

# The UN Human Rights Committee

## A Year in Review

2016





# Table of Content

|  |           |
|--|-----------|
| Table of content   | 3         |
| Abbreviations  | 6         |
| Foreword   | 7         |
| Introduction   | 8         |
| <b>I. Procedural Rights, Safeguards and Guarantees</b>   | <b>9</b>  |
| <b>1.1 The Right to an Effective Remedy (Art 2)</b>  | <b>9</b>  |
| 1.1.1 Inconsistency between domestic laws and the Covenant   | 9         |
| 1.1.2 Invocation of the Covenant before domestic courts and awareness of the Covenant among the general public                                     | 10        |
| Other UN Treaty Bodies   | 10        |
| 1.1.3 Implementation of the views adopted under the OP1  | 11        |
| <b>1.2 The Establishment and Functioning of National Human Rights Institutions</b>   | <b>11</b> |
| Other UN Treaty Bodies   | 12        |
| <b>1.3 Independence of the Judiciary (Art 14)</b>  | <b>13</b> |
| 1.3.1 Selection and appointment  | 13        |
| 1.3.2 Corruption and other systemic issues   | 14        |
| 1.3.3 Sanctions and discipline   | 14        |
| <b>1.4 Right to Fair Trial (Art 14)</b>  | <b>14</b> |
| 1.4.1 Fair and public hearing  | 14        |
| 1.4.2 Undue delays   | 15        |
| 1.4.3 Right to counsel   | 15        |
| 1.4.4 Systemic concerns  | 15        |
| <b>1.5 Investigations of Past Human Rights Violations</b>  | <b>16</b> |
| 1.5.1 Human Rights Violations in the context of political events   | 16        |
| 1.5.2 Gross Human Rights Violations  | 16        |
| Other UN Treaty Bodies   | 16        |
| <b>1.6 Applicability of the Optional Protocol; Reservations and Declarations to the Covenant (Art 1 – First Optional Protocol to the Covenant)</b> | <b>17</b> |
| <b>II. Gender Equality and Discrimination against Women (Art 2, 3, 6, 7, 14, 17, 23, 24, 25, 26)</b>   |           |
| <b>2.1 Gender Discrimination and Representation of Women</b>   | <b>19</b> |
| 2.1.1 Representation of women in public and private life   | 19        |
| 2.1.2 Legal provisions that discriminate against women   | 19        |
| 2.1.3 Gender discrimination in employment  | 20        |
| 2.1.4 Patriarchal attitudes and harmful traditional or customary practices   | 20        |
| Other UN Treaty Bodies   | 20        |
| <b>2.2 Gender-Based Violence</b>   | <b>22</b> |
| 2.2.1 Prevalence of domestic violence  | 22        |
| 2.2.2 Underreporting of gender-based violence  | 22        |
| 2.2.3 Lack of adequate mechanisms for support and assistance for victims   | 22        |
| 2.2.4 Low rates of prosecutions  | 23        |
| 2.2.5 Harmful traditional or customary practices   | 23        |
| Other UN Treaty Bodies   | 24        |
| <b>2.3 Sexual and Reproductive Rights</b>  | <b>25</b> |
| 2.3.1 General prohibition of abortion  | 25        |
| 2.3.2 Obstacles to abortion  | 25        |
| 2.3.3 Access to contraception and sexual and reproductive health services  | 26        |
| 2.3.4 In vitro fertilization   | 27        |
| 2.3.5 Forced sterilization   | 27        |
| Other UN Treaty Bodies   | 27        |

|             |  |           |
|-------------|--|-----------|
| <b>III.</b> | <b>Right to Life (Art 6); Prohibition of Torture, Cruel, Inhuman and Degrading Treatment (Art 7); and Issues of Detention (Arts 9, 10)</b> | <b>28</b> |
|             | <b>3.1 Right to Life</b>   | <b>28</b> |
|             | 3.1.1 Death Penalty  | 28        |
|             | Other UN Treaty Bodies   | 28        |
|             | 3.1.2 Enforced Disappearances  | 28        |
|             | 3.1.3 Non-Refoulement  | 29        |
|             | <b>3.2 Prohibition of Torture and Ill-Treatment</b>  | <b>29</b> |
|             | 3.2.1 Definition of Torture  | 29        |
|             | 3.2.2 Investigation, prosecution and punishment of perpetrators  | 30        |
|             | 3.2.3 National Preventive Mechanisms   | 31        |
|             | 3.2.4 Non-Refoulement  | 32        |
|             | <b>3.3 Issues Relating to Detention</b>  | <b>32</b> |
|             | 3.3.1 Unlawful Detention   | 32        |
|             | 3.3.2 Time period of detention   | 33        |
|             | 3.3.3 Conditions in detention  | 34        |
|             | 3.3.4 Police custody, pretrial detention and fundamental legal safeguards  | 34        |
|             | 3.3.5 Overcrowding   | 35        |
|             | 3.3.6 Prevention of custodial deaths   | 36        |
|             | 3.3.7 Solitary confinement   | 36        |
|             | <b>3.4 Excessive Use of Force</b>  | <b>37</b> |
| <b>IV.</b>  | <b>Migration, Refugees and Asylum Seekers (Art 2, 6, 7, 9, 13)</b>   | <b>39</b> |
|             | <b>4.1 Non-Refoulement</b>   | <b>39</b> |
|             | <b>4.2 Detention Centers</b>   | <b>40</b> |
|             | <b>4.3 Procedural Issues</b>   | <b>40</b> |
|             | <b>4.4 Administrative and Legal Frameworks for asylum seekers</b>  | <b>41</b> |
|             | <b>4.5 Migrants' Freedoms and Rights</b>   | <b>42</b> |
|             | Cases review: Migrant Issues and violations under articles 6 and 7   | 43        |
|             | Other UN Treaty Bodies   | 45        |
| <b>V.</b>   | <b>Non-Discrimination and Vulnerable Groups (Art 2, 26)</b>  | <b>48</b> |
|             | <b>5.1 General Provisions on Non-Discrimination and Vulnerable Groups</b>  | <b>48</b> |
|             | <b>5.2 LGBTQ People</b>  | <b>49</b> |
|             | Other UN Treaty Bodies   | 51        |
|             | <b>5.3 Persons with Disabilities</b>   | <b>52</b> |
|             | Other UN Treaty Bodies   | 55        |
|             | <b>5.4 Children</b>  | <b>55</b> |
|             | Other UN Treaty Bodies   | 57        |
|             | <b>5.5 Human Trafficking</b>   | <b>58</b> |
|             | <b>5.6 Racism and Xenophobia</b>   | <b>60</b> |
|             | Other UN Treaty Bodies   | 60        |
|             | <b>5.7 Rights of Minorities</b>  | <b>62</b> |
|             | <b>5.8 Discrimination against People Living with HIV/AIDS</b>  | <b>63</b> |
|             | <b>5.9 The Rights of Indigenous Peoples</b>  | <b>63</b> |
|             | Other UN Treaty Bodies   | 66        |
| <b>VI.</b>  | <b>Freedoms and Rights of Individuals</b>  | <b>68</b> |
|             | <b>6.1 Right to Self-Determination (Art 1)</b>   | <b>68</b> |
|             | <b>6.2 Right to Privacy (Art 17)</b>   | <b>68</b> |
|             | <b>6.3 Freedom of Religious Belief and Conscience (Art 18)</b>   | <b>69</b> |
|             | <b>6.4 Freedom of Expression (Art 19)</b>  | <b>70</b> |
|             | 6.4.1 Media, social media, broadcast and journalism  | 70        |
|             | 6.4.2 Criminalization of speech  | 71        |
|             | Case review: Incitement to religious hatred – a corollary  | 72        |
|             | 6.4.3 Intimidation, harassment and threats to individuals  | 73        |

|            |   |           |
|------------|---|-----------|
| 6.4.4      | Access to information and independence of research                        | 74        |
| <b>6.5</b> | <b>Right to Peaceful Assembly (Art 21)</b>                                | <b>74</b> |
| 6.5.1      | Prior authorization for assembly  | 74        |
| 6.5.2      | Excessive regulation and the chilling effect thereof                      | 75        |
| 6.5.3      | Excessive use of force  | 75        |
| 6.5.4      | Right to demonstrate – presumption of innocence                           | 75        |
| <b>6.6</b> | <b>Freedom of Association (Art 22)</b>                                    | <b>75</b> |
| 6.6.1      | Registration and functioning of NGOs/other organizations and associations |           |
| 6.6.2      | Criminalization of legitimate activities                                  | 76        |
| <b>6.7</b> | <b>Political Participation and Participation in Public Life (Art 25)</b>  | <b>77</b> |
|            | Other UN Treaty Bodies  | 77        |

# Abbreviations

|              |   |
|--------------|---|
| COBs         | Concluding Observations   |
| CERD         | Committee on the Elimination of Racial Discrimination                               |
| CMW          | Committee on Migrant Workers  |
| CRC          | Committee on the Rights of the Child  |
| CRPD         | Committee on the Rights of Persons with Disabilities                                |
| HR Committee | Human Rights Committee  |
| ICCPR        | International Covenant on Civil and Political Rights                                |
| NHRI         | National Human Rights Institutions  |
| OP1          | First Optional Protocol to the International Covenant on Civil and Political Rights |

The Centre for Civil and Political Rights (CCPR-Centre) is delighted to introduce this analysis of the 2016 findings of the UN Human Rights Committee. For this third edition, the research analyses the main issues emerging from the Concluding Observations and decisions during 2016. It reflects the main concerns discussed by the Committee during the reviews of State Parties as well as the latest developments in the Committee's jurisprudence.

It is now the second time that this research has been carried out in collaboration with the Law Clinic of the LL. M. in International Law of the Graduate Institute of Geneva. Under the supervision of the Centre, students prepared all the related research materials and produced the articles included in this book.

The Centre would like to thank the four students who participated in this project, namely Sanjna Dhawan, Deepsha Dipan Dhal, Somil Kumar and Jannat Majeed, as well as Alex Conte, head of the Law Clinic. For the first time, this research also looks at how other UN Treaty Bodies have analysed civil and political rights issues. This new approach allows for a comparative analysis of the findings of both the Human Rights Committee and the other Committees.

The inclusion of the analysis emanating from the other UN Treaty Bodies was possible thanks to the close partnership with TB-Net, the NGO platform working on the UN Treaty Bodies, and in particular with

- Child Rights Connect for the Committee on the Rights of the Child;
- International Movement Against All Forms of Discrimination and Racism (IMADR) for the Committee on the Elimination of Racial Discrimination; and
- International Disability Alliance (IDA) for the Committee on the Rights of Persons with Disabilities.

Additional research was carried out by Lăzarie Eeckeloo, researcher from the Centre for Civil and Political Rights.

Through the strong and mutually beneficial partnership between the Graduate Institute of Geneva, TB-Net and the CCPR-Centre, it is hoped that the work of the Human Rights Committee, and more broadly the UN Treaty Bodies, will become more visible and accessible to all individuals involved in the promotion and protection of civil and political rights.

Patrick Mutzenberg  
Director  
Centre for Civil and Political Rights

This research was conducted with the support of the Graduate Institute of International and Development Studies and TB-Net



## Foreword



## Introduction

The purpose of this report is to provide a clear understanding of the jurisprudence of the Human Rights Committee (HR Committee or Committee) for the year 2016. The project focuses on summarizing and analysing the Concluding Observations (COBs) and individual communications that were considered during the 116<sup>th</sup>, 117<sup>th</sup> and 118<sup>th</sup> sessions of the Committee.

In the course of the three aforementioned sessions, the Committee examined 21 States parties' reports and 87 individual communications. The following States parties' reports were examined – **Argentina, Azerbaijan, Burkina Faso, Colombia, Costa Rica, Denmark, Ecuador, Ghana, Jamaica, Kazakhstan, Kuwait, Republic of Moldova, Morocco, Namibia, New Zealand, Poland, Rwanda, Slovakia, Slovenia, South Africa and Sweden**. Additionally, the following States parties were respondents to individual communications – **Algeria, Argentina, Australia, Belarus, Cameroon, Canada, Democratic Republic of the Congo, Denmark, France, Ireland, Kazakhstan, Kyrgyzstan, Netherlands, Russian Federation, Sri Lanka, Turkmenistan and Uzbekistan**.

This report aims to present the jurisprudence developed by the Committee during its engagement with the States parties through a thematic lens. This would help readers analyse the jurisprudence, with the help of not only an understanding of the International Covenant on Civil and Political Rights (Covenant) provisions but also its practical implementation within States parties' obligations. Additionally, a thematic analysis has the advantage of discussing related provisions of the Covenant concomitantly.

This report also contains an analysis of the findings of other UN Treaty Bodies, namely the CERD, the CPRD, the CMW and the CRC. The approach allows to compare the relevant Committee's interpretations on specific thematic issues.



## 1. Procedural Rights, Safeguards and Guarantees

Whereas the other thematic portions of this report present the Committee's jurisprudence on the various substantive rights enshrined under the Covenant, the current theme focuses on procedural rights, safeguards and the institutions facilitating the enforcement of rights within each State party. These rights and safeguards are integral to the successful functioning of the Covenant guaranteeing that individuals are aware of their rights, have access to effective remedies and institutions to enforce said remedies. Under this theme, the report also discusses the independence and functioning of institutional frameworks within States parties such as human rights bodies and the judiciary.

### 1.1 The Right to an Effective Remedy (Art 2)

#### 1.1.1 Inconsistency between domestic laws and the Covenant

The Committee observed that domestic laws in several States parties did not grant all rights enshrined under the Covenant. For instance, the Committee noted with concern that in **Ghana** and **Jamaica**<sup>1</sup>, domestic law did not incorporate all rights guaranteed by the Covenant. Similarly, the Committee noted that in **New Zealand**<sup>2</sup>, the Bill of Rights did not reflect all rights under the Covenant and other domestic legislations were inconsistent with the Covenant. For **Sweden**<sup>3</sup>, the Committee remained concerned that the Covenant was not incorporated into the domestic legal order. On a similar note, the Committee observed that in **Kuwait**<sup>4</sup>, sharia law enjoyed primacy over the Covenant. In **South Africa**<sup>5</sup>, the Committee observed the "apparent inconsistency between the text of the Constitution, which provides that a self-executing provision of an international agreement approved by Parliament is considered to be part of domestic law, and the information contained in the core document<sup>6</sup>, which states that provision of an international treaty cannot be invoked before or directly enforced by the courts". The Committee also noted that in **Moldova**<sup>7</sup>, individuals in the Transnistrian region did not enjoy the same level of rights protection as the rest of **Moldova**. In each of the aforementioned instances, the Committee recommended that States parties adopt measures to ensure that domestic law affords the same protections as the Covenant.<sup>8</sup>

The Committee observed that domestic laws in several States parties did not grant all rights enshrined under the Covenant.

#### Counter-terrorism and accountability with ICCPR

The Committee noted that **New Zealand**'s counter-terrorism policy required an overhaul but the State party did not plan to amend the Terrorism Suppression Act 2002 with a view to including provisions that would enable individuals to launch legal proceedings to challenge designations imposed under Security Council resolution 1373. Further, the Committee retained concerns about an oversight and accountability framework for intelligence services with limited judicial intervention and insufficient time for public consideration and consultation. Since **New Zealand** had undertaken an independent review of its intelligence and security services, the Committee recommended that information obtained from the review be included the State party's submissions before the next periodic report. The Committee also advised New Zealand to revise its counter-terrorism bills in order to completely integrate the protections enshrined by the Covenant.<sup>9</sup>

## 1. Procedural Rights, Safeguards and Guarantees

The Committee recommended that States parties make efforts to raise awareness of the Covenant among the general public.

In a similar manner, the Committee observed that **Poland** had broad definitions of "terrorist crime" under the Penal Code and "terrorist incidents" under the counter-terrorism law and its regulations of June 2016 and July 2016.<sup>10</sup> Accordingly, the Committee recommended that **Poland** review its legislation and narrow down the definitions to not allow authorities excessive discretion or to obstruct the exercise of the rights under the Covenant.<sup>11</sup> The Committee noted that in **Denmark**, aside from the broad definition of terrorism and acts of terrorism, techniques of mass surveillance and interception of communication were used despite legal guarantees in the domestic legislation. Additionally, the legislation allowed for the possibility of revoking citizenship of persons with dual nationality.<sup>12</sup> Accordingly, the Committee recommended that **Denmark** strictly observe the principles of necessity, proportionality and non-discrimination in the implementation of its counter-terrorism legislation. Further, the Committee recommended that a clear procedure needed to be established for persons who may be expelled on national security grounds, with an option for such persons to have their case reviewed by a competent authority, ensuring protection of all their rights, including with the assistance of legal counsel.<sup>13</sup>

### 1.1.2 Invocation of the Covenant before domestic courts and awareness of the Covenant among the general public

The Committee noted with concern that in **Burkina Faso**<sup>14</sup>, **Rwanda**<sup>15</sup>, **Morocco**<sup>16</sup>, **South Africa**<sup>17</sup> and **Sweden**<sup>18</sup>, due to a lack of knowledge about the Covenant, there were very few instances of the invocation or application of the Covenant. Additionally, **Ghana**<sup>19</sup> had seen no occurrences of the Covenant being invoked or applied by the domestic courts. In each of these cases, the Committee recommended that States parties make efforts to raise awareness of the Covenant among the general public and also within the legal community to allow for greater invocation and application of the Covenant.<sup>20</sup>

### Other UN Treaty Bodies

The **Committee on the Elimination of Racial Discrimination (CERD)** raised the issue of domestic application of the Convention in several COBs. In **Portugal**, **Lebanon** and **Togo**, the Committee asked for more information on the court cases in which the Convention was invoked or applied in domestic courts.<sup>21</sup> The State party should provide training on the Convention for legal professionals to use it domestically<sup>22</sup>.

The Committee is also concerned about the limited number of complaints brought on racial discrimination: the State should verify the causes of the underreporting, encourage prosecutors to initiate proceedings ex officio and provide the Committee with disaggregated data.<sup>23</sup> **Ukraine** and **Sri Lanka** should also disseminate information on the legislation and the available remedies.<sup>24</sup> Oman and Azerbaijan should raise awareness of the Convention in order to increase the number of cases in which the Convention is invoked, including by translating the most important documents into minority languages.<sup>25</sup>

## 1. Procedural Rights, Safeguards and Guarantees

The Convention has not been completely incorporated into the domestic law of the UK. The State party should ensure its application in its territory without further delay.<sup>26</sup> The Committee encountered the same problem with **Sri Lanka** as the State party has not incorporated the Convention into domestic law nor given any evidence that it will do so during its constitutional reform process.<sup>27</sup> In Pakistan the situation is similar: the Convention is not applicable across the entire territory.<sup>28</sup>

A remarkable recommendation was made for **Paraguay**: the Committee encouraged the State party to fully enforce the judgements of the Inter-American Court of Human Rights, specifically in three cases.<sup>29</sup>

### 1.1.3 Implementation of the views adopted under the OP1

Further, the Committee noted with concern the lack of effective implementation mechanisms and procedures for authors of individual communications in **Azerbaijan**<sup>30</sup> and **Kazakhstan**.<sup>31</sup> Accordingly, the Committee recommended that the States parties put in place appropriate procedures to give full effect to the rights under the Covenant.<sup>32</sup>

The Committee also noted with concern, instances of States parties failing to implement the views of the Committee in prior individual communications in Denmark<sup>33</sup>, **Azerbaijan**<sup>34</sup>, **Kazakhstan**<sup>35</sup> and **Ecuador**.<sup>36</sup> Accordingly, it recommended that the States parties in question adopt measures for effective implementation and follow-up<sup>37</sup> and ensure the dissemination of the views if necessary.<sup>38</sup>

### 1.2 The Establishment and Functioning of National Human Rights Institutions

The Committee focused on several issues related to NHRIs, their independence and their functioning. It was concerned that both **Jamaica**<sup>39</sup> and **Argentina**<sup>40</sup> lacked any body that could be described as a NHRI. Further, the Committee noted that government bodies in both States parties which were *de facto* responsible for all human rights treaty reporting and follow-up had either been downsized<sup>41</sup> or were not institutionalized enough.<sup>42</sup> The Committee was also concerned that in several States parties, the existing NHRI was not offered the adequate financial or material resources to fulfill their respective mandates. Specifically, the Committee noted that NHRIs in **Slovakia**<sup>43</sup>, **Poland**<sup>44</sup>, **Burkina Faso**<sup>45</sup>, **Ghana**<sup>46</sup>, **Costa Rica**<sup>47</sup>, **Namibia**<sup>48</sup>, **Moldova**<sup>49</sup>, **South Africa**<sup>50</sup> and **Slovenia**<sup>51</sup> had been affected adversely by a lack of monetary, material or human resources. Accordingly, the Committee recommended that each State party ensure that its NHRI(s) are adequately funded, staffed and resourced in accordance with the "Principles relating to the Status of National Institutions" (the Paris Principles).<sup>52</sup>

The Committee was also concerned that NHRIs in several States parties were ineffective in their functioning for various reasons. For instance, the Committee observed that in **Ecuador**<sup>53</sup>, of the five National Equality Councils created, only two were functioning.

[The Committee] was concerned that both Jamaica and Argentina lacked any body that could be described as a NHRI.

## 1. Procedural Rights, Safeguards and Guarantees

The Committee also noted that States parties were not regular in adopting “National Human Rights Action Plans.”

The Committee also noted that in [Sweden](#)<sup>54</sup>, the NHRIs were “insufficiently institutionalized” such that their mandates were limited. In [Sweden](#), the Committee noted that several bodies, such as the Parliamentary Ombudsman, the Chancellor of Justice and the Equality Ombudsman, have a mandate of promoting and protecting human rights; however, the scope of their authority remains restricted to specific instruments and does not include international norms, including the Covenant.<sup>55</sup> In [Jamaica](#)<sup>56</sup>, the Committee noted that NHRI was not “not sufficiently institutionalized in the operations of the Government of the State party”. Additionally, the Committee noted that the selection process for members of NHRIs in [New Zealand](#)<sup>57</sup>, [Rwanda](#)<sup>58</sup> and [Ghana](#)<sup>59</sup> were not in compliance with the Paris Principles. Similarly, the Committee observed that NHRIs in South Africa<sup>60</sup> and Kazakhstan<sup>61</sup> lacked the necessary institutional independence as required under the Paris Principles. Accordingly, the Committee recommended that each State party ensure efficiency and independence in the functioning of their respective NHRIs in accordance with the Paris Principles.<sup>62</sup>

Lastly, the Committee also noted that States parties were not regular in adopting “National Human Rights Action Plans.” The Committee observed that [New Zealand](#)<sup>63</sup> had adopted an action plan for 2005-2010 but thereafter only adopted its next plan in 2015. Similarly, the Committee noted that [Moldova](#)<sup>64</sup> had not implemented its previous action plan before adopting its current one. The Committee recommended that both States follow up on the implementation of their previous action plans and adopt new plans without undue delay.<sup>65</sup>

### Other UN Treaty Bodies

**CERD** describes the multiple purposes of a NHRI: to promote respect for human rights without discrimination, to review government policy regarding racial discrimination, to monitor legislative compliance with the Convention, to educate the public and to assist the government in its reporting to the Committee.<sup>66</sup>

The Committee noted in this year's COBs that neither Lebanon nor Italy have an NHRI. The Committee frequently emphasizes two elements: the need for sufficient financial and human resources as well as the lack of compliance with the Paris Principles. The former was mentioned in the recommendations of [Pakistan](#), [South Africa](#), [Sri Lanka](#), [Ukraine](#), [UK](#) and [Togo](#)<sup>67</sup>, and the latter in the recommendations of [Oman](#), [Pakistan](#), [Sri Lanka](#) and [United Kingdom](#).<sup>68</sup> The independence requirement was considered especially crucial.

Another important element is the mandate of the institution. The Committee was concerned that the [Namibian](#) NHRI did not have a mandate for promotion but only for protection of human rights.<sup>69</sup> The [Pakistani](#) NHRI should be competent to address violations of State agencies.<sup>70</sup> The NHRIs of [Sri Lanka](#), [UK](#), [Oman](#) and [Togo](#) all have unclear mandates.<sup>71</sup>

The Committee regretted that the Togolese delegation of the NHRI was not present during the dialogue.<sup>72</sup> In the COBs of [Ukraine](#), the Committee emphasized the need for a framework on minority issues.<sup>73</sup>

## 1. Procedural Rights, Safeguards and Guarantees

The recommendations concerning the NHRI were featured as follow-up recommendations in the majority of the COBs - **Namibia, Lebanon, Pakistan, South Africa, Sri Lanka** and **Togo**.<sup>74</sup> These States need to provide more information about the implementation within one year.

The **Committee on the Rights of Persons with Disabilities (CRPD)** evaluates the national monitoring mechanisms, which is broader than just an NHRI. It emphasized the need for focal points in all branches of government in several COBs. This focal point was lacking in **Lithuania, Uganda, UAE, Uruguay, Ethiopia** and **Serbia**.<sup>75</sup> The **UAE** does not have an NHRI yet.<sup>76</sup> In **Slovakia** and **Thailand** the focal points did not have sufficient capacity.<sup>77</sup>

The Committee stressed the need of compliance with the Paris Principles in the COBs of **Chile, Ethiopia, Lithuania, Portugal** and **Thailand**.<sup>78</sup> Apart from that, the need for sufficient resources was also an important aspect in the COBs of **Bolivia, Guatemala, Portugal, Serbia, Thailand** and **Uganda**.<sup>79</sup>

A key element in the recommendations of this Committee is the need to ensure participation of organisations of persons with disabilities. This was mentioned in almost all the reviews: **Ethiopia, Bolivia, Guatemala, Lithuania, Italy, Serbia, Slovakia, Uganda** and **Thailand**.<sup>80</sup> The same issues arose in the guidelines<sup>81</sup>: the need to comply with the Paris Principles, the civil society participation, including of persons with disabilities, sufficient resources, a clear mandate and independence. The guidelines also explained the twin-track approach to disabilities: this is a combined approach of disability specific policies for supporting and empowering persons with disabilities, along with the mainstreaming of disability rights across general policies.

The Committee noted that the process of appointment of judges in Kuwait, Azerbaijan, Rwanda and Kazakhstan lent itself to undue pressure from the executive.

### 1.3 Independence of the Judiciary (Art 14)

#### 1.3.1 Selection and appointment

In **Poland**<sup>82</sup>, the Committee observed that the process of selection and appointment of judges had been amended and the measures could affect the independence of the Constitutional Tribunal in Poland. Further, the Committee also noted that the Polish government had not published certain judgments rendered by the Constitutional Tribunal concerning unconstitutional measures aimed at changing the composition of the aforementioned tribunal.<sup>83</sup> Similarly, the Committee noted that the process of appointment of judges in **Kuwait**<sup>84</sup>, **Azerbaijan**<sup>85</sup>, **Rwanda**<sup>86</sup> and **Kazakhstan**<sup>87</sup> lent itself to undue pressure from the executive thus compromising the independence of the judiciary. The Committee was also concerned that in Ecuador<sup>88</sup>, the judicial system was used to place sentences on opposition members. Additionally, the Committee observed that in **Moldova**<sup>89</sup>, judges were only appointed permanently after an initial five years.

Accordingly, the Committee recommended that the process for selection and appointment of judges in the aforementioned States must comprise a transparent and impartial process that meets domestic and international legal requirements.<sup>90</sup>



# 1. Procedural Rights, Safeguards and Guarantees

The Committee recommended in each case that States parties place safeguards to guarantee the independence of the judiciary.

The Committee noted that this includes adopting measures to ensure that judges are not subjected to political pressure or influence.<sup>91</sup> Additionally, the Committee recommended that **Poland** publish judgments of the Constitutional Tribunal concerning unconstitutional measures aimed at altering the composition of Poland's Constitutional Tribunal.<sup>92</sup>

## 1.3.2 Corruption and other systemic issues

Further, the Committee noted that the **Moldovan** judicial system suffered from “endemic corruption”<sup>93</sup> as did the judicial systems in **Burkina Faso**<sup>94</sup> and **Azerbaijan**.<sup>95</sup> Accordingly, the Committee recommended investigation of the allegations of corruption to ensure that the judiciary remains impartial and independent.<sup>96</sup> The Committee also noted that threats, intimidation and harassment of lawyers and judges in connection with their professional activities were prevalent in **Morocco**<sup>97</sup> and **Kazakhstan**<sup>98</sup> whereas intimidation of judges was also prevalent in **Ecuador**<sup>99</sup> and **Azerbaijan**.<sup>100</sup> In this regard, the Committee recommended the adoption of requisite measures to ensure that judges and lawyers are able to effectively operate without fear of intimidation, harassment or threats.<sup>101</sup>

## 1.3.3 Sanctions and discipline

The Committee also noted several instances where judges were sanctioned arbitrarily or based on political considerations. The Committee observed disproportionate sanctions against judges in **Poland**<sup>102</sup> and **Kuwait**<sup>103</sup>, and the possibility of the same in **Azerbaijan**<sup>104</sup> and **Kazakhstan**<sup>105</sup> due to inadequate safeguards or a vague legal basis for sanctions. Additionally, the Committee noted that in Azerbaijan<sup>106</sup>, judges were frequently the subject of disciplinary proceedings for minor infractions or controversial interpretations of the law. Similarly, judges in **Ecuador**<sup>107</sup> were frequently subject to disciplinary proceedings for “inexcusable errors.” The Committee noted cases of investigations initiated against judges for controversial decisions in **Moldova**<sup>108</sup> (against a judge who had validated a referendum initiated by the Dignity and Truth Platform) and **Costa Rica**<sup>109</sup> (against a family court judge for recognizing a same sex union).

Accordingly, the Committee recommended in each case that States parties place safeguards to guarantee the independence of the judiciary. This could include clarifying the scope of the laws regulating sanctions on judges and ensuring that either elements of the State or other individuals do not interfere with judges.<sup>110</sup>

## 1.4 Right to Fair Trial (Art 14)

### 1.4.1 Fair and public hearing

In this context, the Committee also held<sup>111</sup> that trials must be conducted orally and in public unless the court decided to “exclude all or part of the public for reasons of morals, public order (ordre public) or national security”. Even in cases in which the public is excluded from the trial, the judgment, including the essential findings, evidence and legal reasoning, must be made public.<sup>112</sup> Further, in accordance with its General Comment No.

## 1. Procedural Rights, Safeguards and Guarantees

32, the Committee also held that if an individual were denied access to material from the Prosecution, it would constitute an infringement of Article 14(3) of the Covenant.<sup>113</sup>

### 1.4.2 Undue delays

The Committee observed that the judicial systems in **Poland**<sup>114</sup> and **Jamaica**<sup>115</sup> suffered from undue delays in court proceedings and the dispensation of justice. Similarly, the Committee noted the backlog of cases before the labor and social courts in **Namibia**<sup>116</sup>. In **Namibia**<sup>117</sup>, the Committee also noted that the right to appeal was hampered by excessive delay in the preparation of court records. Accordingly, the Committee recommended reform to ensure speedy justice and to prevent backlogs.<sup>118</sup>

### 1.4.3 Right to counsel

Additionally, the Committee also observed that in **Poland**<sup>119</sup>, **Azerbaijan**<sup>120</sup> and **Kazakhstan**<sup>121</sup>, the right to counsel was adversely affected for various reasons. In the case of **Azerbaijan**<sup>122</sup>, there were deficiencies in the implementation in practice of provisions guaranteeing the right to counsel for persons deprived of their liberty. Moreover, the low number of working lawyers and the consequent long hours have had a negative impact on the quality of counsel in **Azerbaijan**<sup>123</sup>. In **Kazakhstan**<sup>124</sup>, the Committee noted that in cases involving national security, defense lawyers were subjected to additional security checks placing impediments on their ability to represent their clients. In **Poland**, the Committee noted that individuals faced difficulties in accessing legal assistance during arrest and there was insufficient respect for the confidentiality of communication between counsel and clients.<sup>125</sup> The Committee also noted that the right to legal aid was adversely affected in **Jamaica**<sup>126</sup>, **Namibia**<sup>127</sup> and **Slovenia**<sup>128</sup>. The Committee recommended that requisite measures, including amendments to relevant laws, be adopted to guarantee the right to counsel and legal aid as enshrined under the Covenant.<sup>129</sup>

The Committee recommended that requisite measures, including amendments to relevant laws, be adopted to guarantee the right to counsel.

The Committee, in individual communications against **Russia** and **Kazakhstan**, reaffirmed some of its conclusions from its COBs. For instance, noting that secrecy laws prevented individuals from choosing a counsel of their choice, the Committee held that unless such choice was limited for an objective and sufficiently serious purpose and did not exceed what is necessary to uphold justice, States parties may not place limits on the right to choose counsel.<sup>130</sup>

### 1.4.4 Systemic concerns

The Committee also observed several systemic issues pervading the judicial systems of various States parties. The Committee noted that in **Morocco**<sup>131</sup>, courts had, in some cases, refused to hear witnesses or consider evidence, whereas in others, courts had admitted confessions obtained under duress. In **Argentina**<sup>132</sup>, the Committee noted that the right to a second hearing was applied non-uniformly. Accordingly, the Committee recommended the adoption of appropriate measures that adhere to the safeguards provided under Article 14 of the Covenant.<sup>133</sup>

# 1. Procedural Rights, Safeguards and Guarantees

In South Africa, the recommendations of the Truth and Reconciliation Commission had not been fully implemented.

## 1.5 Investigations of Past Human Rights Violations

The Committee has highlighted several situations where States parties have to adequately investigate, prosecute or bring to justice perpetrators of human rights violations. The Committee has discussed some common issues in this regard.

### 1.5.1 Human Rights Violations in the context of political events

The Committee noted that there had been no impartial, independent and effective investigations of the Zhanaozen protests in **Kazakhstan**<sup>134</sup> or the violence in the aftermath of the 2009 elections in **Moldova**.<sup>135</sup> Similarly, **Ecuador**<sup>136</sup> had failed to convict any members of the "Peasant Defense Networks" who are alleged to have committed several atrocities. The Committee recommended that the States parties carry out investigations into past human rights violations be carried out in an impartial manner and without undue delay.<sup>137</sup>

### 1.5.2 Gross Human Rights Violations

The Committee noted and reiterated the slow progress of investigations into human rights violations, corresponding trials and verdicts in **Argentina** due to a failure in setting up domestic courts and also due to infrequent trials.<sup>138</sup> The Committee also noted with concern the "slow progress made and limited information available regarding the investigation into the attack in 1994 of the Argentine Jewish Mutual Association in Buenos Aires".<sup>139</sup> In the case of **Argentina**, the Committee also noted that a report on offenses by business owners against workers as well as the establishment of a bicameral committee that is to be tasked with identifying instances of economic collusion during the military dictatorship were being hampered.<sup>140</sup> Further, the Committee noted the slow progress of investigations by the Truth Commission in **Ecuador**<sup>141</sup>, the High Council for Reconciliation and National Unity and the Commissions of Inquiry in **Burkina Faso**.<sup>142</sup> The Committee noted that **Rwanda**<sup>143</sup> had not only failed to provide information on the violations committed by the Rwandan Patriotic Front in 1994, but also not provided any information on measures to investigate human rights violations despite rejecting a map of the worst violations as prepared by the United Nations. Additionally, the "Gacaca" courts had been closed but there had been no re-investigation of cases decided by these courts that may have involved miscarriage of justice.<sup>144</sup> Lastly, in **South Africa**<sup>145</sup>, the recommendations of the Truth and Reconciliation Commission had not been fully implemented.

