

2. DUE PROCESS AND PROCEDURAL GUARANTEES

2.1. Right to Fair Trial

The right to a fair trial recognized under Article 14 of the ICCPR is multidimensional. It envisages various guarantees and procedural safeguards that must be present in all judicial, and certain administrative procedures. The following key views constitute examples of how these various dimensions interact and may be compromised. The following subsections will review the HR Committee's considerations with regard to some of the elements protected under the rights to a fair trial and liberty of a person.

Khidirnazar Allakulov v. Uzbekistan,

UN Doc. CCPR/C/120/D/2430/2014, 2017

This communication involved the quashing of court orders for retraction of defamatory statements in newspaper articles made against the author who was acquitted of the crimes alleged in the articles through the interference of the prosecuting authorities by means of supervisory review, which was inconsistent with the right to a fair hearing by an independent and impartial tribunal. The quashing also violated the author's rights under Article 17 by depriving the author of the possibility to rehabilitate his reputation, honour and dignity.

The State party was recommended to provide adequate compensation, including for lost earnings and damage to reputation, legal costs involved in litigation and provide appropriate measures of satisfaction with a view to restoring the author's reputation, honour, dignity and professional standing.

2.1.1. Arbitrary and Unlawful Detention

The HR Committee referred to arbitrary detention in the context of emergency situations, or in relation to special types of offences with regard to **DRC, Jordan, Cameroon, Mauritius, Italy** and

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⁸² Zhaslan v. Kazakhstan, §5.1 fn.15

⁸³ C. v. Australia, §11; Reyes v. Chile, §9; Siobhán Whelan v. Ireland, UN Doc. CCPR/C/119/D/2425/2014, 2017, §10 (**Siobhán v. Ireland**); Zhaslan v. Kazakhstan, §10

⁸⁴ C. v. Australia, §11; Siobhán v. Ireland, §10

⁸⁵ C. v. Australia, §12; Reyes v. Chile, §10; Siobhán v. Ireland, §10; Zhaslan v. Kazakhstan, §10

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Thailand, with common concerns over the lack of judicial control, the lack of effectiveness or availability of appeal recourses, and the long periods of detention.

For instance, the HR Committee expressed concern over reports of arbitrary and secret detention in **DRC** carried out by the National Intelligence Agency and the military in secret locations without any judicial control.⁸⁶ It also referred to **Jordan's** Act on crime prevention which grants Administrative Governors the powers to detain people for long periods without judicial recourse. It noted that more than 30,000 people, including women, had been held in such detention for months and years; and highlighted the ineffectiveness of appeal proceedings.⁸⁷

Vicencio Scarano Spisso v. Venezuela, UN Doc. CCPR/C/119/D/2481/2014, 2017

This communication involved the unlawful detention of a political opponent of the government on the basis of a failure to comply with an interim measure imposed by the Constitutional Chamber of the Supreme Court, wherein the proceedings that lead to detention were carried out by the Constitutional Chamber in excess of its powers.

The HR Committee, however, found that there were insufficient legal grounds for the prison sentence. Noting that the State's inability to demonstrate the reasonableness, necessity and proportionality of the measures, it recalled that any deprivation of liberty must be established by the law; that a custodial regime must not amount to an evasion of the limits of the criminal justice system; and that the notion of arbitrariness must be interpreted broadly.

The HR Committee found a violation under articles 14(1), 3) and (5) on the right to fair trial as the Constitutional Chamber's actions beyond what was strictly stipulated in the law rendered it an incompetent tribunal for issuing a criminal sentence. A violation of Article 9(1) was also found since being tried by the supreme tribunal does not compensate for the requirement of review by a higher tribunal. The HR Committee declared that the author's detention in a disciplinary unit of a military prison in solitary confinement, without access, to common areas constituted a violation of Article 10. The HR Committee recommended that the State furnish full reparation to the victim and take measures to prevent future violations.

The HR Committee also noted the high frequency of arbitrary detention carried out by the 'Quick Intervention Brigade' in **Cameroon** and the fact that the 'Commission in charge of examining compensation claims of arbitrary detention victims' is not yet operational;⁸⁸ **Mauritius's** 'Provisional Charges System' according to which a person may be detained for suspicion of having committed a serious offence;⁸⁹ and the reports of arbitrary detention of hundreds of individuals exercising their right to assembly and freedom of expression for 'attitude adjustments' after the 2014 Coup in **Thailand**.⁹⁰ It also noted with concern **Italy's** special detention regime under art. 41 bis of the law on the penitentiary system, which permits the application of a special

⁸⁶ DRC, §§35-36

⁸⁷ Jordan, §§18-19

⁸⁸ Cameroon, §§33-34

regime of detention for up to 4 years extendable for two years and its automatic extension, and the lack of judicial review thereof.⁹¹

General recommendations to States included measures to ensure that no one is subject to arbitrary detention, to amend the legislation and practices in order to comply with the Covenant, to conduct effective investigations and prosecutions, to release victims of arbitrary detention, and to provide effective remedies, such as an independent and impartial court and full reparation for victims.

