

## 4. GENDER EQUALITY

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### 4.1. Harmful Traditional or Customary Practices

The prevalence of harmful traditional and customary practices was noted with grave concern by the HR Committee in its review of **Bangladesh, Cameroon, DRC, Jordan, Madagascar, Pakistan, Serbia, Swaziland** and **Switzerland**.

#### 4.1.1. Early or Forced Marriages and Polygamy

Noting that in **Cameroon** and **Pakistan**,<sup>297</sup> the minimum age requirements for marriage for girls and boys were set differently, the HR Committee recommended setting the minimum age of marriage at 18 for all. The HR Committee recommended that **Bangladesh** take immediate measures to sharply reduce early marriage, prevent dowry practices and amend the law to prohibit marriage of girls below 18 years of age without any exceptions.<sup>298</sup> The HR Committee recommended that measures be taken to combat the practice of polygamy prevalent in **Swaziland, Madagascar, Jordan** and **Cameroon**.<sup>299</sup> While addressing the issue of forced marriage in **Madagascar, Pakistan, Serbia, Swaziland** and **Switzerland**, the HR Committee recommended that the States take measures towards its abolition, engage in awareness campaigns, review relevant legislations, and grant victims access to remedies and rehabilitation services.<sup>300</sup>

#### 4.1.2. Discriminatory Customary Laws

The HR Committee expressed concern over the persistence of sexist stereotypes, application of customary rules perpetuating discrimination, and certain traditions detrimental to women in the **DRC**.<sup>301</sup> The inheritance and property rights of women were noted to be discriminatory in **Jordan, Madagascar** and **Swaziland**.<sup>302</sup> The HR Committee recommended that the States strengthen public education and awareness-raising activities, involving traditional leaders where necessary, and combat gender stereotypes relating to the subordination of women to men, and their respective roles and responsibilities in the family and in society.<sup>303</sup>

#### 4.1.3. Right to Transfer Nationality

Noting that in **Jordan, Madagascar** and **Swaziland**, women did not have the same rights as men to acquire nationality or transfer their nationality to their spouses, biological and adoptive children, the HR Committee called for an end to this discriminatory practice.<sup>304</sup> The CESCR noted with concern that the proposed amendment to the Child Marriage Restraint Act, 1929, in **Pakistan** has been declared un-Islamic by the Council of Islamic Ideology and that efforts to enact a law to prevent forced conversion have been blocked by the Council. The CAT echoed the concerns of the HR Committee relating to the practice of *qisas* and *diyat*. The CERD recommended **Jordan** to amend its Nationality Act to eliminate provisions that discriminate against non-Arab spouses of Jordanian citizens and to include provisions allowing all Jordanian women to transmit their citizenship to their children from birth, without discrimination.<sup>305</sup>

<sup>297</sup> Cameroon, §§17-18; Pakistan, §§41-42

<sup>298</sup> Bangladesh, §§13-14

<sup>299</sup> Swaziland, §25; Madagascar, §20; Jordan, §9; Cameroon, §§17-18

<sup>300</sup> Madagascar, §20; Pakistan, §42; Serbia, §19; Swaziland, §25; Switzerland, §27

<sup>301</sup> DRC, §15

<sup>302</sup> Jordan, §§8-9; Madagascar, §§19-20; Swaziland, §24

<sup>303</sup> Jordan, §§8-9; Madagascar, §§19-20

<sup>304</sup> Jordan, §§8-9; Madagascar, §§19-20; Swaziland, §24

<sup>305</sup> CERD, Concluding observations on the combined eighteenth to twentieth periodic reports of Jordan, CERD/C/JOR/CO/18-20, 2017, §§22-23 (**CERD, Jordan**); CAT, Pakistan, §§30-31; CESCR, Pakistan, §§57-58

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### 4.1.4. Mutilation of Female Organs and Honour-Killings

