidence obtained in the application of the repentance law. The same applies to detainees awaiting trial.

Paragraph 360

Effective measures should be taken to investigate allegations of summary executions, disappearances, torture and ill-treatment, and arbitrary arrest and detention, to bring the perpetrators to justice, to punish them and to compensate victims. If allegations of such crimes have been made against members of the security forces, whether military or civilian, the investigations should be carried out by an impartial body that does not belong to the organization of the security forces themselves. Persons convicted of such crimes should be dismissed and, pending the outcome of the investigation, be suspended from office.

- Gabon, ICCPR, A/52/40 vol. I (1997) 24 at paras. 130 and 141.

Paragraph 130

The fact that the police force is a component of the country's military forces and, as such, is subject to the military command of the Ministry of Defence, is deplored.

Paragraph 141

The necessary measures should be taken to ensure that the police is transformed into a civilian force not subject to the military command of the Ministry of Defence.

- Peru, ICCPR, A/52/40 vol. I (1997) 28 at para. 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 military tribunals in treason and terrorism cases is repeated.

- Colombia, ICCPR, A/52/40 vol. I (1997) 44 at paras. 275, 281, 282, 294, 297 and 304.

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Paragraph 275

It is noted with satisfaction that victims of human rights abuses committed by members of the armed forces may now be represented as civil parties during proceedings before military courts.

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 282

The military and members of security or other forces allegedly continue to exercise special powers over civilians and civilian authorities, including judicial authorities, granted to them through the establishment of Special Public Order Zones by decrees no longer in force. That the military exercise the functions of investigation, arrest, detention and interrogation is of particular concern.

Paragraph 294

Support given by military personnel or security forces to paramilitary groups and operations should be investigated and punished, and immediate steps should be taken to disband paramilitary groups. Consideration should be given to repealing the presidential decree legalizing the constitution of Rural Security Cooperatives.

Paragraph 297

All necessary steps should be taken to ensure that members of the armed forces and the police accused of human rights abuses are tried by independent civilian courts and suspended from active duty during the period of investigation. To this end, the jurisdiction of the military courts with respect to human rights violations should be transferred to civilian courts and investigations of such cases should be carried out by the Office of the Attorney-General and the Public Prosecutor. The new draft Military Penal Code, if it is to be adopted, should comply in all respects with the requirements of the Covenant. The public forces should not be entitled to rely on the defence of "orders of a superior" in cases of violation of human rights.

Paragraph 304

The Government should put an end to the *de facto* exercise by the military of powers in the Special Public Order Zones established by decrees which are no longer in force.

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- Lebanon, ICCPR, A/52/40 vol. I (1997) 53 at paras. 342 and 344.

Paragraph 342

The amnesty granted to civilian and military personnel for human rights violations they may have committed against civilians during the civil war is of concern. Such a sweeping amnesty may prevent the appropriate investigation and punishment of the perpetrators of past human rights violations, undermine efforts to establish respect for human rights, and constitute an impediment to efforts undertaken to consolidate democracy.

Paragraph 344

The broad scope of the jurisdiction of military courts in Lebanon, especially its extension beyond disciplinary matters and its application to civilians, is of concern. The procedures followed by these military courts, as well as the lack of supervision of the military courts' procedures and verdicts by the ordinary courts are also of concern. The State party should review the jurisdiction of the military courts and transfer the competence of military courts, in all trials concerning civilians and in all cases concerning the violation of human rights by members of the military, to the ordinary courts.

- 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 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. 406.

It is of concern that in order to exercise the right to conscientious objection to military service, which is a part of freedom of conscience under article 18 of the Covenant, the application must be made in advance of the conscript's entry into military service and the right cannot be exercised thereafter. Moreover, the length of alternative service is twice as long as military service and this may raise issues of compatibility with article 18 of the Covenant.

- India, ICCPR, A/52/40 vol. I (1997) 67 at paras. 433, 436 and 437.

Paragraph 433

The continued reliance on special powers under legislation such as the Armed Forces (Special Powers) Act, the Public Safety Act and the National Security Act in areas declared to be disturbed and the serious human rights violations, in particular with respect to articles 6, 7, 9 and 14 of the Covenant, committed by security and armed forces acting under these laws as well as by paramilitary

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and insurgent groups, are matters of concern. The Committee endorses the views of the National Human Rights Commission that the problems in areas affected by terrorism and armed insurgency are essentially political in character and that the approach to resolving such problems must also, essentially, be political, and it emphasizes that terrorism should be fought with means that are compatible with the Covenant.

Paragraph 436

Concern is expressed that criminal prosecutions or civil proceedings against members of the security and armed forces, acting under special powers, may not be commenced without the sanction of the Central Government. This contributes to a climate of impunity and deprives people of remedies to which they may be entitled in accordance with article 2, paragraph 3, of the Covenant. The requirement of governmental sanction for civil proceedings should be abolished and it should be left to the courts to decide whether proceedings are vexatious or abusive. Judicial inquiries should be mandatory in all cases of death at the hands of the security and armed forces, and the judges in such inquiries, including those under the Commission of Enquiry Act of 1952, should be empowered to direct the prosecution of security and armed forces personnel.

