

The UN Human Rights Committee A Year in Review

2014



Foreword

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The Centre for Civil and Political Rights (CCPR-Centre) is proud to present this analysis of the UN Human Rights Committee's work in 2014. This issue is expected to be the first of a collection that will be updated on a yearly basis. The objective of this booklet is to analyse the main issues emerging from the Concluding Observations and decisions over the year. It reflects the main concerns discussed by the Committee during the reviews of various State Parties as well as the latest developments in the Committee's jurisprudence.

This research was carried out in collaboration with the Law Clinic of the LL. M. in International Law of the Graduate Institute of Geneva. Under the supervision of the Centre, students prepared all the related research materials and produced the articles included in this book.

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

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OVERVIEW OF THE CONCLUDING OBSERVATIONS ADOPTED IN 2014

INTRODUCTION	3
1. APPLICABILITY OF THE ICCPR, HUMAN RIGHTS INSTITUTIONS AND THE OPTIONAL PROTOCOLS	4
1.1. DOMESTIC APPLICABILITY OF ICCPR	4
1.2. NATIONAL HUMAN RIGHTS INSTITUTIONS	5
1.3. RESERVATIONS, ACCESSION TO OP'S AND IMPLEMENTATION OF VIEWS	5
2. VULNERABLE GROUPS	6
2.1. LESBIAN, GAY, BISEXUAL, TRANSGENDER AND INTERSEX	6
2.2. INDIGENOUS PEOPLES	6
2.3. MIGRANTS, REFUGEES AND ASYLUM SEEKERS	7
2.4. MINORITIES	7
2.5. PERSONS WITH DISABILITIES AND OLDER PERSONS	8
2.6. CHILDREN	8
2.7. VICTIMS OF TRAFFICKING	9
3. WOMEN AND GIRLS	10
3.1. PARTICIPATION IN PUBLIC AND PRIVATE SPHERES	10
3.2. EQUAL PAY FOR WORK OF EQUAL VALUE	10
3.3. DOMESTIC VIOLENCE AND VIOLENCE AGAINST WOMEN	10
3.4. ABORTION	10
3.5. HARMFUL TRADITIONAL PRACTICES	11
4. ADMINISTRATION OF JUSTICE AND PROCEDURAL GUARANTEES	12
4.1. PRE-TRIAL DETENTION	12
4.2. CONDITIONS OF PRISONS AND DETENTION CENTRES	12
4.3. MILITARY TRIBUNALS	12
5. DEATH PENALTY AND TORTURE/ILL-TREATMENT	13
5.1. DEATH PENALTY	13
5.2. TORTURE AND ILL-TREATMENT	13
6. FREEDOM OF EXPRESSION, PROTECTION OF JOURNALISTS AND HUMAN RIGHTS DEFENDERS, RIGHT TO PRIVACY AND FREEDOM OF CONSCIENCE AND RELIGION	15
6.1. FREEDOM OF EXPRESSION	15
6.2. PROTECTION OF JOURNALISTS AND HUMAN RIGHTS DEFENDERS	15
6.3. RIGHT TO PRIVACY	15
6.4. FREEDOM OF CONSCIENCE AND RELIGION	15
7. ACCOUNTABILITY FOR PAST HUMAN RIGHTS VIOLATIONS	16
8. SPECIFIC COUNTRY SITUATIONS	18
8.1. ISRAEL	18
8.2. SRI LANKA	18
8.3. SUDAN	19
8.4. UNITED STATES OF AMERICA	19
9. INDIVIDUAL CASES AND INDIVIDUAL EVENTS	22

OVERVIEW OF THE DECISIONS ADOPTED IN 2014

INTRODUCTION	23
1. ADMISSIBILITY AND PROCEDURAL ISSUES	24
2. ENFORCED DISAPPEARANCES	26
3. FAIR TRIAL	28
4. FREEDOM OF EXPRESSION, ASSOCIATION AND RELIGION	30
4.1. FREEDOM OF EXPRESSION	30
4.2. FREEDOM OF ASSOCIATION	31
4.3. FREEDOM OF CONSCIENCE AND RELIGION	31
5. TORTURE	33

Overview of the Concluding Observations adopted in 2014

Introduction

All States parties to the International Covenant on Civil and Political Rights (ICCPR/ the Covenant) have assumed the obligation to submit periodic reports to the Human Rights Committee (the Committee), which will then in turn analyse them and adopt Concluding Observations, including issues of concern and recommendations on each State.

