

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

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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

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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

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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

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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

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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

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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"

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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

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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

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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

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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

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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.

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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 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

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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.

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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**,

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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.



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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

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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.

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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>

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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>

- <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

533 Argentina, ¶ 21  
 534 Argentina, ¶ 22  
 535 Argentina, ¶ 22  
 536 Ghana, ¶ 27  
 537 Ghana, ¶ 27.  
 538 Ghana, ¶ 28  
 539 The Committee noted this issue in Jamaica and Azerbaijan.  
 540 Jamaica, ¶¶ 13-14  
 541 Azerbaijan, ¶ 10  
 542 Azerbaijan, ¶ 11  
 543 The Committee noted this issue in Poland, Argentina and Sweden.  
 544 Poland, ¶ 41  
 545 Poland, ¶ 42  
 546 Argentina, ¶ 21  
 547 Argentina, ¶ 22  
 548 Azerbaijan, ¶ 10  
 549 Azerbaijan, ¶ 10  
 550 Azerbaijan, ¶ 10  
 551 Azerbaijan, ¶ 11  
 552 Moldova, ¶ 23  
 553 Moldova, ¶ 24  
 554 More technically, "on the basis of *impairments*". See CRPD, Preamble, para. e.  
 555 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  
 556 CRPD/C/10/D/4/2011  
 557 CRPD/C/10/D/4/2011, para. 9.4.  
 558 The Committee noted this issue for Moldova, Jamaica, Poland and Costa Rica.  
 559 Moldova, ¶ 39  
 560 Moldova, ¶ 40  
 561 Moldova, ¶ 40  
 562 Jamaica, ¶ 43  
 563 Jamaica, ¶ 44  
 564 Jamaica, ¶ 44  
 565 Morocco, ¶ 48  
 566 Morocco, ¶ 48  
 567 Ghana, ¶ 32; Costa Rica, ¶ 36  
 568 The Committee noted this issue for Rwanda, Ghana and Costa Rica.  
 569 Rwanda, ¶ 43  
 570 Rwanda, ¶ 44  
 571 Ghana, ¶ 37  
 572 Ghana, ¶ 38  
 573 Ecuador, ¶ 17  
 574 Ecuador, ¶ 18  
 575 Sweden, ¶¶ 30-31  
 576 New Zealand, ¶ 31  
 577 New Zealand, ¶ 32  
 578 Ghana, ¶ 36; Argentina, ¶ 16; Slovenia, ¶ 30  
 579 Slovenia, ¶ 30; South Africa, ¶ 25  
 580 Slovakia, ¶ 32  
 581 Slovakia, ¶ 32  
 582 Slovakia, ¶ 33  
 583 Slovakia, ¶ 33  
 584 Sweden, ¶ 34  
 585 Sweden, ¶ 35  
 586 Sweden, ¶ 35  
 587 CRC, UK, ¶21-22.  
 588 CRC, New Zealand, ¶21-22.  
 589 Ibid, ¶24.  
 590 Ibid, ¶41-42.  
 591 Ibid, ¶45.  
 592 CRC, South Africa, ¶35-36.  
 593 Ibid, ¶71-72.  
 594 South Africa, ¶ 32  
 595 Burkina Faso, ¶ 35  
 596 Poland, ¶ 27  
 597 Namibia, ¶ 25  
 598 South Africa, ¶ 33; Namibia, ¶ 26, Burkina Faso; ¶35; Poland ¶ 28  
 599 Namibia, ¶ 26  
 600 Poland, ¶ 27  
 601 Poland, ¶ 28  
 602 Burkina Faso, ¶ 34  
 603 Kazakhstan, ¶¶ 34- 35  
 604 Sweden, ¶ 30  
 605 Denmark, ¶ 29  
 606 Kuwait, ¶ 35

