

LEGAL RIGHTS - CRIMINAL - Equal Treatment

IV. CONCLUDING OBSERVATIONS

CERD

- France, CERD, A/49/18 (1994) 20 at para. 150.

Concern was expressed in 1983 about the adequacy of sentences imposed for racially motivated crimes; a new concern is added about whether the sentences for racially motivated homicide are consistent, regardless of the ethnic background of the victims.

- Canada, CERD, A/49/18 (1994) 47 at para. 328.

Legal provisions at both the federal and provincial levels concerning human rights should be harmonized to avoid any possible difference in treatment. Equality in access to and treatment by courts should be fully guaranteed.

- Croatia, CERD, A/50/18 (1995) 36 at para. 170.

It is noted that the administration of the criminal justice system fails to adequately address crimes of an ethnic nature. Thus, there has been a failure to prosecute alleged perpetrators of crimes directed at ethnic Serbs and it is reliably reported that a number of Croatian Serbs have been unfairly prosecuted or excessively punished for alleged crimes against non-Serbs.

- Belgium, CERD, A/52/18 (1997) 31 at para. 221.

Concern was expressed at the allegation that the Public Prosecutor's Department and the police are less zealous in the prosecuting of offences in cases where the victim is not of European origin.

- Mexico, CERD, A/52/18 (1997) 42 at paras. 306 and 320.

Paragraph 306

In certain situations, an individual's right to enjoy equal treatment in the courts is not effectively guaranteed for members of indigenous groups. Specifically, they are not guaranteed the right to express themselves in their own languages during legal proceedings.

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Paragraph 320

The State party should take all appropriate measures to ensure equal and impartial treatment before the law for all persons, and particularly those from indigenous groups. In particular, indigenous inhabitants should be offered the possibility of expressing themselves in their mother tongue in all judicial proceedings.

- Croatia, CERD, A/53/18 (1998) 59 at paras. 317 and 323.

Paragraph 317

Concern is expressed about the failure of the criminal justice system to adequately deal with all crimes of an ethnic nature and the subsequent tendency to fail to prosecute alleged perpetrators of crimes directed at ethnic Serbs, whereas there are reports that Croatian Serbs have been unfairly prosecuted or excessively punished when allegations of illegal activity directed at non-Serbs have been brought.

Paragraph 323

The State party should take measures to ensure the prosecution of persons allegedly responsible for having committed racially motivated crimes, regardless of the racial, ethnic or religious origin of the perpetrator or the victim.

- Peru, CERD, A/54/18 (1999) 21 at para. 152.

With respect to the right to equal treatment before the courts, it is noted with concern that interpreters are not in practice available to monolingual indigenous people and that legislation has not been translated into indigenous languages.

- Australia, CERD, A/55/18 (2000) 17 at para. 38.

It is noted with grave concern that the rate of incarceration of indigenous people is disproportionately high compared with the general population. Concern is also expressed that the provision of appropriate interpretation services is not always fully guaranteed to indigenous people in the criminal process. It is recommended that the State party increase its efforts to seek effective measures to address socio-economic marginalization, the discriminatory approach to law enforcement and the lack of sufficient diversionary programmes.

- Rwanda, CERD, A/55/18 (2000) 31 at para. 146.

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The State party is urged to take further measures to reduce periods of pre-trial detention and to ensure that the right to equal treatment before the law, as defined in article 5 (a) of the Convention, is respected in national and customary judicial proceedings.

- United Kingdom of Great Britain and Northern Ireland, CERD, A/55/18 (2000) 60 at para. 353.

The Committee welcomes the use of ethnic monitoring in the criminal justice system, including the prison population, in order to identify points at which discrimination occurs and to develop means of rectifying it.

- United States of America, CERD, A/56/18 (2001) 64 at paras. 395 and 396.

Paragraph 395

It is noted with concern that the majority of federal, state and local prison and jail inmates are members of ethnic or national minorities, and that the incarceration rate is particularly high with regard to African-Americans and Hispanics. The State party should take firm action to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equal treatment before the courts and all other organs administering justice. Noting the socio-economic marginalization of a significant part of the African-American, Hispanic and Arab populations, it is further recommended that the State party ensure that the high incarceration rate is not a result of the economically, socially and educationally disadvantaged position of these groups.