The HR Committee recommended prohibition of secret detention, closure of all places of secret detention, and termination of arresting powers of the national intelligence agency and the military intelligence to **DRC**.⁹²

It was recommended to **Cameroon** that it ensure that all detainees benefit from procedural guarantees in accordance

Cyrille Gervais Moutono Zogo v. Cameroon, UN Doc. CCPR/C/121/D/2764/2016, 2017

This communication concerns the pre-trial detention and undue length of criminal proceedings against a Cameroonian national, who had been awaiting trial for over 5 years.

The HR Committee recalled that after the initial evaluation has determined that pre-trial detention is necessary, the measure must be revised periodically to assess if it is still reasonable and necessary, or if other alternative measures may be adopted. It further recalled that that everyone detained must be tried within reasonable time. In view of the victim being in detention since 30 March 2011, the detention being justified merely on procedural aspects, and lack of review and trial, the HRC found a violation of Article 9(1), (3) and (4). In the absence of justifications for the length of the proceedings, the HR Committee also found a violation of Article 14(3).

The HR Committee therefore recommended that the State immediately release the author, conduct a prompt trial and appropriately compensate the him.

with the Covenant, and that pre-trial detention periods provided by the Code of Criminal Procedure are respected.⁹³ The recommendations included that **Mauritius** amend its Constitution and accelerate the adoption of the new bill on criminal evidence in accordance with the Convention.⁹⁴ The HR Committee recommended that **Italy** expedite judicial review of orders imposing and extending the special detention regime.⁹⁵

See Sections 2.3. (Procedural safeguards), 3.1.2. (Extrajudicial, summary and arbitrary killings), 3.1.3. (Enforced disappearances), 3.2. (Prohibition of torture, cruel, inhuman or degrading treatment or punishment), 3.3. (Detention conditions), 5.2.3 (Immigration detention) for more.

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⁸⁹ Mauritius, §§31-32

⁹⁰ Thailand, §§25-26

⁹¹ Italy, §§32-33

⁹² DRC, §§35-36

⁹³ Cameroon, §§33-34

⁹⁴ Mauritius, §§31-32

⁹⁵ Italy, §§32-33

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Pre-trial Detention

Notably, the HR Committee highlighted the excessive use of pre-trial detention in drug-related cases in **Mauritius**;⁹⁶ and expressed concern over pre-trial detention in **Mongolia** sometimes exceeding 30 months, and the period not being deducted from the final sentence.⁹⁷ The HR Committee's recommendations on the issue included ensuring that pre-trial detention is subject to reasonable time frames by amending relevant legislation, identifying cases of unlawful detention and ensuring that victims of wrongful pre-trial detention are compensated.⁹⁸ Also, it recommended using alternatives to detention more frequently, expediting pending cases, amending legislation so that pre-trial detention is deducted from imposed sentences, conducting periodic reviews to assess the necessity of the measure, and making bail affordable for detainees.⁹⁹

The Committee Against Torture (CAT) noted that 59% of the prison population in **Cameroon** and 70% of the prison population in **Pakistan** were pre-trial detainees. The CAT also noted with concern that the families of persons held in police stations in **Cameroon** were not promptly notified nor was such persons given access to lawyers or reasons for their arrest from the moment of the detention. In **Pakistan** and **Bosnia and Herzegovina**, persons held in police stations were not explicitly guaranteed the right to request and receive a medical examination by an independent doctor and that police officers are often present during medical examinations.¹⁰⁰

2.1.2. Access to Justice

The HR Committee found a series of obstacles to effective access

Kh.B. v. Kyrgyzstan, UN Doc. CCPR/C/120/D/2163/2012, 2017

This communication involved the passing of a resolution by the parliament of Kyrgyzstan, in which the author was listed as an organizer of an event where the State institutions were criticised, which in turn allegedly led to him being sentenced to life imprisonment in absentia.

The HR Committee found that the facts fell within the definition of 'criminal charges' under Article 14 (1). Nevertheless, the author's failure to sufficiently substantiate his claim, showing that the parliamentary resolution had an effect on the final verdict, did not allow the HR Committee to find a violation of rights under Article 14 (2) of the Covenant.