The HR Committee noted with concern the persistence of breast ironing in **Cameroon**, and of female genital mutilation in **Cameroon**. The HR Committee also expressed concern about the persistence of female genital mutilation (FGM) in **Switzerland** despite enactment of laws in its territory. States were asked to ensure that any person guilty of female genital mutilation or damage to the normal growth of an organ is prosecuted and sentenced, and to ensure that victims have access to trained professionals.<sup>306</sup>

For **Pakistan**, the HR Committee recommended that the State enforce anti-honour killing laws, prohibit *qisas* (equal retaliation) and *diyat* (financial compensation) laws in cases of violence against women, and continue to regulate and supervise the tribal councils in remote areas where they exercise jurisdiction over these cases.<sup>307</sup>

The subject of FGM was raised by the Committee on the Rights of the Child (CRC) with respect to **Cameroon**. It urged the state to strictly enforce the criminalization of genital mutilation and interference with organ growth; explicitly criminalize the practice of breast ironing; and to finalize and adequately resource the updated national action plan to combat FGM and its implementation. The CEDAW called for awareness campaigns in the southern border provinces of **Thailand** on the adverse effects of FGM on women and girls and also recommended the state to research on the extent of the practice of abduction of girls for the purpose of forced marriage and ensure that it is prohibited in practice and in law.<sup>308</sup>

### 4.2. Representation of Women in Public and Private Spheres

The HR Committee expressed concerns over the concentration of women in low-skilled informal sector jobs and their low representation in political and public life with respect to **Bosnia and Herzegovina, Cameroon, DRC, Dominican Republic, Honduras, Madagascar, Mauritius, Mongolia, Romania, Swaziland, Thailand** and **Turkmenistan**.<sup>309</sup> The HR Committee recommended that States strengthen efforts to increase participation of women in high-level managerial positions and higher levels of government.<sup>310</sup> The HR Committee recommended that **Turkmenistan** revise legal restrictions placed on women's employment options.<sup>311</sup>

The HR Committee recommended awareness generation campaigns to end entrenched patriarchal attitudes in society and encourage women to stand for elections, taking temporary special measures where necessary, and efforts to fully implement existing gender equality laws.<sup>312</sup>

The HR Committee also noted that in **Switzerland** there was underrepresentation of women on the boards of companies linked to the Confederation and firms listed on the stock markets despite positive steps taken. It recommended that the State continue to promote equal representation in all spheres.<sup>313</sup>

<sup>306</sup> Cameroon §§19-20; Switzerland §§26-27

<sup>307</sup> Pakistan, §§3-14

<sup>308</sup> CRC, Concluding observations on the combined third to fifth periodic reports of Cameroon, UN Doc. CRC/C/CMR/CO/3-5, 2017, §28 (**CRC, Cameroon**); CEDAW, Thailand, §§18-19

<sup>309</sup> Bosnia & Herzegovina, §25; Cameroon, §17; DRC, §15; Dominican Republic, §11; Honduras, §12; Madagascar, §17; Mauritius, §11; Mongolia, §9; Romania, §21; Swaziland, §24; Thailand, §14; Turkmenistan, §10

<sup>310</sup> Cameroon §18; DRC §16; Dominican Republic §12; Madagascar §18; Mauritius §12; Mongolia §10; Thailand §15

<sup>311</sup> Turkmenistan, §§10-11

<sup>312</sup> Bangladesh, §12; Bosnia & Herzegovina, §26; Dominican Republic, §39; Honduras, §13; Madagascar, §18; Romania, §21-22; Serbia, §19; Swaziland, §54; Thailand, §15;

Turkmenistan, §§10-11

<sup>313</sup> Switzerland, §§18-19

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Echoing the CEDAW and concerned by the potential negative impact on the perceived commitment of **Liechtenstein** to the gender equality framework, the HR Committee expressed concern over the declaration of **Liechtenstein** which stated that the State 'does not interpret the provisions of Article 3 of the Covenant as constituting an impediment to the constitutional rules on the hereditary succession to the throne', and recommended that the declaration be withdrawn.<sup>314</sup>