Paragraph 396

It is noted with concern that, according to the Special Rapporteur of the United Nations Commission on Human Rights on extrajudicial, summary or arbitrary executions, there is a disturbing correlation between race, both of the victim and the defendant, and the imposition of the death penalty, particularly in states like Alabama, Florida, Georgia, Louisiana, Mississippi and Texas. The State party is urged to ensure, possibly by imposing a moratorium, that no death penalty is imposed as a result of racial bias on the part of the prosecutors, judges, juries and lawyers or as a result of the economically, socially and educationally disadvantaged position of the convicted persons.

ICCPR

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

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

- Lebanon, ICCPR, A/52/40 vol. I (1997) 53 at para. 348.

Legal and *de facto* discrimination continue to be matters of concern, including articles 487 to 489 of the Criminal Code, which impose harsher sentences for conviction of adultery on women than on men, nationality laws and the law which may restrict the right to leave the country for spouses in the absence of the consent of their husband (para. 9 of the report). These provisions are incompatible with articles 3 and 23 of the Covenant.

- India, ICCPR, A/52/40 vol. I (1997) 67 at paras. 431 and 441.

Paragraph 431

Note is taken of the fact that rape in marriage is not an offence and that rape committed by a husband separated from his wife incurs a lesser penalty than for other rapists. The Government must take further measures to overcome these problems and to protect women from all discriminatory practices, including violence.

Paragraph 441

Concern is expressed over the overcrowding and poor health conditions and sanitation in many prisons, the inequality of treatment of prisoners and the lengthy periods of pre-trial detention, all of which are incompatible with articles 9 and 10, paragraph 1, of the Covenant. Measures should be taken to reduce overcrowding, to release those who cannot be given a speedy trial and to upgrade prison facilities as quickly as possible. In this respect, attention should be given to the United Nations Standard Minimum Rules for the Treatment of Prisoners.

- Republic of Korea, ICCPR, A/55/40 vol. I (2000) 29 at para. 145.

The abolition of the "ideology conversion oath" is welcomed. Its replacement by a "law-abidance oath" is regretted. It remains unclear which prisoners are required to sign the oath and what the consequences and legal effects of the oath are. Concern is expressed that the oath requirement is applied on a discriminatory basis, particularly to persons convicted under the National Security Law, and that in effect it requires persons to make an oath to abide by a law that is incompatible with the

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Covenant.

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

Paragraph 468

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

Paragraph 469

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

ICESCR

- Paraguay, ICESCR, E/1997/22 (1996) 22 at para. 84.

The Government should pursue policies designed to achieve genuine equality of rights between men and women and should eliminate the discriminatory provisions that are still contained in civil, criminal, trade and labour laws, as well as in family law.

- Syrian Arab Republic, ICESCR, E/2002/22 (2001) 67 at paras. 404 and 421.

Paragraph 404

Concern is expressed about the persisting discrimination in the political, social and economic spheres of life against women in society, which is particularly reflected in limited participation by women in the political and economic decision-making process, a low legal age of marriage for girls, more severe punishment of women for adultery and "honour crimes", and unequal treatment insofar as personal property and social security laws are concerned. It is regretted that the State party has not adopted any significant legislative or administrative measures to eliminate this discrimination, nor ratified the Convention on the Elimination of All Forms of Discrimination against Women.

Paragraph 421

Effective measures should be taken to incorporate a gender equality perspective in both legislation

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and in governmental policies and administrative programmes, with a view to ensuring equality of men and women and addressing, in particular, the problems of the low legal age of marriage for girls, the more severe punishment of women for adultery and "honour crimes", and the unequal treatment of women insofar as personal, property, succession and social security laws are concerned. The State party is also encouraged to ratify the Convention on the Elimination of All Forms of Discrimination against Women.

CEDAW

- Turkey, CEDAW, A/52/38/Rev.1 part I (1997) 24 at para. 179.

The provisions of the Penal Code that allowed less rigorous sanctions or penalties for "honour killings" are of concern. That concept contravened the principle of respect for human life and the security of all persons, which was protected by all the international human rights laws.

- Zimbabwe, CEDAW, A/53/38/Rev.1 part I (1998) 13 at para. 146.

Dissatisfaction is expressed at the fact that prostitutes are criminalized by law while their clients go unpunished. Concern is expressed over the poor women, migrant women and women from other marginalized sectors who are particularly vulnerable and often turn to prostitution as a means of survival.