⁹⁶ Mauritius, §§29-30

⁹⁷ Mongolia, §§23-24

⁹⁸ Madagascar, §§35-36

⁹⁹ Mauritius, §§29-30

¹⁰⁰ CAT, Concluding observations on the sixth periodic report of Bosnia and Herzegovina, UN Doc. CAT/C/BIH/CO/6, 2017, §10 (**CAT, Bosnia and Herzegovina**); CAT, Concluding observations on the fifth periodic report of Cameroon, UN Doc. CAT/C/CMR/CO/5, 2017, §§13,31 (**CAT, Cameroon**); Pakistan (CAT, Concluding observations on the initial report of Pakistan, UN Doc. CAT/C/PAK/CO/1, 2017, §§16-17, 28 (**CAT, Pakistan**))

to justice, such as the length of judicial proceedings, the geographical scope of courts and tribunals, the lack of human and financial resources, the high costs of judicial proceedings, and the lack of access to adequate legal aid. For instance, the excessive length of judicial proceedings and backlogs were of concern with regard to **Italy**, **Serbia**, and **Madagascar**.¹⁰¹

In relation to the geographical scope of courts and tribunals, the HR Committee praised **DRC** for the implementation of mobile

courts, but expressed concern over the lack of sufficient judges and the uneven geographic distribution.¹⁰² With regard to **Madagascar**, the HR Committee noted the considerable delays in administration of justice, its limited coverage across the country and the high costs of proceedings forcing many people to take recourse to traditional courts for issues outside their jurisdiction.¹⁰³

The HR Committee recommended that States pursue efforts to reduce said delays,¹⁰⁴ allocate the necessary financial and economic resources to ensure a well-functioning judiciary, and reinforce measures to ensure access to justice.¹⁰⁵

In its review of **Italy's** periodic report, the CAT noted the lack of adequate access to legal aid in the State, especially to foreigners.

The Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) recommended to **Thailand** to simplify the procedures relating to accessing the Justice Fund and ensure its accessibility for women from all sections of the society, eliminate stigmatization of women and girls who claim their rights, strengthen gender responsiveness and gender sensitivity of the justice system, and to strengthen measures to combat corruption in order to restore women's trust in the justice system.¹⁰⁶

Adequate Legal Aid

The HR Committee insisted on the fundamental role of adequate legal aid for ensuring effective access to justice. The HR Committee highlighted the lack of legal aid laws and policies, the lack of legal aid available for detainees, the insufficiency of human and financial resources and information on legal services, and the narrow qualifying criteria for accessing free legal aid.

For instance, the Committee expressed concern about the lack of legal aid for prisoners, incl. pre-trial detainees, and the legal aid bill not being passed in **Swaziland**.¹⁰⁷ The Committee also highlighted **Serbia's** delay in adopting the law on free legal aid.¹⁰⁸

While acknowledging the increase of public defenders in courts and police stations in **Honduras**, the HR Committee regretted its insufficiency and that persons are not informed of their right to legal counsel and related rights when detained.¹⁰⁹ It expressed concern over the limited access to free legal aid due to narrow qualifying criteria in **Italy**, and the lack of information on legal aid, recommending that qualifying criteria for legal aid are expanded.¹¹⁰ It regarded **DRC's** practice of conditioning legal aid on an indigence certificate with concern.¹¹¹

With regard to **Australia**, the HR Committee referred to the lack of culturally appropriate legal assistance services, such as interpretation and translation services for aboriginal and Torres Strait Islander peoples, and recommended that such services be provided.¹¹² For **Pakistan**, the HR Committee referred to the

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¹⁰¹ Italy, §§34-35; Serbia, §§34-35; Madagascar, §§45-46

¹⁰² DRC, §§37-38

¹⁰³ Madagascar, §§45-46

¹⁰⁴ Serbia, §§34-35

¹⁰⁵ DRC, §§37-38

¹⁰⁶ CAT, Concluding observations on the combined fifth and sixth periodic reports of Italy, UN Doc. CAT/C/ITA/CO/5-6, 2017, §§18-19 (**CAT, Italy**); CEDAW, Concluding observations on the combined sixth and seventh periodic reports of Thailand, CEDAW/C/THA/CO/6-7, 2017, §§10-11 (**CEDAW, Thailand**)

¹⁰⁷ Swaziland, §§32, 40

¹⁰⁸ Serbia, §§34-35

¹⁰⁹ Honduras, §§32-33

¹¹⁰ Italy, §§34-35

¹¹¹ DRC, §§37-38

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State's duty to provide adequate consular and legal services to its nationals abroad, notably Pakistani migrant workers condemned to death overseas.¹¹³ States were recommended to ensure that legal aid is available in all cases, not only when there is possibility of death penalty or life imprisonment;¹¹⁴ and that persons deprived of liberty enjoy all fundamental legal safeguards, including the right to immediate legal assistance.¹¹⁵