Accordingly, the Committee recommended that investigations into past human rights violations be carried out in an impartial manner and without undue delay. Additionally, the Committee also recommended that States parties provide the Committee with information regarding past investigations.<sup>146</sup> Lastly, the Committee recommended that those found guilty be promptly brought to justice and recommendations made by investigating bodies be implemented.<sup>147</sup>

### Other UN Treaty Bodies

In the country reviews, the **CERD** took note of the establishment of a Reconciliation Commission in **Togo** to investigate acts committed in 2005, but remains concerned about the impunity resulting from the restorative justice approach since no criminal



## 1. Procedural Rights, Safeguards and Guarantees

The CERD's mandate involves an early warning and urgent action procedure, through which it contacts States parties and makes decisions.

prosecution will take place.<sup>148</sup>

In **South Africa**, the recommendations of the Reconciliation Commission have not been fully implemented. Perpetrators should be prosecuted and victims should receive reparation, similar to the recommendations of the HR Committee.<sup>149</sup> In **Sri Lanka**, efforts are being made to put truth and reconciliation mechanisms in place, but the Committee regretted the lack of consistent public consultations with all ethnic and ethno-religious groups. The State should ensure that human rights violations are investigated, perpetrators prosecuted and redress is provided to victims.<sup>150</sup>

The CERD's mandate involves an early warning and urgent action procedure, through which it contacts States parties and makes decisions. For example, regarding the alarming situation in **Burundi**, the Committee noted that the President's refusal to respect the end of his term caused a major political crisis in **Burundi** and a deterioration of the human rights situation.<sup>151</sup> The Committee was concerned about killings; summary executions; disappearances and torture, many of which had an ethnic character; the unwillingness or inability of the government to protect civilians; the obligation on civil servants to state their ethnicity; hate speech and incitement to violence and the growing number of refugees. **Burundi** should respect its international human rights obligations, protect its civilians by allowing police officers to enter the country and reengage with the OHCHR.<sup>152</sup>

The Committee considered allegations regarding the use of excessive force against peaceful protesters in **Ethiopia**: thousands of arrests, mass killings, injuries and enforced disappearances allegedly took place in the context of ethnic tension, next to a stampede provoked by state police. No investigation was undertaken. The Committee asked for more information on the status of the investigations, if any, and the measures taken to restore peace. Even in a state of emergency, the State is required to ensure respect for its human rights obligations.<sup>153</sup>

Similar allegations were made regarding excessive use of force, arrests, killings and torture of the Papuan indigenous people in **Indonesia**. According to NGOs, these people have faced repression for several years by security forces of the State. These reports have never been investigated. Moreover, it is reported that the State party favors the migration of non-indigenous persons to this region in order to decrease their representation. They also encounter poor educational standards, resulting in very low rates of literacy. The Committee reminds the State that it is obligated to ensure the enjoyment of human rights by the Papuan people.<sup>154</sup>

### 1.6 Applicability of the Optional Protocol; Reservations and Declarations to the Covenant (Art 1 – First Optional Protocol to the Covenant)

The Committee noted that **Denmark**<sup>155</sup>, **New Zealand**<sup>156</sup>, **Kuwait**<sup>157</sup> and **Sweden**<sup>158</sup> still maintained reservations to various provisions in the Covenant and accordingly urged the States parties to reconsider their respective reservations.<sup>159</sup> In a similar

## 1. Procedural Rights, Safeguards and Guarantees

vein, the Committee urged **Jamaica**<sup>160</sup> to reconsider adopting the First Optional Protocol to the Covenant and also urged **Rwanda**<sup>161</sup> to reconsider its withdrawal of a declaration granting jurisdiction to the African Court of Human and Peoples' Rights.

With regard to issues that are implicated under the theme of gender equality and discrimination against women, the Committee has made recommendations on the basis of several Articles of the Covenant. The Articles that are implicated under this theme are, primarily, Articles 2, 3 and 26, and secondarily, 6, 7, 14, 17, 23, 24 and 25.<sup>162</sup>

## 2.1 Gender Discrimination and Representation of Women

The Committee made recommendations regarding gender equality and representation of women to the following seventeen States: **Moldova, Jamaica, Slovakia, Morocco, Kuwait, Ecuador, Denmark, Burkina Faso, Azerbaijan, New Zealand, Rwanda, Ghana, Argentina, Sweden, Costa Rica, Namibia** and **Slovenia**.

### 2.1.1 Representation of women in public and private life

One of the primary issues that the Committee found for several States regarding gender discrimination is the representation and participation of women in both public and private life.<sup>163</sup> For example, in **Moldova**, the Committee noted that there is underrepresentation of women in Parliament and in decision-making positions within the government.<sup>164</sup> The Committee recommended that **Moldova** undertake awareness-raising and capacity-building campaigns in order to address the root causes that prevent women from participating in public and political life.<sup>165</sup> Similarly, the Committee noted that in **Kuwait**, there is a low level of representation of women in executive and legislative bodies, as well as the judiciary.<sup>166</sup> The Committee also expressed concern that in **Kuwait**, women's applications for prosecutor positions have been suspended.<sup>167</sup> In this regard, the Committee recommended that the State should take the measures necessary, including temporary special measures, to increase the participation of women in public life.<sup>168</sup>

Regarding the low level of women in public affairs and the low number of women elected to office in **Burkina Faso**, the Committee recommended that the State ensure the effective application of the legislation on political parties and encourage women to stand for election.<sup>169</sup> The Committee also noted that there was underrepresentation of women in the private sector and in particular, in senior and managerial positions and on boards of private enterprises, such as in **Slovenia**.<sup>170</sup> The Committee recommended that **Slovenia** support enhanced cooperation and dialogue with partners in the private sector.<sup>171</sup>

### 2.1.2 Legal provisions that discriminate against women

The Committee also pointed out issues with discriminatory legal provisions with regard to women in several of the reviewed States.<sup>172</sup> For example, with **Morocco**, the Committee noted that there are legislative provisions in the country that discriminate against women, including as related to a matrimonial regime that includes polygamy, divorce, child custody, guardianship of children, inheritance and transfer of nationality to a foreign spouse.<sup>173</sup> The Committee recommended that **Morocco** repeal or amend such discriminatory provisions.<sup>174</sup> In **Kuwait**, the Committee expressed concern about discriminatory provisions that

## 2. Gender Equality and Discrimination against Women (Art 2, 3, 6, 7, 14, 17, 23, 24, 25, 26)

One of the primary issues that the Committee found for several States regarding gender discrimination is the representation and participation of women in both public and private life.

## 2. Gender Equality and Discrimination against Women (Art 2, 3, 6, 7, 14, 17, 23, 24, 25, 26)

Certain States faced issues relating to gender discrimination in employment, particularly regarding the gender wage gap.

implicated family and marriage-related issues.<sup>175</sup> The Committee recommended that such discriminatory provisions be repealed or amended and that **Kuwait** establish a minimum age for marriage that complies with international standards and make the signature of a marriage contract by both spouses mandatory.<sup>176</sup>

### 2.1.3 Gender discrimination in employment

The Committee also noted that certain States faced issues relating to gender discrimination in employment, particularly regarding the gender wage gap.<sup>177</sup> For example, the Committee noted that in **Ecuador**, women are more affected by unemployment than men and the wage gap persists.<sup>178</sup> The Committee recommended the implementation of existing legislation and policies on gender equality, as well as combating of gender stereotypes regarding the role of men and women in the family and in society.<sup>179</sup> The Committee also expressed concern about a gender wage gap in **New Zealand**, which disproportionately affects low-income women, Maori and Pasifika women and women with disabilities.<sup>180</sup> The Committee recommended that **New Zealand** ensure the full implementation of the principle of equal pay for work of equal value across its territory in both the public and private sectors.<sup>181</sup>

### 2.1.4 Patriarchal attitudes and harmful traditional or customary practices

The Committee also pointed out the prevalence of patriarchal attitudes and of traditional practices that are harmful to women and girls in certain States.<sup>182</sup> In **Azerbaijan**, the Committee noted that there are patriarchal attitudes related to restrictions imposed on women and girls in order to preserve the “family honour,” as well as early marriage, unregistered religious marriage and temporary marriage.<sup>183</sup> The Committee recommended to **Azerbaijan** that it develop strategies to combat patriarchal attitudes and stereotypes and ensure the effective enforcement of legal provisions against early marriage, unregistered religious marriage and temporary marriage.<sup>184</sup> Regarding **Namibia**, the Committee noted that there are patriarchal attitudes that contribute to violence against women, as well as customary laws that frequently discriminate against women.<sup>185</sup> The Committee recommended that **Namibia** work with traditional leaders to abolish discriminatory customary laws.<sup>186</sup>

#### Other UN Treaty Bodies

Multiple discrimination was defined by the **CRPD** as discrimination on two or more grounds. Intersectional discrimination is a situation where several grounds interact in such a way that they are inseparable. This was acknowledged as a more serious form of discrimination by **Spain**, **Croatia** and the European Union.<sup>187</sup>

The **CRPD** noted that women with disabilities are not a homogenous group. Multiple discrimination should be recognized explicitly and States parties should, inter alia, outlaw gender- and disability-based discrimination and its intersectional forms, adopt legislation to ensure that rights of

## 2. Gender Equality and Discrimination against Women (Art 2, 3, 6, 7, 14, 17, 23, 24, 25, 26)

The CRPD was concerned about multiple and intersectional discrimination in many of the COBs.

women with disabilities are included in all policies, ensure the participation of women with disabilities, collect data on the situation of women with disabilities and ensure that all international cooperation is disability- and gender-sensitive.<sup>188</sup>

States parties should organize mandatory training on multiple discrimination<sup>189</sup> and **Spain** recognize multiple and intersectional discrimination as an aggravated form<sup>190</sup>, in particular based on disability, age, gender, indigenous background, rural isolation, ethnicity, Afro-descendant origin or migrant status and others.<sup>191</sup> Specific data on this issue should be collected and disseminated and remedial schemes should address the aggravated nature of this form of discrimination.<sup>192</sup>

The CRPD was concerned about multiple and intersectional discrimination in many of the COBs. In **Bolivia, Ethiopia, Guatemala, United Arab Emirates, Uruguay, Chile, Italy, Slovakia, Uganda** and **Colombia**, the Committee noted that this form of discrimination should be recognized as an aggravated form of discrimination.<sup>193</sup> Effective remedies should be established and explicit legislation should be adopted. Moreover, **Colombia, Serbia** and **Portugal** should incorporate the disability perspective in all policies relating to gender equality.<sup>194</sup> **Slovakia** should provide mandatory training on this issue.<sup>195</sup> **Lithuania, Thailand, Uganda** and **Portugal** should take measures to eradicate multiple discrimination.<sup>196</sup>

The CRPD repeatedly referred to targets 10.2 and 10.3 of the Sustainable Development Goals and the guidance of art. 5 and 6 in obtaining that goal.<sup>197</sup>

The **CRC** adopted a new general comment in 2016 on the rights of adolescents, with the inputs of adolescents themselves. The CRC stated in that general comment that gender inequality becomes more significant during adolescence since "adolescence itself can be a source of discrimination".<sup>198</sup> For example, gender inequalities become more significant with age, leading to forced marriages, early pregnancies, trafficking, and other serious violations of their rights. The CRC recommended states to address discrimination against girls by promoting empowerment, challenge patriarchal gender norms and promote legal reforms.<sup>199</sup>

The principle of non-discrimination was reiterated in all COBs. In **Iran, Saudi Arabia** and **Pakistan**, for example, the CRC was concerned about the continuing discrimination of girls in all aspects of life, especially against children belonging to religious, minority ethnic and linguistic groups, children born out of wedlock, children in poverty, LGBTQ and asylum-seeking children.<sup>200</sup> In **Pakistan**, the CRC referred to a joint general recommendation of CEDAW and CRC to take active measures to put an end to harmful practices against children.<sup>201</sup> In **Saudi Arabia**, the CRC denounced the system of male guardianship, as well as the fact that girls are not recognized as full subjects of rights.<sup>202</sup> Male guardianship is also denounced in the COBs of **Iran**.<sup>203</sup>

## 2. Gender Equality and Discrimination against Women (Art 2, 3, 6, 7, 14, 17, 23, 24, 25, 26)

The Committee noted that underreporting of gender-based violence was an issue in Azerbaijan, Kazakhstan and Sweden.

### 2.2 Gender-Based Violence

The Committee made recommendations regarding gender-based violence to all twenty-one States that were reviewed during the three sessions in 2016.

#### 2.2.1 Prevalence of domestic violence

The Committee found that there was a high prevalence of domestic violence in several States.<sup>204</sup> For example, the Committee noted that in **Moldova**, there was an increasing number of cases of domestic violence, as well as a lack of prompt and effective investigation of such cases.<sup>205</sup> The Committee recommended that **Moldova** ensure prompt, thorough and effective investigations, as well as prosecutions and punishment of perpetrators of domestic violence.<sup>206</sup>

#### 2.2.2 Underreporting of gender-based violence

The Committee noted several structural issues with regard to the prevention and redressing of gender-based violence, including underreporting of gender-based violence, lack of adequate protection mechanisms for victims and a rate of low prosecutions and convictions.<sup>207</sup>

The Committee noted that underreporting of gender-based violence was an issue in **Azerbaijan, Kazakhstan** and **Sweden**. For **Azerbaijan** and **Kazakhstan**, the Committee expressed concern that cases of sexual and domestic violence are often underreported because of a culture of silence.<sup>208</sup> With regard to **Sweden**, the Committee noted that gender-based violence is often underreported, in particular in cases of sexual violence against women with disabilities.<sup>209</sup> In this regard, the Committee recommended that the affected States conduct awareness raising of the impacts of violence against women, inform women of their rights and establish a mechanism to encourage reporting of domestic violence to law enforcement authorities.<sup>210</sup>

#### 2.2.3 Lack of adequate mechanisms for support and assistance for victims

The Committee also noted that there is a lack of adequate protection mechanisms and insufficient support services for victims of gender-based violence in multiple States.<sup>211</sup> For example, in **Slovakia**, the Committee noted that there is a lack of a coordinated system for preventive measures and victim assistance, such as shelters and legal, medical and psychological assistance.<sup>212</sup> The Committee made a general recommendation to **Slovakia** to ensure that women victims of violence are provided adequate access to protection and assistance.<sup>213</sup>

For **Poland**, the Committee expressed concern about the small number of restraining orders that are issued and the insufficient number of emergency shelters and specialized assistance centers.<sup>214</sup> The Committee recommended that **Poland** provide victims access to means of protection, including restraining orders, with immediate effect and increase the number of emergency shelters and specialized centers in all parts of the country.<sup>215</sup>

With regard to **Azerbaijan**, the Committee noted that the



provision of assistance services to victims is mainly delegated to non-governmental organizations with limited State involvement.<sup>216</sup> In this regard, the Committee recommended that the State ensure that victims are provided access to "sufficient, safe and adequately funded" centers for victims of violence.<sup>217</sup>

#### 2.2.4 Low rates of prosecutions

The Committee also found that certain States had an issue with a low rate of prosecutions of perpetrators of gender-based violence.<sup>218</sup> For example, in **Morocco**, the Committee noted that perpetrators of gender-based violence are often not prosecuted partly as a result of the fact that victims of rape who report the crime may be subject to prosecution themselves because of the criminalization of sexual relations outside marriage between consenting adults.<sup>219</sup> The Committee recommended that **Morocco** end such prosecutions under the criminalization of sexual relations outside marriage and instead prosecute offenders and perpetrators of violence against women.<sup>220</sup>

In **Azerbaijan**, the Committee noted that rather than prosecution, courts use reconciliatory measures for first-time offenders of gender-based violence without regard to the victim's opinion or safety, a practice that the Committee recommended **Azerbaijan** prevent.<sup>221</sup>

With regard to **Ghana**, the Committee noted that women victims of domestic violence frequently withdraw their complaints due to reprisals or social stigma and that there are lenient sentences imposed on perpetrators of such violence, as well as a general lack of investigations and prosecutions.<sup>222</sup> The Committee recommended to **Ghana** that it should ensure that law enforcement authorities receive appropriate training to deal with cases of domestic violence.<sup>223</sup>

Moreover, with regard to **Kazakhstan**, the Committee noted that under the Criminal Procedure Code, the majority of cases involving violence against women fall under the category of "private" and "private-public" prosecution, investigations can only be initiated upon official complaint of the victim and criminal proceedings in such cases can, with few exceptions, be terminated upon "reconciliation of the parties."<sup>224</sup> The Committee recommended that the State classify acts of violence against women as public prosecutions subject to ex officio investigation and prosecution and repeal provisions allowing termination of criminal proceedings upon reconciliation of the parties.<sup>225</sup>

#### 2.2.5 Harmful traditional or customary practices

With regard to certain States, the Committee expressed concern about traditional or customary practices that had the effect of perpetuating gender-based violence against women or that negatively impacted women.<sup>226</sup> This included practices, such as female genital mutilation, *trokosi* (ritual servitude), forced early marriage and witchcraft accusations leading to confinement in witch camps, in **Ghana**, as well as harmful sexual initiation practices in **Namibia**.<sup>227</sup> The Committee recommended that **Ghana** and **Namibia** educate

## 2. Gender Equality and Discrimination against Women (Art 2, 3, 6, 7, 14, 17, 23, 24, 25, 26)

The Committee expressed concern about traditional or customary practices that had the effect of perpetuating gender-based violence against women or that negatively impacted women.

## 2. Gender Equality and Discrimination against Women (Art 2, 3, 6, 7, 14, 17, 23, 24, 25, 26)

The CERD recognized the impact of multiple and intersecting forms of discrimination against women.

communities on the discriminatory impact of such practices.<sup>228</sup> The Committee also recommended that **Ghana** investigate cases of harmful traditional practices and provide victims with access to effective remedies.<sup>229</sup>

### Other UN Treaty Bodies

The **CERD** recognized the impact of multiple and intersecting forms of discrimination against women. Women may be discriminated against because of their gender and/or race. Some examples include sexual violence against particular ethnic groups, coerced sterilization of indigenous women, racial bias-motivated rape and lack of access to remedies because of gender bias in the legal system.

The CERD recommended a more systematic and consistent approach to assess and monitor racial discrimination against women. The CERD incorporated gender analysis in its working methods and, in particular, considered the form and manifestation of racial discrimination, the circumstances in which it occurs, the consequences and the availability of and accessibility to remedies. States parties should describe factors affecting the equal rights of women by collecting data categorized by race or ethnic origin and disaggregated by gender.<sup>230</sup>

The CERD often mentioned multiple and intersecting forms of discrimination in its COBs and asked States consistently to take into account the previously mentioned general recommendation. The CERD was particularly concerned about Afro-descendant and indigenous women and frequently asked for specific data on this issue.

In **Namibia**, the CERD noted the ethnically motivated rape of San women and the lack of accessibility to remedies. The CERD then asked for more information, data and measures taken by the State party to combat stereotypes about indigenous peoples and to raise awareness about reporting mechanisms.<sup>231</sup>

In **Pakistan**, violence against women from an ethnic and religious minority persists - honour killings are a common example. The CERD recommended the State party amend the legislation and enforce existing laws.<sup>232</sup> The CERD was also concerned about the situation of black and marginalized ethnic women in **South Africa**. They are discriminated against on many levels and do not have access to basic services.<sup>233</sup>

The CERD expressed concern regarding the situation of minority women in war-affected areas in **Sri Lanka**, their high rates of unemployment and poverty and the risk of gender-based violence.<sup>234</sup> Lastly, the CERD was concerned by the fact that Afro and indigenous women face multiple forms of discrimination in **Argentina**, **Paraguay** and **Uruguay**. A gender perspective should be mainstreamed in all policies and strategies concerning discrimination and statistical data should be provided.<sup>235</sup> Concerning **Uruguay**, the Committee also recommended that the State party take measures to protect the LGBTQ community from multiple forms of discrimination.<sup>236</sup>



## 2.3 Sexual and Reproductive Rights

The Committee made recommendations regarding sexual and reproductive rights for the following thirteen States:

**Moldova, Jamaica, Slovakia, Poland, Morocco, Ecuador, Burkina Faso, Rwanda, Ghana, Argentina, Costa Rica, Namibia and Colombia.**

### 2.3.1 General prohibition of abortion

The Committee noted that certain States instituted a general prohibition of abortion, which led women in those States to rely on unsafe, clandestine abortions.<sup>237</sup> In **Jamaica**, the Committee noted that abortion is generally criminalized, including in cases of pregnancy resulting from rape, incest or fatal fetal abnormality.<sup>238</sup> The Committee noted that in **Ecuador**, abortion is criminalized except in cases of a danger to the life or health of the mother and in cases where the pregnancy was a result of a rape specifically “of a woman suffering from mental disability.”<sup>239</sup> The Committee recommended to both **Jamaica** and **Ecuador** that they amend their abortion legislation in order to help women not resort to illegal, potentially life-risking abortions.<sup>240</sup>

In 2016, the Committee addressed general prohibition of abortion not only in the COBs but also in an individual communication, *Mellet v. Ireland*. Specifically, the Committee addressed gender discrimination in the context of a prohibition of abortion under Irish law. In this individual communication, the Committee found a violation of Article 26 because the author in question was subjected to differential treatment in relation to other similarly situated women insofar as the author's medical needs and socioeconomic circumstances were not taken into account and the differential treatment did not meet the requirements of reasonableness, objectivity and legitimacy of purpose.<sup>241</sup> Specifically, the author was treated differently from women who were pregnant with a fetus with a fatal impairment and who decided to carry the pregnancy to term in that those women were provided protection by the health care system and could rely on benefits from health insurance and the advice of medical professionals throughout the pregnancy, unlike the author.<sup>242</sup>

### 2.3.2 Obstacles to abortion

The Committee noted that in several States, although abortion is legal, there are certain obstacles to abortion.<sup>243</sup> The Committee noted that in **Poland**, women face several obstacles to accessing safe, legal abortions, such as a conscience clause in Polish law for medical professionals, the lack of a referral mechanism for access to abortion following the exercise of conscientious objection and the lack of health providers in some areas of the country who are willing to offer legal abortion services.<sup>244</sup> The Committee made several recommendations to **Poland**, including that it establish standardized guidelines in public health to ensure the provision of legal abortion services throughout the country, enhance the effectiveness of the referral mechanism in cases of conscientious objection by medical practitioners and ensure

## 2. Gender Equality and Discrimination against Women (Art 2, 3, 6, 7, 14, 17, 23, 24, 25, 26)

The Committee recommended to both Jamaica and Ecuador that they amend their abortion legislation.

## 2. Gender Equality and Discrimination against Women (Art 2, 3, 6, 7, 14, 17, 23, 24, 25, 26)

The Committee has also noted that there is a lack of access to contraception and sexual and reproductive health services in multiple States.

timely review of appeals against a refusal for an abortion.<sup>245</sup> Similarly, the Committee noted that in **Costa Rica**, women have been subjected to violence by medical professionals when seeking abortion services and that those medical professionals sometimes denied them access to basic medical procedures.<sup>246</sup> The Committee recommended that **Costa Rica** ensure that such cases of violence are investigated and that perpetrators are brought to justice.<sup>247</sup>

Regarding **Burkina Faso**, the Committee noted with concern that there were constraints imposed on access to legal abortion in cases of rape or incest, namely, a requirement to obtain a judicial decision recognizing that an offense was committed and the legal deadline of ten weeks for terminating a pregnancy.<sup>248</sup> The Committee recommended that the State lift the requirement for the prior authorization of a court for abortions resulting from rape or incest and ensure that women and girls have access to quality services to deal with complications arising from unsafe abortions.<sup>249</sup>

With regard to **Argentina**, the Committee noted that while there had been a Supreme Court ruling which reaffirmed the right to legally terminate a pregnancy, this ruling was not uniformly applied and resulted in legal abortion often being inaccessible.<sup>250</sup> The Committee referred to a specific case, the Belén case, in which the accused was charged with aggravated homicide for allegedly having an illegal abortion and is still deprived of her liberty.<sup>251</sup> The Committee recommended that **Argentina** should review that case in light of relevant international standards with a view to the accused's prompt release.<sup>252</sup>

### 2.3.3 Access to contraception and sexual and reproductive health services

The Committee has also noted that there is a lack of access to contraception and sexual and reproductive health services in multiple States.<sup>253</sup> For example, the Committee expressed concern that in **Burkina Faso**, there have been reports of violence against women who have raised questions about contraception with their partners, as well as a lack of information about contraception and a lack of accessibility to sexual and reproductive health services in rural areas.<sup>254</sup> The Committee recommended that **Burkina Faso** ensure that women and girls have access to sexual and reproductive health services and that methods of contraception are accessible and available throughout the country.<sup>255</sup>

Similarly, the Committee noted that in **Namibia**, there is a lack of sufficient information about the availability of free contraception for adolescents in health facilities and youth centers, a problem that the Committee recommended that **Namibia** work to correct by ensuring access to such information.<sup>256</sup> With regard specifically to teenagers and adolescents, the Committee noted with concern that in **Colombia**, the rates of teenage pregnancy are high and recommended that Colombia intensify its efforts to prevent unwanted pregnancies, especially among adolescents, and provide women and adolescent girls with access to sexual and reproductive health services.<sup>257</sup>

### 2.3.4 In vitro fertilization

The availability of in vitro fertilization was only an issue that the Committee noted for **Costa Rica**. Specifically, the Committee expressed concern that while the use of in vitro fertilization and embryo transfer were authorized in the State party, there remained excessive restrictions on that use.<sup>258</sup> The Committee recommended that **Costa Rica** prevent excessive restrictions from being placed on the use of that technology.<sup>259</sup>

### 2.3.5 Forced sterilization

The Committee noted a specific issue with regard to **Slovakia**, namely that the State had not acknowledged responsibility for its past practice of forced sterilization of Roma women or provided compensation to the victims, except in one case.<sup>260</sup> The Committee recommended that **Slovakia** establish an independent body to investigate the full extent of the practice of forced sterilization and provide financial and other reparation to the victims.<sup>261</sup> It also recommended that the State party provide ongoing training to health care personnel on how to ensure that informed consent is obtained and monitor health care providers' implementation of legislation on informed consent in situations of sterilization.<sup>262</sup>

### Other UN Treaty Bodies

The **CRC** explained their progressive view on sexual and reproductive rights in their General Comment on the implementation of the rights of the child during adolescence. It reiterated the CESCR's position on the need for equal access to information and services and combatting discrimination: lack of access has as consequence that adolescent girls are most at risk during pregnancy or childbirth. Particular efforts should be made to overcome stigma and fear of vulnerable groups. Abortion should be decriminalized and the best interest of pregnant adolescents should be taken into account. Age-appropriate, comprehensive and inclusive sexual and reproductive health education should be part of the mandatory school curriculum. The CRC stressed again that this information should be accessible to all adolescents.<sup>263</sup> Moreover, children below the minimum legal age limit should have the right to refuse consent for health services or treatment. The voluntary and informed consent of the adolescent should be obtained whether or not the consent of a parent or guardian is required for any medical treatment or procedure. The CRC also states that a legal presumption should be introduced for adolescents so that they are competent to seek and have access to preventive or time-sensitive sexual and reproductive health services. They also have the right to confidential medical counselling without the consent of a parent or guardian if they so wish, not subjected to any age limit.<sup>264</sup>

## 2. Gender Equality and Discrimination against Women (Art 2, 3, 6, 7, 14, 17, 23, 24, 25, 26)

[The CRC] reiterated the CESCR's position on the need for equal access to information and services and combatting discrimination.

### 3. Right to Life (Art 6); Prohibition of Torture, Cruel, Inhuman and Degrading Treatment (Art 7); and Issues of Detention (Arts 9, 10)

The States parties where the death penalty remained in force were Kuwait, Jamaica, Burkina Faso, Kazakhstan and Morocco.

#### 3.1 Right to Life

In its observations, the Committee took note of several issues surrounding arbitrary deprivations of life, the prohibition of torture and cruel, inhuman and degrading treatment (CIDT) and respect for human dignity for persons deprived of their liberty. The Committee also shed light on the obligation of non-refoulement as it applies to Article 6 (prohibition of arbitrary deprivation of life) and Article 7 (prohibition of torture and CIDT) of the Covenant. In certain individual communications, issues surrounding detentions and deprivation of liberty under Article 9 were also considered.

##### 3.1.1 Death Penalty

The States parties where the death penalty remained in force were **Kuwait, Jamaica, Burkina Faso, Kazakhstan** and **Morocco**. In **Kuwait**, the Committee was concerned regarding the large number of offenses for which the death penalty could be imposed, including for “vague” offenses related to internal and external security.<sup>265</sup> Most of these offenses did not meet the threshold of “the most serious crimes” as specified in the Covenant.<sup>266</sup> Moreover, there was information that indicated that imposition of death penalty was mandatory for certain crimes.<sup>267</sup> The Committee recommended that **Kuwait** only impose the death penalty for the most serious crimes.<sup>268</sup> Similarly in **Kazakhstan** the Committee recommended the death penalty be limited to the most serious crimes only.<sup>269</sup> In **Morocco**, the Committee noted the addition of three new categories of crimes punishable by death in the draft Criminal Code.<sup>270</sup>

The Committee asked Jamaica, **Kazakhstan, Burkina Faso, Morocco, Kuwait and Ghana** to consider acceding to the Second Optional Protocol to the Covenant aimed at abolishing the death penalty.<sup>271</sup> Additionally, the Committee recommended States parties such as **Burkina Faso** and **Morocco** to continue the political and legislative process aimed at abolishing the death penalty and its efforts to sensitize public opinion and campaign in favor of its abolition.<sup>272</sup>

#### Other UN Treaty Bodies

The **CRC** issued strong recommendations to **Maldives** and **Saudi Arabia** concerning the death penalty. The Committee urged both States to repeal all provisions providing for death penalty for persons under the age of 18, to not carry out the death penalty on minors and to give them alternative sanctions, with utmost priority.<sup>273</sup> The Committee also urged **Saudi Arabia** to release children who have not benefited from a fair trial<sup>274</sup> and who have been sentenced to death for the exercise of their right to freedom of opinion and expression.<sup>275</sup>

##### 3.1.2 Enforced Disappearances

In **Morocco, Namibia** and **Rwanda** there were several reports of enforced disappearances.<sup>276</sup> The Committee encouraged investigations, as well as prosecutions and punishment of those who were found guilty.<sup>277</sup> The Committee also recommended

States parties to take all possible measures to establish the truth of the circumstances and determine the fate of the victims of such disappearances.<sup>278</sup>

### 3.1.3 Non-Refoulement

According to the Committee's jurisprudence, the obligation of non-refoulement is defined in General Comment No. 31 as "the obligation of States parties not to extradite, deport, expel or otherwise remove a person from their territory when there are substantial grounds for believing that there is a real risk of irreparable harm" under Articles 6 and 7 of the Covenant.<sup>279</sup> There is a high threshold for providing substantial grounds in order to establish the existence of a real risk of irreparable harm and the risk must be personal.<sup>280</sup> The Committee has decided that in order to make the assessment of whether a real risk of irreparable harm exists if the person would be expelled or removed to their country of origin, all relevant facts and circumstances must be considered, including the general human rights situation in the country of origin.<sup>281</sup>

Moreover, the Committee gives important weight to the assessment conducted by the State party, unless the State's evaluation was found to be clearly arbitrary or to amount to a denial of justice.<sup>282</sup> According to the Committee's jurisprudence, it is generally for the organs of States parties to review or evaluate facts and evidence in order to determine whether a real risk of irreparable harm exists.<sup>283</sup>

In an individual communication filed against **Canada**, the author alleged that Canada had violated the guarantees it had made to the author by denying the author a chance to comment on Thailand's request on the waiver of specialty. This waiver allowed **Thailand** to add further chargers not a part of the extradition request.<sup>284</sup> The Committee recalled its earlier jurisprudence to affirm that extradition proceedings fall within its jurisdiction when considering claims under Article 13 of the Covenant.<sup>285</sup> The Committee held that **Canada** violated the procedural guarantees afforded to the author by refusing him the chance to comment on the waiver request thus violating the author's rights under Article 13 of the Covenant.<sup>286</sup>

## 3.2 Prohibition of Torture and Ill-treatment

Under Article 7 of the Covenant, the prohibition on torture, cruel, inhuman or degrading treatment or punishment is absolute.<sup>287</sup> The Committee, in its observations, noted several issues with regard to States parties' implementation of Article 7.

### 3.2.1 Definition of torture

The Committee found that many States Parties lacked either a proper definition of torture in their domestic statutes or lacked remedies. States parties, such as **Sweden**<sup>288</sup>, **Ghana**<sup>289</sup> and **Denmark**<sup>290</sup>, did not have the specific crime of torture in their criminal law. **Kazakhstan** did not cover acts of torture that were committed by people acting in an official capacity.<sup>291</sup> Moreover, **Kuwait**, **Jamaica** and **Poland** did not include all acts of torture as defined by the internationally accepted definition in their domestic provisions.<sup>292</sup> With respect to **South Africa**, the Committee noted that while it did have legislation on torture, it

## 3. Right to Life (Art 6); Prohibition of Torture, Cruel, Inhuman and Degrading Treatment (Art 7); and Issues of Detention (Arts 9, 10)

Under Article 7 of the Covenant, the prohibition on torture, cruel, inhuman or degrading treatment or punishment is absolute.