- Mexico, CEDAW, A/53/38/Rev.1 part I (1998) 32 at para. 414.

New legislation should not discriminate against prostitutes but should punish pimps and procurers.

- Panama, CEDAW, A/53/38/Rev.1 part II (1998) 64 at para. 203.

The discriminatory treatment received by women engaged in prostitution in Panama, especially that a prostitute would find it difficult to seek legal redress in the case of rape since the Code still requires the victim in that situation to be chaste and virtuous in order to be able to institute legal proceedings, is of concern.

- Lithuania, CEDAW, A/55/38 part II (2000) 61 at para. 152.

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While recognizing the efforts made by the Government in addressing the issue of trafficking in women and girls, it is noted with concern that the size of the problem is not reflected in the information provided. Attention is drawn to article 6 of the Convention, and in this regard, it is noted that criminal penalties imposed only on prostitutes entrench sexual exploitation of women.

- Egypt, CEDAW, A/56/38 part I (2001) 33 at paras. 346 and 347.

Paragraph 346

Several provisions of the Penal Code discriminate against women. In particular, in the case of murder following the crime of adultery, men and women are not treated equally. In addition, prostitutes are penalized, while their clients are not.

Paragraph 347

Any discriminatory penal provisions should be eliminated in accordance with the Constitution and the Convention.

- Guyana, CEDAW, A/56/38 part II (2001) 60 at paras. 180 and 181.

Paragraph 180

Concern is expressed about the application of legislation on prostitution, dating from 1893, which has not been reformed and continues to penalize the prostitute but not the client or the procurer.

Paragraph 181

Existing legislation on prostitution should be reviewed and amended in conformity with the Convention, and its full implementation and compliance should be ensured.

CRC

- Islamic Republic of Iran, CRC, CRC/C/97 (2000) 8 at paras. 48 and 49.

Paragraph 48

That respect for the inherent right to life of a person under 18 is not guaranteed under the law is a serious concern, particularly in light of article 220 of the Penal Law which provides that a man who kills his own child or his son's child is subject only to discretionary punishment and the payment of blood money.

Paragraph 49

All necessary measures should be taken to ensure that there is no discriminatory treatment for such

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crimes, and ensure prompt and thorough investigations and prosecutions.

- Jordan, CRC, CRC/C/97 (2000) 31 at paras. 181, 182 and 208.

Paragraph 181

Serious concern is expressed that respect for the inherent right to life of a person under 18 is not guaranteed under the law, particularly in light of articles 340 and 98 of the Penal Code (No. 16/1960), which condone crimes perpetrated in the name of honour. That there is often reluctance on behalf of the police to arrest perpetrators, and that they receive lenient or token punishments are a concern.

Paragraph 182

In line with Commission on Human rights resolutions 2000/31 and 2000/45, the recommendations of the Special Rapporteur on extrajudicial, summary or arbitrary executions (E/CN.4/2000/3) and those of CEDAW, all necessary measures should be taken to ensure that there is no discriminatory treatment for crimes of honour and that they are promptly and thoroughly investigated and prosecuted. In addition, awareness-raising activities to demonstrate that such practices are socially and morally unacceptable should be undertaken, and steps should be taken to ensure that protective custody is replaced by other types of protection for women.

Paragraph 208

The State party should review its legislation and ensure that it criminalizes the sexual abuse and exploitation of children and penalizes all offenders, whether Jordanian or foreign, while ensuring that the child victims are not penalized. It is recommended that the State party: ensure that laws concerning the sexual exploitation of children are gender neutral; simplify procedures so that responses are appropriate, timely, child friendly and sensitive to victims; and vigorously pursue enforcement.

- Lithuania, CRC, CRC/C/103 (2001) 47 at paras. 304 and 305.

Paragraph 304

It is noted that procuration for the purpose of prostitution is punished only in cases involving girls and that some legal provisions result in the administrative punishment of children involved in commercial sexual exploitation.

Paragraph 305

The State party is encouraged to abolish every legal provision that results in administrative or other punishment of the victims of commercial sexual exploitation and to prevent other forms of stigmatization of the victims, and to penalize procuration for the purposes of prostitution involving all children, boys as well as girls.

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