2.1.3. Independence of Judiciary

The HR Committee addressed the lack of guarantees for, and obstacles to the independence of Judiciary in **Dominican Republic, Turkmenistan, Serbia, Cameroon, Swaziland, Mongolia, Madagascar, Honduras** and **Romania**.¹¹⁶

For instance, with regard to **Turkmenistan**, the HR Committee highlighted that judges are appointed and dismissed by the President, the lack of tenure of judges, and the lack of information on the existence of an independent body in charge of judges' discipline.¹¹⁷ For **Serbia**, the concerns referred to the three-year probation period for judges, and reports of pressure and retribution by politicians and media against judges, prosecutors and the high judicial and prosecutorial councils.¹¹⁸

Regarding the situation in **Cameroon**, the HR Committee further expressed concern about the Code of Criminal Procedure, which permits the interference of the Minister of Justice and the Attorney General in order to terminate criminal procedures in certain circumstances; and the alleged violations of the right to a fair trial.¹¹⁹ It expressed concern over reports of **Madagascar's** President and Minister of Justice being President and Vice-President of the High Council of the Judiciary.

In the case of **Honduras**, the HR Committee referred to the absence of security measures for judicial members threatened in the exercise of their duties; it recommended to reinstate Judges Adan Guillermo López Lone and Tirza del Carmen Flores Lanza in positions similar to those they held at the time of their dismissal, in accordance with the judgement of the Inter-American Court of Human Rights in *Lopez Lone et al. v. Honduras*.¹²⁰

Sirozhiddin Allaberdiev v. Uzbekistan, UN Doc. CCPR/C/119/D/2555/2015, 2017

This communication concerns the unlawful detention, torture and violation of the right to a due process against the author. The HR Committee recalled that once a person is in detention, the State is responsible for their security, and it has a duty to produce evidence refuting all allegations of torture and mistreatment. The State was not able to demonstrate that it had addressed the allegations of torture and the HR Committee declared a violation under Articles 7 and 14(3). It also found that Uzbekistan's decision not to include the witnesses listed by the author and the lack of confidentiality of the meetings between the author and the counsel amounted to a violation of the author's right under Articles 14(3)(e) and (b).

The HR Committee explained that arrest in the terms of Article 9 does not require a formal arrest under domestic law, and noted that the State did not present sufficient explanations or

¹¹² Australia, §§39-40

¹¹³ Pakistan, §18

¹¹⁴ Swaziland, §§32, 40-41

¹¹⁵ Honduras, §§32-33

¹¹⁶ Dominican Republic, §§27-28; Turkmenistan, §§30-31; Serbia, §§34-35; Cameroon, §§37-38; Swaziland, §§38-39; Mongolia, §§31-32; Madagascar, §§45-46; Honduras, §§4-35; Romania, §§39-40

¹¹⁷ Turkmenistan, §§30-31

¹¹⁸ Serbia, §§34-35

¹¹⁹ Cameroon, §§37-38

¹²⁰ Honduras, §§34-35

evidence to counter the author's claim of unlawful detention as it was imposed in violation of criminal law and without an order. It therefore considered that the detention amounted to a violation of Article 9(1). The HR Committee recommended that the State furnish full reparation to the victim by revoking his conviction, terminating his incarceration and conduct a proper investigation into the allegations of torture.

The HR Committee recommended that **Dominican Republic** ensure that the selection and appointment proceedings for judges are undertaken by an independent mechanism that ensures their independence, capacity and integrity;¹²¹ that **Serbia** ensure the tenure of new judges;¹²² and that **Cameroon** review the composition of the National High Council of the Judiciary in order to ensure its impartiality.¹²³ Finally, it recommended that **Honduras** take immediate action to protect the autonomy, independence, impartiality and security of judges; and adopt and implement a law regulating judicial services.¹²⁴

The Committee on Economic Social and Cultural Rights (CESCR) urged **Sri Lanka** to take into account the recommendations of the 2017 report of the Special Rapporteur on the independence of judges and lawyers on her mission to Sri Lanka, in order to ensure that the judiciary is fully independent and duly representative.¹²⁵

2.1.4. Military and Traditional Tribunals

Military Tribunals

In this regard, the HR Committee referred to **DRC, Pakistan, Thailand** and **Jordan**,¹²⁶ where military tribunals have jurisdiction to hear cases concerning civilians and grave human rights violations, mainly in contexts of security emergencies or counter-terrorism activities.