Paragraph 437

It is regretted that the National Human Rights Commission is prevented by clause 19 of the Protection of Human Rights Act from investigating directly complaints of human rights violations against the armed forces, but must request a report from the Central Government. It is further regretted that complaints to the Commission are subject to a one-year time limit, thus preventing the investigation of many alleged past human rights violations. These restrictions should be removed and the National Human Rights Commission should be authorized to investigate all allegations of violations by agents of the State. Furthermore, all states within the Union should be encouraged to establish human rights commissions.

- Lithuania, ICCPR, A/53/40 vol. I (1998) 30 at para. 169.

The reported cases of harassment and use of excessive force by members of the army against conscripts and of police brutality against detainees are of concern. An independent investigation mechanism should be established to inquire into all cases of alleged brutality committed by members of the police or the army. Intensive training and education programmes in the field of human rights for members of the army and law enforcement officials are also recommended to ensure their observance of the Covenant, especially its articles 7, 9 and 10.

- Ecuador, ICCPR, A/53/40 vol. I (1998) 43 at para. 280.

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Information that the jurisdiction of the military tribunals has been limited to members of the armed forces in the exercise of their official functions, that these tribunals have no jurisdiction over civilians, and that cases of human rights violations by members of the army and the security forces fall under the jurisdiction of civilian courts, is welcomed.

- Israel, ICCPR, A/53/40 vol. I (1998) 45 at paras. 311, 313 and 314.

Paragraph 311

The situation of women, who continue to face discrimination in many aspects of life, including in military service and in religious institutions and are under-represented in the conduct of public affairs, is of concern. No clear plan of action exists which addresses the situation of the most disadvantaged group of women, namely those belonging to the Arab minority. Targeted measures should be considered to accelerate progress towards equality, in particular for Arab women.

Paragraph 313

The number of Palestinians who have been killed by the security forces, as well as all persons who have been the victims of terrorist attacks, is of concern. The use of rubber-coated metal bullets by the security forces in the occupied territories in dispersing demonstrations is reported to have killed many Palestinians, including children. The State party is urged to enforce rigorously the strict limitations on the operational rules as to the use of firearms and the use of rubber bullets against unarmed civilians.

Paragraph 314

The introduction by the Government of a draft law which would deny victims compensation for excesses committed by members of the security forces against Palestinian residents of the occupied territories is regretted.

- Algeria, ICCPR, A/53/40 vol. I (1998) 52 at para. 354.

The Committee is appalled at the widespread massacre of men, women and children in a great number of villages and towns; seriously concerned that women have been the victims of not only killings, but also of abduction, rape and severe violence; and concerned at the lack of timely or preventive measures of protection to the victims from police or military officials in the vicinity and at the persistent allegations of collusion of members of the security forces in terrorist attacks. The State party is urged to adopt effective measures:

(a) to prevent those attacks and, if they nevertheless occur, to come promptly to the defence of the population;

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(b) to ensure that proper investigations are conducted by an independent body to determine who the offenders are and to bring them to justice; and

(c) in all cases of massacres to conduct an independent enquiry into the conduct of the security forces, from the lowest to the highest levels, and where appropriate, to subject them to penal and disciplinary sanctions.

- Belgium, ICCPR, A/54/40 vol. I (1999) 26 at para. 80.

The behaviour of Belgian soldiers in Somalia under the aegis of the United Nations Operation in Somalia (UNOSOM II), is of concern. It is acknowledged that the State party has recognized the applicability of the Covenant in this respect and opened 270 files for purposes of investigation.

- Armenia, ICCPR, A/54/40 vol. I (1999) 29 at para. 114.

The lack of legal provision for alternatives to military service in case of conscientious objection is regretted. The conscription of conscientious objectors by force and their punishment by military courts, and the instances of reprisals against their family members, are deplored.

- 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 trial only of military personnel charged with offences of an exclusively military nature.

- Lesotho, ICCPR, A/54/40 vol. I (1999) 51 at para. 257.

The continuing influence of the military in civilian matters and in particular the climate of impunity for crimes and abuses of authority committed by members of the military is of concern. The State party is strongly urged to take measures to ensure the primacy of civil and political authority.

- Mexico, ICCPR, A/54/40 vol. I (1999) 61 at paras. 320 and 321.

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Paragraph 320

The increase of action by the armed forces within society, particularly in the States of Chiapas, Guerrero and Oaxaca, where they conduct activities pertaining to the police forces, is of concern. Order should be maintained within the country through the civil security forces.

Paragraph 321

Appropriate procedures should be established to ensure that independent investigations are conducted into allegations of violations of human rights involving members of the armed forces and the security forces and that the persons accused of such violations are brought to trial. The State should also establish effective remedies for the victims.

- Poland, ICCPR, A/54/40 vol. I (1999) 65 at paras. 348 and 354.

Paragraph 348

Firm measures should be adopted to eradicate the army practice of subjecting new recruits to abuse and humiliation.

Paragraph 354

The extent to which military courts have jurisdiction to try civilians (art. 14) is of concern. Despite recent limitations on this procedure, this practice is not justified by the convenience for the military court of trying every person who may have taken some part in an offence primarily committed by a member of the armed forces. These provisions of the Code of Criminal Procedure should be amended or repealed.