In the course of three sessions in the year 2014,¹ the Committee examined 18 States parties' reports. In its 110th session, it adopted Concluding Observations on Chad, Kyrgyzstan, Latvia, Nepal, Sierra Leone and the United States of America (USA).² In its 111th session, the Concluding Observations were addressed to Chile, Georgia, Ireland, Japan, Malawi and Sudan. In the 112th session, the Committee reviewed the States parties' reports of Burundi, Haiti, Israel, Malta, Montenegro and Sri Lanka.

The analysis of the Concluding Observations of 2014 is divided into seven main topics, which have received attention by the Committee: (1) Applicability of the ICCPR and Human Rights Institutions, (2) Vulnerable Groups, (3) Women and Girls, (4) Administration of Justice and Procedural Guarantees, (5) Death Penalty and Torture/ill-treatment, (6) Freedom of Expression, Protection of Journalists and Human Rights Defenders, Right to Privacy and Freedom of Conscience and Religion, as well as (7) Accountability for Past Human Rights Violations. It is noteworthy to follow the Committee's analysis on the same topic across many States with regard to not only the State party itself but rather the substantive aspects discussed, in order to have a more comprehensive idea of the Committee's approach. This also facilitates the understanding of the main concerns of the Committee

regarding current human rights violations.

The first part of this publication features a detailed analysis of 4 of the Concluding Observations of 2014, which are of special interest to the public, either due to a recent or current conflict (Sri Lanka and Sudan) or regarding the measures taken by these countries abroad and its impact on the human rights situation of the local population (USA and Israel).

But before addressing the substantive issues, it appears relevant to provide some additional information on the Concluding Observations of 2014. This year, the Committee did not consider any State in absence of its report, a procedure it is entitled to under article 70 of its Rules of Procedure.

The Committee considered 4 initial reports, namely the first report that a State party should submit to the Committee within two years after its ratification of the ICCPR: Malawi, Haiti, Sierra Leone and Montenegro. Without an exception, all of these 4 States submitted their report late. Malawi had a delay of 17 years; Haiti submitted 16 years too late; Sierra Leone had a delay of 15 years and Montenegro of 4 years.

But not only were the States submitting their initial reports delayed; the other States parties reviewed were also, in many cases significantly delayed. Burundi (17 years), Malta (15 years and 7 months), Nepal (14 years and 6 months), Kyrgyzstan (7 years and 9 months), Sri Lanka (5 years), Latvia (3 years and 7 months), Sudan (2 years and 2 months), USA (1 year and 4 months), Georgia (8 months), Japan (6 months), Chile (2 months), and Israel (2 months). Only Ireland and Chad submitted their report on schedule.

1. Applicability of the ICCPR, Human Rights Institutions and the Optional Protocols

During 2014, the Committee has addressed in many of its Concluding Observations the issues of the domestic applicability of the Covenant, reservations to the ICCPR and its Optional Protocols, and the implementation of its Views. It has also given particular attention to the matter of the independence of National Human Rights Institutions (NHRIs).

1.1. Domestic applicability of ICCPR

In the Concluding Observations of 2014, the Committee has addressed in almost all cases the issue of the domestic applicability of the Covenant. Among other issues, the Committee has expressed concern that the provisions of the Covenant are not given full effect in the legislation of the State party and has thus recommended the States parties to undertake a comprehensive review of the national legislation and to take effective measures to ensure that the rights protected under the ICCPR are given full effect in the domestic order.³