### 3. Right to Life (Art 6); Prohibition of Torture, Cruel, Inhuman and Degrading Treatment (Art 7); and Issues of Detention (Arts 9, 10)

In Kazakhstan, the Committee expressed concern regarding the high number of torture cases that were dismissed.

lacked specific provisions relating to the right of redress and remedy for victims of torture.<sup>293</sup> Thus, the Committee recommended that these parties take measures to include the definition of torture in their criminal codes in line with the Covenant and internationally established norms.<sup>294</sup>

#### 3.2.2 Investigation, prosecution and punishment of perpetrators

The Committee expressed concern that **Burkina Faso** and **Costa Rica** did not provide any information regarding the investigation and punishment of human rights violations committed by officials in detention centers and by members of police.<sup>295</sup> Thus, the Committee recommended that **Burkina Faso** and **Costa Rica** ensure that reports of torture or ill-treatment were investigated promptly, thoroughly and independently so that perpetrators are brought to justice and, if found guilty, are punished with penalties proportionate to the gravity of the crime.<sup>296</sup> Additionally, the Committee recommended that **Burkina Faso** ensure that the confessions obtained under such conditions were rejected by the courts and to make the national observatory for the prevention of torture and related practices operational.<sup>297</sup>

In **Kazakhstan**, the Committee expressed concern regarding the high number of torture cases that were dismissed due to the excessive evidentiary standard that was required to pursue an investigation. In addition, most investigations continued for a long period of time and there was a very low rate of effective prosecution. There was also the practice of charging unsuccessful claims of torture with the charge of "false reporting of a crime." Finally, the Committee noted that victims were not provided with the full reparation and there had been an "alleged" increase in the number of cases being reported since the investigation and penitentiary facilities had been transferred to the Ministry of Internal Affairs.<sup>298</sup>

Thus, the Committee encouraged the State party to determine standards of proof and credibility for investigations regarding cases of torture and ill-treatment committed by State officials and to establish special prosecutor units who would act independently of law enforcement agencies.<sup>299</sup> Additionally, the Committee asked the State party to ensure that the sanctions for the crime of torture were in accordance with the nature and gravity of the crime, to refrain from using false reporting of a crime against alleged victims of torture or ill-treatment and to take measures to ensure that victims would have full access to reparation.<sup>300</sup>

In **Morocco**, the Committee noted that there were reports of torture being carried out by agents of the State particularly in cases where the individuals were thought to be terrorists.<sup>301</sup> The Committee was concerned about confessions obtained under duress and torture by officials.<sup>302</sup> The Committee found that the judges and prosecutors did not always ensure that medical examinations were conducted and the necessary investigations were undertaken.<sup>303</sup> The Committee encouraged the State Party to conduct impartial investigations, prosecute and punish the perpetrators and ensure that medical examinations were performed without delay.<sup>304</sup> The Committee requested that the prohibition on the

extraction of confessions under duress be observed in practice and the evidence obtained through such means not be admitted in court.<sup>305</sup> The Committee encouraged **Morocco** to offer proper mechanisms to victims and guarantee them reparation. It also requested the State party to adopt national preventive mechanisms to combat such practices.<sup>306</sup>

Further, the Committee noted that in **Namibia**, a majority of reported cases of violence and harassment against lesbian, gay, bisexual and transgender persons was committed by members of the police.<sup>307</sup> There were also reports that members of the police regularly detained and raped sex workers.<sup>308</sup> Accordingly, the Committee asked **Namibia** to adopt legislation consistent with the provision of the Covenant and train relevant professionals including police and prison guards.<sup>309</sup> In addition, the Committee directed the State party to ensure that sex workers could report crimes without risk of being prosecuted for their occupation.<sup>310</sup>

In its observations on **Argentina**, the Committee noted that the primary causes attributed to violence were the system of prison self-governance, limited number of convictions and the light penalties for perpetrators.<sup>311</sup> The Committee noted that though there had been an establishment of a national registry for cases of torture and ill-treatment in 2014, **Argentina** was still lacking a unified system for the acts and victims of torture at a federal level.<sup>312</sup> The Committee also expressed concern regarding the reports of humiliating searches, high rates of inter-prisoner violence, forced transfers and the recurrent use of solitary confinement as a method of punishment.<sup>313</sup> It also noted that only a small number of victims of torture had been granted reparation after judicial proceedings.<sup>314</sup>

### 3.2.3 National Preventive Mechanisms

In **Moldova**, the Committee was concerned regarding the insufficient response mechanisms for cases of torture and cruel, inhuman or degrading treatment of individuals in police custody.<sup>315</sup> The Committee requested the State party to integrate the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) in all training programs for law enforcement officials.<sup>316</sup> Additionally, the Committee encouraged the State party to enable the national preventive mechanism to carry out its functions without delay.<sup>317</sup> Finally, the Committee proposed the implementation of a unified registration system for victims of torture with the view of establishing special policies such as conducting systematic human rights training programs for law enforcement and security officers.<sup>318</sup>

The Committee noted that though **Argentina** had adopted the National Preventive Mechanism Act (Act No. 26.827) in 2012, it had not been implemented yet.<sup>319</sup> The Committee encouraged the State party to establish a system to ensure that all complaints of torture and ill-treatment were investigated promptly and independently with the help of forensic examinations to make the process more impartial and comprehensive.<sup>320</sup> In addition, the Committee asked the State party to take measures to establish a unified registration system

## 3. Right to Life (Art 6); Prohibition of Torture, Cruel, Inhuman and Degrading Treatment (Art 7); and Issues of Detention (Arts 9, 10)

In Moldova, the Committee was concerned regarding the insufficient response mechanisms.

### 3. Right to Life (Art 6); Prohibition of Torture, Cruel, Inhuman and Degrading Treatment (Art 7); and Issues of Detention (Arts 9, 10)

In finding a violation of the obligation of non-refoulement, the Committee considers whether the State has given sufficient weight to the author's allegations.

for the victims with the view to formulating policies directed towards prevention of torture and cruel treatment and to ensure that they received the appropriate reparation.<sup>321</sup>

In **Azerbaijan**, the Committee observed that a majority of reports of torture and ill-treatment related to journalists, human rights defenders and youth activists. Though they had established a national preventive mechanism in 2011, the Committee was apprehensive regarding the effectiveness of this body.<sup>322</sup> Thus, it asked the State party to employ independent and effective mechanisms to monitor areas where deprivation of liberty was taking place and to involve NGOs to aid in this process.<sup>323</sup>

#### 3.2.4 Non-Refoulement

In finding a violation of the obligation of non-refoulement, the Committee considers whether the State has given sufficient weight to the author's allegations, in particular with regard to the author's personal circumstances.<sup>324</sup> The Committee has found violations when the author's personal circumstances were not accorded sufficient weight, such as in a case in which the Committee decided that **Denmark** did not give sufficient consideration to the fact that the author in question left Somalia at a young age, had no remaining family or social network in Somalia, had limited literacy skills in the Somali language, was a member of a minority clan and recently suffered from tuberculosis.<sup>325</sup> The Committee decided that in these circumstances, the author's removal to Somalia would put him at a real risk of irreparable harm under Article 7 of the Covenant.<sup>326</sup>

#### 3.3 Issues Relating to Detention

This sub-theme encompasses both conditions in detention and the nature of detention, as well as an individual's treatment in detention.

##### 3.3.1 Unlawful detention

The Committee has considered that a pretrial detention that is not in accordance with domestic law may constitute a violation of Article 9.<sup>327</sup> For example, the Committee decided that the detention of an author who was held in pretrial detention for approximately seven months in **Uzbekistan** in contravention of a law in **Uzbekistan** that stated that a convicted person must be transferred from a pretrial detention facility to a prison at the latest ten days after the final sentence of a court violated Article 9(1) of the Covenant.<sup>328</sup> Similarly, the Committee found in another individual communication that the circumstance of an author who was continuously held in pretrial detention in the **Democratic Republic of the Congo** despite a court order for his placement under house arrest was a breach of the State's internal law and thus violated Article 9(1).<sup>329</sup> The Committee also noted that Article 9(4) of the Covenant entitles anyone who is deprived of liberty (through arrest or detention) to challenge the lawfulness of their arrest/detention.<sup>330</sup> Further, the Committee held that any courts must assess the lawfulness of any detention not only in terms of domestic law but whether the requirements of the Covenant have been met.<sup>331</sup>



The Committee was concerned that in **Morocco**, vaguely worded provisions of the Criminal Code regarding what constitutes an act of terrorism and these provisions were used to target journalists and discourage the right to freedom of expression. Accordingly, the Committee recommended that **Morocco** revise the provisions in its Criminal Code on terrorism to include the right to counsel, define terrorism-related offenses on the basis of their objective and define the nature of such acts precisely.<sup>332</sup> In **Argentina**, the Committee noted that several individuals were subjected to arrests and detention without warrants.<sup>333</sup> The Committee urged the State party to end this practice of unlawful detention.<sup>334</sup>

In **Rwanda**, the Committee was concerned about reports where individuals had been held unlawfully by military and police in unlawful detention centers. There was a lack of information regarding the measures taken to investigate these claims.<sup>335</sup> Thus, the Committee requested the State party to make legislative amendments to ensure that the individual was brought before the judge within 48 hours, to investigate all allegations of torture, guarantee the victims of torture the right to effective remedy and redress and also ensure that those who were deprived of their liberty in detention would be provided with all the necessary legal safeguards.<sup>336</sup>

The Committee has also held that commitment to and treatment in a psychiatric institution of a person against their will, when they pose no danger to themselves or others, constitutes unlawful detention.<sup>337</sup> Additionally, the Committee held that when individuals were committed to a psychiatric institution against their will, the same must be based on a court order.<sup>338</sup> Further, an individual must be given a chance to appeal the order before being committed to an institution.<sup>339</sup>

In **Morocco**, the Committee noted with concern that imprisonment was used to enforce contractual obligations and accordingly the Committee also recommended Morocco refrain from using imprisonment as a method for enforcing contractual obligations.<sup>340</sup>

### 3.3.2 Time period of detention

With regard to police custody, the Committee found that in **Argentina, Ghana, Morocco, Sweden, Rwanda, Moldova** and **Namibia**, suspects were not always brought before a judge within the prescribed time period.<sup>341</sup> The States parties were encouraged to ensure that the prescribed period of police custody was followed and suspects were not abused and kept for an excessive period of detention.<sup>342</sup> In **Argentina**, the Committee found that the police were taking individuals into custody without a warrant. The reasons for these arrests were that the police were seeking to verify the identity of the arrested persons and as a result were detaining the individuals for a long period of time. During this time, the arrested persons were not brought before a judge or a relevant judicial authority.<sup>343</sup> The Committee recommended that the State adopt legislative measures that would put an end to the practice of such detentions was not related to the commission of an offense.<sup>344</sup>

## 3. Right to Life (Art 6); Prohibition of Torture, Cruel, Inhuman and Degrading Treatment (Art 7); and Issues of Detention (Arts 9, 10)

The Committee has also held that commitment to and treatment in a psychiatric institution of a person against their will, when they pose no danger to themselves or others, constitutes unlawful detention.

### 3. Right to Life (Art 6); Prohibition of Torture, Cruel, Inhuman and Degrading Treatment (Art 7); and Issues of Detention (Arts 9, 10)

In the case of Sweden, the Committee suggested the creation of a time limit for the duration of pretrial detention.

In the case of **Sweden**, the Committee suggested the creation of a time limit for the duration of pretrial detention.<sup>345</sup> It requested the State party to ensure that restrictions on contacts for pretrial detainees were time-bound, justified as necessary, proportionate and the extent of their application subject to constant review.<sup>346</sup> In situations where the detainees were young, the Committee asked the State party to take the appropriate measures to mitigate isolation.<sup>347</sup>

The Committee has held that anyone arrested or detained on a criminal charge must be afforded a judicial hearing within 48 hours and any delay longer than 48 hours must remain absolutely exceptional and be justified under the circumstances.<sup>348</sup>

In an individual communication, the Committee noted (in a partly dissenting opinion) that mandatory sentencing schemes that fail to account for individual circumstances and are disproportionate given the facts of particular cases could be arbitrary or unlawful, and contrary to Article 9(1) of the Covenant.<sup>349</sup>

#### 3.3.3 Conditions in detention

Regarding conditions and treatment in detention, the Committee held that persons deprived of their liberty may not be subjected to hardship or constraint other than that resulting from the deprivation of liberty and they must be treated with humanity and respect for their dignity.<sup>350</sup> In addition, the Committee held that incommunicado detention is inconsistent with this obligation.<sup>351</sup>

In the context of allegations of either torture or cruel, inhuman or degrading treatment in detention, the Committee decided that the failure of a State party to refute an author's specific allegations of such treatment and a failure by the State party to carry out an effective investigation into the author's allegations of torture would constitute a violation of Article 7 of the Covenant.<sup>352</sup> The Committee has also found a violation of Article 7 when the author claimed that while he was held in detention, he suffered prison overcrowding and a lack of hygiene, ventilation, lighting, food and physical exercise and the State did not contest these claims.<sup>353</sup> Similarly, the Committee found in another communication, regarding an author who had claimed that he had been deprived of adequate medical care during his imprisonment due to the authorities forcibly returning him to prison and taking no action in response to reports of his medical problems, that the State had violated Article 10(1) of the Covenant because of its failure to provide detailed information contesting its alleged failure to follow the prescriptions in the author's medical reports and the author's forced departure from the hospital.<sup>354</sup>

#### 3.3.4 Police custody, pretrial detention and fundamental legal safeguards

The Committee acknowledged the **Argentinean** Initiative undertaken as part of the Justice 2020 Programme to review the system of pretrial detention in accordance with the Covenant.<sup>355</sup> On the issue of pretrial detention, the Committee asked Argentina to review the current legislation and investigate other alternative non-custodial arrangements.<sup>356</sup>

The Committee also encouraged the State party to provide additional training to those administering justice to ensure that pretrial detention was not the norm and its duration was strictly limited.<sup>357</sup>

In **Burkina Faso**, the Committee noted reports of wrongful arrests and detention in police custody and the excessive use of force by officials in pretrial detention.<sup>358</sup> It requested the State party to ensure that the rules regarding the duration of police custody and pretrial detention were followed. The Committee also encouraged the State party to observe fundamental legal safeguards and to inform individuals of the rights that were available to them.<sup>359</sup>

The Committee proposed States such as **Argentina** and **Burkina Faso** to take measures to ensure that those who were detained had access to lawyers, to review regulations governing pretrial detention and expedite application of non-custodial alternatives.<sup>360</sup>

In **Sweden**, the Committee noted deficiencies in the present legal framework regulating pretrial detention. It expressed concern regarding the absence of a statutory time limit, the lack of access to a counsel and strict restrictions that were placed on people in remand.<sup>361</sup> The Committee suggested the State party take measures to ensure that there was a limit on the duration of pretrial detention, that it constituted an exceptional measure, that individuals were provided with counsel, that all restrictions that were placed were necessary and proportionate in light of all relevant circumstances and finally that these restrictions were time bound and subject to constant review.<sup>362</sup>

### 3.3.5 Overcrowding

The Committee found that when it came to conditions of detention, most prisons in **Costa Rica, Burkina Faso, Namibia, Jamaica, Rwanda, Argentina, Morocco, Slovenia, Ecuador** and **South Africa** were overcrowded.<sup>363</sup> It asked these States to comply with the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) and remedy the problem of overcrowding through putting in place a policy on the use of alternative means to the deprivation of liberty.<sup>364</sup>

In **Burkina Faso, Jamaica, South Africa** and **Ghana**, the Committee found that there was a large number of prisoners who had been kept in extremely poor conditions, with reports of unsatisfactory sanitary conditions, inadequate medical care and the poor quality of food served to prisoners.<sup>365</sup> As a result, it encouraged the States parties to address overcrowding in places of detention by giving prisoners proper facilities and access to medical care, separating prisoners according to their detention scheme and combating corruption in prisons.<sup>366</sup>

In **Ghana**, prisoners who were in pretrial detention were not separated from those who had been convicted. The Committee also noted reports of inmates in **Ghana** designated as “black coats” exercising authority over other prisoners.<sup>367</sup> It encouraged the State party to ensure that necessary steps were taken to separate prisoners by age, sex and custodial status and to ensure that inmates were not given any

## 3. Right to Life (Art 6); Prohibition of Torture, Cruel, Inhuman and Degrading Treatment (Art 7); and Issues of Detention (Arts 9, 10)

The Committee asked the States to comply with the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules).

### 3. Right to Life (Art 6); Prohibition of Torture, Cruel, Inhuman and Degrading Treatment (Art 7); and Issues of Detention (Arts 9, 10)

The Committee found that Ecuador had not taken adequate measures to prevent death related to prison violence.

disciplinary authority over other inmates.<sup>368</sup>

Additionally, the Committee also recommended that **South Africa** adopt practical measures to reduce overcrowding such as the loosening of bail requirements, revising arrest quotas as indicators of police performance and ensuring that bail determinations are made promptly and that persons on remand are not kept in custody for an unreasonable period of time.<sup>369</sup>

#### 3.3.6 Prevention of custodial deaths

The Committee expressed concern regarding suicides and death in temporary holding facilities in **Kazakhstan**.<sup>370</sup> It recommended establishing early prevention strategies and programs, improving the identification of persons at risk of committing suicide, ensuring prompt, impartial and independent investigations into the circumstances surrounding deaths in custody, bringing responsible persons to justice, where appropriate, and providing victims' families with remedies.<sup>371</sup>

The Committee found that **Ecuador** had not taken adequate measures to prevent death related to prison violence.<sup>372</sup> The Committee recommended that the State party investigate instances of custodial deaths and ensure that those who were responsible were punished commensurately with the seriousness of their actions.<sup>373</sup>

In **South Africa**, the Committee noted that were reports of deaths resulting from actions of police and prison officials.<sup>374</sup> The Committee suggested the use of an independent mechanism for the investigation of violence that had been committed in State or contract managed prisons.<sup>375</sup> It encouraged the State party to ensure that the perpetrators and accomplices of these acts were punished and victims were provided with proper redress.<sup>376</sup>

#### 3.3.7 Solitary confinement

The Committee expressed concern regarding the use of solitary confinement as a disciplinary measure for convicts. In **Denmark**, under domestic law, it is possible for detainees to be sentenced to solitary confinement for more than six years for adults and four weeks for minors.<sup>377</sup> The Committee requested the State party to bring its legislation in line with international standards as reflected in the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), by abolishing solitary confinement of minors and reducing the total length of permissible solitary confinement for remand detainees even if it is used as a measure of last resort.<sup>378</sup>

In **South Africa**, the Committee noted that prisoners in two super-maximum security prisons could be locked up 23 hours a day for a minimum period of six months.<sup>379</sup> Thus, it recommended that the State party ensure that solitary confinement measures including segregation were used only for the most rare circumstances for a limited period of time.<sup>380</sup>

### 3.4 Excessive Use of Force

The Committee was concerned about the excessive use of force by law enforcement officials in **Slovakia, Kuwait, Sweden, Ghana and New Zealand**. The Committee noted that in **Sweden**, excessive use of force had included the use of expandable bullets; it also expressed concerns about the Department of Special Investigation being under the purview of the Swedish Police Authority.<sup>381</sup> Moreover, investigations into allegations of excessive use of force were not perceived as independent by the public.<sup>382</sup> The Committee recommended that Sweden review the operations of its investigative bodies and also requested the State party to ensure that all reported cases of excessive use of force were independently investigated.<sup>383</sup>

A similar issue was found in **Slovakia**, where the Committee noted that there was a discrepancy in the number of reported incidents and the ensuing number of legal proceedings and prosecutions.<sup>384</sup> On many occasions, the investigations were not impartial and the perpetrators were subject to lenient penalties.<sup>385</sup> The Committee requested the State party to ensure that appropriate measures were taken to carry out investigations by misconduct of police offices and that training programs directed towards the prevention of torture and ill-treatment were continued.<sup>386</sup>

For **South Africa**, on the issue of excessive use of force committed by law enforcement officials, the Committee proposed that the State party should undertake regular review of measures employed in law enforcement operations<sup>387</sup>, including types of firearms and ammunition used, and ensure that the professional training to avoid excessive use of force was imparted. The State party was also requested to ensure that a proper investigation take place regarding the Marikana incident and that the liability of those who were involved be properly determined.<sup>388</sup>

Similarly, in **Ghana and Kuwait**, the Committee noted that there were a number of reports regarding the excessive use of force and unlawful killings committed by law enforcement and security personnel.<sup>389</sup> The Committee recommended the States parties ensure that prompt, thorough, effective, independent and impartial investigations were launched into all incidents involving the use of force and that the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials were followed.<sup>390</sup>

Similarly, in **Poland**, the Committee was concerned regarding the excessive use by those in law enforcement and the lack of legal proceedings against them.<sup>391</sup> It encouraged the State party to ensure that all complaints of torture and ill-treatment were investigated and to ensure victims had access to redress and adequate compensation.<sup>392</sup>

The Committee found that in **New Zealand** there was use of electro-muscular disruption devices and an absence of information regarding the rules and guidelines that were governing the use of such equipment.<sup>393</sup>

## 3. Right to Life (Art 6); Prohibition of Torture, Cruel, Inhuman and Degrading Treatment (Art 7); and Issues of Detention (Arts 9, 10)

The Committee was concerned about the excessive use of force by law enforcement officials in Slovakia, Kuwait, Sweden, Ghana and New Zealand.

### **3. Right to Life (Art 6); Prohibition of Torture, Cruel, Inhuman and Degrading Treatment (Art 7); and Issues of Detention (Arts 9, 10)**

It requested that the State Party reevaluate its policies on the use of electro-muscular disruption devices and ensure that the Basic Principles on the Use of Force and Firearms were complied with. In addition, the Committee suggested that law enforcement officers be equipped with body mounted cameras in order to monitor their actions.<sup>394</sup>



## 4. Migration, Refugees and Asylum Seekers (Art 2, 6, 7, 9, 13)

This segment aims to highlight the importance of human rights frameworks in the exercise of the rights of international migrants. It talks about the need for a healthy global framework and governance space to engage the needs of people living beyond the borders of their country of origin and discusses the vulnerabilities they so face. The vulnerabilities of one crossing into a new country is not a new discussion; however, lack of uniform laws make the transit and the adaptation more difficult.

### 4.1 Non-Refoulement

While in custody, most migrants face several violations of their rights such as torture, lack of fair trial, excessive use of force and arbitrary detention, among other personal issues such as interference with the family and protection of family protected under Article 23. Non-refoulement has been a topic of much debate and the Committee has been concerned with its compliance by States parties under Article 7 of the Covenant. Allowing no derogation even during a time of emergency, the present jurisprudence clarifies that States parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon their return to any other country by way of extradition, expulsion or refoulement. Misuse of detention powers by States parties and the lack of monitoring mechanisms was yet another area of concern.<sup>395</sup>

The Committee noted that in **Denmark**, the initial detention period of 6 months with a possible extension of 12 months under certain conditions for asylum seekers was excessive. The amendment to the Aliens Act further allowed temporary suspension of fundamental legal safeguards during high influx of migrants, called “special circumstances” while allowing confiscation of assets of asylum seekers (Art 6, 7, 9, 13).<sup>396</sup> The Committee was also concerned about the restrictions on family reunification requiring a residence permit for more than three years under the amendment to the Aliens Act (Art 23).<sup>397</sup>

The Committee suggested that the State ought not only to make sure that the principle of non-refoulement is respected for asylum seekers but that the length of detention and family reunification should also be reduced. The State should repeal the amendment so as to guarantee the full access to fundamental legal safeguards and stop confiscation of assets. The Committee went on to say that the detention of migrants must be reasonable, necessary and proportionate. The Committee reiterated this in **Costa Rica’s** concluding observations.<sup>398</sup>

The Committee has noted that many States<sup>399</sup> have resorted to drastic measures as a response to an influx of asylum seekers. One such instance was in **Slovenia** where the Committee observed that there was construction of a razor wire fence along its border with Croatia, granting the armed forces additional powers with vague and insufficient oversight, accountability and complaint mechanisms, placing limits to entry into the State party solely on the basis of nationality and the possession of identification documents<sup>400</sup> and lack of free access to legal representation against non-refoulement among other things (Art 2, 6, 7, 13, 26). The Committee advised

While in custody, most migrants face several violations of their rights such as torture, lack of fair trial, excessive use of force and arbitrary detention.

## 4. Migration, Refugees and Asylum Seekers (Art 2, 6, 7, 9, 13)

Procedural concerns have been at the forefront for the Committee.

that the State undertake effective steps to make sure that all obligations with the Covenant meet the principle of non-refoulement, international protection and legal representation, facilitate family reunification and respect non-discrimination based on country of origin and procedural protection.<sup>401</sup>

### 4.2 Detention Centers

The Committee noted that **Costa Rica**'s Detention Facility for Irregular Foreign Migrants lacked health services and appropriate sanitation. The Committee also found that Slovakia detained its asylum seekers for lengthy periods in unsuitable sanitary conditions. The Committee asked the States to improve sanitary conditions and to hold migrants in administrative detentions only when justified as a reasonable, necessary and proportionate measure and as a measure of last resort.<sup>402</sup>

The Committee also raised concerns with regard to **Jamaica** where it asked the State to reduce overcrowding in places of detention for migrants and to improve sanitary conditions and access to medical care in accordance with Article 10 of the Covenant and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela rules). The Committee also recommended that the State adopt legislation governing pretrial detention and put in place a system to detain accused persons separately from convicted persons.<sup>403</sup>

With regard to detention in **New Zealand**, the Committee expressed concern that migrants are treated as mass arrivals and that police facilities are used for immigration purposes. To this, it suggested that all migrants, including mass arrivals, be detained only until their entry is documented. The Committee emphasized the importance of separating asylum seekers and migrants from the rest of the detainee population (Art 9).<sup>404</sup>

### 4.3 Procedural Issues

Procedural concerns have been at the forefront for the Committee. In **Kazakhstan's** report the Committee found that there existed multiple procedural issues adding to the existing substantive issues, such as ineffective access to procedures for determining refugee status, improper extraditions violating non-refoulement, rejection of asylum application from Syrian and Ukrainian nationals, expulsion, return and extradition of asylum seekers from China and Uzbekistan, forcible return of asylum seekers before the decision on their asylum claims and use of diplomatic assurances to remove foreign individuals not accompanied by sufficient safeguards, bringing in a real risk of exposing such individuals to treatment contrary to Articles 6 and 7 of the Covenant (Art 2, 6, 7, 13). The Committee recommended that there should be an absolute prohibition of refoulement under Articles 6 and 7 coupled with States exercising utmost care in evaluating diplomatic assurances, ensuring monitoring of individuals who are transferred and monitoring their treatment after their extradition, expulsion and transfer.<sup>405</sup> The Committee noted that in **Kuwait**, there was a lack of a legal framework regulating asylum proceedings leading to a prohibition of refoulement and insisted that



Kuwait establish a legal and institutional framework to regulate asylum.<sup>406</sup>

#### 4.4 Administrative and Legal Frameworks for asylum seekers

For **South Africa**, the Committee raised concerns about cases of undocumented migrants detained at police stations, prisons with poor sanitary conditions, detention without warrant for lengthy periods and lack of access to refugee status determination procedures. The Committee was concerned that these lacunas increase the vulnerability of migrants, especially children, by rendering them undocumented and stateless (Art 6, 7, 13) and asked the State to respect non-refoulement and provide access to legal representation, access to fair documentation and fair procedures (including translation services) and adequate health care (Art 6, 9, 10, 23) to ensure its commitments to the Covenant.<sup>407</sup>

Sometimes, States grant prima facie refugee status to migrants in keeping up their international obligations. However, as was the case in **Rwanda**, States do not handle appeals against a rejected refugee claim or provisions of free legal aid in the appropriate manner. The Committee asked **Rwanda** to consider amending the Refugee Law to establish an independent appeal system, provide free aid and respect the principle of non-refoulement and to not deport refugees where there exist substantial risks of irreparable harm (Art 7, 9, 10).<sup>408</sup>

In a similar fashion, the Committee welcomed **Ghana's** initiative to reform the **Ghana** Refugee Law with regard to Articles 2(3), 6 and 7 of the Covenant, suggesting the expedition of the drafting process of the revised legal refugee framework while taking concrete legal and administrative steps to prevent statelessness and guarantee the fundamental rights of stateless persons and persons at risk of statelessness. The Committee also noted that **Poland** lacked an adequate system to identify people in need of international protection leading to difficulties for asylum seekers in applying for asylum at the border with Belarus in Terespol (Art 2, 6, 7, 9, 26).<sup>409</sup>

The Committee has noted that a lack of proper legal frameworks can lead to excessive use of force against migrants, arbitrary arrests of migrants, discrimination against migrants such as differential access to labor markets and lack of access to judicial remedies. In the case of **Morocco**, the Committee noted that this also led to the participation of Moroccan security forces in collective expulsions in the autonomous Spanish cities of Ceuta and Melilla, with associated problems including the treatment of child migrants, recognition of marriages of asylum seekers and refugees and registration of newborns. Additionally, while taking note of the State efforts, the Committee believed that there was a need to ratify the 1954 and 1961 Conventions on Statelessness and to establish a legal framework to prevent statelessness and expedite revision of the legal framework and regularize the situation to address all the issues mentioned herewith, especially for the Syrian refugees through granting them refugee cards. The Committee observed that this would also help uphold their right to non-discrimination in terms of access

## 4. Migration, Refugees and Asylum Seekers (Art 2, 6, 7, 9, 13)

The Committee asked Rwanda to consider amending the Refugee Law to establish an independent appeal system.

## 4. Migration, Refugees and Asylum Seekers (Art 2, 6, 7, 9, 13)

Group migration often brings in large number of unaccompanied minors who then go missing due to human trafficking.

to the formal labor market. The Committee emphasized that it was also necessary for **Morocco** to revise the Nationality Code of 2007 so as to transmit nationality to all children born in Morocco.<sup>410</sup>

The Committee also voiced this concern over limited access to the labor market and limited use of alternatives to detention of migrants and asylum seekers in the case of **Sweden**. Further, the Committee was concerned about the sufficient guarantees of respect for the principle of non-refoulement, in particular for those migrants and asylum seekers covered by the new temporary adjustments to the asylum legislation that are currently being drafted within the government offices, and for those designated as “security cases”<sup>411</sup> or “qualified security cases” and its practical implications (Arts. 2, 6, 7, 9, 13, 26).<sup>412</sup> It asked the State to ensure that detention was a measure of last resort and also requested the State to ensure that its policies afford sufficient guarantees in the “security cases” or “qualified security cases”.

Group migration often brings in large number of unaccompanied minors who then go missing due to human trafficking (Art 7, 13, 17, 23, 24). In this regard, the Committee asked **Sweden** to apply the principle of best interest and ensure the adequate placement of unaccompanied minors, provide them with care and support and investigate the missing minors while making concrete efforts to prevent the same. The Committee has also given the rights of children their due importance in the case of **Namibia**. The Committee suggested that unaccompanied or separated children should be afforded special protection and be provided with a monitored guardian instead of being treated as adult asylum seekers.<sup>413</sup> In addition, the Committee asked Poland and Slovakia to ensure that children were not deprived of their liberty except when it was a measure of last resort and in their interest.<sup>414</sup>

### 4.5 Migrants' Freedoms and Rights

Most often, freedoms and rights take a back seat and get lost in what are considered more pressing violations. The right to privacy has usually been amiss in issues of asylum, as the Committee noticed in the case of **New Zealand**. The Committee was concerned about the legal and policy framework on immigration with regard to the verification process that involves disclosure of personal information like country of origin. It advised **New Zealand** to ensure that claimants' right to privacy and confidentiality be guaranteed during the procedure. Further, it encouraged **New Zealand** to ensure that the interviewing of children during these refugee determination process should only be restricted to determine the child's claim and when the child expressly wants to be heard.<sup>415</sup>

The Committee has also noted hostility towards migrants from a certain ethnic or religious background. For example, it observed that **Poland** refused to accept refugees of the Muslim faith and advised it not to obstruct asylum access due to religious beliefs or other grounds prohibited by the Covenant. The Committee also emphasized that the detention

of asylum seekers should be reasonable, necessary and proportionate and deportation should only be done after a proper screening and on substantial grounds (Art 6, 7).<sup>416</sup>

In the case of **Namibia**, the Committee highlighted the protection of asylum seekers against persecution based on gender identity and sexual orientation among grounds for protection against refoulement. Here, the Committee also observed that the restriction of movement of refugees in the Osire refugee settlement was an infringement on their ability to pursue education and employment and asked for a removal of the same.

#### **Cases review: Migrant Issues and violations under articles 6 and 7**

The Committee stands strong on its jurisprudence under Articles 6 and 7 that States have an obligation not to extradite, deport, expel or otherwise remove a person from their territory where there are substantial grounds for believing that there is a real risk of irreparable harm. However, the risk must be personal and the threshold is set high for providing substantial grounds to establish a risk of irreparable harm. According to the Committee, it is also important to give weight to the assessment conducted by the State party to review or evaluate facts and evidence in order to determine whether such a risk exists, unless it is found that the evaluation was clearly arbitrary or amounted to a manifest error or denial of justice.<sup>417</sup>

For every individual communication brought forth on violations of Articles 6 and 7, these tests form the standard jurisprudence of evaluation. This rationale was followed in the cases against **Canada**. In a claim of deportation to **Sri Lanka**, the Committee found that the State authorities had taken all measures to examine the situation in **Sri Lanka** at the time of examination of the author's request. Since the author could not show that these reports were arbitrary or manifestly erroneous or amounted to a denial of justice, the Committee concluded that the author's removal to **Sri Lanka** would not violate his rights under Articles 6(1) and 7 of the Covenant, further clarifying that the failure to attain asylum does not expose him to a real or personal risk.<sup>418</sup> The Committee reiterated this jurisprudence in a case against **Denmark** where it considered the author's removal to **Armenia** not to be a violation under Article 7.<sup>419</sup>

In another communication against **Canada**, the author, who was an HIV positive patient claimed that his deportation from **Canada** to **Zimbabwe** would be an interference with his right to effective remedy, right to life in terms of proper medication and protection of family life.<sup>420</sup> The author was convicted of eleven criminal offences in **Canada** and had failed to comply with judicial orders and immigration condition. Subsequently, the State party sought to expel him in order to prevent the commission of further crimes by the author. The potential expulsion of the author would lead to a separation from his family. However, there was no legal obstacle preventing his family from visiting him in **Zimbabwe** and the Committee deemed that the separation of the author from his family was

## **4. Migration, Refugees and Asylum Seekers (Art 2, 6, 7, 9, 13)**

The Committee stands strong on its jurisprudence under Articles 6 and 7 that States have an obligation not to extradite where there is a real risk of irreparable harm.