### 4.3. Equal Pay for Work of Equal Value

While noting that Malagasy civil service guaranteed equal pay, the HR Committee expressed concern about significant wage gaps in the private sector in **Madagascar**.<sup>315</sup> The HR Committee recommended the enforcement of existing regulations on equal pay in **Mauritius**, and recommended that **Switzerland** correct the pay gap in its private sector.<sup>316</sup> In the case of **Romania**, the HR Committee recommended that the State take effective measures to combat the inequality in employment, including the existing gender pay gap.<sup>317</sup>

The CESCR made recommendations to ensure equal pay for work of equal work in its concluding observations on **Australia**, **Jordan**, **Pakistan** and **Romania**.<sup>318</sup>

### 4.4. Violence against Women and Girls

High rates and impunity associated with violence against women and girls, including domestic violence, were noted in **DRC**, **Dominican Republic**, **Honduras**, **Madagascar**, **Mauritius**, **Romania**, **Switzerland**, **Thailand** and **Turkmenistan**.<sup>319</sup> Most of these crimes were under-reported, either because of them being considered a private affair or due to fear of reprisals and the possibility of ending criminal proceedings upon settlement by parties.<sup>320</sup>

The HR Committee expressed concern over **Turkmenistan's** failure to provide the requested information on cases of violence against women on the grounds that this is not a widespread phenomenon and recommended that the State adopt legislation criminalizing violence against women.<sup>321</sup> The HR Committee noted a disproportionate effect of violence against indigenous women and women with disabilities, which persists despite various positive measures taken to address them, in **Australia**.<sup>322</sup> The HR Committee noted with concern the reports of hundreds of femicides annually and the violence committed against sex workers in **Honduras**.<sup>323</sup>

The HR Committee also noted the situation of migrant women in **Switzerland**, who, in order to retain their residence permits if they report domestic violence, must prove to the courts that the violence to which they were subjected was intense and systematic. It was recommended that the burden of proof for such victims of violence be eased.<sup>324</sup>

<sup>314</sup> Liechtenstein, §§13-14

<sup>315</sup> Madagascar, §18

<sup>316</sup> Mauritius, §12; Switzerland, §19

<sup>317</sup> Romania, §22

<sup>318</sup> CESCR, Concluding observations on the fifth periodic report of Australia, UN Doc. E/C.12/AUS/CO/5, 2017, §25-26

(CESCR, **Australia**); Jordan (CESCR) §43-44; CESCR, **Pakistan**, §§39-40;

Romania (CESCR) §28-29

<sup>319</sup> DRC, §17; Dominican Republic, §13;

Honduras, §14; Madagascar, §23

Mauritius, §20; Romania, §23;

Switzerland, §26; Turkmenistan, §12

<sup>320</sup> Bosnia & Herzegovina, §27;

Cameroon, §19; DRC, §19; Mauritius,

§19; Mongolia, §18; Pakistan, §13;

Romania, §23; Switzerland, §26;

Thailand, §13

<sup>321</sup> Turkmenistan, §§12-13

<sup>322</sup> Australia, §21

<sup>323</sup> Honduras, §14

<sup>324</sup> Switzerland, §27

**X. v. Sri Lanka, UN Doc. CCPR/C/120/D/2256/2013, 2017.**

[Key words: Rape as torture; Discrimination based on ethnicity, minority status and gender]

This communication involved the unduly prolonged court proceedings relating to a case of rape during which the author was subjected to humiliating treatment and harassment. The HRC found that the treatment meted out to her was in breach of Article 7. Furthermore, the failure in enabling her to make the complaint in her mother tongue, the failure to acknowledge the author's vulnerability as a minor member of an ethnic minority and the denigration of her character during the trial was found to amount to discrimination on grounds of her gender and ethnicity, in violation of Article 26 of the Covenant.