With regard to **Pakistan**, the HR Committee expressed its concern over the extension of military tribunals' jurisdiction over anti-terrorism cases and cases of persons detained under the 'Actions in Aid of Civil Power' Regulation. It was noted that military courts had convicted 274 civilians, including children, in secret proceedings, and 161 civilians had been sentenced to death. It also referred with concern to 90% of the convictions being based on confessions; the lack of clear criteria to select the cases to be tried by these courts; defendants not having legal counsel of their own choosing or an effective right to appeal; and the lack of publicity of charges, evidence and reasoned judgements. The HR Committee also expressed concern over 5 missing persons, whose cases were being investigated by the Commission of Inquiry on Enforced Disappearances, after being allegedly convicted by military courts.¹²⁷

With regard to **Thailand**, while noting that Order 55/2016 transferred cases concerning civilians from military courts to civil ones from September 2016, the HR Committee expressed concern about reports of ongoing cases and arrest warrants for civilians before military courts; cases of civilians convicted by military courts without the right to appeal; and reports of military courts

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¹²¹ Dominican Republic, §§27-28

¹²² Serbia, §§34-35

¹²³ Cameroon, §§37-38

¹²⁴ Honduras, §§34-35

¹²⁵ CESCR, Concluding observations on the fifth periodic report of Sri Lanka, UN Doc. E/C.12/LKA/CO/5, 2017, §§11-12 (**CESCR, Sri Lanka**)

¹²⁶ DRC, §§37-38; Pakistan, §23; Thailand, §§25-26; Jordan, §§26-27

¹²⁷ Pakistan, §23

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not implementing all procedural guarantees under Article 14 of the Covenant.¹²⁸ Furthermore, the HR Committee expressed concern over the wide jurisdiction of the State Security Court in **Jordan**, including over cases of civilians accused of terrorism, and its reported lack of impartiality and independence.¹²⁹

It recommended that the States ensure that military tribunals do not try civilians, and they reform the laws so that grave violations of human rights are heard in ordinary courts;¹³⁰ that States review military courts' power to impose the death penalty and that they reform the proceedings in compliance with Articles 14 and 15 of the Covenant and its General Comment No. 32.¹³¹ It was recommended that **Thailand** ensure that trials before military courts are exceptional, that all necessary measures are taken to transfer cases of civilians pending before military courts to civil ones, and that the right to appeal before civil courts is provided to persons convicted under military jurisdiction.¹³² To **Jordan**, it was recommended that the State Security Court be abolished.¹³³

Traditional Tribunals

With regard to traditional tribunals in **Swaziland**, the HR Committee expressed its concern over the system not meeting the fair trial standards provided by the Covenant, and the lack of sufficient limitation of such jurisdiction.¹³⁴ It referred to **Madagascar's** *Dina* courts, which are limited to civil matters, unduly exercising jurisdiction on matters outside their scope as a result of the judicial system's shortcomings.¹³⁵ It recommended that **Swaziland** align the traditional justice system with fair trial standards, and restrict such courts' jurisdiction to minor civil and criminal matters, their judgments being subject to States Court' validation.¹³⁶ **Madagascar** was recommended to allocate additional human and financial resources to ensure broader coverage and effective legal assistance; and to ensure that traditional *Dina* courts consider only civil cases.¹³⁷

2.2. Right to an Effective Remedy and Transitional Justice

Victims' right to an effective remedy in the context of current and past armed conflicts, and transitional justice was a concern for the HR Committee in relation to Madagascar, Bosnia and Herzegovina, DRC and Serbia.

With regard to the **Madagascar** Act No. 2012-007 of 2012 introducing amnesty for purposes of national reconciliation, the HR Committee recalled that acts of torture, enforced disappearances, and extrajudicial and summary executions committed between 2009 and 2013 cannot be subject to amnesty. It regretted the lack of information regarding the prosecution of perpetrators of the said acts, and the application of amnesty in such cases, and, expressed concern over the Malagasy Reconciliation Council and the National Reparations and Compensation Fund not being operational.¹³⁸ For **DRC**, the HR Committee expressed its concern over the prevalent impunity of government officials and members of armed non-state actors carrying out human rights violations; and the difficulties for victims to access effective remedies.¹³⁹ It also noted the low rate of prosecutions, particularly against middle and high ranking officials, for war crimes committed during the armed conflict in **Serbia**; the narrow definitions of 'victim' and 'injured parties'