- 606 Kuwait, ¶ 35
- 607 Jamaica, ¶ 37
- 608 Jamaica, ¶ 38
- 609 New Zealand, ¶ 40; Moldova, ¶ 20
- 610 Ibid
- 611 New Zealand, ¶ 40; Moldova, ¶ 20
- 612 New Zealand, ¶ 40; South Africa, ¶ 15; Sweden, ¶ 16; Slovenia, ¶ 8; Slovakia, ¶ 13
- 613 Sweden, ¶ 16
- 614 Sweden, ¶ 17
- 615 Slovenia, ¶ 8
- 616 CERD, General Comment No. 35 on Combating Racist Hate Speech, 26 September 2013, CERD/C/GC/35, ¶5.
- 617 Ibid, ¶6.
- 618 Ibid, ¶7.
- 619 Ibid, ¶10 and 13.
- 620 Ibid, ¶16.
- 621 Ibid, ¶15.
- 622 Ibid, ¶17 and 20.
- 623 Ibid, ¶45.
- 624 CERD, Greece, ¶16-17.
- 625 CERD, Pakistan, ¶15-16.
- 626 CERD, Ukraine, ¶11-14.
- 627 CERD, UK, 15-17.
- 628 CERD, Lebanon, ¶10-11.
- 629 CERD, South Africa, ¶12-13.
- 630 CERD, Sri Lanka, ¶16-17.
- 631 CERD, Azerbaijan, ¶13-16.
- 632 CERD, Namibia, ¶11-12, CERD, Turkmenistan, ¶8-9.
- 633 CERD, Portugal, ¶16-17.
- 634 CERD, Italy, ¶14-17.
- 635 Azerbaijan, ¶ 44
- 636 Azerbaijan, ¶ 45
- 637 Slovenia, ¶ 21
- 638 Slovenia, ¶ 21
- 639 Slovenia, ¶ 22
- 640 Sweden, ¶¶ 22-23
- 641 Kazakhstan, ¶¶ 13-14
- 642 Costa Rica, ¶ 13, South Africa, ¶ 16; Jamaica, ¶ 19
- 643 Costa Rica, ¶ 14, South Africa, ¶ 17; Jamaica, ¶ 20
- 644 Costa Rica ¶ 14; South Africa, ¶ 17 (b); Jamaica, ¶ 20
- 645 Costa Rica, ¶ 9
- 646 Costa Rica, ¶ 10
- 647 Rwanda, ¶ 48
- 648 Rwanda, ¶ 47
- 649 Kuwait, ¶ 10
- 650 Kuwait, ¶ 11
- 651 Ecuador, ¶ 36 (a)
- 652 Ecuador, ¶ 38
- 653 Argentina, ¶ 37
- 654 Argentina, ¶ 38
- 655 Sweden, ¶ 38
- 656 Sweden, ¶ 39
- 657 Slovakia, ¶ 16
- 658 Sweden, ¶ 14
- 659 Slovakia, ¶ 17
- 660 Moldova, ¶ 12 (b)
- 661 Slovakia, ¶ 19
- 662 Slovakia, ¶ 26
- 663 Slovakia, ¶ 19
- 664 Slovenia, ¶ 33
- 665 Slovenia, ¶ 34
- 666 South Africa, ¶ 46
- 667 New Zealand, ¶ 21
- 668 New Zealand, ¶ 23
- 669 New Zealand, ¶ 26
- 670 New Zealand, ¶ 43
- 671 New Zealand, ¶ 46
- 672 New Zealand, ¶ 48
- 673 CERD, General Comment No. 23 on rights of indigenous peoples, 18 August 1997, ¶3.
- 674 Ibid, ¶4.
- 675 Ibid, ¶5.
- 676 CERD, Argentina, ¶6-7.
- 677 Ibid, ¶8-9.
- 678 Ibid, ¶20-24.
- 679 CERD, Namibia, ¶15-16.
- 680 Ibid, ¶19-20.

<sup>681</sup> Ibid, ¶121-22.

<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.