The State party was recommended to, *inter alia*, provide the author with adequate compensation for the harm she suffered and facilitate her social and psychological rehabilitation, including with appropriate means of satisfaction and a public apology with a view to restoring her reputation and honour.

While welcoming the repeal of the law that allowed rapists to marry their victims in **Jordan**, the HR Committee expressed concern over the reduced sentencing for murder, if the victim's family consents, and the 'policy of preventive measures' purportedly used to protect women from violence and honour crimes.<sup>325</sup>

The HR Committee expressed concern over acid attacks, rapes, gang rapes, dowry-related violence, fatwa-instigated violence, sexual harassment, and sexual violence against indigenous women, and sexual and gender-based violence and domestic violence against Rohingya refugee women and girls in refugee camps in **Bangladesh**.<sup>326</sup> For the **DRC**, the persistence of sexual violence in conflict zones and as a weapon of war were noted.<sup>327</sup>

To address these issues, the HR Committee's recommendations to the States were (i) to ensure that complaints of violence against women and girls are thoroughly investigated and that perpetrators are prosecuted and sentenced; (ii) to establish a coordinated system for preventive measures, by means of awareness generation campaigns and training of law enforcement personnel; and (iii) to establish or strengthen victim assistance, through shelters, and legal, medical and psychological assistance.<sup>328</sup>

With respect to sexual violence perpetrated by the army and the police, the CEDAW called for a zero tolerance policy and urged **Sri Lanka** to ensure accelerated investigation, prosecution and punishment into all allegations of violence perpetrated against women and girls, including arbitrary arrest, torture and sexual violence as well as surveillance and harassment. The CEDAW expressed concern at reports that convicted perpetrators of war crimes of sexual violence in **Bosnia and Herzegovina** routinely received reduced sentences without any individual assessment, and are allowed to pay fines instead of being imprisoned. **Italy** was recommended to harmonise its legislation regulating arms export control with article 7 (4) of the Arms Trade Treaty and with

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<sup>325</sup> Jordan, § 11

<sup>326</sup> Bangladesh, § 18

<sup>327</sup> DRC, § 20

<sup>328</sup> Australia, § 22; Bosnia & Herzegovina, § 28; Cameroon, § 20; DRC, § 18; Dominican Republic, § 14; Jordan, § 11; Honduras, § 15; Madagascar, § 24; Mauritius, § 20; Mongolia, § 18; Pakistan, § 14; Romania, § 24; Serbia, § 21; Switzerland, § 27; Thailand, § 14; Swaziland, § 27; Turkmenistan, § 12

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Council Common Position 2008/944/CFSP of the Council of the European Union in light of the impact that the misuse of small arms and light weapons has on women, including those living in conflict zones.<sup>329</sup>

The HR Committee noted that despite the adoption of an anti-rape law in **Pakistan**, effective access by victims to justice had not been enhanced as no mechanism had been put in place to implement the law. The HR Committee recommended the enforcement and implementation of the law, along with increasing the number of female police officers and specialised units dealing with such cases.<sup>330</sup> It also recommended to **Cameroon, DRC, Jordan, Mauritius** and **Madagascar** that they make marital rape or 'non-consensual marital sex' a crime under their legal frameworks.<sup>331</sup>

In several of its recommendations, the HR Committee pointed out the importance of disaggregated data collection on domestic violence cases, prosecutorial investigations and outcomes of criminal proceedings.<sup>332</sup>

The CESCR, CEDAW and CAT urged **Australia, Cameroon, Jordan** and **Sri Lanka** to define and criminalise all forms of gender-based violence against women, including marital rape and all forms of domestic violence. **Jordan** was recommended by the CEDAW to ensure that rapists and perpetrators of crimes committed in the name of so-called "honour" are prosecuted and punished adequately without benefiting from any mitigating or exculpatory provisions. The CEDAW recommended **Sri Lanka** to amend the law requiring mediation prior to pursuing a case in court in cases of domestic violence. The CESCR urged **Australia** to redouble its efforts to combat domestic violence against women and children, including among indigenous peoples, as domestic violence remains widespread and is leading to homelessness among affected victims.<sup>333</sup>