## 4. Migration, Refugees and Asylum Seekers (Art 2, 6, 7, 9, 13)

In a case against Denmark, the Committee found that the State had failed to take into consideration the special vulnerability of the authors.

proportionate to the objective of his removal under Articles 17 and 23 of the Covenant. Further, on his claims of violation of Articles 6(1) and 7, based on lack of medical facilities in **Zimbabwe**, States parties had taken into consideration his health conditions and had made the necessary inquiries into the same before the expulsion decision.<sup>421</sup>

In yet another claim against **Canada** where the author claimed that Bangladesh was “rampantly corrupt” and that she was at risk from her brother’s alleged murderers who had important judicial and political contacts, State party authorities found that the existence of corruption<sup>422</sup> or her diagnosis of post-traumatic stress disorder, depression, anxiety and other medical conditions<sup>423</sup> were not sufficient to substantiate the personal risk alleged by the author. Since the author could not show the State party’s authorities’ conclusion was arbitrary or erroneous or amounted to a denial of justice, the Committee did not find a real risk of irreparable harm as claimed under Articles 6(1) and 7.<sup>424</sup>

Similarly, in a case against **Denmark**, not only was the Danish Immigration Service’s refusal of the asylum request upheld by the Refugee Appeals Board, the author himself failed to substantiate that he would be at risk of persecution by the LTTE<sup>425</sup> or demonstrate that the conclusions reached by the Board were unreasonable or arbitrary. Hence, the Committee found that a return of the author to **Sri Lanka** would not constitute a violation of Article 7.<sup>426</sup> Yet again, in a deportation to Pakistan case, the Committee took note that the author had failed to show that the conclusions of the States party’s authorities were arbitrary and manifestly erroneous or amounted to a denial of justice. The Committee found that his removal from **Denmark** was not a violation of his rights.<sup>427</sup>

In a case against **Denmark**, the Committee found that the State had failed to take into consideration the special vulnerability of the authors and their two minor children who would be homeless, vulnerable and without proper medical care for their young son suffering from a heart condition in Italy, their first country of asylum. Further, it found that the State had failed to provide effective remedies such as the provision of a permanent residential permit from the Italian authorities. The Committee also held that since it is the State’s obligation under the Covenant to provide the authors with an effective remedy, it should reconsider the claim for asylum and not expel the authors to **Italy** while their request is being reconsidered by the State party.<sup>428</sup>

The Committee asked States like **Canada** to pay reparation to individuals whose rights had been violated under the Covenant, saying that the State party was under an Article 2(3) obligation to provide the author with an effective remedy.<sup>429</sup> Quoting Article 24, the Committee reiterated that, “the principle of the best interests of the child forms an integral part of every child’s right to protection as required by a minor, on the part of his or her family, society and the State.” The Committee found that the author’s removal was an arbitrary interference with the right to family life under Article 17(1), read alone and in conjunction with Article 23(1) of the

Covenant, in respect of the author and her son.<sup>430</sup>

Lastly, in a case against the **Russian Federation**, although the Committee concluded that there was no real risk of threat under Article 7 or arbitrariness by the State authorities, it found that the Russian Federation violated its obligations under Article 1 of the Optional Protocol by contradicting the Committee's request for interim measures of protection and for clearly disregarding the request to not extradite the authors while the examination of their case was pending.<sup>431</sup> The Committee asked the State party to comply with the Committee's requests for interim measures and avoid violations of Article 1 of the Optional Protocol.<sup>432</sup>

#### Other UN Treaty Bodies

The **CRC** has declared that immigration detention is never in the best interests of the child. The experts recommended a child-rights based approach, with attention to their specific vulnerabilities and their protection at all stages of the migration. Regarding this, sexual violence en route was an issue that States needed to account for by offering specialized medical attention and safe spaces. Experts urged States to combat racial discrimination and xenophobia by holding perpetrators of incitement to violence or hatred accountable.<sup>433</sup>

The CRC mentioned migration in several Concluding Observations in 2016. It was mainly concerned about the best interest of the child when processing asylum cases, unaccompanied migrant children, living conditions, children in detention, legal assistance, hate speech from the local community, inaccessible procedures for family reunification, the lack of interpreters at the border, access to education, the enjoyment of rights free from discrimination, access to basic services and age assessments.<sup>434</sup> The Committee asked for reliable data on the number of children seeking asylum<sup>435</sup> and sufficient resources to specialist and child-specific support.<sup>436</sup> The Committee expressed its concern about the refugee camps in Calais and Grande-Synthe in **France**.<sup>437</sup>

The **CERD** has two general recommendations on the subject of migration. The 22<sup>nd</sup> recommendation stresses that all human beings are born free and equal and that States have the obligation to prohibit and eliminate racial discrimination. Refugees and displaced persons have the right to return to their homes or to receive compensation if their property cannot be restored to them. States have the obligation to respect the principle of non-refoulement.<sup>438</sup>

The 30<sup>th</sup> recommendation clarifies the rights of non-citizens. States parties are obligated to guarantee equality between citizens and non-citizens in the enjoyment of these rights. In this regard, States have to provide socio-economic data on the non-citizen population within their jurisdiction in their periodic reports. States should also revise legislation to remove discriminatory effects on non-citizens and take action to combat the stigmatization of non-citizens by prosecuting racially motivated crimes. Non-citizens should not be

## 4. Migration, Refugees and Asylum Seekers (Art 2, 6, 7, 9, 13)

The CRC has declared that immigration detention is never in the best interests of the child.



## 4. Migration, Refugees and Asylum Seekers (Art 2, 6, 7, 9, 13)

Persons with disabilities who are detained should be provided with appropriate support and reasonable accommodation.

discriminated against with regard to access to citizenship and safeguards regarding deportation, and collective expulsion should be prohibited. Statelessness should be reduced and the principle of non-refoulement is reiterated. Non-citizens should have access to effective legal remedies and be able to enjoy economic, social and cultural rights.

Migration came back in many Concluding Observations of the Committee. Common problems were raised several times in the reviews of different States parties: the treatment of undocumented migrants in **Namibia**, **Spain** and **Greece**<sup>439</sup>, as well as the access to basic services in **Namibia**, **Spain**, **Greece**, **Pakistan**, **South Africa** and **Ukraine**.<sup>440</sup> The Committee recommended that the State take action against racism and xenophobia in **Azerbaijan**, **Pakistan**, **South Africa**, **Ukraine**, **Argentina** and **Uruguay**.<sup>441</sup> Problematic asylum procedures or a complete lack of framework was noted in **Azerbaijan**, **Oman**, **Georgia**, **Lebanon** and **Pakistan**.<sup>442</sup> The Committee views that detention of migrants should be avoided and was concerned about the detention of migrants in **Rwanda**, **Greece**, **South Africa**, **Ukraine** and **Portugal**.<sup>443</sup> The treatment of non-citizens was a concern in **Oman** and **Togo**.<sup>444</sup> Lastly, more information was requested on the situation of migrants in **Azerbaijan**, **Paraguay** and **Turkmenistan**.<sup>445</sup>

Other issues included: the restrictions on the freedom of movement of asylum seekers in the Osire settlement in **Namibia**; the lack of access to education and violations of non-refoulement in Rwanda<sup>446</sup>; the ineffective guardianship for children and collective expulsions in **Greece**<sup>447</sup>; the situation of Palestinian refugees in **Lebanon**<sup>448</sup>; the treatment of IDPs in **Ukraine**<sup>449</sup>; the use of immigration detention without a time limit in the **UK**<sup>450</sup>; and the hotspot approach in **Italy**.<sup>451</sup>

The **CRPD** was concerned about migration in many of its Concluding Observations. It is for example important to be able to access facilities and mental health support when arriving in a State party.<sup>452</sup> The needs of persons with disabilities have to be taken into account in migration policies, particularly in situations of extreme poverty.<sup>453</sup> Persons with disabilities who are detained should be provided with appropriate support and reasonable accommodation.<sup>454</sup> Detention centres should be accessible to migrant workers with disabilities.<sup>455</sup> The Committee was very concerned about the situation of persons with disabilities on the borders of Slovakia<sup>456</sup> and the exclusion of non-citizens with disabilities to services and entitlements in **Thailand**. There is also a widespread stigma about being a person with disabilities.<sup>457</sup> The Committee stressed that persons with disabilities should not be discriminated against when applying for dual citizenship and should be registered at birth.<sup>458</sup>

The OHCHR stressed the same issues in its thematic study on art. 11 CRPD: IDPs with disabilities should be registered to ensure an adequate standard of living. If asylum seekers with disabilities are detained, the State party should provide reasonable accommodation and adequate support.<sup>459</sup> States must ensure access to basic services to children affected by armed conflict. In post-conflict context, resources for



education should be increased to build inclusive school facilities. States should take into account the specific needs of internally displaced women with disabilities.<sup>460</sup> The OHCHR also stressed the importance of the principle of non-discrimination when it comes to persons with disabilities in emergency situations.<sup>461</sup> Reliable data are needed to estimate the dimensions of the problem correctly.<sup>462</sup> Information should be accessible and provided in the relevant languages.<sup>463</sup>

The **CMW** stressed in **Turkey**'s Concluding Observations that the human rights of all migrant children in transit should be guaranteed. They should be treated as children, and their best interest should be the first priority.<sup>464</sup>

## 4. Migration, Refugees and Asylum Seekers (Art 2, 6, 7, 9, 13)

## 5. Non-Discrimination and Vulnerable Groups (Art 2, 26)

These recommendations were generally-phrased because they mostly dealt with the anti-discrimination legislation in place in the particular States.

There are several recommendations in the Concluding Observations for the Human Rights Committee's 116th, 117th and 118th sessions that address non-discrimination and the protection of the human rights of vulnerable groups. The following sub-themes can be distilled from these recommendations under the broader theme of non-discrimination and vulnerable groups: general provisions on non-discrimination; LGBTQ people; persons with disabilities; children; human trafficking; racism; rights of minorities; erased people; persons living with HIV/AIDS; and the rights of indigenous peoples.

The theme of non-discrimination and vulnerable groups encompasses a variety of challenges faced by the groups listed above. Members of the groups suffer human rights violations ranging from a lack of protection under anti-discrimination legislation to violence and harassment. As such, the Committee has made recommendations under this theme on the basis of several Articles of the Covenant. The main Articles that are implicated under this theme are Articles 2 and 26, which constitute the primary anti-discrimination provisions of the Covenant.<sup>465</sup> However, to the extent that treatment suffered by certain vulnerable groups violates other Articles of the Covenant, the Committee has included those in its recommendations as well. Specifically, the Committee has addressed Articles 3, 6, 7, 9, 10, 17 and 27, where they are relevant.

### 5.1 General Provisions on Non-Discrimination and Vulnerable Groups

The Committee addressed recommendations that broadly dealt with non-discrimination and vulnerable groups to the following eight States: **Moldova, Slovakia, Poland, Ecuador, Denmark, Sweden, Costa Rica** and **Namibia**.

These recommendations were generally-phrased because they mostly dealt with the anti-discrimination legislation in place in the particular States, with a common cause for concern being that the anti-discrimination legislation in place did not prohibit discrimination on the basis of all the grounds listed in the Covenant.<sup>466</sup> For example, the Committee noted in **Denmark's** Concluding Observations that its anti-discrimination legislation prevents LGBT people and persons with disabilities from being able to lodge complaints before the Board of Equal Treatment in cases that were not related to the labor market.<sup>467</sup> Similarly, in **Sweden's** Concluding Observations, the Committee noted that the anti-discrimination laws in that country do not protect "against all status-based forms of discrimination and do not cover discrimination in all areas of public life."<sup>468</sup>

Other concerns that the Committee raised with regard to anti-discrimination legislation in particular States was that such legislation did not define multiple discrimination and did not establish effective remedies.<sup>469</sup> For example, the Committee noted that the Anti-Discrimination Act in **Slovakia** lacked a definition of multiple discrimination and recommended that **Slovakia** adopt measures to address multiple discrimination.<sup>470</sup> In addition, for **Costa Rica**, the Committee recommended that

## 5. Non-Discrimination and Vulnerable Groups (Art 2, 26)

the State adopt legislation that would include provisions allowing reparation for discrimination, racism or xenophobia through effective legal remedies.<sup>471</sup> The Committee noted specifically that in **Poland**, obtaining compensation for acts of discrimination is difficult and recommended that Poland make effective remedies for discrimination more accessible.<sup>472</sup>

In certain Concluding Observations, the Committee used recommendations under a general non-discrimination heading to express its concerns regarding reported discrimination against several different groups in the same country.<sup>473</sup> For **Moldova**, the Committee expressed concern about discrimination against LGBT people, Roma people and Muslims and recommended that the country take specific actions to combat discrimination against each of those groups, including amending legislation, implementing awareness-raising campaigns to combat stereotypes, providing access to identity documents to Roma people and providing training to law enforcement and immigration officials on the inadmissibility of ethnic and religious profiling.<sup>474</sup>

The Committee took a similar approach with regard to **Costa Rica**, when it expressed concern about discrimination against indigenous peoples, persons of African descent, migrants, asylum seekers and refugees and persons with disabilities, under the general heading of "Non-discrimination."<sup>475</sup> The Committee recommended that **Costa Rica** dispel stereotypes about those groups of people through awareness-raising campaigns.<sup>476</sup> Similarly, in the Concluding Observations for Namibia, the Committee addressed racial discrimination, discrimination against indigenous peoples, discrimination against LGBTQ people, discrimination against persons with disabilities and discrimination against persons who are HIV-positive.<sup>477</sup> Here, the Committee recommended general actions, such as awareness-raising campaigns, but also more specific actions, such as repealing laws that discriminate on the basis of race, adopting legislation prohibiting discrimination on the basis of sexual orientation and combating discrimination against persons with disabilities and persons who are HIV-positive.<sup>478</sup>

### 5.2 LGBTQ People

The Committee made recommendations regarding discrimination against LGBTQ people, also called discrimination on the basis of sexual orientation and gender identity, for fourteen of the twenty-one reviewed States: **Moldova, Jamaica, Slovakia, Morocco, Kuwait, Ecuador, Burkina Faso, Azerbaijan, New Zealand, Ghana, Kazakhstan, Costa Rica, Slovenia** and **Colombia**.

A common issue that the Committee highlighted for many of the States it reviewed is violence, harassment and hate speech against LGBTQ people.<sup>479</sup> For example, for **Jamaica**, the Committee expressed concerns about incidents of discrimination, harassment and violence against LGBTQ persons and recommended that the State ensure that such cases of violence are thoroughly investigated with prosecution and punishment of the perpetrators with appropriate torture

A common issue that the Committee highlighted for many of the States it reviewed is violence, harassment and hate speech against LGBTQ people.

## 5. Non-Discrimination and Vulnerable Groups (Art 2, 26)

In addition, the Committee noted that there was hate speech against LGBTQ people in certain States.

sanctions, as well as the provision of access to effective remedies to victims.<sup>480</sup> Similarly, the Committee noted that in **Kuwait**, there were reports of harassment, violence, abuse, torture and sexual assault against persons on the basis of their sexual orientation or gender identity and recommended that **Kuwait** take measures to end such incidents.<sup>481</sup> The Committee discussed violence in particular contexts with regard to certain States. For example, with **Colombia**, it noted that there was violence against LGBTQ people that was related to police misconduct.<sup>482</sup> The Committee recommended that Colombia adopt measures to prevent members of the security forces from subjecting LGBTQ people to violence or discrimination.<sup>483</sup> Similarly, with regard to **Azerbaijan**, the Committee noted that there was discrimination and violence committed against people on the basis of their sexual orientation and gender identity by their family members and by police and prison officials.<sup>484</sup> It recommended that **Azerbaijan** ensure that such cases of violence are properly investigated and that there is accountability for the perpetrators.<sup>485</sup>

In addition, the Committee noted that there was hate speech against LGBTQ people in certain States. For example, the Committee expressed its concern that in **Slovakia**, there is hate speech against LGBTQ people, including from political figures and recommended that **Slovakia** take measures to tackle that hate speech and to eradicate social stigmatization of people on the basis of their real or perceived sexual orientation and gender identity.<sup>486</sup> In the case of **Azerbaijan**, the Committee discussed stigmatization of LGBTQ people specifically in the context of hostility against them on social media and recommended that **Azerbaijan** ensure that adequate and effective protection against discrimination and hate speech is provided to people both in law and practice.<sup>487</sup>

Another aspect of discrimination against LGBTQ people that the Committee discussed in the Concluding Observations is the criminalization of homosexuality, sodomy and same-sex sexual acts.<sup>488</sup> For example, the Committee expressed concern at the criminalization of homosexuality in **Morocco**, where homosexuality is punishable by up to three years in prison.<sup>489</sup> The Committee recommended that **Morocco** decriminalize homosexuality and free people who are in detention solely for engaging in consensual sexual relations with someone of the same sex.<sup>490</sup> Similarly, the Committee noted that in **Kuwait**, same-sex sexual activity is criminalized even among consenting adults and there is additionally an offense of "imitating members of the opposite sex."<sup>491</sup> In this regard, the Committee recommended that these offenses be decriminalized and repealed.<sup>492</sup>

The Committee was not only concerned that legislation in certain States criminalized same-sex sexual activity, but also that there was legislation that did not prohibit discrimination on the basis of sexual orientation and gender identity or otherwise adequately protect against such discrimination.<sup>493</sup> This was the case in **Burkina Faso**, where the Committee noted a lack of legislation prohibiting discrimination on the basis of sexual orientation and gender identity.<sup>494</sup> The Committee recommended that legislation in the State be reviewed to

## 5. Non-Discrimination and Vulnerable Groups (Art 2, 26)

ensure that such discrimination is prohibited.<sup>495</sup> Similarly, the Committee noted that the legal framework in **Azerbaijan** does not prohibit discrimination on the basis of sexual orientation and gender identity and recommended that such discrimination be included in the State's anti-discrimination legal framework.<sup>496</sup>

Some States had particular issues with discrimination against LGBTQ people that other States did not necessarily have. The Committee noted that in **Slovakia**, sterilization is a requirement for legal gender recognition for both transgender men and women and recommended that Slovakia develop a procedure for legal gender recognition that is in line with the requirements of the Covenant.<sup>497</sup> Relatedly, the Committee noted that in **Kazakhstan**, there were stringent conditions on the availability of gender reassignment surgery and sex change and recommended that Kazakhstan review those conditions and ensure that the procedures for gender reassignment surgery and sex change are compatible with the Covenant.<sup>498</sup>

For both Slovenia and **New Zealand**, the Committee noted that there were legal obstacles to LGBTQ people being able to adopt children. In the case of **Slovenia**, certain amendments to a law that would have granted same-sex couples the right to inherit, to access reproductive treatments and to adopt children were rejected.<sup>499</sup> In **New Zealand**, the Committee noted with concern that the current legislative regime regarding adoption does not permit civil union partners to adopt children and recommended that the State repeal the discriminatory provisions in question and consider allowing civil union partners to adopt children.<sup>500</sup>

The Committee also noted specific violations of rights that were particular to the context of certain States. For example, in **Ecuador**, the Committee noted that there had been reports of LGBTQ people being placed in addiction rehabilitation treatments as a way to "cure" their sexual orientation or gender identity.<sup>501</sup> The Committee stated that while some of those clinics had been closed, reports of such "treatment" continued.<sup>502</sup> The Committee recommended that **Ecuador** take efforts to eliminate fully the placement of LGBTQ persons in institutions as a way to "cure" them and ensure investigation, prosecution and punishment for individuals responsible for such "treatment," as well as full reparation for the victims.<sup>503</sup>

### Other UN Treaty Bodies

The **CRC** mentioned the protection of LGBTQ people in 17 out of 27 Concluding Observations in 2016. In four of those, the LGBTQ issue was elaborated in detail and integrated in other clusters: **UK**, **Slovakia**, **Iran** and **Maldives**.

LGBTQ-rights are closely linked to the principle to non-discrimination. The Committee was concerned about children experiencing discrimination, hate speech and social stigmatization because of their sexual orientation and recommended the States parties to raise awareness, amend legislation and prosecute hate crimes.<sup>504</sup> In **Iran**, same-sex

For both Slovenia and New Zealand, the Committee noted that there were legal obstacles to LGBTQ people being able to adopt children.

## 5. Non-Discrimination and Vulnerable Groups (Art 2, 26)

The CRC strongly condemned intersex genital mutilations as harmful traditional practices in the Concluding Observations of South Africa.

sexual behavior was even severely criminalized.<sup>505</sup> But the Committee was also concerned about LGBTQ-children when it comes to harmful practices, freedom from violence, health and other issues.<sup>506</sup> Also, the Committee was concerned about bullying and intimidation of LGBTQ-children.<sup>507</sup> The Committee noted that LGBTQ children were subjected to electric shocks and strong medications in **Iran** to 'cure' them and considered this as cruel and degrading treatment.<sup>508</sup> All children should have equal access to health service and accurate information on their sexuality. This should be part of the mandatory school curriculum.<sup>509</sup>

In other Concluding Observations, LGBTQ issues were primarily mentioned under non-discrimination. In this regard, the Committee recommended the States parties revise legislation<sup>510</sup>, take measures to combat this discrimination<sup>511</sup>, raise awareness<sup>512</sup>, provide them with information about bullying<sup>513</sup>, investigate these incidents<sup>514</sup>, ensure equal access to education, basic services<sup>515</sup>, and identity documents that correspond with the gender identity of their choosing.<sup>516</sup> States parties should guarantee bodily integrity<sup>517</sup> and promote inclusive participation in the Youth Parliament.<sup>518</sup>

Much of the same problems came back in the General Comment on Rights of Adolescents.<sup>519</sup>

Another separate vulnerable group is intersex people. The Human Rights Committee has not adopted any Concluding Observations regarding them, but other treaty bodies have. In **Uruguay's** and **Argentina's** Concluding Observations, the **CERD** was concerned about multiple forms of discrimination that intersex Afro-descendant people continue to face in all aspects of social, political, economic and cultural life.<sup>520</sup>

The **CRC** strongly condemned intersex genital mutilations as harmful traditional practices in the Concluding Observations of **South Africa**.<sup>521</sup> Based on its joint General Comment with CEDAW (No. 18/31), the CRC called for the government of **South Africa** to adopt legislation to avoid unnecessary medical or surgical treatment during infancy and childhood and to provide effective remedies to victims. In addition, CRC also recognized non-consensual unnecessary genital surgery and other medical treatments on intersex children in **France**, **Ireland**, **UK**, **Nepal** and **New Zealand** as a harmful practice, and issued recommendations to these countries accordingly.<sup>522</sup>

### 5.3 Persons with Disabilities

The Committee made recommendations regarding discrimination against persons with disabilities for the following eight States: **Moldova**, **Jamaica**, **Slovakia**, **Poland**, **Azerbaijan**, **Ghana**, **Argentina** and **Sweden**.

An issue that the Committee pointed out for multiple States was the problem of forced institutionalization and detention of persons with disabilities, as well as poor and potentially inhuman conditions and treatment in those institutions.<sup>523</sup> The Committee noted that in **Moldova**, persons with disabilities have been forcefully detained and administered psychiatric



## 5. Non-Discrimination and Vulnerable Groups (Art 2, 26)

treatment non-consensually.<sup>524</sup> There have also been reports of abuse and ill-treatment committed by the staff and caregivers at psychoneurological residential institutions and psychiatric hospitals, including rape, forced abortions, neglect and restraint.<sup>525</sup> The Committee made several recommendations to **Moldova** in this regard, including that it should revise its laws on forced detention on the grounds of mental or intellectual disability so that detention is applied only as a measure of last resort for the shortest appropriate amount of time and should never be justified only by the existence of a disability.<sup>526</sup> In addition, the Committee recommended that **Moldova** adopt a monitoring system in residential institutions and psychiatric hospitals and conduct prompt, impartial and thorough investigations into allegations of abuse and ill-treatment by persons with disabilities and hold perpetrators to account, while providing effective remedies to victims.<sup>527</sup>

Similarly, the Committee noted that in **Slovakia**, many persons with disabilities live in institutions separated from the rest of society and that physical and mechanical restraints, including in netted cage beds, are used in these institutions.<sup>528</sup> It recommended that **Slovakia** take measures to expedite the deinstitutionalization process in accordance with General Comment No. 35 (2014) on liberty and security of person and abolish the use of netted cage beds and other restraints in institutions.<sup>529</sup> Regarding **Azerbaijan**, the Committee expressed concern about reports of involuntary confinement in psychiatric institutions of individuals with intellectual and/or psychosocial disabilities, as well as forced institutionalization of persons with various disabilities, including children, without proper judicial review of such institutionalization.<sup>530</sup> The Committee also noted that there is negligence and poor living conditions in such institutions.<sup>531</sup> Accordingly, the Committee recommended that **Azerbaijan** make efforts towards deinstitutionalization and ensure that there are adequate procedural and substantive safeguards established by law in place, including judicial review of the lawfulness of such deprivation of liberty and independent oversight of living conditions in institutions.<sup>532</sup>

With regard to conditions in institutions for persons with disabilities, **Argentina**'s Concluding Observations are notable. The Committee noted that in **Argentina**, there were reports of persons with disabilities being placed in psychiatric institutions for long periods of time without effective supervision of their placement and specifically, there were reports that 133 individuals had died in Melchor Romero Hospital between 2012 and 2014.<sup>533</sup> In this regard, the Committee recommended that any decision to resort to restraints or involuntary committal to institutions be taken on an exceptional basis and be preceded by a thorough medical evaluation.<sup>534</sup> The Committee also recommended that **Argentina** establish an independent monitoring and reporting system and ensure that abuses are investigated and prosecuted and that victims and their families are provided redress.<sup>535</sup>

Another country-specific issue in this regard is in **Ghana**, where the Committee noted that there have been reports of the existence of hundreds of unregistered private "prayer camps"

Regarding Azerbaijan, the Committee expressed concern about reports of involuntary confinement in psychiatric institutions of individuals with intellectual and/or psychosocial disabilities.

## 5. Non-Discrimination and Vulnerable Groups (Art 2, 26)

The Committee recommended that Argentina institute community and family support measures for persons with disabilities.

that deal with illness, including mental illness, and function without governmental regulation and oversight.<sup>536</sup> There have also been reports about the use of torture and inhuman and degrading treatment in these camps, as well as treatment without free and informed consent of persons with mental disabilities.<sup>537</sup> The Committee recommended to **Ghana** that it ensure registration, regulation and control of “prayer camps” and that it prohibit non-consensual psychiatric treatment and provide access to effective remedies to persons with mental disabilities against violations of their rights.<sup>538</sup>

The Committee also expressed concern about the issue of accessibility to public spaces, buildings and facilities in some of the reviewed States.<sup>539</sup> In **Jamaica**, access to public buildings and services was noted as an issue, to which the Committee recommended **Jamaica** effectively implement its law on disabilities so as to ensure non-discrimination and to promote inclusion of persons with disabilities.<sup>540</sup> With regard to **Azerbaijan**, the Committee noted that there were obstacles in the physical accessibility of public transportation and other facilities for persons with disabilities.<sup>541</sup> The Committee recommended that **Azerbaijan** should take measures to remove barriers to non-discriminatory access to information, means of communication, public transportation and buildings, for persons with disabilities.<sup>542</sup>

Another form of access that the Committee noted for certain States was access of persons with disabilities to civil rights and services, including community support and employment services.<sup>543</sup> With regard to **Poland**, the Committee noted that persons with mental and intellectual disabilities who are subject to incapacitation have no voting rights.<sup>544</sup> The Committee recommended that **Poland** revise its legislation to ensure that persons with mental and intellectual disabilities would not be deprived of their voting rights on disproportionate bases.<sup>545</sup> Additionally, in **Argentina**, the Committee noted that the current employment quota for persons with disabilities amounts in practice to no more than 0.86 percent, despite the legal obligation that the quota must be 4 percent minimum.<sup>546</sup> The Committee recommended that **Argentina** institute community and family support measures for persons with disabilities and take the necessary steps to implement the 4 percent quota.<sup>547</sup>

Other, more country-specific issues include the fact that in **Azerbaijan**, there is no prohibition of discrimination on the grounds of disability in some areas of life and insufficient enforcement of regulations in this regard.<sup>548</sup> Additionally, the law on the rights of persons with disabilities has not been adopted.<sup>549</sup> The Committee has also noted that in **Azerbaijan**, children with disabilities in particular are societally perceived as ill and in need of segregation from other children.<sup>550</sup> With regard to these issues, the Committee recommended that **Azerbaijan** should take measures to guarantee in law and in practice equal rights to persons with disabilities and ensure that they are protected against discrimination and exclusion.<sup>551</sup>

In **Moldova**, the Committee has expressed concern about

legislation that allows the non-consensual termination of a pregnancy on the grounds of psychosocial or intellectual impairment.<sup>552</sup> The Committee recommended that **Moldova** repeal this legislation in order to ensure that women with disabilities can enjoy their right to sexual and reproductive health.<sup>553</sup>

#### Other UN Treaty Bodies

The **CRPD** upholds a more strict standard through its jurisprudence in 55 Concluding Observations based on article 14 of the CRPD: an absolute prohibition of deprivation of liberty on the basis of disability,<sup>554</sup> as this practice constitutes a discriminatory practice impacting notably on persons with intellectual and psychosocial disabilities. Such a prohibition entails that disability can never be considered a criterion to justify a deprivation of liberty, not even in combination with other grounds such as care, medical necessity, and alleged dangerousness to oneself or others.<sup>555</sup>

This CRPD standard requires States to derogate legal provisions that allow for involuntary commitment to psychiatric institutions and alike, typically in the area of civil law and/or mental health law, and to eradicate “security measures” in the area of criminal law, which imply forced detention and treatment of persons with disabilities who have not been found guilty of any crime.

Article 29 of the CRPD “requires States parties to ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, including by guaranteeing their right to vote.” The CRPD Committee considers that any exclusion of the right to vote on the basis of disability is contrary to Article 29 of the CRPD.

This interpretation has been made clear throughout the Committee’s Concluding Observations, and notably in the individual case *Zsolt Bujdosó v Hungary*.<sup>556</sup> In this decision, the CRPD Committee has stated that “[a]rticle 29 does not foresee any reasonable restriction, nor does it allow any exception for any group of persons with disabilities. Therefore, an exclusion of the right to vote on the basis of a perceived, or actual psychosocial or intellectual disability, including a restriction pursuant to an individualized assessment, constitutes discrimination on the basis of disability, within the meaning of article 2 of the Convention.”<sup>557</sup> In this way, the CRPD provides for a greater scope of the enjoyment and protection of the right to vote of persons with disabilities.

#### 5.4 Children

The Committee has made recommendations regarding the treatment of children for the following fifteen States: **Moldova, Jamaica, Slovakia, Poland, Morocco, Ecuador, New Zealand, Rwanda, Ghana, Argentina, Sweden, Costa Rica, Slovenia, South Africa and Colombia.**

The Committee observed issues surrounding juvenile justice, particularly detention of children, for many of these States.<sup>558</sup> For example, the Committee noted multiple issues relating to

## 5. Non-Discrimination and Vulnerable Groups (Art 2, 26)

The CRPD provides for a greater scope of the enjoyment and protection of the right to vote of persons with disabilities.

## 5. Non-Discrimination and Vulnerable Groups (Art 2, 26)

Yet another significant issue that the Committee noted with regard to children is the use of child labor in multiple States.

detention of children in **Moldova**, such as: the lack of a time limit for the pretrial detention of children, inadequate educational and psychological support for children in detention, an uneven quality of lawyers assisting children in conflict with the law, the use of solitary confinement against children as a disciplinary measure and the detention of children convicted of crimes in adult detention facilities.<sup>559</sup> Regarding these issues, the Committee recommended that **Moldova** develop an effective juvenile justice system that takes into account age and the specific needs of children who come into conflict with the law.<sup>560</sup> In addition, the Committee recommended that the State make appropriate legal remedies available to minors and use detention against minors only as a measure of last resort and for the shortest period of time.<sup>561</sup>

Similarly, the Committee noted that in **Jamaica**, children may be incarcerated on the basis that they are “beyond parental control” and are held in police lock-ups regularly, often for more than 24 hours.<sup>562</sup> The Committee recommended that **Jamaica** amend its law to remove the possibility of incarcerating a child on the basis of them being “beyond parental control” and to address gaps in service delivery to children in conflict with the law, as well as provide support to children who experience exploitation, abuse and trauma.<sup>563</sup> The Committee also recommended that **Jamaica** detain children only as a last resort and for the shortest possible period of time provided by law and that it should establish child-friendly holding cells.<sup>564</sup>

Yet another significant issue that the Committee noted with regard to children is the use of child labor in multiple States. Specifically, it noted that child labor is used in **Morocco**, **Ecuador**, **Ghana** and **Costa Rica**. For **Morocco**, the Committee recommended that it enforce the laws on child labor and child exploitation in order to end these practices.<sup>565</sup> It also recommended that **Morocco** raise public awareness of the issue of child labor and strengthen its oversight mechanisms.<sup>566</sup> The Committee also recommended the implementation of awareness-raising campaigns to **Ghana** and **Costa Rica**.<sup>567</sup>

Another issue relating to the treatment of children that the Committee observed is the registration of children, often at birth.<sup>568</sup> In **Rwanda**, the Committee noted that many children who are migrants, refugees or asylum seekers are not registered and that there are often fees for late registration.<sup>569</sup> The Committee recommended that the State identify unregistered children and ensure their retroactive birth registration, as well as waive fees for late registration.<sup>570</sup> Similarly, the Committee noted that in **Ghana**, many children in rural areas remain unregistered and with regard specifically to refugee children, many of them who do not have birth certificates encounter barriers with regard to the issuance of identity documents in **Ghana**.<sup>571</sup> In this regard, the Committee recommended that the State take measures to expedite the registration of unregistered children and facilitate access to identification documentation by refugee children.<sup>572</sup>

The Committee expressed concern about child abuse and

## 5. Non-Discrimination and Vulnerable Groups (Art 2, 26)

exploitation and corporal punishment in multiple States, including **Ecuador**, **New Zealand**, **Ghana**, **Argentina**, **Sweden**, **Slovenia** and **South Africa**. With regard to **Ecuador**, the Committee noted that there are a high number of complaints regarding sexual offenses in educational institutions and there is a corresponding low rate of convictions.<sup>573</sup> The Committee recommended that **Ecuador** thoroughly and independently investigate such complaints, bring the perpetrators to trial and if convicted, punish them commensurately with the seriousness of their actions and ensure full reparation and rehabilitation for victims.<sup>574</sup> The sexual exploitation of children was also an issue that was noted for **Sweden**, specifically in the context of cyberspace, for which the Committee recommended that penalties be commensurate with the gravity of such crimes.<sup>575</sup> With regard to **New Zealand**, the Committee noted that many children suffer physical and psychological abuse and neglect and that there is a lack of information regarding programs of rehabilitation, reintegration and redress for child victims, particularly Maori and Pasifika child victims.<sup>576</sup> The Committee recommended **New Zealand** to establish early detection and reporting mechanisms for child abuse and effectively investigate such cases.<sup>577</sup>

The Committee noted that corporal punishment was an issue in **Ghana**, **Argentina**, **Slovenia** and **South Africa**. The Committee recommended that the State should encourage non-violent forms of discipline and conduct awareness-raising campaigns for **Ghana**, **Argentina** and **Slovenia**.<sup>578</sup> For **Slovenia** and **South Africa**, it also recommended that the State take steps, including legislative measures, to end corporal punishment in all settings.<sup>579</sup>

In **Slovakia** and **Sweden**, the Committee addressed issues relating to unaccompanied minors. For **Slovakia**, the Committee noted that there have been reports of unaccompanied minors going missing from foster homes.<sup>580</sup> In addition, article 127 of the Slovakian Act on Residence of Foreigners deems unaccompanied children adults until a medical age assessment examination proves that they are children.<sup>581</sup> The Committee recommended that **Slovakia** establish a register of disappeared unaccompanied children and conduct search operations for them.<sup>582</sup> It also recommended that **Slovakia** remove the presumption of majority from the aforementioned law.<sup>583</sup> The Committee expressed concern that in **Sweden**, many unaccompanied minors have gone missing and may possibly have been subjected to trafficking.<sup>584</sup> It recommended that **Sweden** should ensure the adequate placement of unaccompanied minors and should provide them with care and support.<sup>585</sup> Moreover, the Committee recommended that **Sweden** should investigate the issue of missing unaccompanied minors and make efforts to prevent future occurrences.<sup>586</sup>

### Other UN Treaty Bodies

The **CRC** has given a landmarking recommendation on discrimination of children to the **United Kingdom**. It recommended to provide protection of all children under 18 years of age against discrimination on the grounds of their

The Committee noted that corporal punishment was an issue in Ghana, Argentina, Slovenia and South Africa.