¹²⁸ Thailand, §§31-32

¹²⁹ Jordan, §§26-27

¹³⁰ DRC, §§37-38

¹³¹ Pakistan, §23

¹³² Thailand, §§25-26

¹³³ Jordan, §§26-27

¹³⁴ Swaziland, §§38-39

¹³⁵ Madagascar, §§45-46

¹³⁶ Swaziland, §§38-39

¹³⁷ Swaziland, §§38-39

¹³⁸ Madagascar, §§13-14

under the Law on Civilian Invalids of War and the Criminal procedure code; the lack of appointment of a new War Crimes prosecutor and the lack of resources allocated to this office; and the reports of government pressure on the office of the prosecutor.¹⁴⁰

In the case of **Bosnia and Herzegovina**, the HR Committee expressed concern over the slow prosecution of international crimes committed during the conflict; and noted that the National War Crimes Processing Strategy goal of completing the most complex cases by the end of 2015 was not achieved. Also, while acknowledging the introduction of definitions of torture and other international crimes in the criminal code and the plans to eliminate amnesty for international crimes, it expressed concern over the domestic courts' reliance on the Criminal Code of the former Socialist Federal Republic of Yugoslavia to prosecute crimes committed during the conflict, which do not include crimes against humanity, sexual slavery, enforced pregnancy and command responsibility definitions.¹⁴¹

In relation to wartime sexual victims' compensation, while acknowledging the court decisions to grant financial compensation in criminal proceedings, the HR Committee expressed concern about the Constitutional Court's opinion of prescription being applicable to compensation claims for non-material damage. It also referred with concern to the non-adoption of the draft law on the rights of victims of torture, the program for victims of sexual violence and the strategy on transitional justice; and the inequality of benefits for civilian victims and war veterans.¹⁴²

In general, the HR Committee recommended that the States investigate all cases of serious human rights violations to combat impunity. It recommended that **Madagascar** provide the Malagasy Reconciliation Council and the National Reparations and Compensation Fund with adequate resources to ensure their operability;¹⁴³ that **DRC** implement a transitional justice system to address all the violations committed in the past;¹⁴⁴ and that **Serbia** reform its laws to ensure that all victims of the conflict have an effective right to full reparation, and that it appoint a war crimes prosecutor, giving them adequate resources and independence.¹⁴⁵

It recommended that **Bosnia and Herzegovina** provide adequate support for victims and witnesses of past crimes, including psychological support; that the legal aid system be fully operational across the entire territory and available to all victims; that effective victims' and witnesses' protection programs be provided; that legislative and practical measures to ensure effective access to remedies for survivors of torture and sexual violence be adopted; and that benefits received by civilians be comparable to those received by war veterans.¹⁴⁶

The CESCR recommended that **Sri Lanka** incorporate economic, social and cultural rights into the policies and mechanisms of transitional justice.¹⁴⁷ The CEDAW recommended **Sri Lanka** and **Thailand** to fully involve women at all stages of the post-conflict reconstruction process. **Sri Lanka** was specifically urged to incorporate better safeguards to ensure the independence and

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¹³⁹ DRC, §§11-12

¹⁴⁰ Serbia, §§22-23

¹⁴¹ Bosnia & Herzegovina, §§17-18

¹⁴² Ibid, §§17-18

¹⁴³ Madagascar, §§13-14

¹⁴⁴ DRC, §§11-12

¹⁴⁵ Serbia, §§22-23

¹⁴⁶ Madagascar, §§17-18

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effectiveness of the judiciary and witness protection programmes, in line with international standards; and take steps to remove persisting barriers to women's access to justice, including gender, language and culture sensitive measures. With respect to **Thailand**, the CEDAW recommended to increase its efforts to end the conflict in the southern border provinces and ensure that the military, law enforcement officials and non-State armed groups abide by international humanitarian and human rights law, in particular with regard to the protection of women and girls who are not engaged in conflict from all forms of violence.¹⁴⁸

2.3. Procedural Safeguards

Following reports of arbitrary detention after the 2014 coup in **Thailand**, the HR Committee expressed its concern about individuals being detained without charge, incommunicado and at undisclosed places of detention for up to seven days without any kind of judicial supervision or safeguards against ill-treatment or access to a lawyer. It further expressed concern in view of detainees, reportedly, being obliged to sign agreements to not travel abroad or express political views, non-compliance with which meant two years' imprisonment. Also, it expressed concern over prolonged detention (30 days in civilian courts, and 84 days in military ones) for criminal suspects, without any charge or habeas corpus.¹⁴⁹

In relation to Madagascar, the HR Committee referred with concern to the possibility of extending police custody up to 12 days on the basis of insufficiently defined criteria; the difficulties detainees experience to access legal services; and the possibility of contributing to police operative costs in order to speed up

Vladislav Chelakh v. Kazakhstan, UN Doc. CCPR/C/121/D/2645/2015, 2017

This communication involved the trial and conviction of the author leading to a sentence of life imprisonment. The author was provided with a lawyer not of his choosing and was given insufficient time to prepare his case before the court. The HR Committee stated that accused persons must have adequate time and facilities for the preparation of their defence and to communicate with counsel of their own choosing.

