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Consider, first, the text of Article 2, para. 3 of the *International Covenant on Civil and Political Rights*:

Each State Party to the present Covenant undertakes:

- (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
- (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
- (c) To ensure that the competent authorities shall enforce such remedies when granted.

Now, consider the following excerpt from the Human Rights Committee's *General Comment (No. 31)* that relates to this provision:

Article 2, paragraph 3, requires that in addition to effective protection of Covenant rights States Parties must ensure that individuals also have accessible and effective remedies to vindicate those rights. Such remedies should be appropriately adapted so as to take account of the special vulnerability of certain categories of persons, including in particular children. The Committee attaches importance to States Parties establishing appropriate judicial and administrative mechanisms for addressing claims of rights violations under domestic law. The Committee notes that the enjoyment of the rights recognized under the Covenant can be effectively assured by the judiciary in many different ways, including direct applicability of the Covenant, application of comparable constitutional or other provisions of law, or the interpretive effect of the Covenant in the application of national law. Administrative mechanisms are particularly required to give effect to the general obligation to investigate allegations of violations promptly, thoroughly and effectively through independent and impartial bodies. National human rights institutions, endowed with appropriate powers, can contribute to this end. A failure by a State Party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant. Cessation of an ongoing violation is an essential element of the right to an effective remedy.

EFFECTIVE REMEDY - EXERCISE 1 (1/1 point)

Now try to answer the following questions (in this and the subsequent units) related to the duty to provide an effective

1 remedy under the ICCPR:

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1. The right to an effective remedy means that any individual whose rights under the Covenant have been violated has a right:

- ☐ To have the claim alleging that a violation has taken place examined by a court;
- ☐ To have the claim alleging that a violation has taken place examined by a body, whether judicial or administrative, having the power to order a cessation of the alleged violation; or,
- ☒ To have the claim alleging that a violation has taken place examined by a judicial or administrative body that can examine the claim independently and impartially, and order a cessation of the alleged violation or grant reparation. ✓

EXPLANATION

Contrary to what is commonly believed, it is not required under Article 2, para. 3 of the *International Covenant on Civil and Political Rights* that the allegation of violation be examined by a *court*. Administrative remedies may be sufficient, where they present certain minimum guarantees of independence and impartiality, allowing a review of the measure that has allegedly caused the violation. However, the Covenant does express a preference for judicial remedies, as States parties are encouraged under this provision to "develop the possibilities of judicial remedy". Moreover, it is required that the authority before which the claim is filed has the power to impose a cessation of the violation and that it can provide reparation (indeed, General Comment No. 31 continues: "Without reparation to individuals whose Covenant rights have been violated, the obligation to provide an effective remedy, which is central to the efficacy of article 2, paragraph 3, is not discharged" (para. 16)).

Similarly to Article 2, para. 3, of the ICCPR, Article 13 of the European Convention on Human Rights does not require that those alleging a violation have access to a judicial determination of their claim. Article 13 ECHR states that 'Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.' The European Court of Human Rights has repeatedly stated that "the 'authority' referred to in that provision (does not) necessarily have to be a judicial authority; but if it is not, its powers and the guarantees which it affords are relevant in determining whether the remedy before it is effective".

In contrast, Article 25 of the American Convention on Human Rights goes much further. It guarantees a right to an effective judicial remedy to the individual whose fundamental rights are violated, whether these rights are recognized under the ACHR, or under the domestic constitution: 'Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties' (Art. 25 para. 1 ACHR).

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