## 5. Non-Discrimination and Vulnerable Groups (Art 2, 26)

In New Zealand, the CRC remained concerned about the structural and systematic disadvantages Maori and Pasifika children have to face.

age.<sup>587</sup> Two of the states reviewed by the HR Committee were also reviewed by the CRC: **New Zealand** and **South Africa**. In **New Zealand**'s Concluding Observations, the Committee identified violence, abuse and neglect as issues that require the adoption of urgent measures, together with children belonging to minority or indigenous groups and juvenile justice. The Committee reinforced the ICCPR recommendations and added some others.

Violence can amount to ill-treatment of children in state care but the victims have difficulties seeking redress. The CRC recommended the State party to collect data, to take measures to eradicate violence and abuse in state care and to ensure that all staff working with children are trained and checked. Incidents should be investigated and a strategy should be developed to combat abuse, particularly against Maori and Pasifika children and children with disabilities.<sup>588</sup> **New Zealand** should also combat sexual abuse of children and ensure mandatory reporting of cases in order to collect data. Awareness-raising activities were also recommended.<sup>589</sup>

The CRC remained concerned about the structural and systematic disadvantages Maori and Pasifika children have to face. The State party should develop a strategy for the full enjoyment of the rights of those children in close cooperation with their communities.<sup>590</sup>

A last issue that required the adoption of urgent measures was juvenile justice: the minimum age of criminal responsibility should be raised to 18 years, children should be separated from adults in all places of detention and detention should be a measure of last resort.<sup>591</sup>

The Committee elaborated on corporal punishment in the Concluding Observations of **South Africa**. Corporal punishment at home has not been prohibited and is widely practiced. Corporal punishment in schools is prohibited but still persists in practice. There are no data on incidents in childcare facilities. The CRC recommendations reinforced the ones of the HR Committee by going beyond legislative reforms: raise awareness, build capacity of communities working with children, collect data, promote consultations between students and teachers on disciplinary issues and hold perpetrators accountable.<sup>592</sup>

The Committee also raised concern about the low age of criminal responsibility (only 10) and detention. A large number of children are held in pretrial detention: they have no access to basic services and facilities are overcrowded.<sup>593</sup>

### 5.5 Human Trafficking

The Committee made recommendations regarding human trafficking for the following twelve States: **Moldova**, **Jamaica**, **Poland**, **Kuwait**, **Denmark**, **Burkina Faso**, **New Zealand**, **Kazakhstan**, **Sweden**, **Costa Rica**, **Namibia** and **South Africa**.

In **Namibia**, **South Africa**<sup>594</sup>, **Burkina Faso**<sup>595</sup> and **Poland**<sup>596</sup>, the Committee was concerned that the parties lacked the effective mechanisms that would help in proper identification



## 5. Non-Discrimination and Vulnerable Groups (Art 2, 26)

and referral mechanisms of victims.<sup>597</sup> The Committee recommended that the States parties continue taking measures necessary to outlaw and eradicate trafficking and to establish a nationwide identification and referral system for victims of trafficking.<sup>598</sup> In addition, the Committee encouraged **Namibia** to combat violations regarding forced labor by increasing the number of labor inspectors and ensuring that they had full access to private farms.<sup>599</sup> The Committee also noted that **Poland** did not have a provision in its penal code to ensure that the victims of trafficking were exempt from prosecution.<sup>600</sup> Thus, the Committee suggested that **Poland** introduce a provision that would protect victims from prosecution, detention and punishment for activities that arose from their situation.<sup>601</sup> Finally, the Committee asked **Burkina Faso** to collate data in order to assess the extent of trafficking for purposes of the sexual and economic exploitation, forced labor and exploitation of children.<sup>602</sup>

In **Kazakhstan**, the Committee suggested monitoring the impact of domestic legislation and strengthening international anti-trafficking cooperation to prevent and combat trafficking. It encouraged the State party to remain vigilant and refrain from classifying such claims under provisions for lesser penalties.<sup>603</sup>

In **Sweden**, the Committee recommended that the penalties for the sexual exploitation of children, including those committed in cyberspace, should be proportionate with the gravity of such crimes. The Committee strongly encouraged Sweden to ensure that the investigation regarding the sexual exploitation of children was prompt and thorough. The Committee strongly advised the State party to take measures which would hold perpetrators accountable and implement mechanisms that would allow victims access to effective means of protection and assistance services and to full reparation, including rehabilitation and adequate compensation.<sup>604</sup>

The Committee encouraged **Denmark**<sup>605</sup> to continue its efforts to bring awareness to the general public about the problem of trafficking and the risks of economic and social exploitation and to strictly enforce domestic laws with the view to eliminating these practices and strengthening monitoring mechanisms.

The Committee also recommended more specific measures for States parties such as **Kuwait**, including the adoption of a national strategy to investigate offenders in particular employers, sponsors and recruitment companies found guilty of forced labor and sexual exploitation and to take measures such as the prohibition on withholding workers passports, relaxing the stringent standard of evidence of coercion for victims of forced prostitution and making available residence permits on humanitarian grounds to foreign victims of trafficking and forced prostitution.<sup>606</sup>

The Committee noted that in **Jamaica**, the National Rapporteur was unable to execute its functions due to inadequate resources and the national legislation did not protect victims of human trafficking from the practice of non-

The Committee encouraged Denmark to continue its efforts to bring awareness to the general public about the problem of trafficking.

## 5. Non-Discrimination and Vulnerable Groups (Art 2, 26)

States parties were encouraged to prevent and protect all communities against racist and xenophobic attacks.

refoulement.<sup>607</sup> Thus, the Committee directed the State party to allocate human and financial resources to the relevant offices and to ensure that victims were not returned to the country where they could be harmed.<sup>608</sup>

On the issue of victims, the Committee encouraged States parties such as **New Zealand** and **Moldova** to develop and implement programs for victims' rehabilitation and redress, with a particular focus on women and child victims, as well as to effectively regulate and monitor international labor contractors and recruitment agencies to prevent trafficking, commercial sexual exploitation and other contemporary forms of slavery.<sup>609</sup> Finally, the Committee encouraged the States parties to ensure that victims of trafficking were not prosecuted, detained or punished for activities they were involved in as a result of their situation as trafficked persons and to consider offering immigration status options to these victims.<sup>610</sup> The Committee also asked States to assist in the social integration of victims and to provide access to quality health care and counseling services throughout the State party.<sup>611</sup>

### 5.6 Racism and Xenophobia

The Committee found an increase in the manifestations of racism and xenophobia in **New Zealand**, **Sweden**, **Slovenia**, **Slovakia** and **South Africa**, that was applicable to a variety of groups, differing in religion, regions and ethnicity. There was a rise in reports where there had been racist and xenophobic violence against groups such as Muslims, Roma and Jews, asylum seekers or foreign nationals. Thus, States parties were encouraged to prevent and protect all communities against racist and xenophobic attacks and improve policing responses to violence against non-nationals.<sup>612</sup>

In **Sweden**, the Committee acknowledged the measures that had been taken to combat hate speech, including the creation of a cybercrime center to investigate online hate speech and other forms of racism.<sup>613</sup> The committee also proposed use of both law enforcement and awareness raising activities to promote respect for human rights and tolerance for diversity. It encouraged the State party to emphasize the need for legal and policy frameworks to punish perpetrators of racism, hatred and xenophobia and to provide victims with adequate remedies.<sup>614</sup>

In order to eradicate and prevent racism and xenophobia in **Slovenia**, the Committee suggested establishing a separate independent and effective body to respond to cases of racism, consultation with civil society representatives and the adoption of clear strategies on the prevention and elimination of racism. The Committee also strongly emphasized the need for an accessible system of transparent and effective legal remedies for the victims of discrimination and the need for conducting campaigns aimed at raising awareness, respecting human rights and the tolerance for diversity.<sup>615</sup>

#### Other UN Treaty Bodies

The **CERD** is increasingly concerned with racist hate crimes and

## 5. Non-Discrimination and Vulnerable Groups (Art 2, 26)

hate speech. Accordingly, the Committee gives considerable attention to these issues during State reviews.

These issues were also addressed in general recommendation 35, even though the term hate speech is not explicitly used in the Convention.<sup>616</sup> The Committee uses article 4 as a basis: racist hate speech includes all forms of speech directed against groups based on race, colour, descent, national or ethnic origin, women members and religion.<sup>617</sup> Speech can be oral, in print, electronic, symbolic, composed of images, etc.<sup>618</sup> States are obligated to take immediate measures to eradicate incitement and discrimination through the adoption of legislation prohibiting all dissemination of ideas based on racial or ethnic superiority or hatred, incitement to hatred, violence or discrimination or threats and participation in organizations and activities which promote discrimination.<sup>619</sup> Incitement may be expressed or implied and does not need to be acted upon.<sup>620</sup>

The Committee takes several factors into account to determine whether something qualifies as hate speech: the content, form and style of the speech; the economic, social and political climate at the time; the position of the speaker in society and the audience to which the speech is directed; the reach of the speech and the means of transmission and the objectives of the speech.<sup>621</sup> The Committee stressed the need for effective implementation in addition to sufficiently precise legislation.<sup>622</sup> The final element detailed by the Committee explains that the relationship between racist hate speech and freedom of expression is complementary and should not be seen as one eradicating the other.<sup>623</sup>

The Committee was concerned about the rise of the manifestation of racial discrimination in several States parties and gave them similar recommendations. The growth of the Golden Dawn party in **Greece** and the increasing number of racist attacks against asylum seekers are alarming. Such crimes are rarely reported but the State should take measures to prosecute perpetrators and increase reporting, including by strengthening training on identifying hate speech and improving coordination between different institutions. Media should not stigmatize minorities and the State should undertake national campaigns to promote tolerance. Lastly, Greece should collect data on this issue.<sup>624</sup> In **Pakistan**, the number of hate crimes against minorities is alarmingly high, but no investigations have been carried out. The aforementioned recommendation was also made to **Greece, Ukraine** and **Georgia**.<sup>625</sup> The Committee also recommended that the States parties organize awareness-raising campaigns.<sup>626</sup> The number of hate crimes also rose in the **United Kingdom**, especially during and after the referendum campaign, which was marked by divisive, anti-immigrant and xenophobic rhetoric. Moreover, the **United Kingdom** still has an interpretative declaration on article 4, which the Committee asked the State party to withdraw.<sup>627</sup>

In **Lebanon**, the CERD expressed its concern about the vague legal provisions on racist expression and recommended that the State party use GC 35 as guidance.<sup>628</sup> **South Africa**

The Committee was concerned about the rise of the manifestation of racial discrimination in several States parties.

## 5. Non-Discrimination and Vulnerable Groups (Art 2, 26)

In Azerbaijan, the Committee found allegations of discrimination and harassment against members of the Armenian community.

completely lacks legislation concerning hate speech, even though there has been a rise in hate crimes.<sup>629</sup>

The Committee was alarmed by reports of hate speech and incitement to violence against minority groups in **Sri Lanka**. The State has the obligation to protect these minorities, to adopt legislation criminalizing these acts and to enforce it.<sup>630</sup> In **Azerbaijan**, individuals have been arrested based on hate crime legislation for having expressed opinions diverging from official positions. Legislation should be clear, not overly broad, not enforced arbitrarily and the State should not condone racial hatred.<sup>631</sup>

**Namibia's** and **Turkmenistan's** definition for hate speech does not coincide with the definition in article 4 of the Convention.<sup>632</sup>

In **Italy** and **Portugal**, the Committee recommended that the States parties investigate incidents of hate speech, hold people accountable by lifting their parliamentary immunity, provide effective remedies for victims, collect data and ensure that the prohibition of racist hate speech extends to the Internet.<sup>633</sup> **Italy** should also include racist motives as an aggravating circumstance, even when it is not the sole motivation.<sup>634</sup>

### 5.7 Rights of Minorities

In **Azerbaijan**, the Committee found allegations of discrimination and harassment against members of the Armenian community. This also led to cases where Azerbaijanis of Armenian origin were reluctant to self-identify as such, as well as reports that foreigners with Armenian surnames had been prevented from entering the State.<sup>635</sup>

The Committee requested the State to take all measures necessary to prevent and combat the harassment of and discrimination against members of the Armenian minority and to ensure that foreigners with Armenian surnames were not denied access to the country on arbitrary and discriminatory bases.<sup>636</sup>

In **Slovenia**, the Committee found that legislative acts in 2010 enabled people who were removed or "erased" from the Slovenian registry of permanent residents in 1992 to re-establish their permanent residency status and the 2013 legislation provided compensation to those who had suffered from damage as a result of erasure.<sup>637</sup> However, the 2010 act expired in 2013 and at present there are no avenues for those who are of erased status to re-establish their legal status.<sup>638</sup> The Committee recommended the State party to implement mechanisms through which those who were of erased people status could restore their legal status and all "erased" people were provided with full and effective reparation.<sup>639</sup>

Given the threat of terrorism, several States parties have enacted measures to combat this threat and bolster their security apparatus. The Committee noted that in several instances, such laws targeted certain minorities in a discriminatory manner. The Committee noted that in **Sweden**,

## 5. Non-Discrimination and Vulnerable Groups (Art 2, 26)

a discrepancy was reported between the number of arrests and the number of convictions under the Terrorism Act. Additionally, allegations the Committee took note of allegations of “branding of persons” of a foreign and minority background and the targeting of Muslims in counter-terrorism-related law enforcement and investigations. While advising Sweden to review existing counter-terrorism legislation and apply the principles of necessity and proportionality strictly during exercise of arrest powers under the Terrorism Act, the Committee also recommended that Sweden provide law enforcement officials training on cultural awareness and against racial profiling.<sup>640</sup>

The Committee observed that in **Kazakhstan**, members or presumed members of banned or unregistered Islamic groups, such as the Tabligh Jamaat were being targeted by counter-terrorism activities due to definitions in domestic law being broad or unclear. The Committee recommended that **Kazakhstan** revise its counter-terrorism and counter-extremism legislation to comply with the principles of legal certainty and predictability since the State party's criminal legislation was not in compliance with the Covenant in the context of several rights and freedoms such as the freedoms of religion, expression, assembly and association. The Committee further advised **Kazakhstan** to not suppress conduct and speech and ensure that the rights to a fair trial and access to justice are respected in all prosecutions for “extremism.”<sup>641</sup>

### 5.8 Discrimination against People Living with HIV/AIDS

The Committee expressed concerns that people who were living in **Costa Rica, Jamaica** and **South Africa** with HIV/AIDS were constantly marginalized and deprived of liberty.<sup>642</sup> The Committee asked States parties to adopt measures that would raise awareness of HIV/AIDS and take concrete steps to ensure that people with HIV/AIDS enjoyed equal access to health care and medical treatment.<sup>643</sup> These measures could include the adoption of a draft national policy on HIV, sexually transmitted infections and tuberculosis and its implementation in sexual and reproductive health policy, especially concerning adolescents.<sup>644</sup>

### 5.9 The Rights of Indigenous Peoples

The Committee made recommendations regarding the rights of indigenous peoples for the following thirteen States: **Moldova, Slovakia, Morocco, Kuwait, Ecuador, New Zealand, Rwanda, Argentina, Sweden, Costa Rica, Slovenia, South Africa** and **Colombia**.

In **Costa Rica**, the Committee found structural discrimination against indigenous people of African descent that limited their access to access to education, employment and housing.<sup>645</sup> They encouraged the State party to eliminate discrimination through awareness campaigns, as well as the adoption of legislative reform concentrated on preventing and punishing all forms of discrimination.<sup>646</sup> Similarly in **Rwanda**, the Committee asked the State party to introduce programs that would promote equal opportunity and access to service<sup>647</sup> for historically marginalized groups such as the Batwa

In Costa Rica, the Committee found structural discrimination against indigenous people of African descent.



## 5. Non-Discrimination and Vulnerable Groups (Art 2, 26)

The Committee suggested to Sweden to adopt the Nordic Sami Convention.

community.<sup>648</sup>

In **Kuwait**, the Committee found that a number of Bidoon Individuals were stateless because the process of granting Kuwaiti citizenship was slow and they were unable to obtain the civil documentation and access to social services.<sup>649</sup> Thus, the Committee recommended the State to speed up the process of granting citizenship by making it more accessible and less discriminatory. In addition, **Kuwait** was encouraged to incorporate the 1954 Convention relating to the Status of Stateless Persons and to the 1961 Convention on the Reduction of Statelessness into domestic law.<sup>650</sup>

The Committee noted that in **Ecuador**, oil concessions had been granted in indigenous territories without proper consultation with the communities that were affected. Thus, it recommended the State party to take necessary steps to ensure that indigenous peoples were consulted in advance on decisions that could have an impact on the exercise of their rights.<sup>651</sup> Moreover, in order to address the gap between ordinary courts and indigenous courts, the Committee recommended **Ecuador** to adopt specific legal and institutional frameworks governing the division of responsibilities between two courts.<sup>652</sup>

In **Argentina**, it was observed that in spite of national and provisional initiatives, the ownership and possession of lands occupied by indigenous groups still was not legally recognized and protected. As a result, indigenous groups were a target of violence and forced evictions in a number of provinces.<sup>653</sup> In order to counter this, the Committee proposed that the State party legally recognize and demarcate the territories over which indigenous peoples have rights after consultation with them. In addition, also ensure that those who perpetrated such violence were duly punished and the victims provided with appropriate redress.<sup>654</sup>

In **Sweden**, the Committee acknowledged the changes to the constitution and legal framework recognizing the right of self-determination for the Sami people.<sup>655</sup> They suggested to Sweden to adopt the Nordic Sami Convention without undue delay and implement measures to ensure that the Parliament was provided with adequate resources. The Committee also requested the State party to review all existing legislation, policies and practices regulating activities that could have had an impact on the rights and interests of the Sami people, including development projects and extractive industries operations. Moreover, they also proposed granting adequate legal aid to Sami villages in court disputes concerning land and grazing rights and providing for a suitable burden of proof in cases regarding Sami land and grazing rights.<sup>656</sup>

The Committee found that individuals of Roma origins living in **Slovakia** were in a vulnerable position because of their limited access to education, employment, housing and health care.<sup>657</sup> Moreover, due to their lack of formal residency status, they were unable to take advantage of social benefits, subsidized health care and education.<sup>658</sup> Thus, the Committee suggested that the State party ensure that there was no discrimination against Roma citizens staying in their jurisdiction



## 5. Non-Discrimination and Vulnerable Groups (Art 2, 26)

and those who came to stay from other European Union countries. It also proposed for the State party to identify mechanisms to facilitate the access of the Roma population to support and assistance services that could take into account their de jure and de facto situation.<sup>659</sup> The Committee raised similar concerns in **Moldova** where it directed the State party to allocate human and financial resources to implement the Roma action plan to ensure that all individuals had access to identity documents.<sup>660</sup>

It was also observed that in **Slovakia**, the children of the Roma community were often provided with inferior education and were segregated from the main school system. Thus, the State party was requested to adopt measure to effectively monitor and eradicate the practice of segregation and ensure that education was imparted in a non-discriminatory manner.<sup>661</sup> The Committee was also concerned about the forced sterilization of Roma Women being conducted in **Slovakia**.<sup>662</sup> It directed the State investigate the extent of this practice, monitor health care providers on the implementation of these rules and ensure that appropriate sanctions were imposed if breaches occurred.<sup>663</sup>

In **Slovenia**, the Committee was specifically concerned about instances of child and forced marriages among members of the Roma community. Moreover, the distinction made by the State party between "autochthonous" and "non-autochthonous" Roma communities was a cause of concern because only the former were granted special rights and opportunities while the latter remained unrepresented at the local level.<sup>664</sup> The Committee encouraged the State party to repeal the distinction between the two types of status among the Roma community, engage with the representatives of the Roma Community Council and take effective measures to increase the participation of Roma people in public life and decision making processes. The Committee asked the State party to ensure that the prohibition of child and forced marriage was implemented in practice, the perpetrators were punished and victims were provided with counseling and rehabilitation services.<sup>665</sup>

In **South Africa**, the Committee noted that due to the fishing quotas on indigenous groups such as the Khoi San<sup>666</sup> having been removed on a temporary basis, the families had been left with an insufficient means of livelihood. The Committee urged the State party to ensure that the communities were not discriminated against in their access to traditional means of subsistence.

In **New Zealand**, the Committee suggested the introduction of comprehensive employment and vocational training strategies to remedy the discrimination between the Maori and Pasifika.<sup>667</sup> The Committee was also concerned about the overrepresentation of Maori and Pasifika in the criminal justice system.<sup>668</sup> It encouraged the State party to take a comprehensive review into the law enforcement operational strategies and thereby implement a human rights programs for law enforcement officials, the judiciary and penitentiary personnel in order to eliminate all forms of indirect and direct

In Slovenia, the Committee was specifically concerned about instances of child and forced marriages among members of the Roma community.

## 5. Non-Discrimination and Vulnerable Groups (Art 2, 26)

The CERD recognizes that indigenous peoples are discriminated against in all parts of the world.

discrimination.<sup>669</sup> They also requested the revision of the Marine and Coastal Area Act 2011 as it did not adequately address discriminatory effects on Maori claims to their customary land and right to cultural development.<sup>670</sup> Finally, the Committee asked the State party to guarantee the participation of indigenous communities in all relevant national and international consultation processes including those directly affecting them, as well as the implementation of technical capacity programs directed towards building their effective participation in the processes.<sup>671</sup> Additionally, the Committee asked the State party to take measures to ensure that there was Māori and Pasifika representation in government positions at all levels.<sup>672</sup>

### Other UN Treaty Bodies

The **CERD** recognizes that indigenous peoples are discriminated against in all parts of the world. They have often lost their land and resources to colonists, companies and state enterprises.<sup>673</sup> Indigenous culture, history, language and way of life should be recognized and preserved and members of indigenous peoples should be free from discrimination. They should be able to participate in public life and be consulted in the decision-making process.<sup>674</sup> Indigenous peoples have the right to own and develop their communal lands and resources. If they have been deprived of it, steps should be taken to return the land. If this is not possible, they have the right to just and prompt compensation in the form of land if possible.<sup>675</sup>

While the HR Committee is mainly concerned with land ownership and poverty, the recommendations of the CERD are more specific. Additionally, CERD publishes more general recommendations on minorities and indigenous peoples.

The Committee was concerned about the persistent structural discrimination against indigenous peoples in **Argentina**: they lack the access to basic services and water and their children are malnourished. The State should promote social inclusion, reduce the level of poverty and take steps to meet the Sustainable Development Goals.<sup>676</sup> However, a comprehensive legislative framework and appropriate mechanisms that could implement the aforementioned rights do not exist. These should be adopted as a priority and in consultation with the relevant groups.<sup>677</sup> The Committee also noted that the implementation of the recognition of land rights has been delayed and is concerned about the high number of evictions involving indigenous peoples and the incidents of violence against them.<sup>678</sup>

In **Namibia**, the Committee was particularly concerned about the high rate of poverty and the lack of access to services. Indigenous peoples should be involved in the development of programmes to improve their situation.<sup>679</sup> The State party should recognize indigenous peoples and allow them to participate in political processes.<sup>680</sup> Other concerns were sexual violence against indigenous women<sup>681</sup> and, again, the issue of land reform. Much of the land of indigenous peoples is owned by the State, which is problematic.<sup>682</sup>

## 5. Non-Discrimination and Vulnerable Groups (Art 2, 26)

The Committee was also concerned about the population decline among the Batwa, an indigenous group in **Rwanda**. They are stigmatized and discriminated against: their literacy rate remains very low; there is a lack of access to health, social services, housing and employment; poverty rates are high, etc. The Committee recommended that the State take special measures i.e. remove the barriers to education, the labour market and other basic services; combat stereotypes and include them in the decision-making process.<sup>683</sup> The land issue is also alarming in **Rwanda**, forced evictions take place to create national parks and people do not receive compensation for their loss.<sup>684</sup>

Lastly, **South Africa** also received the recommendation to adopt special measures to redress the inequalities resulting from the Apartheid.<sup>685</sup> Indigenous peoples still suffer from extreme poverty, discrimination and marginalization and should be included in the adoption of the bill to improve their situation.<sup>686</sup>

The Committee asked **South Africa** in several recommendations to provide them with disaggregated data about the demographic composition of the population.<sup>687</sup>

## 6. Freedoms and Rights of Individuals

The Committee remained concerned that limited progress had been made on the issue of self-determination for the people of Western Sahara.

### 6.1 Right to Self-Determination (Art 1)

While noting **Morocco**'s initiative for engaging in negotiations on autonomy for Western Sahara and additional information provided by the State party, the Committee remained concerned that limited progress had been made on the issue of self-determination for the people of Western Sahara and about reports that **Morocco** was not consulting the people of Western Sahara on the issue of development of natural resources in the region. The Committee also noted with concern the presence of the "berm" or sand wall which limited the freedom of movement of people in Western Sahara by limiting the number of crossing points open to civilians. The presence of landmines and other explosive remnants of war along the berm also endangered the life and safety of communities in the vicinity.<sup>688</sup>

The Committee recommended that the State party continue and increase its efforts undertaken within the framework of the negotiations on Western Sahara under the Secretary-General in order to ensure the right of self-determination for the people of Western Sahara and urged **Morocco** to enhance "meaningful consultations" with the people of Western Sahara to ensure their prior, free and informed consent for development projects and resource extraction in the region. Lastly, it recommended that the State Party take steps to ensure freedom of movement along both sides of the berm alongside continued demining operations and efforts to compensate victims.<sup>689</sup>

### 6.2 Right to Privacy (Art 17)

The Committee noted that **New Zealand, Namibia** and **Sweden** undertook "extreme surveillance measures" with no clear mandate on "national security" and "private communications," often with a non-transparent framework with wide access to and interception of communication.<sup>690</sup> Similarly, the Committee noted a lack of clarity regarding the reach of legal interception and lack of judicial independence in **Namibia, Poland** and **Rwanda**. The Committee then asked the States parties to ensure that interception was conducted only when justified by law, with necessary procedural and judicial safeguards and only to achieve specific and legitimate objectives.<sup>691</sup>

The Committee also noted a lack of proper oversight mechanisms<sup>692</sup> to prevent abuse of surveillance powers in **South Africa** and **Sweden** and accordingly recommended that the States parties respectively ensure that an independent oversight body was set up that not only functions promptly and effectively but is also adequately funded and equipped.<sup>693</sup> Further, the Committee recommended that such mechanisms ought to be in conformity with the principles of legality, proportionality and necessity.<sup>694</sup>

The Committee also noted with concern that in **Poland**, foreign nationals were targeted to collect metadata through indiscriminate surveillance without notification, a procedure for complaints or mechanisms for remedy.<sup>695</sup> The Committee recommended that Poland revise the existing legislation in line

with its obligations under the Covenant.<sup>696</sup>

The Committee saw the use of DNA testing, as part of a counter-terrorism processes by **Kuwait** as unnecessary and disproportionate restrictions on the right to privacy.<sup>697</sup> The compulsory nature of the DNA test imposed a penalty of a one year imprisonment with fine if a person refused to provide samples. Further, there was an absence of independent control and judiciary measure. The lack of necessary safeguards to guarantee confidentiality and prevent arbitrary use of the DNA samples collected further concerned the Committee. **Kuwait** was asked to uphold the principles of legality, necessity and proportionality, right to privacy and its obligations under the Covenant, including Article 17 and in this light limit DNA collection to serious crimes and on the basis of judicial decisions. Further, the Committee recommended that **Kuwait** allow individuals access to courts to challenge the collection of DNA samples, erase the samples after a time period and establish an oversight mechanism to monitor the collection and use of DNA samples and prevent abuses.<sup>698</sup>

### 6.3 Freedom of Religious Belief and Conscience (Art 18)

States have been seen to curtail religious beliefs through application of sanctions and restriction to people's religious practices, in turn limiting them in their chosen practice of living. In **Rwanda**, the Committee observed that Jehovah's Witnesses were denied their right to refuse to participate when singing the national anthem, attending religious ceremonies of another faith in schools and to take an oath holding the national flag. This was seen as a restriction of freedom of thought, conscience and religion and the Committee advised the State to maintain its obligation under Article 18 of the Covenant by guaranteeing the same and ensuring that any limitations are in compliance with Article 18(3).<sup>699</sup>

Similarly, the Committee noted that in **Morocco**, provisions of the Criminal Code criminalized the practice of any other religion than the official religion. Further, the Committee was concerned that actions contrary to the Muslim religion were criminalized and new offenses were further added to the draft Criminal Code that intended to extend the limits imposed on freedom of religion and expression.<sup>700</sup> The Committee called for an elimination of this discriminatory practice and recommended that **Morocco** revise the Criminal Code to bring it into compliance with Art 18 of the Covenant.<sup>701</sup>

The Committee has held that the right to conscientious objection is inherent in the right to freedom of thought, conscience and religion. Further, the Committee held that this right entitles any individual to an exemption from compulsory military service if such service cannot be reconciled with that individual's religion or beliefs; moreover, the right must not be impaired by coercion. A State may, if it wishes, compel the objector to undertake a civilian alternative to military service, outside the military sphere and not under military command. The alternative service must not be of a punitive nature. It must be a real service to the community and compatible with respect for human rights.<sup>702</sup>

## 6. Freedoms and Rights of Individuals

The Committee saw the use of DNA testing, as part of a counter-terrorism processes by Kuwait as unnecessary and disproportionate restrictions on the right to privacy.

## 6. Freedoms and Rights of Individuals

Aside from issues pertaining to media and social media, the Committee faced instances of criminalization of speech in several States.

The Committee also noted that **Kazakhstan** did not legally recognize the right to conscientious objection to military service and reminded the State party of its failure to implement the Committee's previous recommendations<sup>703</sup> on the same issue. Accordingly, the Committee recommended that Kazakhstan implement the recommendations made by the Committee in this context.<sup>704</sup>

### 6.4 Freedom of Expression (Art 19)

In its observations on the freedom of expression, the Committee covered issues arising in varied contexts. The Committee observed constraints placed on the media in the form of influence and failure to guarantee independence. Aside from the aforementioned, it noted measures in States Parties that curbed the freedom of journalists. Concerns were also raised that as a result of concentration in media ownership in States parties, the right to freedom of expression was infringed. The Committee noted with concern instances of limitations of social media access in several States.

Aside from issues pertaining to media and social media, the Committee faced instances of criminalization of speech in several States. Vague definitions of crimes and the prosecution of individuals for exercising their freedom of expression led to the Committee making several recommendations in this regard. In this context, the Committee also discussed intimidation, harassment and threats to individuals in the context of their exercise of their freedom of expression. The Committee also noted limits placed on access to information and constraints on academic research and their respective effects on the freedom of expression.

#### 6.4.1 Media, social media, broadcast and journalism

The Committee noted with concern that past and proposed legislation in **Poland** did not offer enough guarantees to ensure the independence of the Polish public television and radio services.<sup>705</sup> It was concerned about the continued concentration of media ownership in **Moldova**<sup>706</sup> and **Argentina**.<sup>707</sup> Additionally, the Committee was also concerned about the influence of political and private interests on the media in **Moldova** which did not reflect public interest.<sup>708</sup> In **Namibia**, the Committee also observed with concern the trend of self-censorship in state-owned media.<sup>709</sup>

The Committee recommended that **Poland**<sup>710</sup>, **Moldova**<sup>711</sup> and **Argentina**<sup>712</sup> ensure that their media and broadcasting services operate independently. The Committee recommended that **Moldova**<sup>713</sup> and **Argentina**<sup>714</sup> observe the General Comment No. 34 to prevent a concentration of media ownership.

In its observations on **Azerbaijan**, the Committee noted reports of arbitrary interference with media freedom including the revocation of broadcast licenses on political grounds (Radio Free Europe, Radio Liberty, ANS television and radio outlets) and allegations of financial pressure on the independent newspaper "Azadliq."<sup>715</sup> The Committee noted with concern that **Kuwait** had adopted legislation which placed restrictions on internet based expressions, had terminated licenses of



## 6. Freedoms and Rights of Individuals

those in the media who were critical of the government, curtailed access to the internet and revoked the licenses of internet service providers without due process.<sup>716</sup> The Committee recommended that **Azerbaijan**<sup>717</sup> and **Kuwait**<sup>718</sup> take steps to end the aforementioned persecution or retaliation against the media and ensure that the media can operate free from the fear of government intervention.

Similarly, the Committee was concerned about interference with journalistic activity and the shutting of independent newspapers, magazines, television channels and news websites for minor irregularity or charges related to extremism in **Kazakhstan**.<sup>719</sup> Additionally, the Committee also noted that **Kazakhstan** blocked social media blogs, news sites and other internet sources based on national security concerns in accordance with its domestic laws. The Committee also observed that the State did not comply with the principles of legal certainty, necessity and proportionality as required by the Covenant with reference to its laws and practices pertaining to freedom of expression.<sup>720</sup> Accordingly, the Committee recommended that **Kazakhstan** should revise its laws that limit freedom of expression to bring them in conformity with the Covenant,<sup>721</sup> while refraining from using criminal provisions and other regulations to stifle the expression of dissenting opinions beyond the limits placed by Article 19(3) of the Covenant.<sup>722</sup>

The Committee also clarified that in determining whether or not a violation of Article 19 has taken place, any domestic legislation must be demonstrated by the State party to be necessary and proportional. Further, in accordance with its General Comment No. 34, it also held that the reasons for restrictions are limited to those under Article 19(3) of the Covenant.<sup>723</sup>

### 6.4.2 Criminalization of speech

The Committee was concerned that **Poland**<sup>724</sup>, **Slovenia**<sup>725</sup>, **Kazakhstan**<sup>726</sup> and **Kuwait**<sup>727</sup> continued to criminalize defamation. The Committee urged the aforementioned States<sup>728</sup> to decriminalize defamation in accordance with its General Comment No. 34.

The Committee also noted that in **Ecuador**, several crimes such as sabotage and terrorism were defined in vague terms.<sup>729</sup> Similarly, in **Rwanda**<sup>730</sup>, the crime of separatism and other crimes were defined in vague terms which made them susceptible to misuse. The Committee also noted with concern prosecutions against journalists, politicians and human rights defenders on the basis of such crimes in **Ecuador**<sup>731</sup> and **Rwanda**<sup>732</sup> respectively. In a similar context, the Committee observed that the Organic Act on Communication in **Ecuador**<sup>733</sup> included ambiguous or disproportionate obligations such as the obligation to "cover and disseminate facts of public interest" or the ban on disseminating "information that is, directly or through third parties, issued by prior arrangement and repeatedly published in one or more medium of communication with a view to discrediting a natural or legal person or undermining his or her public credibility." Failure to comply with these obligations gave rise to severe penalties.

The Committee also noted that in Ecuador, several crimes such as sabotage and terrorism were defined in vague terms.

## 6. Freedoms and Rights of Individuals

The Committee noted that several States Parties criminalized insults, insults to state symbols, blasphemy, territorial integrity of a state, senior officials and religion.

Accordingly, the Committee recommended that **Rwanda**<sup>734</sup> and **Ecuador**<sup>735</sup> adopt the necessary legislative measures to bring in line with the Covenant its criminal law to the extent that such law infringed the freedom of expression in the State and urged **Rwanda**<sup>736</sup> to refrain from prosecutions of journalists, politicians and human rights defenders.