### 4.5. Sexual and Reproductive Health Rights

#### 4.5.1. Gender Assignment and Associated Rights

The HR Committee addressed the issue of gender assignment of infants and children born with intersex variations in **Australia** and **Switzerland**. The HR Committee noted that such infants and children were subjected to irreversible and invasive medical interventions without their full, free and informed consent.<sup>334</sup> The HR Committee recommended that these States (i) take measures to ensure that no child undergoes unnecessary surgery intended to assign sex; (ii) make their medical records accessible; (iii) ensure that such treatment is done only with effective consent of the child; and (iv) ensure that psychological assistance and reparation, including compensation, are provided for victims of needless surgical procedures.<sup>335</sup>

Concerned by the lack of a legal framework in **Serbia** to deal with the consequences of adjusting or changing one's sex, and lack of right to a preferred gender, the HR Committee recommended the implementation of a procedure for legal gender recognition compatible with the Covenant.<sup>336</sup>

<sup>329</sup> CAT, Bosnia & Herzegovina, §§16,18,32; CEDAW, Concluding observations on the seventh periodic report of Italy, CEDAW/C/ITA/CO/7, 2017, §20 (**CEDAW, Italy**); CEDAW, Sri Lanka, §25

<sup>330</sup> Pakistan, §14

<sup>331</sup> Cameroon, §20; DRC, §18; Jordan, §11; Mauritius, §9; Madagascar, §23

<sup>332</sup> Australia, §22; Bosnia & Herzegovina, §28; Dominican Republic, §14; Liechtenstein, §20

<sup>333</sup> CESCR, Australia, §34; CEDAW, Jordan, §§31-34; CAT, Cameroon, §47; CEDAW, Sri Lanka, §23

<sup>334</sup> Australia, §25; Switzerland, §24

<sup>335</sup> Switzerland, §25; Australia, §26

<sup>336</sup> Serbia, §§12-13

The HR Committee noted the lack of clarity in legislation and procedures concerning the change of civil status with respect to gender identity in **Romania** and recommended that relevant legislation be clear and be applied in accordance with the Covenant.<sup>337</sup>

#### 4.5.2. Forced Sterilization

The HR Committee, while expressing concern over the practice of forced sterilization of persons with disabilities in **Dominican Republic** and on intersex persons in **Australia**, recommended that the States take measures to bring such practices to an end, where the person in question has not extended full, free and informed consent.<sup>338</sup>

The CESCR recommended that **Australia** study and implement the recommendations put forward in the 2013 report of the Senate Community Affairs References Committee entitled "Involuntary or coerced sterilisation of intersex people in Australia". In line with its consistent jurisprudence, in 2017, the Committee on the Rights of Persons with Disabilities (CRPD) upheld a stricter standard on the prohibition of forced sterilization of persons with disabilities. Persons who are deemed incapable to give 'free and informed' consent for reason of being deprived of such legal capacity are explicitly included in the scope of this prohibition." The CRPD stressed the need "that supported, decision-making mechanisms and strengthened safeguards are provided, paying particular attention to women, intersex persons girls and boys".

#### 4.5.3. Voluntary Termination of Pregnancy

##### General Prohibition on Abortion

The HR Committee dealt with the general prohibition on voluntary termination of pregnancy or abortion in observations on **Bangladesh, Cameroon, DRC, Honduras, Jordan, Liechtenstein, Madagascar, Mauritius, Pakistan, Romania, and Swaziland**. The HR Committee recommended that States allow exceptions to the general prohibition and revise their legislation to provide for additional exceptions to the legal ban on abortion, including in cases of rape, incest, fatal foetal impairment and for therapeutic reasons.<sup>339</sup>