- Romania, ICCPR, A/54/40 vol. I (1999) 68 at para. 368.

The lack of a clear legal framework that defines and limits the role of security forces and provides for effective civilian control over them is of concern.

- Cameroon, ICCPR, A/55/40 vol. I (2000) 36 at paras. 215 and 216.

Paragraph 215

Concern is expressed about the jurisdiction of military courts over civilians and about the extension of that jurisdiction to offences which are not per se of a military nature, for example all offences involving firearms. Further, that a person who was discharged by civilian judicial authorities may be brought before a different tribunal for trial, in contravention of article 14, paragraph 7, is also of concern.

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Paragraph 216

The jurisdiction of military tribunals should be limited to military offences committed by military personnel. The State party must avoid any person being tried or punished again for an offence for which he/she has already been finally convicted or acquitted of.

- Congo, ICCPR, A/55/40 vol. I (2000) 43 at paras. 267 and 268.

Paragraph 267

Summary and extrajudicial executions, disappearances and arbitrary arrests and detentions carried out not only by the armed forces, but also by the militias, other paramilitary groups, as well as by foreign soldiers, in violation of articles 6, 7 and 9 of the Covenant are of grave concern.

Paragraph 268

All appropriate enquiries and investigations should be conducted into these crimes and the measures necessary should be taken to bring the perpetrators to justice and effectively protect the right to life and security of person.

- Kyrgyzstan, ICCPR, A/55/40 vol. I (2000) 57 at paras. 410 and 411.

Paragraph 410

That conscientious objection to military service is allowed only for members of a registered religious organization whose teachings prohibit the use of arms is of concern. That the State party has not sought to justify why the provision on alternative service entails a period of service twice as long as that required of military conscripts and why persons of higher education serve for a considerably lesser period in the military as well as in alternative service (arts. 18, 26) is regretted.

Paragraph 411

Conscientious objection should be provided for in law in a manner that is consistent with articles 18 and 26 of the Covenant, bearing in mind that article 18 also protects freedom of conscience of non-believers. The State party should fix the periods of military service and alternative service on a non-discriminatory basis.

- Kuwait, ICCPR, A/55/40 vol. I (2000) 65 at paras. 494 and 495.

Paragraph 494

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The existence of compulsory military service and the fact that Kuwaiti law does not contain any provision on conscientious objection is of concern.

Paragraph 495

In order to implement article 18 of the Covenant, the State party should reflect in its legislation the situation of persons who believe that the use of armed force conflicts with their convictions, and establish for these cases an alternative civilian service.

- Denmark, ICCPR, A/56/40 vol. I (2001) 34 at para. 73(11).

The delay in resolving the claim for compensation by the members of the Thule community in Greenland in respect of their displacement from their lands and the loss of traditional hunting rights on account of the construction of the military base at Thule is regretted. Reports that the alleged victims in the Thule case were induced to reduce the amount of their claim in order to meet the limitations set in legal-aid requirements are of concern.

- Argentina, ICCPR, A/56/40 vol. I (2001) 38 at para. 74(9).

Despite positive measures taken recently to overcome past injustices, including the repeal in 1998 of the Law of Due Obedience and the *Punto Final* Law, many persons whose actions were covered by these laws continue to serve in the military or in public office, with some having enjoyed promotions in the ensuing years. The atmosphere of impunity for those responsible for gross human rights violations under military rule is of concern. Gross violations of civil and political rights during military rule should be prosecutable for as long as necessary, with applicability as far back in time as necessary to bring their perpetrators to justice. Rigorous efforts should continue to be made in this area and measures should be taken to ensure that persons involved in gross human rights violations are removed from military or public service.

- 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 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 the Government has released some of the persons convicted of the crime of terrorism

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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 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.

- Venezuela, ICCPR, A/56/40 vol. I (2001) 49 at para. 77(26).

There is no provision in domestic law for conscientious objection to military service, which is legitimate pursuant to article 18 of the Covenant. The State party should see to it that individuals required to perform military service can plead conscientious objection and perform alternative service without discrimination.

See also:

- Dominican Republic, ICCPR, A/56/40 vol. I (2001) 54 at para. 78(21).
- Dominican Republic, ICCPR, A/56/40 vol. I (2001) 54 at paras. 78(10) and 78(15).

Paragraph 78(10)

The fact that the National Police has its own judicial body, separate from that established by the Constitution, to try crimes and offences by its members, is deplored; this is incompatible with the principle of equality before the law protected by articles 14 and 2, paragraph 3, of the Covenant. It is also observed that, although the police is a civilian body legally subordinate to the Department of the Interior and Police, in practice it is subject to military authority and discipline, to the extent that the chief of police is a general of the armed forces on active duty. The State party should ensure that the jurisdiction of the police tribunals is restricted to internal disciplinary matters and that their powers to try police officers accused of common crimes are transferred to the ordinary civilian courts.

Paragraph 78(15)

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It is of concern that prisons are guarded by the police and the army because there is no prison guard service, although training courses to that end have started. To comply with article 10 of the Covenant, the State party needs to establish as soon as possible a specialized prison guard service independent of the police investigation services and the armed forces that meets the United Nations standard minimum rules on the treatment of prisoners and is given instruction in human rights.