The State Party was recommended to pay the author appropriate compensation and prevent such incidents in the future.

investigations, which undermines equal access to justice.¹⁵⁰ Similarly, the HR Committee expressed concern over the prosecutor being able to authorize remand in custody of persons arrested on the basis of a criminal charge, with possibility of extension and no judicial control, and the lack of interpreters for Russian speaking defendants in Turkmenistan;¹⁵¹ detainees not being informed of the reasons for their arrest and their right to

¹⁴⁷ CESCR, Sri Lanka, §§71-72

¹⁴⁸ CEDAW, Concluding observations on the eighth periodic report of Sri Lanka, CEDAW/C/LKA/CO/8, 2017, §§ 14-17 (**CEDAW, Sri Lanka**); CEDAW, Thailand, §§23-24

¹⁴⁹ Thailand, §§25-26

¹⁵⁰ Madagascar, §§33-34

legal counsel in DRC.¹⁵² It also highlighted detainees neither being provided with immediate access to a lawyer or a doctor, nor the opportunity to contact their families, and the lack of investigation of detainees' rights violations complaints in **Mongolia**;¹⁵³ and the lack of access to detention registers, and the difficulty individuals in police custody face to be examined by an independent doctor in **Honduras**.¹⁵⁴

2.3.1. Counter-Terrorism Measures

The HR Committee mainly addressed issues of broad definitions of terrorist acts which may pose a risk to the exercise of fundamental freedoms, and violations of procedural safeguards in the context of the counter-terrorism strategies. For instance, it expressed concern over **Jordan's** Act on prevention of terrorism and its broad definition of terrorism which includes acts disturbing public order, acts that sow discord and online activity that supports ideas of terrorist groups. The HR Committee explained that such a definition could be used to detain individuals exercising their right to freedom of expression and peaceful assembly. It also highlighted measures permitting the police and intelligence services to arrest and refer suspects to the State Security Court, which has judges appointed by the executive.¹⁶⁰ The HR Committee noted **Cameroon's** Law n° 2014/028 for repressing terrorist acts, establishing new grounds for death penalty and other provisions incompatible the Covenant, and granting jurisdiction to military courts over civilians. It also referred to reports of said law being applied for denunciation of non-terrorist acts, and abuses committed in the framework of the fight against terrorism.¹⁶¹

The CAT was concerned by credible reports of mass arrests being carried out without a warrant, often on the basis of thin evidence, as part of counter-terrorism operations in **Cameroon**. The Committee noted regrettably that the State party did not respond to the requests for information regarding the number of persons who had been subjected to arbitrary arrest and the number of State officials who had been punished for such acts.¹⁶²

It also expressed concern over reports of Counter Terrorism Laws in **Swaziland** being used for repression of political opposition and social protests; the terrorism act definition being overbroad; and the lack of legal remedies and procedural safeguards in the 'Suppression of Terrorism Act' and the 'Sedition and Subversive Activities Act'.¹⁶³ It further noted **Turkmenistan's** broad definition of extremism;¹⁶⁴ and the reports of illegal and secret detention, ill-treatment and extraordinary renditions being used against terrorists in **Romania**, including in the case of Abd al-Rahim Hussayn Muhammad al-Nashiri.¹⁶⁵

The HR Committee also expressed concern over **Mauritius'** Prevention of Terrorism Act, which allows the denial of bail and detention for 36 hours, without access to anyone, including counsel; and the lack of data on the application of this legislation.¹⁶⁶ In relation to **Bangladesh**, it expressed concern over unclear legal terminology which grants the State broad powers to detain in cases of 'prejudicial acts' and 'terrorist acts'; and the adoption of death penalty for financing terrorists.¹⁶⁷ Similarly, in relation to **Pakistan's** Anti-Terrorism Act, the HR Committee highlighted several aspects, such as the broad definition of terrorism; the Act's supremacy over other laws, which enables

