

**AMNESTY
INTERNATIONAL**



Mr Rafael Rivas Posada
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Dear Mr Rivas Posada,

AMNESTY INTERNATIONAL'S COMMENTS ON DRAFT GENERAL COMMENT NO 33

Amnesty International (AI) welcomes the opportunity to comment on *Draft General Comment No 33, The Obligations of States Parties under the Optional Protocol to the International Covenant on Civil and Political Rights* (second revised version as of 18 August 2008).

AI would like to express at the outset its strong support for this initiative and particularly for the Committee's emphasis on the authority and legal character of its views under the Optional Protocol and the ensuing obligations of the states parties concerned to provide effective remedies and implement the views when the Committee has determined that a violation of the Covenant has occurred. This is in line with the Committee's approach on the legal character of its concluding observations and other pronouncements of states parties' obligations under the Covenant.

AI provides these comments with the aim of further clarifying states parties' obligations under the Optional Protocol.

Paragraph 4. AI welcomes the draft's explicit recognition that states parties must refrain from instituting "retaliatory measures" against authors of the communication. AI suggests that this paragraph be further developed by adding explicit reference to the prohibition of hindering the effective exercise of the right of individuals to address a communication to the Committee. Reference could also be made to the prohibition of intimidation and harassment, beyond "retaliatory measures" and to the duty of states parties to ensure that authors of communications and their families are effectively protected against reprisals by individuals (or groups).

AI also encourages the Committee to expand on the states parties' obligation to refrain from instituting retaliatory measures, by explicitly stating in this general comment that such prohibition extends beyond the alleged victim of the violations to include members of their families and, when relevant, their lawyers.

AI encourages the Committee to consider including additional language in paragraph 4, such as “States parties must guarantee the effective right of individuals to address a communication to the Committee and ensure that the authors of communications and their families are effectively protected against any form of reprisals, harassment or intimidation, by any individuals or group within their jurisdiction.”

Paragraph 8. AI encourages the Committee to develop its analysis of the obligations of states parties deriving from Article 4 of the Optional Protocol, in particular by reading this provision in light of the duty of states parties to investigate substantiated allegations of violations of the rights enshrined in the Covenant. The Committee has already elaborated on “the general obligation to investigate allegations of violations promptly, thoroughly and effectively through independent and impartial bodies” as a component to the right of an effective remedy in its *General Comment No 31 on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, adopted on 29 March 2004. AI believes that states parties are under an obligation, under both provisions of the Covenant and the Optional Protocol, to investigate effectively, independently and promptly, the allegations of human rights violations contained in the communication and to submit the results of such investigation to the Committee for its consideration of the admissibility and merits of the case.

Paragraph 15. AI fully agrees with the analysis of the Committee on the nature of its “views” adopted under the Optional Protocol. AI particularly welcomes the explicit reference to the obligation of states parties to provide an effective remedy under article 2 paragraph 3 of the Covenant, when the Committee determines a violation has occurred. The organization however encourages the Committee to strengthen and specify the language in the second sentence of paragraph 16 by replacing the words “to reconsider the matter” with “to remedy the violation”.

Paragraph 20. AI welcomes reference to the public record of the status of implementation of Committee's views. AI encourages the Committee to provide some examples of how failure to implement Committee's views may result in criticism by international bodies, for example by including specific reference to the possibility of such failure being raised in the context of Universal Periodic Reviews (UPR) conducted by the Human Rights Council. In this regard for example, AI notes that the UPR of both Netherlands and Switzerland in 2008 featured concerns related to the failure of those states parties to comply with recommendations of the Committee.

Paragraph 21. While AI recognizes the importance of continuous dialogue between states parties and the Committee, the organization is concerned that this paragraph seems to legitimize the stance of some states parties to reject the Committee's final “views” that established a violation of the Covenant. AI encourages the Committee to clarify that the dialogue between the state party concerned and the Special Rapporteur for the Follow-up of Views should focus on the implementation of the Committee's views (as clearly stated in paragraph 21 of the draft general comment).

In this regard, AI suggests that the general comment explicitly clarifies that the “views” of the Committee are final, in determining whether a violation of the Covenant has occurred or not and identifying the effective remedies required to address such violation.

Paragraph 29. As mentioned above, AI welcomes the explicit reference to the obligation of states parties to provide an effective remedy under article 2 paragraph 3 of the Covenant.

AI encourages the Committee to develop further this paragraph by explicitly stating the duty of states parties to implement the remedies identified by the Committee and, more generally, to provide reparations to the individual(s) concerned; to take measures to prevent the recurrence of the violation; and to bring to justice the perpetrators of the violation. While recognizing that these aspects of the general obligations of states parties to the Covenant have already been fully addressed in the above mentioned General Comment No 31, AI believes, nonetheless, that this general comment, on states parties' obligations under the Optional Protocol, would benefit by making explicit reference to the range measures states parties must take in order to provide effective remedies when the Committee establishes a violation of the Covenant under the Optional Protocol's procedure.

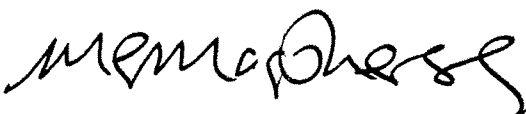
Reservations. The issue of reservations to the Optional Protocol has already been comprehensively dealt with by the Committee in its jurisprudence and in its General Comment No 24 (adopted in 1994). AI regrets that despite such clear and authoritative jurisprudence, some states parties entered reservations to the Optional Protocol which have the effect of excluding the competence of the Committee to determine whether certain provisions of the Covenant (or the Covenant for certain categories of individuals) have been violated. In light of this, AI encourages the Committee to reiterate its position on this issue in this general comment.

AI also encourages the Committee to expressly note that the denunciation of the Optional Protocol in order to re-accede to it with reservations runs contrary to the principle of good faith in the performing of treaty obligations and does *de facto* amount to the formulation of reservation after a state has become a party to the treaty.

Lastly, AI welcomes the Committee's decision to seek views and comments on this draft general comment by posting the draft on its website and circulating it to solicit contributions from NGOs. The organization encourages the Committee to publish all comments received. With a view to the drafting of future general comments, AI encourages the Committee to consider ways of broadening its consultations with NGOs, academics, other experts as well as UN and regional bodies at an early stage in the drafting process, e.g. by holding public discussions during its regular sessions with the opportunity for NGOs and other experts to intervene and engage in a dialogue on the issues concerned.

I trust that these comments will assist you in developing the draft general comment further. Please do not hesitate to contact me should you have any questions about the issues raised in this letter. In the meantime, I remain

Yours sincerely,



Martin Macpherson
Director, International Law and Organizations Program

Cc: All Committee members
Secretary, Human Rights Committee