- Uzbekistan, ICCPR, A/56/40 vol. I (2001) 59 at paras. 79(15) and 79(16).

Paragraph 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.

Paragraph 79(16)

The information that more than 1300 Tajiks, citizens of Uzbekistan, were resettled from their villages in the mountains to the steppes of the Sherabad region, about 250 miles away, is of deep concern. While, the State party explained that the action was taken in order to improve the living conditions of the people concerned, it did not refute the information that the resettlement was enforced by military forces, that the Tajiks had to leave their homes without their belongings, and that their villages were subsequently destroyed. The State party should immediately stop any further action to expel people from their homes, in violation of articles 12 and 17 and possibly, in certain situations article 27 of the Covenant. The State party should take steps to compensate the individuals concerned for the loss of their property and their suffering, resulting from their forcible displacement and its aftermath, and to report on their present living conditions.

- Syrian Arab Republic, ICCPR, A/56/40 vol. I (2001) 70 at para. 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(8).

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Concern remains that, six years after alleged involvement of members of the State party's peacekeeping forces in the events surrounding the fall of Srebrenica, Bosnia-Herzegovina, in July 1995, the responsibility of the persons concerned has yet to be publicly and finally determined. In respect of an event of such gravity, it is of particular importance that issues relating to the State party's obligations to ensure the right to life be resolved in an expeditious and comprehensive manner (articles 2 and 6 of the Covenant). The State party should complete its investigations as to the involvement of its armed forces in Srebrenica as soon as possible, publicise these findings widely and examine the conclusions to determine any appropriate criminal or disciplinary action.

- Guatemala, ICCPR, A/56/40 vol. I (2001) 93 at paras. 85(10), 85(13), 85(14) and 85(20).

Paragraph 85(10)

In ratifying the Covenant, the State party accepted the obligations contained in article 2, paragraphs 1 and 2, to ensure to all individuals subject to its jurisdiction the rights recognized in the Covenant and to take the necessary steps to adopt, if they do not already exist, measures to give effect to those rights. The State party's claim that the principles of the Constitution prevent it from giving effect to the provisions of the Covenant and, for example, the fact that personal jurisdiction has been maintained for members of the military and some rights of members of indigenous communities are not being recognized, is of concern. The limitations of its Constitution should not be put forward as a reason for non-compliance with the Covenant, but the necessary reforms should be drawn up to achieve such compliance.

Paragraph 85(13)

Reports of human rights violations, particularly gross and systemic violations of the right to life, liberty and security of person, are of grave concern. Reports of disappearances in the State party, both the most recent reports and those in the past, are of particular concern. The information supplied by the delegation that all such situations are being investigated is not satisfactory. Taking into account the provisions of articles 6, 7 and 9 of the Covenant, the State party should give special priority to investigating and bringing to justice the perpetrators of human rights violations, including police and military personnel. The perpetrators of such acts must be tried and punished; mere separation from service or dismissal from the army is not sufficient. All necessary measures should be taken to prevent the occurrence of such acts.

Paragraph 85(14)

The many reports of, and the State party's failure to provide answers about, extrajudicial executions allegedly carried out by former members of the military and paramilitary forces and attributed to ordinary criminals are of deep concern. These acts are all contrary to article 6 of the Covenant. The State party should conduct investigations to identify those responsible for extrajudicial executions and bring them to justice. It should also take the necessary measures to prevent the occurrence of such

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violations of articles 6 and 7 of the Covenant.

Paragraph 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

- Nigeria, ICESCR, E/1999/22 (1998) 27 at paras. 127 and 128.

Paragraph 127

The military authorities have found intellectuals, journalists, university professors and university students to be easy targets for repression or persecution on the pretext that they constitute the most vociferous and dangerous political opposition. One of the major university campuses has been put under military guardianship. Universities have suffered repeated and long periods of closure.

Paragraph 128

The restoration of democracy and the rule of law are prerequisites for the implementation of the International Covenant on Economic, Social and Cultural Rights in Nigeria. Elimination of the practice of governing by military decree and the strengthening of the authority of the Nigerian judiciary and the National Human Rights Commission are necessary first steps in restoring confidence in the regime's intention to reinstitute democratic civilian rule.

- Mexico, ICESCR, E/2000/22 (1999) 62 at para. 387.

The presence of numerous military and paramilitary forces within the indigenous community of Chiapas and other states in the region is of concern. Allegations that these elements interfere with the supervision and implementation of development programmes and the distribution of economic and social assistance is of particular concern.

- Georgia, ICESCR, E/2001/22 (2000) 30 at paras. 93 and 105.

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Paragraph 93

With regard to education, it is noted with concern that in the new secondary school curriculum there appears to be an imbalance between the amount of time devoted to military training (3 units) and to "fundamentals of justice" (1 unit).

Paragraph 105

With regard to the secondary school curriculum, it is recommended that the State party strike an appropriate balance between the school time devoted to military training and the time devoted to civic education, including the "fundamentals of justice".

- Republic of Korea, ICESCR, E/2002/22 (2001) 45 at para. 219.