The Committee noted that several States Parties criminalized insults<sup>737</sup>, insults to state symbols<sup>738</sup>, blasphemy<sup>739</sup>, territorial integrity of a state<sup>740</sup>, senior officials (including monarchs<sup>741</sup>, Presidents<sup>742</sup> and other officials<sup>743</sup>) and religion<sup>744</sup> and was also concerned about politically motivated criminal proceedings against independent media outlets in **Azerbaijan** such as "Meydan TV" and its journalists.<sup>745</sup> In the case of **Morocco**, the Committee noted with concern the prosecution or threat thereof for criminal charges for insulting Islam, the monarchy or the state's territorial integrity.<sup>746</sup> Similarly, in **Kuwait**, there were prosecutions of activists, journalists, bloggers and other individuals for expressing critical views or insulting the "Emir," defaming religion and threatening **Kuwait's** national security or relations with other States.<sup>747</sup> The Committee also noted with concern **Kuwait's** recent amendment of domestic law according to which individuals who had been convicted of the aforementioned offences in **Kuwait** were prevented from standing for election.<sup>748</sup> Accordingly, it recommended that **Morocco**<sup>749</sup> and **Kuwait**<sup>750</sup> bring its domestic legislation restricting the freedom of expression into compliance with Article 19(3) of the Covenant. The Committee also specifically recommended that **Kuwait**<sup>751</sup> and **Kazakhstan**<sup>752</sup> amend their criminal laws and make appropriate changes to its laws to bring them in conformity with the Covenant, clarify key terms and provisions that are vague and ambiguous and ensure that these are not used as tools to curtail the exercise of freedom of expression. It also recommended that **Kuwait** provide effective judicial redress and compensation to individuals imprisoned in contravention to Articles 9 and 19 of the Covenant.<sup>753</sup>

The Committee observed that in **Kuwait**, Law No. 15 (article 13) was being increasingly used arbitrarily against government critics for politically motivated reasons to deprive them of citizenship for "undermining the social or economic system" or "threatening the higher interests of the State or its security."<sup>754</sup> Accordingly, the Committee recommended that appropriate amendments be made to the aforementioned law and the same never be used to deny citizenship and allow for the peaceful exercise of the freedom of expression.<sup>755</sup>

The Committee was also concerned about a draft law in **Poland** that would impose up to three years of imprisonment on anyone who referred to Nazi camps operated in occupied Poland during the Second World War and accordingly recommended that **Poland** review the draft law in order to bring it into compliance with the Covenant.<sup>756</sup>

### Case review: Incitement to religious hatred – a corollary

In an individual communication<sup>757</sup> against the **Netherlands**, the authors submitted a complaint alleging that a Dutch court's acquittal of Mr. Geert Wilders, a Member of Parliament and the founder of the extreme right-wing political Party for

## 6. Freedoms and Rights of Individuals

Freedom, on charges of incitement of religious hatred was not in conformity with Article 20(2) of the Covenant. The authors alleged that the acquittal did not take into consideration the corpus of Mr. Wilders' statements, accentuated the artificial distinction between criticism of Islam and humiliating Muslims, rejected the counts of incitement on grounds of race because "Moroccans and non-Western migrants" are not races and created a kind of general and absolute exception ("the public debate") to the crime of incitement to discrimination or hatred.<sup>758</sup> Further, the complaint alleged that the Dutch courts had granted too much leeway to freedom of expression over incitement of hatred and that the court failed to take into account the State party's obligations under Article 20 of the Covenant.<sup>759</sup>

The Committee concluded that Article 20(2) of the Covenant was justiciable rejecting the State party's arguments in this regard stating that Article 20 was "designed to give specific recognition to the prohibition of discrimination set forth in article 26 of the Covenant, by identifying a limitation that States parties must impose on other enforceable Covenant rights, including the principle of freedom of expression under article 19."<sup>760</sup> Further, the Committee stated that Article 20 not only required States parties to adopt legislation prohibiting conduct but also imposed on them an obligation to provide for a complaints procedure and appropriate sanctions.<sup>761</sup>

In deciding on the merits, the Committee considered the tension in the application of Articles 19 and 20 of the Covenant as they applied to this case. Relying on its General Comment No. 34, the Committee held that the freedom of expression included expression that may be regarded as deeply offensive and the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives which is essential.<sup>762</sup> Additionally, the Committee considered that any prohibitions under Article 20 must be compatible with Article 19(3) of the Covenant.<sup>763</sup>

Further, the Committee held that the obligation under Article 20(2) did not require States to secure convictions but only to ensure that individuals are prosecuted before an impartial court of law.<sup>764</sup> The Committee noted that the State party had fulfilled its obligations under Article 20 of the Covenant by pursuing a prosecution and it was satisfied with the detailed judgment of the court.<sup>765</sup>

The Committee considered that any prohibitions under Article 20 must be compatible with Article 19(3) of the Covenant.

### 6.4.3 Intimidation, harassment and threats to individuals

The Committee noted several instances of threats, intimidation and attacks against individuals in different capacities with a view to curbing their freedom of expression. For instance, the Committee was concerned that journalists and human rights defenders in **Morocco**<sup>766</sup> were subject to threats and prosecutions and accordingly recommended that **Morocco** ensure that restrictions placed on journalists and human rights defenders do not exceed the limits set by Article 19(3) of the Covenant.<sup>767</sup> Similarly, in **Namibia**, it was concerned about the harassment of journalists by members of the South West Africa People's Organization and the restrictions on political activities

## 6. Freedoms and Rights of Individuals

The Committee was also concerned at the lack of legislation guaranteeing the right to information in Namibia.

on university campuses in the State.<sup>768</sup> Accordingly, the Committee recommended that **Namibia** should accord protection to journalists against harassment and encourage dialogue on political issues in campuses across its territory.<sup>769</sup>

In **Rwanda**, the Committee noted intimidation of politicians, journalists and human rights defenders<sup>770</sup> and urged the State party to provide effective protection to the aforementioned and investigate attacks them.<sup>771</sup> Several journalists and social media users in **Ecuador** had been subjected to harassment and anonymous threats after being named by government officials<sup>772</sup> and accordingly the Committee recommended that **Ecuador** provide individuals with proper protection from such threats including prompt, effective and thorough investigations.<sup>773</sup>

### 6.4.4 Access to information and independence of research

The Committee noted that the Research, Science and Technology Act (Act No. 23 of 2004) in **Namibia** governing research projects defined them very broadly and subjected them to a cumbersome and costly prior authorization procedure.<sup>774</sup> Accordingly, it recommended that **Namibia** amend its impugned legislation to respect, protect and promote academic freedoms including removing the need for prior authorization from the State.<sup>775</sup>

The Committee was also concerned at the lack of legislation guaranteeing the right to information in **Namibia**<sup>776</sup> and accordingly recommended that it develop and adopt legislation guaranteeing the right to information.<sup>777</sup> Similarly, it was concerned about reports suggesting that the Access to Information Act (2004) in **Jamaica** suffered from obstacles in its implementation such as the low level of knowledge of information officers and an inaccessible complaint procedure.<sup>778</sup> It asked **Jamaica** to ensure effective implementation of the aforementioned legislation including providing training to officers, conducting public information campaigns and establishing an accessible complaint mechanism.<sup>779</sup> Lastly, in **Ghana** it noted delayed adoption of its Right to Information Bill<sup>780</sup> and accordingly, recommended an expedited adoption of the bill.<sup>781</sup>

## 6.5 Right to Peaceful Assembly (Art 21)

### 6.5.1 Prior authorization for assembly

The Committee noted that some States parties placed a requirement of prior authorization for peaceful gatherings either in domestic legislation or as a matter of practice. There were instances where such authorizations were denied outside the scope of the Covenant.

The Committee noted that laws in **Rwanda**<sup>782</sup>, **Morocco**<sup>783</sup>, **Azerbaijan**<sup>784</sup> (in practice) and **Kuwait**<sup>785</sup> subjected assemblies and demonstrations in public places to prior authorization. The Committee also noted that **Rwanda** had refused authorization in several instances based on justifications outside Article 21 of the Covenant<sup>786</sup> and **Kuwait** barred non-citizens from participating in public gatherings.<sup>787</sup> Accordingly, the Committee recommended that the States parties ensure that any restrictions on the right to peaceful assembly are

## 6. Freedoms and Rights of Individuals

permissible under the Covenant.<sup>788</sup> In deciding the limits of permissible restrictions to Article 21, the Committee concluded that the same must be sourced within the second sentence of Article 21 and the burden to justify the same remains on the State party.<sup>789</sup>

### 6.5.2 Excessive regulation and the chilling effect thereof

Excessive regulation, intimidation tactics and use of excessive force at peaceful assemblies led in some States parties to a chilling effect on such gatherings as noted by the Committee.

The Committee observed that assemblies in **Moldova** were excessively regulated, the number of prosecutions produced a chilling effect and law enforcement officials warned individuals against participating in political assemblies.<sup>790</sup> Accordingly, the Committee recommended that the States parties review their legislations to bring them in compliance with Article 22 of the Covenant.<sup>791</sup>

On a similar note, authorities in **Azerbaijan** used a variety of tactics including preventive detention and “prophylactic conversations on police premises aimed at intimidating activists and discouraging them from participating in assemblies”<sup>792</sup> and were asked to end the aforementioned practices that are inconsistent with Articles 19 and 21 of the Covenant.<sup>793</sup>

### 6.5.3 Excessive use of force

The Committee noted that security forces in **Kuwait**<sup>794</sup> had used force excessively and disproportionately to disperse peaceful demonstrations and it recommended that **Kuwait** train all security forces on using force taking “due account of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.”<sup>795</sup>

### 6.5.4 Right to demonstrate – presumption of innocence

The domestic legislation in **Burkina Faso** punished acts of vandalism committed during public demonstrations in a manner which allows for any member of a group to be held criminally responsible regardless of whether the alleged perpetrator has been identified or not.<sup>796</sup> Accordingly, the Committee recommended that **Burkina Faso** respect the presumption of innocence under Article 14 of the Covenant and Article 21 of the Covenant by appropriately amending national legislation.<sup>797</sup>

## 6.6 Freedom of Association (Art 22)

In its observations on the freedom of association, the Committee mainly raised concerns at the onerous procedures for registration present in several States parties and noted this not only in the context of individual legislations but also the implementation of said laws in different States. The Committee also noted several instances where the rules related to funding of NGOs or other associations were used to influence them unduly. The Committee also observed that several States parties criminalized conduct that should otherwise be legitimate.

The Committee observed that assemblies in Moldova were excessively regulated.



## 6. Freedoms and Rights of Individuals

The rules for suspension or dissolution of political parties were considered too broad (and therefore prone to misuse) in the case of Kazakhstan and Ecuador.

### 6.6.1 Registration and functioning of NGOs/other organizations and associations

The Committee noted that several States placed impediments on the registration and operation of NGOs, political parties and other associations or organizations. For instance, **Kazakhstan** imposed undue restrictions via regulations governing registration of political parties and on their exercise of the freedom of assembly and political participation.<sup>798</sup> Similarly, the domestic legislations in **Rwanda**<sup>799</sup>, **Azerbaijan**<sup>800</sup> and **Moldova**<sup>801</sup> placed onerous obligations for the registration of NGOs and other organizations. Accordingly, the Committee recommended that the States Parties clarify the rules governing registration of NGOs and other organizations.<sup>802</sup>

The Committee also noted that civil society organizations in **Kazakhstan** were apprehensive that the establishment of a “central operator” and other provisions regulating allocation of funds to public associations may be used to exert control over them and limit their ability to receive funds from abroad.<sup>803</sup> Accordingly, the Committee recommended that the State ensure that legislations governing allocation of funds to NGOs do not serve as means of undue control and interference.<sup>804</sup> The Committee also noted that in **Rwanda**, NGOs had to provide evidence of funding for the entire duration of their intended period of operation which led NGOs in Rwanda to only apply for short term registrations.<sup>805</sup> The Committee was also concerned at the invasive role played by the **Rwanda** Governance Board in determining the leadership of NGOs<sup>806</sup> and recommended that **Rwanda** refrain from interfering with the internal functioning of NGOs.<sup>807</sup>

Similarly, the rules for suspension or dissolution of political parties were considered too broad (and therefore prone to misuse) in the case of **Kazakhstan**<sup>808</sup> and **Ecuador**<sup>809</sup>. In both instances, the Committee recommended that the States Parties clarify the grounds for suspension or dissolution of political parties.<sup>810</sup>

Further, in **Kazakhstan**<sup>811</sup>, the Committee noted that the legal framework regulating strikes and mandatory affiliation of trade unions could adversely affect their freedom of association and accordingly recommended that **Kazakhstan** bring its domestic legislations regulating strikes and the freedom of association of trade unions in line with Articles 19, 22 and 25 of the Covenant.<sup>812</sup>

### 6.6.2 Criminalization of legitimate activities

The Committee noted that in **Kazakhstan**, associations could be held criminally responsible for undertaking legitimate activities including under the offense of incitement to “social, national, clan, class or religious discord.”<sup>813</sup> Accordingly, the Committee recommended that **Kazakhstan** refrain from criminalizing public associations for legitimate activities. The Committee also recommended that criminal provisions should not be defined too broadly and must comply with the principle of legal certainty.<sup>814</sup>

Similarly, human rights defenders in **Morocco** were subjected to disproportionate and unjustified restrictions and had their freedom of movement limited particularly in Western



## 6. Freedoms and Rights of Individuals

The Committee asked the State to revise its domestic laws and bring them in compliance with Article 22 of the Covenant.<sup>816</sup> In **Azerbaijan**, the Committee expressed concern regarding measures taken against NGOs such as closure, criminal investigation and the freezing of assets of both the NGO and its members.<sup>817</sup> There were also limitations placed on the freedom of movement of journalists, opposition politicians, human rights defenders and lawyers.<sup>818</sup> To this, the Committee recommended that **Azerbaijan** must ensure that legal provisions govern funding to allow access to foreign funds and to ensure that NGOs can operate freely without fear of retribution for legitimate activities.<sup>819</sup> It also noted that internally displaced persons were subjected to residence registrations and restricted choices of residence upon resettlement.<sup>820</sup> The Committee reiterated its previous recommendation<sup>821</sup> that the State party should bring its residence registration system into full compliance with the Covenant.<sup>822</sup>

### 6.7 Political Participation and Participation in Public Life (Art 25)

The Committee noted that States parties have placed limits public participation by using restrictive criminal law provisions. For instance, the Committee noted that **Azerbaijan** applied severe restrictions during presidential election campaigns, such as only 22 days of campaigning, limited opportunities for assemblies, intimidation, conviction and detention of opposition candidates and violations of the registration process. Accordingly, the Committee recommended that **Azerbaijan** enact transparent electoral regulation and encourage practices that allow pluralistic political debate and refrain from the use of the criminal law system to exclude opposition candidates.<sup>823</sup>

Another example of the same can be seen in **Burkina Faso** where the State's Electoral Code exempted certain citizens from participating in election or acceding to elected office on the renders ineligible, anyone who "supported an unconstitutional change in violation of the principle of the democratic rotation of power".<sup>824</sup> The Committee was concerned about the ill-defined exclusion of a several candidates on the basis of their political beliefs and deemed it to be a violation of Article 25 of the Covenant. The Committee recommended that **Burkina Faso** guarantee to its citizens the right to vote and run for elections without distinction. The Committee referred to its General Comment No. 25 (1996) and the ruling by the Community Court of Justice of the Economic Community of West African States.<sup>825</sup>

The Committee noted that States parties have placed limits public participation by using restrictive criminal law provisions.

#### Other UN Treaty Bodies

Regarding political participation, the **CRC** noted in the **United Kingdom's** Concluding Observations that children demand increasingly for a right to vote from the age of 16 years. The voting age was lowered in **Scotland**. The Committee encouraged States parties to consult with children on this issue and if implemented, this should be supported by human rights education.<sup>826</sup>

## 6. Freedoms and Rights of Individuals

The Committee also mentioned political participation of children several times in the General Comment on the Rights of Adolescents. Adolescents engage in many activities and use social networks. They hold potential in terms of political engagement and monitoring accountability of States.<sup>827</sup> The Committee emphasized the importance of participation through which they can advocate for their rights: adolescents need to be supported in forming organizations. If voting age is lowered, States need to make sure that adolescents understand their role as active citizen.<sup>828</sup>

The Committee also stressed the importance of political participation with regard to the freedom of association: association with peers is a major part of one's development.<sup>829</sup> Adolescent's organizations, clubs and associations should be legally recognized.<sup>830</sup> Additionally, the right to information plays a great role, especially in the digital environment since adolescents often communicate through social media and find their information on the Internet. They should be trained on this as part of the basic education curriculum to ensure that this is accessible to everyone without discrimination.<sup>831</sup>

Poverty during adolescence can lead to social and political exclusion<sup>832</sup>, another reason why education plays a key role in ensuring the enjoyment of the rights of adolescents. Investments should be made in strategies to promote positive gender relations to overcome barriers for political participation of girls.<sup>833</sup>

- <sup>1</sup> *Concluding observations on the initial reports of Ghana* (Adopted by the Committee at its 117th session (20 June-15 July 2016)), UN Doc. CCPR/C/GHA/CO/1 (**Ghana**), ¶ 7; *Concluding observations on the fourth periodic report of Jamaica* (Adopted by the Committee at its 118th session (17 October-4 November 2016)), UN Doc. CCPR/C/JAM/CO/4 (**Jamaica**), ¶ 9
- <sup>2</sup> *Concluding observations on the sixth periodic report of New Zealand* (Adopted by the Committee at its 116th session (7-31 March 2016)), UN Doc. CCPR/C/NZL/CO/6 (**New Zealand**), ¶ 9
- <sup>3</sup> *Concluding observations on the seventh periodic report of Sweden* (Adopted by the Committee at its 116th session (7-31 March 2016)), UN Doc. CCPR/C/SWE/CO/7 (**Sweden**), ¶ 4
- <sup>4</sup> *Concluding observations on the third periodic report of Kuwait* (Adopted by the Committee at its 117th session (20 June-15 July 2016)), UN Doc. CCPR/C/KWT/CO/3 (**Kuwait**), ¶ 6
- <sup>5</sup> *Concluding observations on the initial reports of South Africa* (Adopted by the Committee at its 116th session (7-31 March 2016)), UN Doc. CCPR/C/ZAF/CO/1 (**South Africa**), ¶ 6
- <sup>6</sup> See, HRI/CORE/ZAF/2014, ¶ 95
- <sup>7</sup> *Concluding observations on the third periodic report of Moldova* (Adopted by the Committee at its 118th session (17 October-4 November 2016)), UN Doc. CCPR/C/MDA/CO/3 (**Moldova**), ¶ 5
- <sup>8</sup> *Concluding observations on the sixth periodic report of Morocco* (Adopted by the Committee at its 118th session (17 October-4 November 2016)), UN Doc. CCPR/C/MAR/CO/6 (**Morocco**), ¶ 6; Ghana, ¶ 8; Jamaica, ¶ 10; New Zealand, ¶ 10; Sweden, ¶ 5; Kuwait, ¶ 7; South Africa, ¶ 6; Moldova, ¶ 6;
- <sup>9</sup> New Zealand, ¶¶ 13, 14
- <sup>10</sup> Poland, ¶ 9
- <sup>11</sup> Poland, ¶ 10
- <sup>12</sup> Denmark, ¶ 27
- <sup>13</sup> Denmark, ¶ 28
- <sup>14</sup> *Concluding observations on the initial reports of Burkina Faso* (Adopted by the Committee at its 117th session (20 June-15 July 2016)), UN Doc. CCPR/C/BFA/CO/1 (**Burkina Faso**), ¶¶ 5-6
- <sup>15</sup> *Concluding observations on the fourth periodic report of Rwanda* (Adopted by the Committee at its 116th session (7-31 March 2016)), UN Doc. CCPR/C/RWA/CO/4 (**Rwanda**), ¶¶ 5-6
- <sup>16</sup> Morocco, ¶¶ 5-6
- <sup>17</sup> South Africa, ¶¶ 6-7
- <sup>18</sup> Sweden, ¶¶ 4-5
- <sup>19</sup> Ghana, ¶¶ 7-8
- <sup>20</sup> Burkina Faso, ¶¶ 5-6; Rwanda, ¶¶ 5-6; Morocco, ¶¶ 5-6; South Africa, ¶¶ 6-7; Sweden, ¶¶ 4-5; Ghana, ¶¶ 7-8
- <sup>21</sup> UN Committee on the Elimination of Racial Discrimination, *Concluding Observations of Togo*, UN Doc. CERD/C/TGO/CO/18-19, ¶¶ 29-30 (**CERD, Togo**); CERD, *Concluding Observations of Portugal*, UN Doc. CERD/C/PRT/CO/15-17, ¶¶ 8-9 (**CERD, Portugal**); CERD, *Concluding Observations of Lebanon*, UN Doc. CERD/C/LBN/CO/18-22, ¶¶ 17-18 (**CERD, Lebanon**).
- <sup>22</sup> CERD, Portugal, ¶ 8-9.
- <sup>23</sup> CERD, Portugal, ¶¶ 12-13; CERD, Togo, ¶¶ 29-30; CERD, *Concluding Observations of Namibia*, UN Doc. CERD/C/NAM/CO/13-15, ¶¶ 25-26 (**CERD, Namibia**); CERD, *Concluding Observations of Ukraine*, UN Doc. CERD/C/UKR/CO/22-23, ¶¶ 31-32 (**CERD, Ukraine**); CERD, *Concluding Observations of Sri Lanka*, UN Doc. CERD/C/LKA/CO/10-17, ¶¶ 10-11 (**CERD, Sri Lanka**); CERD, *Concluding Observations of Oman*, UN Doc. CERD/C/OMN/CO/2-5, ¶¶ 11-12 (**CERD, Oman**); CERD, *Concluding Observations of Azerbaijan*, UN Doc. CERD/C/AZE/CO/7-9, ¶¶ 17-18 (**CERD, Azerbaijan**).
- <sup>24</sup> CERD, Ukraine, ¶¶ 31-32; CERD, Sri Lanka, ¶¶ 10-11.
- <sup>25</sup> CERD, Oman, ¶¶ 11-12; CERD, Azerbaijan, ¶¶ 17-18.
- <sup>26</sup> CERD, *Concluding Observations of the United Kingdom*, UN Doc. CERD/C/GBR/CO/21-23, ¶¶ 7-8 (**CERD, UK**).
- <sup>27</sup> CERD, Sri Lanka, ¶¶ 10-11.
- <sup>28</sup> CERD, *Concluding Observations of Pakistan*, UN Doc. CERD/C/PAK/CO/21-23, ¶¶ 5-6 (**CERD, Pakistan**).
- <sup>29</sup> CERD, *Concluding Observations of Paraguay*, UN Doc. CERD/C/PRY/CO/4-6, ¶¶ 21-22 (**CERD, Paraguay**).
- <sup>30</sup> *Concluding observations on the fourth periodic report of Azerbaijan* (Adopted by the Committee at its 118th session (17 October-4 November 2016)), UN Doc. CCPR/C/AZE/CO/4 (**Azerbaijan**), ¶¶ 4-5
- <sup>31</sup> *Concluding observations on the second periodic report of Kazakhstan* (Adopted by the Committee at its 117th session (20 June-15 July 2016)), UN Doc. CCPR/C/KAZ/CO/2 (**Kazakhstan**), ¶¶ 5-6
- <sup>32</sup> Azerbaijan, ¶¶ 4-5; Kazakhstan, ¶¶ 5-6
- <sup>33</sup> *Concluding observations on the sixth periodic report of Denmark* (Adopted by the Committee at its 117th session (20 June-15 July 2016)), UN Doc. CCPR/C/DNK/CO/6 (**Denmark**), ¶¶ 11-12
- <sup>34</sup> Azerbaijan, ¶¶ 4-5
- <sup>35</sup> Kazakhstan, ¶¶ 5-6
- <sup>36</sup> *Concluding observations on the sixth periodic report of Ecuador* (Adopted by the Committee at its 117th session (20 June-15 July 2016)), UN Doc. CCPR/C/ECU/CO/6 (**Ecuador**), ¶¶ 5-6
- <sup>37</sup> Denmark, ¶¶ 11-12; Azerbaijan, ¶¶ 4-5; Kazakhstan, ¶¶ 5-6; Ecuador, ¶¶ 5-6
- <sup>38</sup> Denmark, ¶¶ 11-12
- <sup>39</sup> Jamaica, ¶ 5
- <sup>40</sup> *Concluding observations on the fifth periodic report of Argentina* (Adopted by the Committee at its 117th session (20 June-15 July 2016)), UN Doc. CCPR/C/ARG/CO/5 (**Argentina**), ¶ 5
- <sup>41</sup> Argentina, ¶ 5
- <sup>42</sup> Jamaica, ¶ 7
- <sup>43</sup> *Concluding observations on the fourth periodic report of Slovakia* (Adopted by the Committee at its 118th session (17 October-4 November 2016)), UN Doc. CCPR/C/SVK/CO/4 (**Slovakia**), ¶ 8
- <sup>44</sup> *Concluding observations on the seventh periodic report of Poland* (Adopted by the Committee at its 118th session (17 October-4 November 2016)), UN Doc. CCPR/C/POL/CO/7 (**Poland**), ¶ 5
- <sup>45</sup> Burkina Faso, ¶ 7
- <sup>46</sup> Ghana, ¶ 9
- <sup>47</sup> *Concluding observations on the sixth periodic report of Costa Rica* (Adopted by the Committee at its 116th session (7-31 March 2016)), UN Doc. CCPR/C/CRI/CO/6 (**Costa Rica**), ¶ 5
- <sup>48</sup> *Concluding observations on the second periodic report of Namibia* (Adopted by the Committee at its 116th session (7-31 March 2016)), UN Doc. CCPR/C/NAM/CO/2 (**Namibia**), ¶ 7
- <sup>49</sup> Moldova, ¶ 7
- <sup>50</sup> South Africa, ¶ 10
- <sup>51</sup> *Concluding observations on the third periodic report of Slovenia* (Adopted by the Committee at its 116th session (7-31 March 2016)),

UN Doc. CCPR/C/SVN/CO/3 (**Slovenia**), ¶ 5

<sup>52</sup> Jamaica, ¶ 6; Argentina, ¶ 6; Slovakia, ¶ 9; Poland, ¶ 6; Burkina Faso, ¶ 8; Ghana, ¶ 10; Costa Rica, ¶ 6; Namibia, ¶ 8; Moldova, ¶ 8; South Africa, ¶ 11; Slovenia, ¶ 6

<sup>53</sup> Ecuador, ¶ 9

<sup>54</sup> Sweden, ¶ 8

<sup>55</sup> Sweden, ¶ 8

<sup>56</sup> Jamaica, ¶ 7

<sup>57</sup> New Zealand, ¶ 11

<sup>58</sup> Rwanda, ¶ 9

<sup>59</sup> Ghana, ¶ 9

<sup>60</sup> South Africa, ¶ 10

<sup>61</sup> Kazakhstan, ¶ 5

<sup>62</sup> Ecuador, ¶ 10; Sweden, ¶ 9; Jamaica, ¶ 8; New Zealand, ¶ 12; Rwanda, ¶ 10; Ghana, ¶ 10; South Africa, ¶ 11; Kazakhstan, ¶ 6

<sup>63</sup> New Zealand, ¶ 7

<sup>64</sup> Moldova, ¶ 9

<sup>65</sup> New Zealand, ¶ 8; Moldova, ¶ 10

<sup>66</sup> CERD, General recommendation No 17 on the establishment of national institutions to facilitate the implementation of the Convention, 19 March 1993

<sup>67</sup> CERD, Pakistan; CERD, Concluding Observations of South Africa, UN Doc. CERD/C/ZAF/CO/4-8 (**CERD, South Africa**); CERD, Sri Lanka; CERD, Ukraine; CERD, UK; CERD, Togo.

<sup>68</sup> CERD, Oman; CERD, Pakistan; CERD, Sri Lanka; CERD, UK.

<sup>69</sup> CERD, Namibia.

<sup>70</sup> CERD, Pakistan.

<sup>71</sup> CERD, Sri Lanka; CERD, UK; CERD, Oman; CERD, Togo.

<sup>72</sup> CERD, Togo.

<sup>73</sup> CERD, Ukraine.

<sup>74</sup> CERD, Namibia; CERD, Lebanon; CERD, Pakistan; CERD, South Africa; CERD, Sri Lanka; CERD, Togo.

<sup>75</sup> CRPD, Concluding Observations of Lithuania, UN Doc. CRPD/C/LTU/CO/1 (**CRPD, Lithuania**); CRPD, Concluding Observations of Uganda, UN Doc. CRPD/C/UGA/CO/1 (**CRPD, Uganda**); CRPD, Concluding Observations of the United Arab Emirates, UN Doc. CRPD/C/ARE/CO/1 (**CRPD, UAE**); CRPD, Concluding Observations of Uruguay, UN Doc. CRPD/C/URY/CO (**CRPD, Uruguay**); CRPD, Concluding Observations of Ethiopia, UN Doc. CRPD/C/ETH/CO/1 (**CRPD, Ethiopia**); CRPD, Concluding Observations of Serbia, UN Doc. CRPD/C/SRB/CO/1 (**CRPD, Serbia**).

<sup>76</sup> CRPD, UAE.

<sup>77</sup> CRPD, Concluding Observations of Slovakia, UN Doc. CRPD/C/SVK/CO/1 (**CRPD, Slovakia**); CRPD, Concluding Observations of Thailand, UN Doc. CRPD/C/THA/CO/1 (**CRPD, Thailand**).

<sup>78</sup> CRPD, Concluding Observations of Chile, UN Doc. CRPD/C/CHL/CO/1 (**CRPD, Chile**); CRPD, Ethiopia; CRPD, Lithuania; CRPD, Concluding Observations of Portugal, UN Doc. CRPD/C/PRT/CO/1 (**CRPD, Portugal**); CRPD, Thailand.

<sup>79</sup> CRPD, Concluding Observations of Bolivia, UN Doc. CRPD/C/BOL/CO/1 (**CRPD, Bolivia**); CRPD, Concluding Observations of Guatemala, UN Doc. CRPD/C/GTM/CO/1 (**CRPD, Guatemala**); CRPD, Portugal; CRPD, Serbia; CRPD, Thailand; CRPD, Uganda.

<sup>80</sup> CRPD, Ethiopia; CRPD, Bolivia; CRPD, Guatemala; CRPD, Lithuania; CRPD, Concluding Observations of Italy, UN Doc.

CRPD/C/ITA/CO/1 (**CRPD, Italy**); CRPD, Serbia; CRPD, Slovakia; CRPD, Uganda; CRPD, Thailand.

<sup>81</sup> CRPD, Guidelines on Independent Monitoring Frameworks and their participation in the work of the Committee.