In other cases, the Committee has noted the possibility to invoke the provisions of international human rights treaties directly in domestic courts (including the ICCPR). However, in these cases it has expressed concern that there are only limited examples where the provisions of the Covenant have been invoked. In these cases, it has recommended States take appropriate measures to raise awareness of the Covenant among judges, lawyers, prosecutors and the public at large to ensure that its provisions are taken into account before national courts.⁴ In some cases, it has required the State party to include in its next periodic report examples of application of the Covenant by domestic courts.⁵

The Committee also addressed two cases with particular situations: Israel and the USA. With regard to Israel, the Committee regretted that the State party maintains its position on the non-applicability of the ICCPR to the Occupied Palestinian Territories.⁶ Both, Israel and the USA, claim that the Covenant is a territorially bound treaty and that it does not apply with respect to individuals who are under its jurisdiction, but outside of its territory. The Committee considers that this position contradicts its interpretation of the application of the ICCPR, which is also supported by its jurisprudence, the jurisprudence of the International Court of Justice (ICJ) as well as State practice.⁷

In this context, the Committee reiterated its recommendation to Israel and the USA to interpret the Covenant in good faith, in light of the ICCPR's object and purpose, and to review its legal position so as to acknowledge the extraterritorial application of the ICCPR under certain circumstances (see General Comment N° 31), in conformity with the Committee's interpretation of the application of the ICCPR, its jurisprudence, the jurisprudence of the ICJ and State practice.⁸

Furthermore, with regard to the USA and its federal structure, the Committee expressed concern that the provisions of the ICCPR have been declared to be non-self-executing and that the State party has only limited avenues to ensure that the Covenant is respected and implemented in the state level as well as in local levels. The Committee thus recommended the USA to identify ways to give greater effect to the ICCPR at all levels, taking into consideration that its obligations are binding on the State party as a whole.⁹

With regard to the issue of restrictive applicability or non-applicability of international human rights law whenever international humanitarian law is applicable, a position sustained by Israel and the USA and addressed by the Committee, please refer to section 7.

The Concluding Observations on the periodic reports of Chile, Georgia, Latvia, Nepal and Sri Lanka did not include any concern or recommendations on the issue of the domestic applicability of the ICCPR.

Both, Israel and the USA, claim that the Covenant (...) does not apply with respect to individuals who are under its jurisdiction, but outside of its territory. The Committee considers that this position contradicts its interpretation of the application of the ICCPR

1. Applicability of the ICCPR, Human Rights Institutions and the Optional Protocols

With regard to reservations and declarations, the Committee has reiterated its view that in general, reservations and declarations to the ICCPR or its Optional Protocols have an adverse effect on the effective implementation of these human rights instruments.

1.2. National Human Rights Institutions

The Committee has also addressed the issue of NHRIs in many of the Concluding Observations of 2014. In some cases, it expressed concern that the respective NHRIs does not function fully independently,¹⁰ that it is not adequately funded,¹¹ as well as the reluctance of the NHRI itself to engage in particular issues, for example the rights of LGBTI persons.¹² In some instances, it expressed concern at the lack of capacity in implementing a broad mandate on human rights issues¹³ as well as at the lack of unified definitions of human rights in the constitutive instruments of the NHRI.¹⁴

The Committee thus recommended to several states that they adopt measures to ensure that the respective NHRIs enjoy full independence, in line with the Paris Principles;¹⁵ to provide NHRIs with adequate financial and human resources;¹⁶ to enhance its capacity to implement a broad human rights mandate;¹⁷ to ensure that the NHRIs recommendations are adequately taken into account by State authorities;¹⁸ and to comply with the mandates to engage in all human rights issues, including those related to the rights of LGBTI persons.¹⁹

In the case of Japan, the Committee regretted that the State party had not made any progress to establish a consolidated NHRI, and thus reiterated its recommendation to establish an independent NHRI with a broad human rights mandate, and provide it with adequate financial and human resources, in line with the Paris Principles.²⁰ A similar recommendation was made to the USA.²¹

1.3. Reservations, accession to OPs and implementation of Views

The Committee has also paid particular attention to the issues of reservations and declarations, accession to the optional protocols to the ICCPR and the implementation of the Committee's Views.