The Committee notes the continued negative effects on the enjoyment of economic, social and cultural rights of the pervasive "fortress mentality", which is enforced by the National Security Law. Moreover, the high level of defense expenditure creates an imbalance in contrast with the shrinking budget for key areas of economic, social and cultural rights.

- Senegal, ICESCR, E/2002/22 (2001) 61 at para. 349.

It is of concern that funds allocated for basic social services through its 20/20 Initiative fall far short of the minimum social expenditure required to cover such services. In this regard, it is noted with regret that more is spent on the military and on servicing the State party's debt than on basic social services.

CEDAW

- Cyprus, CEDAW, A/51/38 (1996) 9 at para. 43.

The State party's reservation as to the exclusion of women from the military is noted with concern.

- Indonesia, CEDAW, A/53/38/Rev.1 part I (1998) 24 at para. 295.

Concern is expressed over the information provided on the situation of women in areas of armed conflict which reflects a limited understanding of the problem. The Government's remarks are confined to the participation of women in the armed forces and do not address the vulnerability of women to sexual exploitation in conflict situations, as well as a range of other human rights abuses affecting women in such contexts.

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- Myanmar, CEDAW, A/55/38 part I (2000) 12 at paras. 117 and 118.

Paragraph 117

Human rights violations of women, in particular by military personnel, are of concern.

Paragraph 118

The Government is urged to prosecute and punish those who violate the human rights of women, including military personnel, and carry out human rights education and gender-sensitization training for all law enforcement and military personnel.

- Democratic Republic of the Congo, CEDAW, A/55/38 part I (2000) 21 at paras. 217 and 218.

Paragraph 217

Grave concern is expressed over reports of women who were raped, assaulted or severely tortured during the war. The situation of refugee and displaced women suffering from the consequences of war and the psychological and mental trauma experienced by women and girls as a result of the forced conscription of children, are also matters of concern.

Paragraph 218

Specific and structural measures should be adopted, including legislation to protect women from such acts and provide to women victims of violence psychosocial support and socio-economic integration measures. Further, the Government should introduce awareness-raising measures to emphasize the importance of maintaining human rights standards in times of war. The Government should ensure that children are not recruited as soldiers.

- Austria, CEDAW, A/55/38 part II (2000) 70 at para. 219.

The imminent withdrawal of the reservation to article 7 of the Convention in respect of women and the military is welcomed.

CAT

- Egypt, CAT, A/49/44 (1994) 14 at para. 88.

Concern is expressed over the existence of many special courts, such as the military courts, whose functioning suggests that they are subordinate to the head of the executive branch, since the President

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of the Republic is authorized to refer cases to the State security courts and to approve the decisions handed down.

- Chile, CAT, A/50/44 (1995) 10 at paras. 59 and 60.

Paragraph 59

Legislation such as the rules of the criminal prosecution system and the subjection of civilians to military jurisdiction are not helpful as far as the prevention of torture is concerned.

Paragraph 60

The security forces should be subordinate to the civil authorities responsible for public safety and all vestiges of the legislation enacted by the military dictatorship should be abandoned.

- Peru, CAT, A/50/44 (1995) 11 at paras. 69 and 73.

Paragraph 69

The subjection of civilians to military jurisdiction and the fact that, in practice, the competence of the military courts is being extended is of concern.

Paragraph 73

The following measures are recommended:

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;

The efforts to educate medical and law-enforcement personnel, civil and military, should be intensified, as should the programmes for the full rehabilitation of victims.

- 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 to allow the ordinary judiciary to recover full criminal jurisdiction in the country.

- Guatemala, CAT, A/51/44 (1996) 10 at para. 57.

Changing the legal provisions concerning the military jurisdiction, in order to limit the jurisdiction of military judges exclusively to military crimes, is recommended.

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- Colombia, CAT, A/51/44 (1996) 15 at paras. 76 and 80.

Paragraph 76

The light penalties for the offence of torture in the Code of Military Justice do not seem to be acceptable, nor does the extension of military jurisdiction to deal with ordinary crime by means of the inadmissible expansion of the concept of active service and the enactment of provisions which seriously limit the effectiveness of means for protecting rights, such as *habeas corpus*.

Paragraph 80

The situation of impunity must be terminated by adopting the necessary legislative and administrative amendments to ensure that military courts judge only violations of military regulations, punishing torture by means of penalties commensurate with its seriousness and dispelling any doubt as to the responsibility of anyone who obeys an illegal order.

- Russian Federation, CAT, A/52/44 (1997) 9 at para. 43.

An independent committee should be established to investigate allegations of torture and inhuman and degrading treatment committed by the military forces of the Russian Federation and Chechen separatists, with a view to bringing to justice those against whom there is evidence tending to establish their involvement or complicity in such acts.

- Poland, CAT, A/52/44 (1997) 18 at para. 107.

Objective inquiries should be initiated and pursued with due dispatch, into the activities of the security forces in order to determine the veracity of allegations of acts of torture and where the findings are positive offenders should be brought before the courts.

- Ukraine, CAT, A/52/44 (1997) 23 at para. 136.

The systematic mistreatment and beating of recruits in the armed forces constitutes a flagrant violation of the Convention.

- Peru, CAT, A/53/44 (1998) 21 at para. 202.