<sup>82</sup> Poland, ¶ 7

<sup>83</sup> Poland, ¶ 7

<sup>84</sup> Kuwait, ¶ 30

<sup>85</sup> Azerbaijan, ¶ 6

<sup>86</sup> Rwanda, ¶ 33

<sup>87</sup> Kazakhstan, ¶ 37

<sup>88</sup> Ecuador, ¶ 25

<sup>89</sup> Moldova, ¶ 29

<sup>90</sup> Poland, ¶ 8; Kuwait, ¶ 31; Azerbaijan, ¶ 7; Rwanda, ¶ 34; Kazakhstan, ¶ 38; Ecuador, ¶ 26; Moldova, ¶ 30

<sup>91</sup> Rwanda, ¶ 34;

<sup>92</sup> Poland, ¶ 8

<sup>93</sup> Moldova, ¶ 29

<sup>94</sup> Burkina Faso, ¶ 31

<sup>95</sup> Azerbaijan, ¶ 46

<sup>96</sup> Moldova, ¶ 30; Burkina Faso, ¶ 32; Azerbaijan, ¶ 47;

<sup>97</sup> Morocco, ¶ 33

<sup>98</sup> Kazakhstan, ¶ 37

<sup>99</sup> Ecuador, ¶ 25

<sup>100</sup> Azerbaijan, ¶ 46

<sup>101</sup> Morocco, ¶ 34; Ecuador, ¶ 26; Azerbaijan, ¶ 47; Kazakhstan, ¶ 38

<sup>102</sup> Poland, ¶ 33

<sup>103</sup> Kuwait, ¶ 30

<sup>104</sup> Azerbaijan, ¶ 46

<sup>105</sup> Kazakhstan, ¶ 37

<sup>106</sup> Azerbaijan, ¶ 46

<sup>107</sup> Ecuador, ¶ 25

<sup>108</sup> Moldova, ¶ 29

<sup>109</sup> Costa Rica, ¶ 31

<sup>110</sup> Poland, ¶ 34; Kuwait, ¶ 31; Azerbaijan, ¶ 47; Kazakhstan, ¶ 38; Ecuador, ¶ 26; Moldova, ¶ 30; Costa Rica, ¶ 32

<sup>111</sup> *YM v. Russian Federation*, Communication No. 2059/2011, UN Doc. CCPR/C/116/D/2059/2011 (31 March 2016) ¶ 9.2; *Ramazan Esergepov v. Kazakhstan*, Communication No. 2129/2012 UN Doc. CCPR/C/116/D/2129/2012 (29 March 2016) ¶ 11.3

<sup>112</sup> UN Human Rights Committee, General comment no. 32, Article 14, Right to equality before courts and tribunals and to fair trial, UN Doc. CCPR/C/GC/32 (23 August 2007) ¶ 29

- <sup>113</sup> *YM v. Russian Federation*, Communication No. 2059/2011, UN Doc. CCPR/C/116/D/2059/2011 (31 March 2016) ¶ 9.3; *Ramazan Esergepov v. Kazakhstan*, Communication No. 2129/2012 UN Doc. CCPR/C/116/D/2129/2012 (29 March 2016) ¶ 11.4
- <sup>114</sup> Poland, ¶ 33
- <sup>115</sup> Jamaica, ¶ 41
- <sup>116</sup> Namibia, ¶ 29
- <sup>117</sup> Namibia, ¶ 29
- <sup>118</sup> Poland, ¶ 34; Jamaica, ¶ 42; Namibia, ¶ 30
- <sup>119</sup> Poland, ¶ 33
- <sup>120</sup> Azerbaijan, ¶ 24
- <sup>121</sup> Kazakhstan, ¶ 37
- <sup>122</sup> Azerbaijan, ¶ 24
- <sup>123</sup> Azerbaijan, ¶ 24
- <sup>124</sup> Kazakhstan, ¶ 39
- <sup>125</sup> Poland, ¶ 33
- <sup>126</sup> Jamaica, ¶ 41
- <sup>127</sup> Namibia, ¶ 31
- <sup>128</sup> Slovenia, ¶ 27
- <sup>129</sup> Poland, ¶ 34; Azerbaijan, ¶ 25; Kazakhstan, ¶¶ 38, 40; Jamaica, ¶ 42; Namibia, ¶ 32; Slovenia, ¶ 28
- <sup>130</sup> *YM v. Russian Federation*, Communication No. 2059/2011, UN Doc. CCPR/C/116/D/2059/2011 (31 March 2016) ¶ 9.5; *Ramazan Esergepov v. Kazakhstan*, Communication No. 2129/2012 UN Doc. CCPR/C/116/D/2129/2012 (29 March 2016) ¶ 11.5
- <sup>131</sup> Morocco, ¶ 33
- <sup>132</sup> Argentina, ¶ 31
- <sup>133</sup> Morocco, ¶ 34; Poland, ¶ 34; Argentina, ¶ 32
- <sup>134</sup> Kazakhstan, ¶ 17
- <sup>135</sup> Moldova, ¶ 35
- <sup>136</sup> Ecuador, ¶ 21
- <sup>137</sup> Kazakhstan, ¶ 18; Moldova, ¶ 36; Ecuador, ¶ 22
- <sup>138</sup> Argentina, ¶ 27
- <sup>139</sup> Argentina, ¶ 29
- <sup>140</sup> Argentina, ¶ 27
- <sup>141</sup> Ecuador, ¶ 19
- <sup>142</sup> Burkina Faso, ¶ 9
- <sup>143</sup> Rwanda, ¶ 23
- <sup>144</sup> Rwanda, ¶ 32
- <sup>145</sup> South Africa, ¶ 12
- <sup>146</sup> For instance, the Committee noted that Ecuador had provided information to the Committee pertaining to measures being adopted to strengthen investigations procedures for its "Peasant Defense Networks" - (CCPR/C/ECU/6, ¶¶ 165 – 166)
- <sup>147</sup> Rwanda, ¶¶ 24, 33; South Africa, ¶ 13; Burkina Faso, ¶ 10; Argentina, ¶¶ 28, 30; Ecuador, ¶ 20
- <sup>148</sup> CERD, Togo, ¶¶ 15-18.
- <sup>149</sup> CERD, South Africa, ¶¶ 10-11.
- <sup>150</sup> CERD, Sri Lanka, ¶¶ 29-30.
- <sup>151</sup> CERD, Prevention of Racial Discrimination, including Early Warning and Urgent Action Procedures, Decision on Burundi, 23 August 2016.
- <sup>152</sup> CERD, Prevention of Racial Discrimination, including Early Warning and Urgent Action Procedures, Decision on Burundi, 28 November 2016.
- <sup>153</sup> CERD, Prevention of Racial Discrimination, including Early Warning and Urgent Action Procedures, Letter to Ethiopia, 13 December 2016.
- <sup>154</sup> CERD, Prevention of Racial Discrimination, including Early Warning and Urgent Action Procedures, Letter to Indonesia, 13 December 2016; CERD, Prevention of Racial Discrimination, including Early Warning and Urgent Action Procedures, Letter to Indonesia, 3 October 2016.
- <sup>155</sup> Denmark, ¶ 7
- <sup>156</sup> New Zealand, ¶ 5
- <sup>157</sup> Kuwait, ¶ 8
- <sup>158</sup> Sweden, ¶ 6
- <sup>159</sup> Denmark, ¶ 8; New Zealand, ¶ 6; Kuwait, ¶ 9; Sweden, ¶ 7
- <sup>160</sup> Jamaica, ¶ 11
- <sup>161</sup> Rwanda, ¶ 8
- <sup>162</sup> According to Article 3 of the Covenant, the States parties "undertake to ensure the equal right of men and women to the enjoyment" of the rights in the Covenant.
- <sup>163</sup> The Committee noted that this was an issue that was present in Moldova, Jamaica, Slovakia, Kuwait, Ecuador, Denmark, Azerbaijan, Burkina Faso, New Zealand, Rwanda, Argentina, Costa Rica, Slovenia and Namibia.
- <sup>164</sup> Moldova, ¶ 13
- <sup>165</sup> Moldova, ¶ 14
- <sup>166</sup> Kuwait, ¶ 16
- <sup>167</sup> Kuwait, ¶ 16
- <sup>168</sup> Kuwait, ¶ 17
- <sup>169</sup> Burkina Faso, ¶¶ 11-12
- <sup>170</sup> Slovenia, ¶ 11
- <sup>171</sup> Slovenia, ¶ 12
- <sup>172</sup> The Committee noted that this was an issue in Morocco, Kuwait, Burkina Faso and Ghana.
- <sup>173</sup> Morocco, ¶ 13
- <sup>174</sup> Morocco, ¶ 14
- <sup>175</sup> Kuwait, ¶ 14
- <sup>176</sup> Kuwait, ¶ 15
- <sup>177</sup> The Committee noted that this was an issue with regard to Ecuador, Denmark, Azerbaijan, New Zealand, Argentina, Sweden and Costa Rica.

- <sup>178</sup> Ecuador, ¶ 7
- <sup>179</sup> Ecuador, ¶ 8
- <sup>180</sup> New Zealand, ¶ 17
- <sup>181</sup> New Zealand, ¶ 18
- <sup>182</sup> The Committee noted this issue in Burkina Faso, Azerbaijan, Rwanda and Namibia.
- <sup>183</sup> Azerbaijan, ¶ 14
- <sup>184</sup> Azerbaijan, ¶ 15
- <sup>185</sup> Namibia, ¶ 11
- <sup>186</sup> Namibia, ¶ 12
- <sup>187</sup> OHCHR, Thematic study on equality and non-discrimination under article 5 of the Convention on the Rights of Persons with Disabilities, ¶26 (**OHCHR, Thematic study**).
- <sup>188</sup> CRPD, General Comment 3 on art. 6, 2 September 2016, CRPD/C/GC/3.
- <sup>189</sup> OHCHR, Thematic study, ¶64.
- <sup>190</sup> OHCHR, Thematic study, ¶68.
- <sup>191</sup> OHCHR, Thematic study, ¶70.
- <sup>192</sup> OHCHR, Thematic study, ¶73-74.
- <sup>193</sup> CRPD, Bolivia, ¶13-14; CRPD, Concluding Observations of Colombia, UN Doc. [CRPD/C/COL/CO/1](#), ¶14-15 (**CRPD, Colombia**); CRPD, Ethiopia, <https://tinyurl.com/y9tn6m68>, ¶11-12; CRPD, Guatemala, ¶15-16; CRPD, Italy, ¶11-12; CRPD, UAE, ¶11-12, CRPD, Uruguay, ¶13-14; CRPD, Chile, ¶11-12; CRPD, Slovakia, ¶17-20; CRPD, Uganda, ¶8-9.
- <sup>194</sup> CRPD, Colombia, ¶16-17; CRPD, Portugal, ¶17-18; CRPD, Serbia, ¶11-12.
- <sup>195</sup> CRPD, Slovakia, ¶17-20.
- <sup>196</sup> CRPD, Lithuania, ¶15-16; CRPD, Portugal, ¶17-18; CRPD, Thailand, <https://tinyurl.com/y8r5pdn2>, ¶15-16; CRPD, Uganda, ¶10-11.
- <sup>197</sup> See CRPD, all Concluding Observations.
- <sup>198</sup> CRC, General Comment No. 20 on the implementation of the rights of the child during adolescence, 6 December 2016, CRC/C/GC/20, ¶27 (**CRC, GC Adolescence**).
- <sup>199</sup> CRC, GC Adolescence, ¶27-28.
- <sup>200</sup> CRC, Concluding Observations of Iran, UN Doc. CRC/C/IRN/CO/3-4, ¶29-32 (**CRC, Iran**); CRC, Concluding Observations of Pakistan, UN Doc. CRC/C/PAK/CO/5, ¶18-19 (**CRC, Pakistan**); CRC, Concluding Observations of Saudi Arabia, UN Doc. CRC/C/SAU/CO/3-4, ¶15-17 (**CRC, Saudi Arabia**).
- <sup>201</sup> CRC, Pakistan, ¶39.
- <sup>202</sup> CRC, Saudi Arabia, ¶15-16.
- <sup>203</sup> CRC, Iran, ¶29-30.
- <sup>204</sup> The Committee noted that this was an issue in Moldova, Slovakia, Poland, Kuwait, Denmark, Burkina Faso, Azerbaijan and New Zealand.
- <sup>205</sup> Moldova, ¶ 15
- <sup>206</sup> Moldova, ¶ 16
- <sup>207</sup> The Committee noted this with regard to Moldova, Slovakia, Poland, Morocco, Kuwait, Ecuador, Denmark, Azerbaijan, New Zealand, Rwanda, Ghana, Kazakhstan, Sweden, Costa Rica, South Africa and Colombia.
- <sup>208</sup> Azerbaijan, ¶ 16; Kazakhstan, ¶ 11
- <sup>209</sup> Sweden, ¶ 20
- <sup>210</sup> Azerbaijan, ¶ 17; Kazakhstan, ¶ 12; Sweden, ¶ 21
- <sup>211</sup> The Committee noted that this was an issue for Slovakia, Poland, Morocco, Burkina Faso, Azerbaijan, New Zealand, Kazakhstan, Costa Rica, Namibia and Slovenia.
- <sup>212</sup> Slovakia, ¶ 24
- <sup>213</sup> Slovakia, ¶ 25
- <sup>214</sup> Poland, ¶ 19
- <sup>215</sup> Poland, ¶ 20
- <sup>216</sup> Azerbaijan, ¶ 16
- <sup>217</sup> Azerbaijan, ¶ 17
- <sup>218</sup> The Committee found this issue in Poland, Morocco, Ecuador, Azerbaijan, New Zealand, Kazakhstan, Costa Rica, Namibia and Colombia.
- <sup>219</sup> Morocco, ¶ 15
- <sup>220</sup> Morocco, ¶ 16
- <sup>221</sup> Azerbaijan, ¶ 16-17
- <sup>222</sup> Ghana, ¶ 15. The Committee noted that in Namibia, there was a similar issue with regard to rape victims frequently withdrawing their complaints due to their receiving compensation from the perpetrator or succumbing to family pressure, shame or threats. In this regard, the Committee recommended that Namibia protect victims from stigmatization and reprisals. Namibia, ¶ 23-24.
- <sup>223</sup> Ghana, ¶ 16
- <sup>224</sup> Kazakhstan, ¶ 11
- <sup>225</sup> Kazakhstan, ¶ 12
- <sup>226</sup> The Committee noted this issue for Ghana, Namibia and South Africa.
- <sup>227</sup> Ghana, ¶ 17; Namibia, ¶ 13
- <sup>228</sup> Ghana, ¶ 18; Namibia, ¶ 14
- <sup>229</sup> Ghana, ¶ 18
- <sup>230</sup> CERD, General recommendation no. 25 on gender-related aspects of discrimination, 20 March 2000, CERD/C/GC/25.
- <sup>231</sup> CERD, Namibia, ¶17-18.
- <sup>232</sup> CERD, Pakistan, ¶25-26.
- <sup>233</sup> CERD, South Africa, ¶22-23.
- <sup>234</sup> CERD, Sri Lanka, ¶27-28.
- <sup>235</sup> CERD, Concluding Observations of Argentina, UN Doc. CERD/C/ARG/CO/21-23 ¶35-36 (**CERD, Argentina**); CERD, Paraguay, ¶41-42.
- <sup>236</sup> CERD, Concluding Observations of Uruguay, UN Doc. CERD/C/URY/CO/21-23 ¶25-28 (**CERD, Uruguay**).
- <sup>237</sup> The Committee noted that this was an issue in Jamaica and Ecuador.
- <sup>238</sup> Jamaica, ¶ 25
- <sup>239</sup> Ecuador, ¶ 15
- <sup>240</sup> Jamaica, ¶ 26 ; Ecuador, ¶ 16
- <sup>241</sup> *Amanda Jane Mellet v. Ireland*, Communication No. 2324/2013, UN Doc. CCPR/C/116/D/2324/2013 (31 March 2016) ¶ 7.11



- <sup>242</sup> *Amanda Jane Mellet v. Ireland*, Communication No. 2324/2013, UN Doc. CCPR/C/116/D/2324/2013 (31 March 2016) ¶ 7.10; Committee member Sarah Cleveland appended a concurring opinion in which she agreed with the Committee that Article 26 was violated in this individual communication. In this concurring opinion, Ms. Cleveland expanded on gender discrimination under the Covenant and under international human rights law. See Communication No. 2324/2013, Annex II, Individual opinion of Committee member Sarah Cleveland (concurring). Sir Nigel Rodley appended a concurring opinion in which he underlined that the refusal of the State party to allow for termination of pregnancy in the case of a fatal fetal abnormality cannot be justified as being for the protection of the life of the foetus. He also stated that Article 7 was violated cumulatively in this individual communication but also was violated by the requirement that a pregnant woman carry a non-viable pregnancy to term. See Communication No. 2324/2013, Annex III, Individual opinion of Committee member Sir Nigel Rodley (concurring). Anja Seibert-Fohr appended a partly dissenting opinion, in which she disagreed with the Committee's finding of a violation of Article 26 on the ground that the State party's prohibition of abortion did not constitute discrimination on the basis of gender. See Communication No. 2324/2013, Annex V, Individual opinion of Committee member Anja Seibert-Fohr (partly dissenting).
- <sup>243</sup> The Committee noted that this was an issue for Poland, Morocco, Ecuador, Burkina Faso, Rwanda, Ghana, Argentina, Costa Rica, Namibia and Colombia.
- <sup>244</sup> Poland, ¶ 23
- <sup>245</sup> Poland, ¶ 24
- <sup>246</sup> Costa Rica, ¶ 17
- <sup>247</sup> Costa Rica, ¶ 18
- <sup>248</sup> Burkina Faso, ¶ 19
- <sup>249</sup> Burkina Faso, ¶ 20
- <sup>250</sup> Argentina, ¶ 11
- <sup>251</sup> Argentina, ¶ 11
- <sup>252</sup> Argentina, ¶ 12
- <sup>253</sup> The Committee noted that this was an issue in Moldova, Burkina Faso, Namibia and Colombia.
- <sup>254</sup> Burkina Faso, ¶ 19
- <sup>255</sup> Burkina Faso, ¶ 20
- <sup>256</sup> Namibia, ¶¶ 15-16
- <sup>257</sup> Colombia, ¶¶ 20-21
- <sup>258</sup> Costa Rica, ¶ 19
- <sup>259</sup> Costa Rica, ¶ 20
- <sup>260</sup> Slovakia, ¶ 26
- <sup>261</sup> Slovakia, ¶ 27
- <sup>262</sup> Slovakia, ¶ 27
- <sup>263</sup> CRC, GC Adolescence, ¶¶ 59-61.
- <sup>264</sup> *Ibid*, ¶ 39.
- <sup>265</sup> Kuwait, ¶ 22 (b)
- <sup>266</sup> Kuwait, ¶ 22 (b)
- <sup>267</sup> Kuwait, ¶ 22 (c)
- <sup>268</sup> Kuwait, ¶ 23
- <sup>269</sup> Kazakhstan, ¶ 16
- <sup>270</sup> Morocco, ¶ 19
- <sup>271</sup> Jamaica ¶ 36 Kazakhstan, ¶ 16; Burkina Faso, ¶ 22, Morocco, ¶ 20; Kuwait, ¶ 23; Ghana, ¶ 20
- <sup>272</sup> Burkina Faso, ¶ 22; Morocco, ¶ 20
- <sup>273</sup> CRC, Concluding Observations of the Maldives, UN Doc. CRC/C/MDV/CO/4-5 ¶¶ 30-31 (**CRC, Maldives**); CRC, Saudi Arabia, ¶¶ 20-21.
- <sup>274</sup> CRC, Saudi Arabia, ¶¶ 20-21.
- <sup>275</sup> *Ibid*, ¶ 24, 43.
- <sup>276</sup> Morocco ¶ 27; Namibia ¶ 19; Rwanda ¶ 21
- <sup>277</sup> Morocco, ¶ 28; Namibia, ¶ 20; Rwanda ¶ 22
- <sup>278</sup> Morocco, ¶ 28; Namibia, ¶ 20; Rwanda ¶ 22
- <sup>279</sup> *S.Z. v. Denmark*, Communication No. 2443/2014, UN Doc. CCPR/C/117/D/2443/2014 (13 July 2016) ¶ 9.2; *A.H.A. v. Denmark*, Communication No. 2493/2014, UN Doc. CCPR/C/117/D/2493/2014 (8 July 2016) ¶ 8.2; *A.A.S. v. Denmark*, Communication No. 2464/2014, UN Doc. CCPR/C/117/D/2464/2014 (4 July 2016) ¶ 7.2; *E.U.R. v. Denmark*, Communication No. 2469/2014, UN Doc. CCPR/C/117/D/2469/2014 (1 July 2016) ¶ 9.3; *Y v. Canada*, Communication No. 2327/2014, UN Doc. CCPR/C/116/D/2327/2014 (10 March 2016) ¶ 10.3; *K.G. v. Denmark*, Communication No. 2347/2014, UN Doc. CCPR/C/116/D/2347/2014 (22 March 2016) ¶ 7.2; *Z v. Denmark*, Communication No. 2422/2014, UN Doc. CCPR/C/116/D/2422/2014 ¶ 7.2; *A v. Denmark*, Communication No. 2357/2014, UN Doc. CCPR/C/116/D/2402/2014 (30 March 2016) ¶ 7.4; *Y v. Canada*, Communication No. 2314/2013, UN Doc. CCPR/C/116/D/2314/2013 (22 March 2016) ¶ 7.2; *Abdilafr Abubakar Ali and Mayul Ali Mohamad v. Denmark*, Communication No. 2409/2014, UN Doc. CCPR/C/116/D/2409/2014 (29 March 2016) ¶ 7.3; *A.A.I. and A.H.A v. Denmark*, Communication No. 2402/2014, UN Doc. CCPR/C/116/D/2402/2014 (March 2016) ¶ 6.5 A&B *v. Denmark*, Communication No. 2291/2013, UN Doc. CCPR/C/117/2291/2013 (9 September 2016) ¶ 8.3, *A.S.M. and R.A.H. v. Denmark*, Communication No. 2378/2014, UN Doc. CCPR/C/117/2378/2014 (18 November 2016) ¶ 8.3 *V.R. and N.R. v. Denmark*, Communication No. 2745/2016, UN Doc. CCPR/C/117/D/2745/2016 (30 August 2016) ¶ 4.4; *I.M.Y. v. Denmark*, Communication No. 2559/2015, UN Doc. CCPR/C/117/D/2559/2015 (9 September 2016) ¶ 7.6; *Ms. Obah Hussein Ahmed v. Denmark*, Communication No. 2379/2014, UN Doc. CCPR/C/117/2379/2014 (22 September 2016) ¶ 13.3; *A.M.M. v. Denmark*, Communication No. 2415/2014, UN Doc. CCPR/C/117/2415/2014 (5 September 2016) ¶ 7.4; *B.M.I and N.A.K. v. Denmark*, Communication No. 2569/2015, UN Doc. CCPR/C/118/D/2569/2015 (16 December 2016) ¶ 8.3<sup>280</sup> *Ibid*
- <sup>281</sup> *Ibid*
- <sup>282</sup> *S.Z. v. Denmark*, Communication No. 2443/2014, UN Doc. CCPR/C/117/D/2443/2014 (13 July 2016) ¶ 9.5
- <sup>283</sup> *Ibid*
- <sup>284</sup> *Rakesh Saxena v. Canada*, Communication No. 2118/2011, UN Doc. CCPR/C/118/D/2118/2011 (3 November 2016) ¶¶ 11-12
- <sup>285</sup> See *Ngoc Si Truong v. Canada – Decision of Inadmissibility*, Communication No. 743/1997, UN Doc. CCPR/C/77/D/743/1997 (28 March 2003) ¶ 7.6. *Everett v. Spain – Decision of Inadmissibility* Communication No. 961/2000, UN Doc. CCPR/C/81/D/961/2000 (9 July 2004) ¶ 6.4
- <sup>286</sup> *Rakesh Saxena v. Canada*, Communication No. 2118/2011, UN Doc. CCPR/C/118/D/2118/2011 (3 November 2016) ¶¶ 11-12
- <sup>287</sup> *Amanda Jane Mellet v. Ireland*, Communication No. 2324/2013, UN Doc. CCPR/C/116/D/2324/2013 (31 March 2016) ¶ 7.4
- <sup>288</sup> Sweden, ¶ 26

<sup>289</sup> Ghana, ¶ 25  
<sup>290</sup> Denmark, ¶ 21  
<sup>291</sup> Kazakhstan, ¶ 21  
<sup>292</sup> Kuwait, ¶ 24, Poland, ¶ 25, Jamaica ¶ 33  
<sup>293</sup> South Africa, ¶ 23  
<sup>294</sup> Sweden ¶ 27; Ghana ¶ 26; Kazakhstan, ¶ 22; Denmark ¶ 22; Kuwait ¶ 25; Poland ¶ 26; Jamaica ¶ 34 (a)  
<sup>295</sup> Burkina Faso, ¶ 27; Costa Rica, ¶ 25  
<sup>296</sup> Burkina Faso ¶ 28; Costa Rica, ¶ 26  
<sup>297</sup> Burkina Faso ¶ 28  
<sup>298</sup> Kazakhstan, ¶ 23  
<sup>299</sup> Kazakhstan, ¶ 24  
<sup>300</sup> Kazakhstan, ¶ 24  
<sup>301</sup> Morocco, ¶ 23  
<sup>302</sup> Morocco, ¶ 23  
<sup>303</sup> Morocco, ¶ 23  
<sup>304</sup> Morocco, ¶ 24  
<sup>305</sup> Morocco, ¶ 24  
<sup>306</sup> Morocco, ¶ 24  
<sup>307</sup> Namibia, ¶ 21  
<sup>308</sup> Namibia, ¶ 21  
<sup>309</sup> Namibia, ¶ 22 (c)  
<sup>310</sup> Namibia, ¶ 22 (c)  
<sup>311</sup> Argentina, ¶ 13 <sup>312</sup> Ibid  
<sup>313</sup> Ibid <sup>314</sup> Ibid  
<sup>315</sup> Moldova, ¶ 21  
<sup>316</sup> Moldova, ¶ 22 (c)  
<sup>317</sup> Moldova ¶ 22 (d)  
<sup>318</sup> Moldova, ¶ 22 <sup>319</sup> Ibid  
<sup>320</sup> Argentina, ¶ 14 <sup>321</sup> Ibid  
<sup>322</sup> Azerbaijan, ¶ 18  
<sup>323</sup> Azerbaijan, ¶ 19(b)  
<sup>324</sup> A.A.S. v. Denmark, Communication No. 2464/2014, UN Doc. CCPR/C/117/D/2464/2014 (4 July 2016) ¶ 7.7; E.U.R. v. Denmark, Communication No. 2469/2014, UN Doc. CCPR/C/117/D/2469/2014 (1 July 2016) ¶ 9.11; Ms. Obah Hussein Ahmed v. Denmark, Communication No. 2379/2014, UN Doc. CCPR/C/117/2379/2014 (22 September 2016) ¶ 13.8  
<sup>325</sup> A.A.S. v. Denmark, Communication No. 2464/2014, UN Doc. CCPR/C/117/D/2464/2014 (4 July 2016) ¶ 7.7  
<sup>326</sup> There was a dissenting opinion in this case by Committee members Yuval Shany, Yuji Iwasawa and Konstantin Vardzelashvili, in which the members dissented against the finding by the Committee that the obligation of non-refoulement under Article 7 was violated. Specifically, the members stated that the Committee had engaged in an independent risk assessment and had thus failed to properly apply the "clearly arbitrary" standard. The members also noted that the Committee may simply have disagreed with the risk assessment of the Danish authorities. See A.A.S. v. Denmark, Communication No. 2464/2014, UN Doc. CCPR/C/117/D/2464/2014 (4 July 2016) Annex ¶ 3.5  
In addition, in E.U.R., there were multiple dissenting opinions, the first by Yuval Shany, Yuji Iwasawa, Sir Nigel Rodley and Konstantin Vardzelashvili, and the second by Anja Seibert-Fohr, both of which disagreed with the Committee's conclusion that the non-refoulement obligation had been violated on similar grounds as the dissenting opinion in A.A.S. v. Denmark. See E.U.R. v. Denmark, Communication No. 2469/2014, UN Doc. CCPR/C/117/D/2469/2014 (1 July 2016) Annex I, Annex II  
<sup>327</sup> *Ortikov v. Uzbekistan*, Communication No. 2317/2013, UN Doc. CCPR/C/117/D/2317/2013 (26 October 2016) ¶ 10.3  
<sup>328</sup> Ibid  
<sup>329</sup> *Mambu v. Democratic Republic of the Congo*, Communication No. 2465/2014, UN Doc. CCPR/C/118/D/2465/2014 (3 November 2016) ¶ 9.3  
<sup>330</sup> *Griffiths v. Australia*, Communication No. 1973/2010, UN Doc. CCPR/C/112/D/1973/2010 (21 October 2014) ¶ 7.6  
<sup>331</sup> *Nasir v. Australia*, Communication No. 2229/2012, UN Doc. CCPR/C/116/D/2229/2012 (29 March 2016) ¶ 7.4  
<sup>332</sup> Morocco, ¶¶ 17-18  
<sup>333</sup> Argentina, ¶ 17  
<sup>334</sup> Argentina, ¶ 18  
<sup>335</sup> Rwanda, ¶ 19  
<sup>336</sup> Rwanda, ¶ 20  
<sup>337</sup> T.V. and A.G. v. Uzbekistan, Communication No. 2044/2011, UN Doc. CCPR/C/116/D/2044/2011 (11 March 2016) ¶¶ 7.3-7.8  
<sup>338</sup> T.V. and A.G. v. Uzbekistan, Communication No. 2044/2011, UN Doc. CCPR/C/116/D/2044/2011 (11 March 2016) ¶¶ 7.9-7.10  
<sup>339</sup> Ibid  
<sup>340</sup> Morocco, ¶¶ 31-32  
<sup>341</sup> Ghana, ¶ 41; Moldova, ¶ 22; Namibia ¶ 27; Sweden ¶ 28; Argentina, ¶ 17; Namibia ¶ 27; Morocco, ¶¶ 17, 25  
<sup>342</sup> Ghana, ¶ 42; Morocco, ¶ 26; Kuwait ¶ 24; Rwanda, ¶ 20; Namibia ¶ 28; Sweden ¶ 29 (a); Morocco, ¶¶ 18, 26  
<sup>343</sup> Argentina, ¶ 17  
<sup>344</sup> Argentina, ¶ 18  
<sup>345</sup> Sweden, ¶ 28  
<sup>346</sup> Sweden, ¶ 29 (b)  
<sup>347</sup> Sweden, ¶ 29(a)  
<sup>348</sup> Vyacheslav Berezhnoy v. Russian Federation, Communication No. 2107/2011, UN Doc. CCPR/C/118/D/2107/2011 (28 October 2016)  
<sup>349</sup> *Nasir v. Australia*, Communication No. 2229/2012, UN Doc. CCPR/C/116/D/2229/2012 (29 March 2016) Individual opinion of Committee member Sarah Cleveland (partly dissenting) Annex II, ¶¶ 3-13  
<sup>350</sup> *Ortikov v. Uzbekistan*, Communication No. 2317/2013, UN Doc. CCPR/C/117/D/2317/2013 (26 October 2016) ¶ 10.4; Navruz Tahirovich Nasrylayev v. Turkmenistan, Communication No. 2219/2012, UN Doc. CCPR/C/117/D/2219/2012 (15 July 2016) ¶¶ 8.2-8.3; Matkarim Aminov v. Turkmenistan, Communication No. 2220/2012, UN Doc. CCPR/C/117/D/2220/2012 (14 July 2016) ¶ 9.2; Dovran Bahramovich Matyakubov v. Turkmenistan, Communication No. 2220/2012, UN Doc. CCPR/C/117/D/2220/2012 (14 July 2016) ¶ 7.3; Shadurdy Uchetov v. Turkmenistan, Communication No. 2226/2012, UN Doc. CCPR/C/117/D/2226/2012 (15 July 2016) ¶ 7.3; Akmurat Halbayewich Yegendurdyev v. Turkmenistan, Communication No. 2227/2012, UN Doc. CCPR/C/117/D/2227/2012 (14 July 2016) ¶ 7.3

<sup>351</sup> Ibid; There was an individual opinion in this case by Olivier de Frouville, in which he stated that incommunicado detention in itself can constitute a violation of Article 9, not just a violation of Article 10, because any incommunicado detention outside the reach of the law constitutes an arbitrary detention under Article 9(1), as well as a violation of the right to security of person under the same provision. Mr. de Frouville stated in addition that any incommunicado detention that removes a person from the protection of the law violates Article 16 because it constitutes a denial of the victim's right to recognition everywhere as a person before the law. *Ortikov v. Uzbekistan*, Communication No. 2317/2013, UN Doc. CCPR/C/117/D/2317/2013 (26 October 2016) ¶¶ 5-6 (Annex); *Mejdoub Chani v. Algeria*, Communication No. 2297/2013, UN Doc. CCPR/C/116/D/2297/2013 (11 March 2016) ¶ 7.3

<sup>352</sup> *Ortikov v. Uzbekistan*, Communication No. 2317/2013, UN Doc. CCPR/C/117/D/2317/2013 (26 October 2016) ¶ 10.2

<sup>353</sup> *Kerrouche v. Algeria*, Communication No. 2128/2012, UN Doc. CCPR/C/118/D/2128/2012 (3 November 2016) ¶ 8.3

<sup>354</sup> *Mambu v. Democratic Republic of the Congo*, Communication No. 2465/2014, UN Doc. CCPR/C/118/D/2465/2014 (3 November 2016) ¶ 9.4

<sup>355</sup> Ibid

<sup>356</sup> Argentina, ¶ 20

<sup>357</sup> Argentina, ¶ 20

<sup>358</sup> Burkina Faso, ¶ 29

<sup>359</sup> Burkina Faso, ¶ 30

<sup>360</sup> Argentina, ¶ 20; Burkina Faso, ¶ 30

<sup>361</sup> Sweden, ¶ 29

<sup>362</sup> Sweden, ¶ 29

<sup>363</sup> Argentina ¶ 23; Costa Rica, ¶ 27; Burkina Faso ¶ 33; Namibia ¶ 33; Ecuador ¶ 23; Jamaica ¶ 31; South Africa ¶ 30; Slovenia ¶ 25; Morocco ¶ 29; Rwanda, ¶ 31

<sup>364</sup> Slovenia, ¶ 26; Moldova, ¶ 27; Burkina Faso, ¶ 34; Namibia ¶ 34; Argentina ¶ 24; Azerbaijan ¶ 23; Costa Rica ¶ 28; Ecuador ¶ 24; Ghana ¶ 30; Jamaica, ¶ 32; South Africa ¶ 31; Morocco ¶ 29; Rwanda ¶ 32

<sup>365</sup> Burkina Faso, ¶ 33; Ghana ¶ 29; Jamaica ¶ 31; South Africa ¶ 30

<sup>366</sup> Burkina Faso, ¶ 34; Ghana ¶ 29; Jamaica ¶ 31; South Africa ¶ 30

<sup>367</sup> Ghana, ¶ 29

<sup>368</sup> Ghana, ¶ 30

<sup>369</sup> South Africa, ¶ 31 (a)

<sup>370</sup> Kazakhstan ¶ 19

<sup>371</sup> Kazakhstan, ¶ 20

<sup>372</sup> Ecuador, ¶ 23

<sup>373</sup> Ecuador, ¶ 24

<sup>374</sup> South Africa, ¶ 28

<sup>375</sup> South Africa, ¶ 29

<sup>376</sup> South Africa, ¶ 29

<sup>377</sup> Denmark, ¶ 23

<sup>378</sup> Denmark, ¶ 24

<sup>379</sup> South Africa, ¶ 30

<sup>380</sup> South Africa, ¶ 31 (c)

<sup>381</sup> Sweden, ¶ 24

<sup>382</sup> Sweden, ¶ 24

<sup>383</sup> Sweden, ¶ 25

<sup>384</sup> Slovakia, ¶ 28

<sup>385</sup> Slovakia, ¶ 28

<sup>386</sup> Slovakia, ¶ 29

<sup>387</sup> South Africa, ¶ 27(b)

<sup>388</sup> South Africa, ¶ 27(c)

<sup>389</sup> Ghana, ¶ 21; Kuwait ¶ 42

<sup>390</sup> Ghana, ¶ 22; Kuwait ¶ 43

<sup>391</sup> Poland, ¶ 25

<sup>392</sup> Poland, ¶ 26 (b)

<sup>393</sup> New Zealand, ¶ 33

<sup>394</sup> New Zealand, ¶ 34

<sup>395</sup> ICCPR, Article 7; ICCPR, Article 8

<sup>396</sup> Denmark, ¶ 31

<sup>397</sup> Denmark, ¶ 35

<sup>398</sup> Costa Rica, ¶¶ 29, 30

<sup>399</sup> In this context, see also Note 378 that refers to Moroccan measures in response to an influx of asylum seekers

<sup>400</sup> Slovenia, ¶ 15; Also see Joint Statement of the Heads of the Police Services of Austria, Slovenia, Croatia, Serbia and the former Yugoslav Republic of Macedonia (18 February 2016), available at [https://www.mup.hr/UserDocImages/topvijesti/2016/veljaca/.../joint\\_statement.pdf](https://www.mup.hr/UserDocImages/topvijesti/2016/veljaca/.../joint_statement.pdf)

<sup>401</sup> Slovenia, ¶ 15

<sup>402</sup> Costa Rica, ¶¶ 29-30; Slovakia, ¶¶ 30-31

<sup>403</sup> Jamaica, ¶¶ 31-32

<sup>404</sup> New Zealand, ¶¶ 37-38

<sup>405</sup> Kazakhstan, ¶¶ 43-44

<sup>406</sup> Kuwait, ¶¶ 36-37

<sup>407</sup> South Africa, ¶¶ 34-37

<sup>408</sup> Rwanda ¶¶ 29-30

<sup>409</sup> Poland, ¶ 31

<sup>410</sup> Morocco, ¶¶ 35-36

<sup>411</sup> "Security cases" under the Aliens Act (2005:716) and "qualified security cases" under the Aliens Controls (Special Provisions) Act (1991:572)