The HR Committee recommended that **Jordan** and **Mauritius** regulate pregnancy or abortion in a manner that is consistent with its duty to ensure that women and girls do not have to undertake unsafe abortions, and it was recommended that they ensure that women and girls who resort to abortion and the doctors who assist them are not subject to criminal sanctions.<sup>340</sup>

##### ***Siobhán Whelan v. Ireland, UN Doc. CCPR/C/119/D/2425/2014, 2017.***

This communication involved allegations of cruel, inhuman and degrading treatment as well as the violation of rights to equality and non-discrimination on the ground of sex, and

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<sup>337</sup> Romania, §§ 15-16

<sup>338</sup> Australia, § 28; Dominican Republic, § 15

<sup>339</sup> Bangladesh, § 16; Cameroon, § 22; DRC, § 22; Honduras, § 17; Jordan, § 21; Liechtenstein, § 22; Madagascar, § 22; Mauritius, § 16; Pakistan, § 16; Romania, § 26

<sup>340</sup> Jordan, § 21; Mauritius, § 16

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arbitrary interference with the right to privacy with regard to the legal prohibition of abortion in Ireland. Due to complications with her pregnancy, the author had to seek abortion and ensuing services in the United Kingdom, suffering considerable distress in Ireland due to unavailability of such services there. The HR Committee found that the existence of domestic legal prohibition of abortion cannot be invoked to justify a failure to meet the requirements of Article 7 of the Covenant. Moreover, the State was found to have interfered arbitrarily with the author's right to privacy under Article 17, since its scope encompasses a woman's decision to request termination of pregnancy. Finally, the failure of the State to provide the author with the services that she required constituted discrimination under Article 26.

Accordingly, the HR Committee recommended the State to provide the author with adequate compensation and to make available to her any required psychological treatment. Furthermore, the State was under an obligation to take steps to prevent similar violations in the future, in particular by amending its law on voluntary termination of pregnancy.

### Procedural and Other Obstacles to Abortion

The HR Committee noted conscientious objection on part of the medical staff posing an obstacle to women obtaining safe and legal abortions in **Italy**, **Romania** and **Swaziland**.<sup>341</sup> The recommendations in this respect included establishment of an effective referral system and adoption of clear protocols for service providers so that women are not obliged to resort to unsafe abortion.<sup>342</sup>

The HR Committee recommended that **Honduras**, **Mauritius** and **Swaziland** collect disaggregated data on maternal mortality, including those due to unsafe abortions.<sup>343</sup> It also recommended review of relevant laws where unclear laws posed further obstacles for obtaining a safe and legal abortion, such as in **Pakistan** and **Swaziland**.<sup>344</sup> The HR Committee reiterated the importance of women's consent to abortion, while noting the criminal law in **Jordan**, under which the protection of family honour is a ground for leniency in cases of abortion, even if the woman does not consent.<sup>345</sup>

### 4.5.4. Access to Contraception and Sexual and Reproductive Health Services

The HR Committee made recommendations to several States to ensure access for men, women, boys and girls, to comprehensive reproductive health education and services throughout the country, especially in rural areas, including access to affordable contraceptives, quality ante-natal and post-abortion health services, and to increase awareness-raising programmes on the importance of using contraceptives and on sexual and reproductive health rights and choices.<sup>346</sup>

<sup>341</sup> Italy, §17; Romania, §25; Swaziland, §28

<sup>342</sup> Italy, §17; Romania, §26; Swaziland, §28

<sup>343</sup> Honduras, §17; Mauritius, §§15-16; Swaziland, §28

<sup>344</sup> Pakistan, §16; Swaziland, §28

<sup>345</sup> Jordan, §20

<sup>346</sup> Bangladesh, §16; Cameroon, §22; DRC, §22; Honduras, §17; Jordan, §21; Lichtenstein, §22; Madagascar, §22; Mauritius, §16; Pakistan, §16; Romania, §26; Swaziland, §29