The following is of concern:

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The maintenance of the competence of military courts to try civilians;

The maintenance of emergency legislation hardly conducive to respect for human rights in general and the elimination of torture in particular.

See also:

- Peru, CAT, A/55/44 (2000) 13 at para. 59.

- Venezuela, CAT, A/54/44 (1999) 16 at para. 139.

The non-existence of effective procedures for monitoring respect for the physical integrity of detainees in prisons, both civilian and military, is of concern.

- Italy, CAT, A/54/44 (1999) 19 at para. 168.

The lack of training in the field of human rights, in particular, the prohibition against torture to the troops participating in peacekeeping operations and the inadequate number of military police accompanying them, is of concern.

- Peru, CAT, A/55/44 (2000) 13 at paras. 61 and 62.

Paragraph 61

The State party should ensure vigorous investigation and, where appropriate, the prosecution of all reported instances of alleged torture and ill-treatment by its authorities, whether civil or military.

Paragraph 62

The State party should return jurisdiction from military courts to civil courts in all matters concerning civilians.

- Kyrgyzstan, CAT, A/55/44 (2000) 17 at para. 75.

It is recommended that military places of detention and prisons be supervised to ensure that inmates are not maltreated and they, as should everyone, can be represented by counsel at their trials.

- Poland, CAT, A/55/44 (2000) 21 at paras. 91 and 95.

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Paragraph 91

The persistence in the army of the practice of the “*fala*”, whereby new recruits are subjected to abuse and humiliation is of concern.

Paragraph 95

Legislative and administrative measures should be introduced to safeguard against excessive use of force by the police, in particular in connection with the supervision of public meetings and to safeguard against the persistence of abusive measures associated with the practice of so-called “*fala*” in the army.

- Paraguay, CAT, A/55/44 (2000) 27 at para. 150.

Reports that the practice of torture and cruel, inhuman or degrading treatment or punishment continues in police stations and in armed forces prisons and premises, where soldiers performing compulsory military service are subjected to frequent physical ill-treatment is of concern.

- Armenia, CAT, A/56/44 (2001) 17 at paras. 37 and 39.

Paragraph 37

The ongoing practice of hazing (“*dedovshchina*”) in the military, which has led to abuses and violations of the relevant provisions of the Convention is of concern. This practice also has a devastating effect on victims and may sometimes even lead to their suicide.

Paragraph 39

The State party should conduct impartial investigations without delay into allegations of hazing (“*dedovshchina*”) in the military and institute proceedings in substantiated cases.

- Canada, CAT, A/56/44 (2001) 24 at para. 59.

The State party should continue and enhance training of military personnel on the standards required by the Convention and related human rights matters, including those regarding discriminatory treatment.

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

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The many human rights violations attributable to two special forces, the Operational Command and the Task Force of the National Gendarmerie (GIGN) are of concern.

- Bolivia, CAT, A/56/44 (2001) 40 at paras. 93, 95 and 97.

Paragraph 93

It is noted that the lack of training in human rights and, in particular, in the prohibition of torture given to law-enforcement officials and members of the armed forces, has resulted in a situation in which serious ill-treatment and torture are inflicted.

Paragraph 95

Concern is expressed with respect to the following:

The continuing complaints of torture and other cruel, inhuman or degrading treatment, resulting on many occasions in death, both in police stations and in prisons and military barracks.

The numerous complaints submitted to the Ombudsman and the Human Rights Commission established by the Chamber of Deputies regarding treatment in breach of articles 1 and 16 of the Convention, which in some cases have caused serious injury and even loss of life, inflicted on soldiers in barracks during their compulsory military service under the pretext of disciplinary measures.

The excessive and disproportionate use of force and firearms by the National Police and the armed forces in suppressing mass demonstrations resulting from social conflicts which, by remaining unpunished, encourage the repetition of such abuses and appear to indicate tacit approval on the part of the authorities. The torture, arbitrary detention and ill-treatment perpetrated by the police and military forces in their own facilities are particularly serious during periods when a state of siege has been declared.

Paragraph 97

It is recommended that the State party review the disciplinary procedures and rules in prisons so as to ensure that violations are dealt with impartially and that any inhuman and cruel punishments are excluded.

- Slovakia, CAT, A/56/44 (2001) 43 at para.105.

The State party should continue to provide human rights training for law enforcement, military and other officials, including those operating in local communities, as well as for those at border areas,

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and those serving at officially administered institutions, and provide clear guidelines on the prohibition against torture and ill-treatment and the prohibition on returning persons facing a probable risk of torture.

- Czech Republic, CAT, A/56/44 (2001) 46 at para. 113.

Concern is expressed about inter-prisoner violence and bullying in various institutions, including prisons, the military and educational institutions, as well as the presence of male guards in prisons for women where it may lead to an abuse of their authority.

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

The State party should complete the transfer of responsibilities for prisons from the Ministry of Internal Affairs to the Ministry of Justice, permitting the demilitarization of the penitentiary system.

CRC

- Mexico, CRC, CRC/C/24 (1994) 12 at para. 42.

The State party should intensify its action against all violence resulting in cases of ill-treatment of children, in particular when committed by members of the police force and security services and the military. The State party should ensure that cases of crimes committed against children by members of the armed forces or the police are tried before civilian courts.

