

Human Rights Compatibility and Civil Penalties

Since it commenced its work, the committee has considered a number of bills containing civil penalty provisions and has sought clarification as to whether these provisions and the procedures for their enforcement are consistent with guarantees relating to criminal proceedings contained in articles 14 and 15 of the International Covenant on Civil and Political Rights (ICCPR). Pending its more detailed study of the issue, the committee deferred final consideration of a number of bills which give rise to these issues. The committee's comments on these aspects of the bills appear in this section.

The committee acknowledges that civil penalty provisions raise complex human rights issues and that the implications for existing practice are potentially significant. The committee has therefore decided to provide its initial views on these matters in the form of an interim practice note (in Appendix 2 to this report). This Practice Note is intended to provide guidance to those involved in policy development, drafting and human rights scrutiny of these types of provisions.

The interim *Practice Note 2* draws attention to the principal criteria employed in assessing whether a civil penalty provision is 'criminal': (a) the classification of the penalty under domestic law; (b) the nature of the penalty provision (punitive or deterrent, as opposed to protective or compensatory); and (c) the severity of the penalty.

The committee would find it helpful for the performance of its function of assessing human rights compatibility if statements of compatibility were to address the issues set out in the interim *Practice Note 2*. The committee has indicated in its comments on the bills considered here the type of analysis that may be appropriate in a statement of compatibility accompanying a bill that proposes introducing or incorporating a civil penalty regime.

The committee recognises that the topic is a complex one and that the issue should be the subject of continuing dialogue with government.