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¹⁵¹ Turkmenistan, §§24-25

¹⁵² DRC, §§35-36

¹⁵³ Mongolia, §§23-24

¹⁵⁴ Honduras, §§32-33

¹⁵⁵ DRC, §§35-36

¹⁵⁶ Mongolia, §§23-24

¹⁵⁷ Madagascar, §§33-34

¹⁵⁸ Turkmenistan, §§24-25

¹⁵⁹ Honduras, §§32-33

¹⁶⁰ Jordan, §§12-13

¹⁶¹ Cameroon, §§11-12

¹⁶² CAT, Cameroon §§13-14

¹⁶³ Swaziland, §§36-37

¹⁶⁴ Turkmenistan, §§14-15

¹⁶⁵ Romania, §§33-34

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Anti-terrorism courts to try juveniles in spite of the Juvenile Justice System Ordinance of 2000; and detention up to one year and admission of confessions obtained in police custody as evidence in court.¹⁶⁸

The HR Committee expressed concern over the stop, search and seizure powers, questioning and detention warrants, preventive and post-sentence detention regimes, 'declared areas' offences and revocation of citizenship in **Australia**. It also noted the State's inaction in implementing the recommendations of the Independent National Security Legislation Monitor, in charge of reviewing counter-terrorism legislation, and of the Council of Australian governments; and the reauthorization of control and preventive detention orders.¹⁶⁹

It was recommended that States review relevant legislations and practices to comply with the Covenant and international legal safeguards. The HR Committee recommended that suspects in **Jordan** be tried by ordinary civil courts in accordance with due process principles; that **Swaziland** restrict the terrorism definition to cases involving acts of violence, and ensure effective remedies and procedural safeguards to counter improper application of the law; that **Turkmenistan** ensure legal certainty, predictability and proportionality by incorporating elements of violence, advocacy or hatred in the extremism definition; and that **Bangladesh** ensure that said measures are not used to repress journalists and human rights defenders.¹⁷⁰

Recommendations included **Mauritius** ensuring that judges may decide when to release a suspect on bail, and that it collect pertinent data on the application of the Prevention of Terrorism Act; **Romania** reinforcing and accelerating investigations of extraordinary and secret renditions; and **Australia** ensuring that limitations to human rights for national security purposes serve legitimate aims and are subject to appropriate safeguards.¹⁷¹

2.4. Corruption

While acknowledging governmental efforts to counter corruption, the HR Committee highlighted reports of bribes given to access basic services and to influence government officials in **Dominican Republic**;¹⁷² the widespread corruption among the political, judiciary and police authorities in **Madagascar**;¹⁷³ and extortions being a constant practice of administrative officers in the police, judiciary, education, tax and sanitary sectors in **Cameroon**.¹⁷⁴ Regarding **Cameroon**, it was also noted with concern that some of the measures for repressing corruption practices are being used for targeting public figures instead.

The HR Committee made general recommendations related to the issues of corruption, on the basis of the States' duties not only to ensure a fair trial (Article 14), but also to take all necessary measures to ensure the rights provided in the Covenant are implemented (Article 2), including rights to ensure public participation (Article 25) and non-discrimination (Article 26).¹⁷⁵ The HR Committee made recommendations for the States to reinforce efforts to counter and eradicate corruption and impunity, by

¹⁶⁶ Mauritius, §§27-28

¹⁶⁷ Bangladesh, §§9-10

¹⁶⁸ Pakistan, §21

¹⁶⁹ Australia, §§15-16

¹⁷⁰ Jordan, §§12-13; Swaziland, §§36-37; Turkmenistan, §§14-15; Bangladesh, §§9-10

¹⁷¹ Mauritius, §§33-34; Romania, §§34-35; Australia, §§15-16

¹⁷² Dominican Republic, §§29-30

¹⁷³ Madagascar, §§11-12

¹⁷⁴ Cameroon, §§9-10

prosecuting and sanctioning the culprits. It recommended that **Dominican Republic** consider the recommendations of the UN Convention Against Corruption in relation to the Criminal Code on bribery and embezzlement, misappropriation or other diversion of property, that **Madagascar** establish public oversight mechanisms such as the independent anti-corruption offices; and that **Cameroon** adopt a strict anti-corruption policy for public officers.¹⁷⁶

The CESCR has been increasingly dealing with the issue of corruption in its periodic review of State reports. Corruption was addressed in its concluding observations on **Pakistan**; the Committee expressed its concern at the prevalence and magnitude of corruption cases involving high-level officials, despite the measures taken by the State party to combat corruption. **Pakistan** was recommended to ensure the effective protection of victims of corruption and their lawyers, anti-corruption activists, whistle-blowers and witnesses.¹⁷⁷

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¹⁷⁵ Cameroon, §§29-30;
Madagascar, §§11-12

¹⁷⁶ Dominican Republic, §§29-30;
Madagascar, §§11-12; Cameroon,
§§9-10

¹⁷⁷ CESCR, Concluding
observations on the initial report of
Pakistan, UN Doc.
E/C.12/PAK/CO/1, 2017, §§19-20
(CESCR, Pakistan)