- Colombia, CRC, CRC/C/38 (1995) 16 at para. 93.

Violations of human rights and children's rights should always be examined by civilian courts under civilian law, not military courts. The outcome of investigations and cases of convictions should be widely publicized in order to deter future offences and thus combat the perception of impunity.

- United Kingdom of Great Britain and Northern Ireland, CRC, CRC/C/38 (1995) 35 at para. 212.

The absence of effective safeguards to prevent the ill-treatment of children under the emergency

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legislation is a concern. Under the same legislation it is possible to hold children as young as 10 for seven days without charge. The emergency legislation which gives the police and the army the power to stop, question and search people on the street has led to complaints of children being badly treated. This situation, which may lead to a lack of confidence in the system of investigation and action on such complaints, is of concern.

- Sri Lanka, CRC, CRC/C/43 (1995) 26 at para. 141.

The fact that only a small part of the national budget is dedicated to the protection of the child and a high proportion to military expenditures is of concern.

- Republic of Korea, CRC, CRC/C/50 (1996) 26 at para. 156.

The fact that the country has only recently emerged from a period of military rule has had a negative impact on the enjoyment of the fundamental rights and freedoms of children.

- Croatia, CRC, CRC/C/50 (1996) 31 at para. 205.

In keeping with efforts to promote the process of national reconciliation and national dialogue, training programmes should be organized for members of the army, police and judiciary on the provisions of the Convention.

- Tajikistan, CRC, CRC/C/100 (2000) 53 at paras. 295 and 296.

Paragraph 295

Concern is expressed about the numerous and continuing reports of ill-treatment of persons under the age of 18 by the militia, including psychological intimidation, corporal punishment and torture. Victims of such treatment are largely from vulnerable groups, such as children living and/or working on the streets. Fear of reprisals and inadequate complaints procedures discourage children and their parents from filing complaints.

Paragraph 296

In the light of article 37 of the Convention and the Code of Conduct for Law Enforcement Officials, adopted by the General Assembly in its resolution 34/169 of 17 December 1979, all necessary and effective steps should be taken to prevent incidents of ill-treatment by law enforcement officials. It is recommended that the State party provide the militia with training on how to deal with persons under the age of 18; ensure that persons are adequately informed of their rights when they are

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detained; ensure that complaints procedures are simplified so that responses are appropriate, timely, child-friendly and sensitive to victims; and provide rehabilitative support to victims.

- India, CRC, CRC/C/94 (2000) 10 at para. 96.

The State party should at all times ensure respect for human rights and humanitarian law aimed at the protection and care of children in armed conflict. The State party is called upon to ensure impartial and thorough investigations in cases of rights violations committed against children and the prompt prosecution of those responsible, and it should provide just and adequate reparation to the victims. Clause 19 of the Protection of Human Rights Act should be repealed to allow inquiries into alleged abuses committed by members of the security forces to be conducted by the National Commission on Human Rights. In line with the recommendations of the Human Rights Committee (CCPR/C/79/Add.81), the requirement of governmental permission for criminal prosecutions or civil proceedings against members of the security forces should be abolished.

- Sierra Leone, CRC, CRC/C/94 (2000) 24 at paras. 141, 142 and 185.

Paragraph 141

Deep concern is expressed about the massive participation of children in armed forces in the State party, either as combatants or in other roles. No minimum age is established in national legislation for voluntary recruitment when the consent of a specified adult party is given.

Paragraph 142

The State party's announcement of its intention to pass legislation raising the minimum age of recruitment to 18 is noted. The State party is urged to move quickly towards this goal and to ensure that the new legislation is enforced.

Paragraph 185

The Committee expresses its extremely deep consternation at the very high numbers of children who have been forcibly recruited into armed forces, including children as young as five years old, and who have often been forced to commit atrocities against other people, including other children and members of their community. Great concern is expressed at the horrifying amputation of hands, arms and legs, and at the many other atrocities and acts of violence and cruelty committed by armed persons against children, including, in some cases, against very young children.

- Armenia, CRC, CRC/C/94 (2000) 53 at paras. 341-343.

Paragraph 341

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The recruitment of refugees into the military should be prevented.

Paragraph 342

Concern is expressed about the negative impact of recent armed conflicts on children. The alleged conscription of young children into the State party's armed forces is a concern.

Paragraph 343

In the light of article 38 and other relevant articles of the Convention, it is recommended that the State party at all times ensure respect for human rights and humanitarian law aimed at the protection and care of children in armed conflict, and provide care and physical rehabilitation and psychological recovery measures for these children. It is recommended that the State party refrain from conscripting children into the armed forces.

- Kyrgyzstan, CRC, CRC/C/97 (2000) 51 at paras. 300 and 301.

Paragraph 300

Concern is expressed about the numerous and continuing reports of ill-treatment of persons under 18 by the militia, including psychological intimidation, corporal punishment, torture and abduction. Concern is expressed that victims of such treatment are largely from vulnerable groups, such as refugees; that children are often detained for payment from their families; and that fear of reprisals and inadequate complaints procedures discourage children and their parents from filing complaints. Like the Committee against Torture (CAT/C/23/6), the Committee expresses concern at the absence of a definition of torture in the 1998 Criminal Code and appropriate penalties, and the apparent failure to provide prompt, impartial and full investigation into allegations of torture, as well as the failure to prosecute alleged perpetrators.