- <sup>412</sup> Sweden, ¶¶ 32-33
- <sup>413</sup> Namibia, ¶¶ 35-36
- <sup>414</sup> Poland, ¶¶ 31-32, Slovakia, ¶¶ 30-31
- <sup>415</sup> New Zealand, ¶¶ 35-36
- <sup>416</sup> Poland ¶¶ 31-32
- <sup>417</sup> *KB v. Russian Federation*, Communication No. 2193/2012, UN Doc. CCPR/C/116/D/2193/2012 (10 March 2016) ¶¶ 10.3
- <sup>418</sup> *Y v. Canada*, Communication No. 2314/2013, UN Doc. CCPR/C/116/D/2314/2013 (22 March 2016), ¶¶ 7.6, 8
- <sup>419</sup> *Z v. Denmark*, Communication No. 2422/2014, UN Doc. CCPR/C/116/D/2422/2014 (24 May 2016), ¶¶ 7.3-7.4
- <sup>420</sup> ICCPR, Article 17; ICCPR, Article 23 (1)
- <sup>421</sup> *W.M.G. v. Canada*, Communication No. 2060/2011, UN Doc. CCPR/C/116/D/2060/2011 (11 March 2016) ¶ 7
- <sup>422</sup> *Y v. Canada (2)*, Communication No. 2327/2014, UN Doc. CCPR/C/116/D/2327/2014 (10 March 2016) ¶ 10.4
- <sup>423</sup> *Ibid*, ¶ 10.5
- <sup>424</sup> *Ibid*, ¶ 10.6
- <sup>425</sup> *K.G. v. Denmark*, Communication No. 2347/2014, UN Doc. CCPR/C/116/D/2347/2014 (22 March 2016) ¶ 7.3
- <sup>426</sup> *Ibid*, ¶ 7.4
- <sup>427</sup> *A and B v. Denmark*, Communication No. 2291/2013, UN Doc. CCPR/C/117/D/2291/2013 (9 September 2016) ¶ 8.6
- <sup>428</sup> *Abdilafr Abubakar Ali and Mayul Ali Mohamad v. Denmark*, Communication No. 2409/2014, UN Doc. CCPR/C/116/D/2409/2014 (29 March 2016) ¶ 7.8
- <sup>429</sup> *DT v. Canada*, Communication No. 2081/2011, UN Doc. CCPR/C/117/D/2081/2011 (29 September 2016) ¶ 9
- <sup>430</sup> *DT v. Canada*, Communication No. 2081/2011, UN Doc. CCPR/C/117/D/2081/2011 (29 September 2016) ¶¶ 7.11-7.12
- <sup>431</sup> *KB v. Russian Federation*, Communication No. 2193/2012, UN Doc. CCPR/C/116/D/2193/2012 (10 March 2016) ¶ 8.1
- <sup>432</sup> *KB v. Russian Federation*, Communication No. 2193/2012, UN Doc. CCPR/C/116/D/2193/2012 (10 March 2016) ¶ 12
- <sup>433</sup> CERD Statement on the occasion of the United Nations Summit on Refugees and Migrants, 19 September 2016.
- <sup>434</sup> CRC, Concluding Observations of Nauru, UN Doc. CRC/C/NRU/CO/1 ¶52-53 (**CRC, Nauru**); CRC, Concluding Observations of Bulgaria, UN Doc. CRC/C/BGR/CO/3-5 ¶50-51 (**CRC, Bulgaria**); CRC, Concluding Observations of Slovakia, UN Doc. CRC/C/SVK/CO/3-5 ¶52-53 (**CRC, Slovakia**); CRC, Concluding Observations of the United Kingdom, UN Doc. CRC/C/GBR/CO/5 ¶76-77 (**CRC, UK**); CRC, Concluding Observations of France, UN Doc. CRC/C/FRA/CO/5 ¶73-76 (**CRC, France**).
- <sup>435</sup> CRC, UK, ¶76-77.
- <sup>436</sup> CRC, France, ¶73-76.
- <sup>437</sup> *Ibid*
- <sup>438</sup> CERD, General recommendation No. 22 on article 5 and refugees and displaced persons, 24 August 1996.
- <sup>439</sup> CERD, Concluding Observations of Spain, UN Doc. CERD/C/ESP/CO/21-23 ¶11-16 (**CERD, Spain**).
- <sup>440</sup> CERD, Namibia, ¶27-28.
- <sup>441</sup> CERD, Pakistan, ¶37-38; CERD, Concluding Observations of Argentina, UN Doc. CERD/C/ARG/CO/21-23 ¶33-34 (**CERD, Argentina**); CERD, Concluding Observations of Uruguay, UN Doc. CERD/C/URY/CO/21-23 ¶29-32 (**CERD, Uruguay**).
- <sup>442</sup> CERD, Concluding Observations of Georgia, UN Doc. CERD/C/GEO/CO/6-8 ¶20-21 (**CERD, Georgia**); CERD, Portugal, ¶24-25.
- <sup>443</sup> CERD, South Africa ¶26-28.
- <sup>444</sup> CERD, Oman, ¶15-16, 27-28.
- <sup>445</sup> CERD, Azerbaijan, ¶29-30; CERD, Paraguay, 43-44; CERD, Concluding Observations of Turkmenistan, UN Doc. CERD/C/TKM/CO/8-11 ¶16-17 (**CERD, Turkmenistan**).
- <sup>446</sup> CERD, Concluding Observations of Rwanda, UN Doc. CERD/C/RWA/CO/18-20 ¶20-21 (**CERD, Rwanda**).
- <sup>447</sup> CERD, Concluding Observations of Greece, UN Doc. CERD/C/GRC/CO/20-22 ¶22-23 (**CERD, Greece**).
- <sup>448</sup> CERD, Lebanon, ¶27-32.
- <sup>449</sup> CERD, Ukraine, ¶25-32.
- <sup>450</sup> CERD, UK, ¶38-39.
- <sup>451</sup> CERD, Concluding Observations of Italy, UN Doc. CERD/C/ITA/CO/19-20 ¶18-20 (**CERD, Italy**).
- <sup>452</sup> CRPD, Italy, ¶25-26.
- <sup>453</sup> CRPD, Portugal, ¶27-28; CRPD, Slovakia, ¶53-54.
- <sup>454</sup> CRPD, Slovakia, ¶36-37; CRPD, UAE, ¶35-36.
- <sup>455</sup> CRPD, UAE, ¶35-36.
- <sup>456</sup> CRPD, Slovakia, ¶53-54.
- <sup>457</sup> CRPD, Thailand, ¶37-38.
- <sup>458</sup> CRPD, Uganda, ¶36-37.
- <sup>459</sup> CRPD, Thematic study on the rights of persons with disabilities under article 11 of the Convention on the Rights of Persons with Disabilities, on situations of risk and humanitarian emergencies, ¶6.
- <sup>460</sup> *Ibid*
- <sup>461</sup> *Ibid*, ¶17.
- <sup>462</sup> *Ibid*, ¶21.
- <sup>463</sup> *Ibid*, ¶28.
- <sup>464</sup> CMW, Concluding Observations of Turkey, UN Doc. CMW/C/TUR/CO/1 ¶42.
- <sup>465</sup> Under Articles 2(1) and 26 of the Covenant, discrimination on the following grounds is prohibited: "race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."
- <sup>466</sup> The Committee noted that this was an issue for Poland, Denmark and Sweden.
- <sup>467</sup> Denmark, ¶ 13
- <sup>468</sup> Sweden, ¶ 10
- <sup>469</sup> The Committee noted that this was an issue for Moldova, Denmark, Sweden and Costa Rica.
- <sup>470</sup> Slovakia, ¶¶ 10-11
- <sup>471</sup> Costa Rica, ¶ 10
- <sup>472</sup> Poland, ¶¶ 13-14
- <sup>473</sup> The Committee noted that this was an issue for Moldova, Costa Rica and Namibia.
- <sup>474</sup> Moldova, ¶ 11
- <sup>475</sup> Costa Rica, ¶ 9
- <sup>476</sup> Costa Rica, ¶ 10
- <sup>477</sup> Namibia, ¶ 9
- <sup>478</sup> Namibia, ¶ 10

- <sup>479</sup> The Committee noted this issue for Jamaica, Slovakia, Morocco, Kuwait, Ecuador, Burkina Faso, Azerbaijan, Ghana, Kazakhstan, Costa Rica and Colombia.
- <sup>480</sup> Jamaica, ¶¶ 17-18
- <sup>481</sup> Kuwait, ¶¶ 12-13
- <sup>482</sup> Colombia, ¶ 16
- <sup>483</sup> Colombia, ¶ 17
- <sup>484</sup> Azerbaijan, ¶ 8
- <sup>485</sup> Azerbaijan, ¶ 9
- <sup>486</sup> Slovakia, ¶¶ 14-15
- <sup>487</sup> Azerbaijan, ¶¶ 8-9
- <sup>488</sup> The Committee noted this issue for Morocco, Kuwait and Ghana.
- <sup>489</sup> Morocco, ¶ 11
- <sup>490</sup> Morocco, ¶ 12
- <sup>491</sup> Kuwait, ¶ 12
- <sup>492</sup> Kuwait, ¶ 13
- <sup>493</sup> The Committee noted that this issue was present in Burkina Faso, Azerbaijan, Kazakhstan and Costa Rica.
- <sup>494</sup> Burkina Faso, ¶ 13
- <sup>495</sup> Burkina Faso, ¶ 14
- <sup>496</sup> Azerbaijan, ¶¶ 8-9
- <sup>497</sup> Slovakia, ¶¶ 14-15
- <sup>498</sup> Kazakhstan, ¶¶ 9-10
- <sup>499</sup> Slovenia, ¶ 9
- <sup>500</sup> New Zealand, ¶¶ 27-28
- <sup>501</sup> Ecuador, ¶ 11
- <sup>502</sup> Ecuador, ¶ 11
- <sup>503</sup> Ecuador, ¶ 12
- <sup>504</sup> CRC, UK, ¶¶ 21-24; CRC, Slovakia, ¶¶ 15-16; CRC, Concluding Observations of the Maldives, UN Doc. ¶¶ 26-27 (**CRC, Maldives**).
- <sup>505</sup> CRC, Iran, ¶¶ 31-32.
- <sup>506</sup> CRC, UK, ¶¶ 46-47; CRC, Concluding Observations of Nepal, UN Doc. CRC/C/NPL/CO/3-5 ¶¶ 41-42 (**CRC, Nepal**).
- <sup>507</sup> CRC, UK, ¶ 48; CRC, Maldives ¶¶ 42-43; CRC, Iran, ¶¶ 77-78.
- <sup>508</sup> CRC, Iran, ¶¶ 53-54.
- <sup>509</sup> CRC, UK, ¶¶ 58-59 and 64-65; CRC, Iran, ¶¶ 71-72.
- <sup>510</sup> CRC, Concluding Observations of Zimbabwe, UN Doc. CRC/C/ZWE/CO/2 ¶¶ 26-27 (**CRC, Zimbabwe**); CRC, Concluding Observations of Peru, UN Doc. CRC/C/PER/CO/4-5 ¶¶ 27-28 (**CRC, Peru**); CRC, Concluding Observations of South Africa, UN Doc. CRC/C/ZAF/CO/2 ¶¶ 23-24 (**CRC, South Africa**).
- <sup>511</sup> CRC, Concluding Observations of New Zealand, UN Doc. CRC/C/NZL/CO/5 ¶¶ 15-16 (**CRC, New Zealand**).
- <sup>512</sup> CRC, Zimbabwe, ¶¶ 26-27; CRC, Concluding Observations of Haiti, UN Doc. CRC/C/HTI/CO/2-3 ¶¶ 22-23 (**CRC, Haiti**); CRC, Concluding Observations of Brunei, UN Doc. CRC/C/BRN/CO/2-3 ¶¶ 25-26 (**CRC, Brunei**); CRC, Concluding Observations of Ireland, UN Doc. CRC/C/IRL/CO/3-4 ¶¶ 27-28 (**CRC, Ireland**); CRC, Peru, ¶¶ 27-28; CRC, Concluding Observations of Gabon, UN Doc. CRC/C/GAB/CO/2 ¶¶ 22-23 (**CRC, Gabon**); CRC, Nepal, ¶¶ 41-42; CRC, Pakistan, ¶¶ 18-19; CRC, South Africa, ¶¶ 23-24; CRC, Concluding Observations of Suriname, UN Doc. CRC/C/SUR/CO/3-4 ¶ 14 (**CRC, Suriname**).
- <sup>513</sup> CRC, Concluding Observations of Latvia, UN Doc. CRC/C/LVA/CO/3-5 ¶¶ 26-27 (**CRC, Latvia**).
- <sup>514</sup> CRC, Haiti, ¶¶ 18-19.
- <sup>515</sup> CRC, Gabon, ¶¶ 22-23; CRC, Saudi Arabia, ¶¶ 17-18; CRC, South Africa, ¶¶ 23-24.
- <sup>516</sup> CRC, Nepal, ¶¶ 41-42.
- <sup>517</sup> CRC, Nepal, ¶¶ 41-42.
- <sup>518</sup> CRC, Suriname ¶ 16.
- <sup>519</sup> CRC, GC Adolescence, ¶¶ 33-34.
- <sup>520</sup> CERD, Uruguay, ¶¶ 27-28; CERD, Argentina, ¶¶ 35-36.
- <sup>521</sup> CRC, South Africa, ¶¶ 39-40.
- <sup>522</sup> CRC, New Zealand ; CRC, France ; CRC, Ireland ; CRC, UK ; CRC, Nepal.
- <sup>523</sup> The Committee noted that this was an issue in Moldova, Slovakia, Azerbaijan, Ghana and Argentina.
- <sup>524</sup> Moldova, ¶ 23
- <sup>525</sup> Moldova, ¶ 23
- <sup>526</sup> Moldova, ¶ 24
- <sup>527</sup> Moldova, ¶ 24
- <sup>528</sup> Slovakia, ¶ 20
- <sup>529</sup> Slovakia, ¶ 21
- <sup>530</sup> Azerbaijan, ¶ 12
- <sup>531</sup> Azerbaijan, ¶ 12
- <sup>532</sup> Azerbaijan, ¶ 13
- <sup>533</sup> Argentina, ¶ 21
- <sup>534</sup> Argentina, ¶ 22
- <sup>535</sup> Argentina, ¶ 22
- <sup>536</sup> Ghana, ¶ 27
- <sup>537</sup> Ghana, ¶ 27.
- <sup>538</sup> Ghana, ¶ 28
- <sup>539</sup> The Committee noted this issue in Jamaica and Azerbaijan.
- <sup>540</sup> Jamaica, ¶¶ 13-14
- <sup>541</sup> Azerbaijan, ¶ 10
- <sup>542</sup> Azerbaijan, ¶ 11
- <sup>543</sup> The Committee noted this issue in Poland, Argentina and Sweden.
- <sup>544</sup> Poland, ¶ 41
- <sup>545</sup> Poland, ¶ 42
- <sup>546</sup> Argentina, ¶ 21
- <sup>547</sup> Argentina, ¶ 22

- <sup>548</sup> Azerbaijan, ¶ 10
- <sup>549</sup> Azerbaijan, ¶ 10
- <sup>550</sup> Azerbaijan, ¶ 10
- <sup>551</sup> Azerbaijan, ¶ 11
- <sup>552</sup> Moldova, ¶ 23
- <sup>553</sup> Moldova, ¶ 24
- <sup>554</sup> More technically, "on the basis of *impairments*". See CRPD, Preamble, para. e.
- <sup>555</sup> For the more systematized and updated position by the CRPD Committee, see its Guidelines on article 14 of the Convention on the Rights of Persons with Disabilities. The right to liberty and security of persons with disabilities, adopted during the Committee's 14th session, held in September 2015
- <sup>556</sup> CRPD/C/10/D/4/2011
- <sup>557</sup> CRPD/C/10/D/4/2011, para. 9.4.
- <sup>558</sup> The Committee noted this issue for Moldova, Jamaica, Poland and Costa Rica.
- <sup>559</sup> Moldova, ¶ 39
- <sup>560</sup> Moldova, ¶ 40
- <sup>561</sup> Moldova, ¶ 40
- <sup>562</sup> Jamaica, ¶ 43
- <sup>563</sup> Jamaica, ¶ 44
- <sup>564</sup> Jamaica, ¶ 44
- <sup>565</sup> Morocco, ¶ 48
- <sup>566</sup> Morocco, ¶ 48
- <sup>567</sup> Ghana, ¶ 32; Costa Rica, ¶ 36
- <sup>568</sup> The Committee noted this issue for Rwanda, Ghana and Costa Rica.
- <sup>569</sup> Rwanda, ¶ 43
- <sup>570</sup> Rwanda, ¶ 44
- <sup>571</sup> Ghana, ¶ 37
- <sup>572</sup> Ghana, ¶ 38
- <sup>573</sup> Ecuador, ¶ 17
- <sup>574</sup> Ecuador, ¶ 18
- <sup>575</sup> Sweden, ¶¶ 30-31
- <sup>576</sup> New Zealand, ¶ 31
- <sup>577</sup> New Zealand, ¶ 32
- <sup>578</sup> Ghana, ¶ 36; Argentina, ¶ 16; Slovenia, ¶ 30
- <sup>579</sup> Slovenia, ¶ 30; South Africa, ¶ 25
- <sup>580</sup> Slovakia, ¶ 32
- <sup>581</sup> Slovakia, ¶ 32
- <sup>582</sup> Slovakia, ¶ 33
- <sup>583</sup> Slovakia, ¶ 33
- <sup>584</sup> Sweden, ¶ 34
- <sup>585</sup> Sweden, ¶ 35
- <sup>586</sup> Sweden, ¶ 35
- <sup>587</sup> CRC, UK, ¶21-22.
- <sup>588</sup> CRC, New Zealand, ¶21-22.
- <sup>589</sup> Ibid, ¶24.
- <sup>590</sup> Ibid, ¶41-42.
- <sup>591</sup> Ibid, ¶45.
- <sup>592</sup> CRC, South Africa, ¶35-36.
- <sup>593</sup> Ibid, ¶71-72.
- <sup>594</sup> South Africa, ¶ 32
- <sup>595</sup> Burkina Faso, ¶ 35
- <sup>596</sup> Poland, ¶ 27
- <sup>597</sup> Namibia, ¶ 25
- <sup>598</sup> South Africa, ¶ 33; Namibia, ¶ 26, Burkina Faso; ¶35; Poland ¶ 28
- <sup>599</sup> Namibia, ¶ 26
- <sup>600</sup> Poland, ¶ 27
- <sup>601</sup> Poland, ¶ 28
- <sup>602</sup> Burkina Faso, ¶ 34
- <sup>603</sup> Kazakhstan, ¶¶ 34- 35
- <sup>604</sup> Sweden, ¶ 30
- <sup>605</sup> Denmark, ¶ 29
- <sup>606</sup> Kuwait, ¶ 35
- <sup>607</sup> Jamaica, ¶ 37
- <sup>608</sup> Jamaica, ¶ 38
- <sup>609</sup> New Zealand, ¶ 40; Moldova, ¶ 20
- <sup>610</sup> Ibid
- <sup>611</sup> New Zealand, ¶ 40; Moldova, ¶ 20
- <sup>612</sup> New Zealand, ¶ 40; South Africa, ¶ 15; Sweden, ¶ 16; Slovenia, ¶ 8; Slovakia, ¶ 13
- <sup>613</sup> Sweden, ¶ 16
- <sup>614</sup> Sweden, ¶ 17
- <sup>615</sup> Slovenia, ¶ 8
- <sup>616</sup> CERD, General Comment No. 35 on Combating Racist Hate Speech, 26 September 2013, CERD/C/GC/35, ¶15.
- <sup>617</sup> Ibid, ¶6.
- <sup>618</sup> Ibid, ¶7.
- <sup>619</sup> Ibid, ¶10 and 13.
- <sup>620</sup> Ibid, ¶16.
- <sup>621</sup> Ibid, ¶15.



- <sup>622</sup> Ibid, ¶17 and 20.
- <sup>623</sup> Ibid, ¶45.
- <sup>624</sup> CERD, Greece, ¶16-17.
- <sup>625</sup> CERD, Pakistan, ¶15-16.
- <sup>626</sup> CERD, Ukraine, ¶11-14.
- <sup>627</sup> CERD, UK, 15-17.
- <sup>628</sup> CERD, Lebanon, ¶10-11.
- <sup>629</sup> CERD, South Africa, ¶12-13.
- <sup>630</sup> CERD, Sri Lanka, ¶16-17.
- <sup>631</sup> CERD, Azerbaijan, ¶13-16.
- <sup>632</sup> CERD, Namibia, ¶11-12, CERD, Turkmenistan, ¶8-9.
- <sup>633</sup> CERD, Portugal, ¶16-17.
- <sup>634</sup> CERD, Italy, ¶14-17.
- <sup>635</sup> Azerbaijan, ¶ 44
- <sup>636</sup> Azerbaijan, ¶ 45
- <sup>637</sup> Slovenia, ¶ 21
- <sup>638</sup> Slovenia, ¶ 21
- <sup>639</sup> Slovenia, ¶ 22
- <sup>640</sup> Sweden, ¶¶ 22-23
- <sup>641</sup> Kazakhstan, ¶¶ 13-14
- <sup>642</sup> Costa Rica, ¶ 13, South Africa, ¶ 16; Jamaica, ¶ 19
- <sup>643</sup> Costa Rica, ¶ 14, South Africa, ¶ 17; Jamaica, ¶ 20
- <sup>644</sup> Costa Rica ¶ 14; South Africa, ¶ 17 (b); Jamaica, ¶ 20
- <sup>645</sup> Costa Rica, ¶ 9
- <sup>646</sup> Costa Rica, ¶ 10
- <sup>647</sup> Rwanda, ¶ 48
- <sup>648</sup> Rwanda, ¶ 47
- <sup>649</sup> Kuwait, ¶ 10
- <sup>650</sup> Kuwait, ¶ 11
- <sup>651</sup> Ecuador, ¶ 36 (a)
- <sup>652</sup> Ecuador, ¶ 38
- <sup>653</sup> Argentina, ¶ 37
- <sup>654</sup> Argentina, ¶ 38
- <sup>655</sup> Sweden, ¶ 38
- <sup>656</sup> Sweden, ¶ 39
- <sup>657</sup> Slovakia, ¶ 16
- <sup>658</sup> Sweden, ¶ 14
- <sup>659</sup> Slovakia, ¶ 17
- <sup>660</sup> Moldova, ¶ 12 (b)
- <sup>661</sup> Slovakia, ¶ 19
- <sup>662</sup> Slovakia, ¶ 26
- <sup>663</sup> Slovakia, ¶ 19
- <sup>664</sup> Slovenia, ¶ 33
- <sup>665</sup> Slovenia, ¶ 34
- <sup>666</sup> South Africa, ¶ 46
- <sup>667</sup> New Zealand, ¶ 21
- <sup>668</sup> New Zealand, ¶ 23
- <sup>669</sup> New Zealand, ¶ 26
- <sup>670</sup> New Zealand, ¶ 43
- <sup>671</sup> New Zealand, ¶ 46
- <sup>672</sup> New Zealand, ¶ 48
- <sup>673</sup> CERD, General Comment No. 23 on rights of indigenous peoples, 18 August 1997, ¶3.
- <sup>674</sup> Ibid, ¶4.
- <sup>675</sup> Ibid, ¶5.
- <sup>676</sup> CERD, Argentina, ¶6-7.
- <sup>677</sup> Ibid, ¶8-9.
- <sup>678</sup> Ibid, ¶20-24.
- <sup>679</sup> CERD, Namibia, ¶15-16.
- <sup>680</sup> Ibid, ¶19-20.
- <sup>681</sup> Ibid, ¶21-22.
- <sup>682</sup> Ibid, ¶23-24.
- <sup>683</sup> CERD, Rwanda, ¶14-17.
- <sup>684</sup> Ibid, ¶18-19.
- <sup>685</sup> CERD, South Africa, ¶14-15.
- <sup>686</sup> Ibid, ¶24-25.
- <sup>687</sup> CERD, Azerbaijan; CERD, Argentina, ¶10-11; CERD, Namibia, ¶5-6; CERD, Rwanda, ¶10-11; CERD, South Africa, ¶14-15.
- <sup>688</sup> Morocco, ¶ 9
- <sup>689</sup> Morocco, ¶ 10
- <sup>690</sup> New Zealand, ¶ 9; Namibia, ¶ 37 Sweden, ¶ 36
- <sup>691</sup> Namibia, ¶¶ 37, 38; Rwanda, ¶ 36; Poland, ¶ 39; New Zealand, ¶ 10; Namibia, ¶ 38; Sweden, ¶ 37
- <sup>692</sup> South Africa, ¶ 10; Sweden, ¶ 36
- <sup>693</sup> South Africa, ¶ 11; Sweden, ¶ 37
- <sup>694</sup> South Africa, ¶ 11; Sweden, ¶ 37
- <sup>695</sup> Poland, ¶ 39
- <sup>696</sup> Poland, ¶ 40
- <sup>697</sup> Kuwait, ¶ 20; Law No. 78 (2015), Kuwait

- <sup>698</sup> Kuwait, ¶ 21
- <sup>699</sup> Rwanda, ¶¶ 37-38
- <sup>700</sup> Morocco, ¶ 39
- <sup>701</sup> Morocco, ¶ 40
- <sup>702</sup> *Navruz Tahirovich Nasyrlyayev v. Turkmenistan*, Communication No. 2219/2012, UN Doc. CCPR/C/117/D/2219/2012 (15 July 2016) ¶ 8.7; *Matkarim Aminov v. Turkmenistan*, Communication No. 2220/2012, UN Doc. CCPR/C/117/D/2220/2012 (14 July 2016) ¶ 9.7; *Dovran Bahramovich Matyakubov v. Turkmenistan*, Communication No. 2224/2012, UN Doc. CCPR/C/117/D/2224/2012 (14 July 2016) ¶ 7.7; *Akmurat Nurjanov v. Turkmenistan*, Communication No. 2225/2012, UN Doc. CCPR/C/117/D/2225/2012 (15 July 2016) ¶ 9.3; *Shadurdy Uchetov v. Turkmenistan*, Communication No. 2226/2012, UN Doc. CCPR/C/117/D/2226/2012 (15 July 2016) ¶ 7.6; *Akmurat Halbayewich Yegendurdyew v. Turkmenistan*, Communication No. 2227/2012, UN Doc. CCPR/C/117/D/2227/2012 (14 July 2016) ¶ 7.6
- <sup>703</sup> Kazakhstan, ¶ 23
- <sup>704</sup> Kazakhstan, ¶¶ 45-46
- <sup>705</sup> Poland, ¶ 37
- <sup>706</sup> Moldova, ¶ 31
- <sup>707</sup> Argentina, ¶ 35
- <sup>708</sup> Moldova, ¶ 31
- <sup>709</sup> Namibia, ¶ 39
- <sup>710</sup> Poland, ¶ 38
- <sup>711</sup> Moldova, ¶ 32
- <sup>712</sup> Argentina, ¶ 36
- <sup>713</sup> Moldova, ¶ 32
- <sup>714</sup> Argentina, ¶ 36
- <sup>715</sup> Azerbaijan, ¶ 36
- <sup>716</sup> Kuwait, ¶ 40
- <sup>717</sup> Azerbaijan, ¶ 37
- <sup>718</sup> Kuwait, ¶ 41
- <sup>719</sup> Kazakhstan, ¶ 49
- <sup>720</sup> Kazakhstan, ¶ 49
- <sup>721</sup> Kazakhstan, ¶ 50
- <sup>722</sup> Kazakhstan, ¶ 50
- <sup>723</sup> *Ramazan Esergepov v. Kazakhstan*, Communication No. 2129/2012 UN Doc. CCPR/C/116/D/2129/2012 (29 March 2016) ¶¶ 11.6-11.8; *Valery Misnikov v. Belarus*, Communication No. 2093/2011, UN Doc. CCPR/C/117/D/2093/2011 (14 July 2016) ¶ 9.3; *Margarita Korol v. Belarus*, Communication No. 2089/2011, UN Doc. CCPR/C/117/D/2089/2011 (14 July 2016) ¶ 7.3; *Anatoly Poplavny and Leonid Sudalenko v. Belarus*, Communication No. 2139/2012, UN Doc. CCPR/C/118/D/2139/2012 (3 November 2016) ¶¶ 8.3-8.4
- <sup>724</sup> Poland, ¶ 37
- <sup>725</sup> Slovenia, ¶ 31
- <sup>726</sup> Kazakhstan, ¶ 49
- <sup>727</sup> Kuwait, ¶ 40
- <sup>728</sup> Poland, ¶ 37; Slovenia, ¶ 32; Kazakhstan, ¶ 50; Kuwait, ¶ 41
- <sup>729</sup> Ecuador, ¶ 27
- <sup>730</sup> Rwanda, ¶ 39
- <sup>731</sup> Ecuador, ¶ 27
- <sup>732</sup> Rwanda, ¶ 39
- <sup>733</sup> Ecuador, ¶ 29
- <sup>734</sup> Rwanda, ¶ 40
- <sup>735</sup> Ecuador, ¶ 28
- <sup>736</sup> Rwanda, ¶ 40
- <sup>737</sup> Rwanda, ¶ 39
- <sup>738</sup> Poland, ¶ 37
- <sup>739</sup> Kuwait, ¶ 40
- <sup>740</sup> Morocco ¶ 43; Kuwait, ¶ 40
- <sup>741</sup> Morocco ¶ 43; Kuwait, ¶ 40
- <sup>742</sup> Kazakhstan, ¶ 49
- <sup>743</sup> Poland, ¶ 37; Kazakhstan ¶ 49
- <sup>744</sup> Poland, ¶ 37; Morocco ¶ 43; Kuwait, ¶ 40
- <sup>745</sup> Azerbaijan, ¶ 36
- <sup>746</sup> Morocco, ¶ 43
- <sup>747</sup> Kuwait, ¶ 40
- <sup>748</sup> Kuwait, ¶ 40
- <sup>749</sup> Morocco, ¶ 44
- <sup>750</sup> Kuwait, ¶ 41
- <sup>751</sup> Kuwait, ¶ 41
- <sup>752</sup> Kazakhstan, ¶ 50
- <sup>753</sup> Kuwait, ¶ 41
- <sup>754</sup> Kuwait, ¶ 48
- <sup>755</sup> Kuwait, ¶ 49
- <sup>756</sup> Poland, ¶¶ 37-38
- <sup>757</sup> *Mohamed Rabbae, A.B.S and N.A. v. Netherlands*, Communication No. 2124/2011, UN Doc. CCPR/C/117/D/2124/2011 (14 July 2016)
- <sup>758</sup> *Mohamed Rabbae, A.B.S and N.A. v. Netherlands*, Communication No. 2124/2011, UN Doc. CCPR/C/117/D/2124/2011 (14 July 2016) ¶ 3.2
- <sup>759</sup> *Ibid*, ¶ 3.3
- <sup>760</sup> *Ibid*, ¶ 9.7; Also see the Committee's general comment No. 34 (2011) on the freedoms of opinion and expression, ¶¶ 51-52.
- <sup>761</sup> *Mohamed Rabbae, A.B.S and N.A. v. Netherlands*, Communication No. 2124/2011, UN Doc. CCPR/C/117/D/2124/2011 (14 July 2016) ¶ 9.7; Also see *Vassilari et al. v. Greece*, Communication No. 1570/2007, UN Doc. CCPR/C/95/D/1570/2007 (9 March 2009) Appendix ¶ 1
- <sup>762</sup> *Mohamed Rabbae, A.B.S and N.A. v. Netherlands*, Communication No. 2124/2011, UN Doc. CCPR/C/117/D/2124/2011 (14 July 2016) ¶ 10.4
- <sup>763</sup> *Ibid*

<sup>764</sup> Ibid  
<sup>765</sup> Ibid, ¶ 10.7  
<sup>766</sup> Morocco, ¶ 43  
<sup>767</sup> Morocco, ¶ 44  
<sup>768</sup> Namibia, ¶ 39  
<sup>769</sup> Namibia, ¶ 38  
<sup>770</sup> Rwanda, ¶ 39  
<sup>771</sup> Rwanda, ¶ 40  
<sup>772</sup> Ecuador, ¶ 28  
<sup>773</sup> Ecuador, ¶ 29  
<sup>774</sup> Namibia, ¶ 41  
<sup>775</sup> Namibia, ¶ 42  
<sup>776</sup> Namibia, ¶ 39  
<sup>777</sup> Namibia, ¶ 40  
<sup>778</sup> Jamaica, ¶ 47  
<sup>779</sup> Jamaica, ¶ 48  
<sup>780</sup> Ghana, ¶ 39  
<sup>781</sup> Ghana, ¶ 40  
<sup>782</sup> Rwanda, ¶ 41  
<sup>783</sup> Morocco, ¶ 45  
<sup>784</sup> Azerbaijan, ¶ 38  
<sup>785</sup> Kuwait, ¶ 42  
<sup>786</sup> Rwanda, ¶ 41  
<sup>787</sup> Kuwait, ¶ 42  
<sup>788</sup> Kuwait, ¶ 43; Rwanda, ¶ 42; Azerbaijan, ¶ 39; Morocco, ¶ 46  
<sup>789</sup> *Margarita Korol v. Belarus*, Communication No. 2089/2011, UN Doc. CCPR/C/117/D/2089/2011 (14 July 2016) ¶¶ 7.5-7.6  
<sup>790</sup> Moldova, ¶ 33  
<sup>791</sup> Moldova, ¶ 34  
<sup>792</sup> Azerbaijan, ¶ 38  
<sup>793</sup> Azerbaijan, ¶ 38  
<sup>794</sup> Kuwait, ¶ 42  
<sup>795</sup> Kuwait, ¶ 43  
<sup>796</sup> Burkina Faso, ¶ 37  
<sup>797</sup> Burkina Faso, ¶ 38  
<sup>798</sup> Kazakhstan, ¶ 53  
<sup>799</sup> Rwanda, ¶ 41  
<sup>800</sup> Azerbaijan, ¶ 40  
<sup>801</sup> Moldova, ¶ 37  
<sup>802</sup> Rwanda, ¶ 42; Azerbaijan, ¶ 40; Moldova, ¶ 38  
<sup>803</sup> Kazakhstan, ¶ 53  
<sup>804</sup> Kazakhstan, ¶ 54  
<sup>805</sup> Rwanda, ¶ 41  
<sup>806</sup> Rwanda, ¶ 41  
<sup>807</sup> Rwanda, ¶ 42  
<sup>808</sup> Kazakhstan, ¶ 53  
<sup>809</sup> Ecuador, ¶ 27  
<sup>810</sup> Kazakhstan, ¶ 54; Ecuador, ¶ 28  
<sup>811</sup> Kazakhstan, ¶ 53  
<sup>812</sup> Kazakhstan, ¶ 54  
<sup>813</sup> Kazakhstan, ¶ 53  
<sup>814</sup> Kazakhstan, ¶ 54  
<sup>815</sup> Morocco, ¶ 41  
<sup>816</sup> Morocco, ¶ 42  
<sup>817</sup> Azerbaijan, ¶ 40  
<sup>818</sup> Azerbaijan, ¶ 40  
<sup>819</sup> Azerbaijan, ¶ 41  
<sup>820</sup> Azerbaijan, ¶ 40  
<sup>821</sup> Azerbaijan, ¶ 18  
<sup>822</sup> Azerbaijan, ¶ 41  
<sup>823</sup> Azerbaijan, ¶¶ 42-43  
<sup>824</sup> Electoral Code of Burkina Faso, Article 135 – “supported an unconstitutional change in violation of the principle of the democratic rotation of power.”  
<sup>825</sup> Burkina Faso, ¶¶ 39-40  
<sup>826</sup> CRC, UK, ¶¶ 32-33.  
<sup>827</sup> CRC, GC Adolescence, ¶2.  
<sup>828</sup> Ibid, ¶24.  
<sup>829</sup> Ibid, ¶44.  
<sup>830</sup> Ibid, ¶45.  
<sup>831</sup> Ibid, ¶47.  
<sup>832</sup> Ibid, ¶66.  
<sup>833</sup> Ibid, ¶69.