Paragraph 301

In light of article 37 of the Convention, and recalling the Code of Conduct for Law Enforcement Officials (General Assembly resolution 34/169), the State party should take all necessary and effective steps to prevent incidents of ill-treatment from occurring. The recommendations made by the Committee against Torture (CAT/C/23/6) should be implemented; the militia should be provided with training on how to deal with persons under 18; persons should be adequately informed of their rights when they are detained; complaints procedures should be simplified so that responses are appropriate, timely, child-friendly and sensitive to victims; and rehabilitative support should be provided to victims.

- Burundi, CRC, CRC/C/100 (2000) 17 at paras. 109, 110, 115, 116, 156 and 157.

Paragraph 109

Concern is expressed about the low minimum age of recruitment to the armed forces.

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Paragraph 110

Legislative measures should be taken to raise the minimum age of recruitment into the armed forces to 18.

Paragraph 115

Deep concern is expressed about the extensive violations of the right to life of children by, *inter alia*, armed conflict, deliberate killings by armed persons including members of the armed forces, State regroupment policies, other forms of population displacement, poor health and sanitation facilities, severe malnutrition and related illnesses, and as a result of the prevailing conflict between groups of the population.

Paragraph 116

The State party is strongly urged to make every effort to reinforce protection of the right to life, survival and development of all children within the State party through policies, programmes and services that target and guarantee protection of this right. The State party is urged to seek as much international assistance as possible in this regard.

Paragraph 156

Concern is expressed about the participation of children in the State party's armed forces, either as soldiers, or as helpers in camps or in the obtaining of information. Reports of widespread recruitment of children by opposition armed forces and sexual exploitation of children by members of the armed forces are also of concern. Deep concern is expressed about violations of the provisions of international humanitarian law relating to the treatment of civilians in armed conflict.

Paragraph 157

The State party is urged to end the use of children as soldiers or in any other way related to the armed conflict and to demand, in the context of peace negotiations, that opposition armed forces also cease to use children as soldiers. The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts should be ratified at the earliest opportunity. In addition, the State party is urged to ensure that the sexual exploitation of children by members of the armed forces is brought to an end and that the perpetrators are prosecuted. Demobilized children, and others who have been linked to armed forces or groups should be provided with assistance toward their social reintegration. The full respect of the provisions of international humanitarian law should be guaranteed.

- Democratic Republic of the Congo, CRC, CRC/C/108 (2001) 31 at paras. 155, 213, 214, 223 and 224.

Paragraph 155

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The Committee notes the negative impact on children of the armed conflict within the State party's territory and the role of numerous actors in this conflict, including the armed forces of several States all party to the Convention, armed groups and numerous private companies, as cited in a United Nations report on the illegal exploitation of natural resources and other forms of wealth of the Democratic Republic of the Congo. Particularly noted are grave violations of the Convention within territory outside of the control of the Government of the State party and where armed elements, including armed forces under the jurisdiction of other States parties to the Convention, have been active. It is also noted that article 38 of the Convention requires States parties to respect provisions of international humanitarian law applicable to them and that, as indicated by United Nations sources (see, *inter alia*, Security Council resolution 1341 (2001) of 22 February 2001), this law has been violated, particularly with regard to children. In this context, in addition to the responsibility of the State party, the Committee also emphasizes the responsibilities of several other States and certain other actors for the negative impact of the armed conflict upon children and for violations of some provisions of the Convention and international humanitarian law within areas of the State party.

Paragraph 213

The direct and indirect impact of the armed conflict on almost all children in the State party is of deep concern. Concern is expressed about the deliberate killing of children by armed forces of the State party, armed forces of other State parties that have participated in the conflict and by other armed groups, and about the continuing impunity for such acts constituting very serious violations of children's rights. The recruitment and use of children as soldiers by the State party and by other actors in the armed conflict, including children under 15 is of concern. The creation of a special bureau for the demobilization and reintegration of child soldiers (DUNABER) is noted with appreciation, but concern is expressed about the effectiveness of this bureau.

Paragraph 214

The State party is urged to strengthen its efforts to end the armed conflict to ensure that the protection and promotion of children's rights are given due consideration in the ongoing peace process. Further, the State party is urged to prevent the killing or other forms of harm of children and to ensure that those persons responsible for committing such acts are prosecuted. The participation of children in armed conflicts should be prevented and their recruitment ended entirely, including cross-border recruitment and use as soldiers, and additional efforts should be made to demobilize and reintegrate present and former child soldiers into their communities and to provide for their psychological recovery. DUNABER should be provided with sufficient human and financial resources to effectively demobilize and reintegrate children into society and to provide the necessary follow-up.

Paragraph 223

It is of concern that child civilians and child soldiers are brought before military courts and that such courts do not guarantee international judicial protections, such as the right to appeal.

Paragraph 224

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It is urged that, in keeping with the ban on the recruitment of children as soldiers, no child be tried by a military tribunal.