With regard to reservations and declarations, the Committee has reiterated its view that in general, reservations and declarations to the ICCPR or its Optional Protocols have an adverse effect on the effective implementation of these human rights instruments. In this context, the Committee recommended or reiterated its recommendations to the States parties to withdraw their reservations and declarations to the ICCPR.²²

The Committee also recommended or reiterated its recommendations to consider acceding to the First Optional Protocol to the ICCPR.²³ A similar recommendation was made with regard to the Second Optional Protocol,²⁴ in particular on the occasion of the 25th anniversary of the Protocol.²⁵ Sri Lanka was the only country for which the Committee did not recommend the adoption of the Second Optional Protocol.

With regard to the issue of the implementation of the Views adopted under the First Optional Protocol to the ICCPR, the Committee has expressed concern at the failure of States parties to implement its Views as well as on the lack of cooperation from States parties. The Committee has thus urged States parties to take concrete steps to give full effect to all Views on Individual Communications, in particular by conducting prompt, thorough and independent investigations, prosecuting those responsible, and providing effective remedies and reparation to victims without any further delay.²⁶

2.1. Lesbian, Gay, Bisexual, Transgender and Intersex

At the outset, the NGO reports highlighted that LGBT persons are faced with threats to their physical integrity, intimidation and discrimination in various spheres of life. The Committee was deeply concerned by reports from Haiti, Malta, Burundi, Japan, Malawi, Chile, Montenegro, Sierra Leone and Georgia²⁷ on the harassment, intimidation, arrest as well as imprisonment of individuals on the suspicion of being lesbians, gays, bisexuals or transgenders (LGBT).

While Georgia was advised to take all necessary measures to guarantee the full enjoyment of the rights to freedom of expression and assembly of LGBT persons and defenders of their rights,²⁸ Japan has received a recommendation to remove the remaining restrictions in terms of eligibility criteria applied to same-sex couples with respect to publicly operated housing services at the municipal level.²⁹

Overall, the States were advised to take effective protection against violence and discrimination committed on the grounds of a person's sexual orientation or gender identity, especially in the educational system, and launch public awareness campaigns to combat social prejudices.³⁰

Moreover, the States were required to ensure that all forms of discrimination against LGBT persons are recorded and that all acts of violence against them are accounted for and punished, and that the victims of such violations are compensated.³¹

One interesting and important variation in the language used by the Committee appeared in the Concluding Observations on Malawi. The Committee also expressed concern about intersex persons – and not only LGBT persons, as in all of the other Concluding Observations where they are mentioned. Even if the recommendation to Malawi was mainly aimed at guaranteeing LGBTI persons effective access to health services,³² it might indicate an evolving perspective of the Committee on the rights of intersex persons in its Concluding Observations. Moreover, it would be interesting to discern the criteria employed by the Committee to refer in some cases only to LGBT persons and in other cases to include also intersex persons.

2.2. Indigenous peoples

Likewise, the rights of indigenous peoples were emphasized widely and mentioned in the Concluding Observations for the USA, Chile, Japan and in a very specific context for Nepal. For instance, the USA³³, Chile³⁴ and Japan³⁵ were advised to take necessary steps to revise their legislation and guarantee the full enjoyment of the rights of indigenous peoples to their ancestral lands. Furthermore, with regard to the USA, the Committee expressed concern at the lack of sufficient protection of sacred areas of indigenous peoples against desecration, contamination and destruction as a result of urbanization, extractive industries, industrial development, tourism and toxic contamination.³⁶

With regard to Nepal, the Committee expressed concern at the extremely low representation inter alia of indigenous women in high-level decision-making positions.³⁷



2. Vulnerable Groups

In the Concluding Observations on Israel, Malta, Latvia and Japan, the Committee expressed concerns regarding the automatic – and often prolonged – detention of asylum seekers.

2.3. Migrants, refugees and asylum seekers

Rights of migrants, refugees and asylum seekers are a controversial subject in many States. However, the Committee focused specifically on migrants in only four States parties' Concluding Observations in 2014.³⁸ The Committee was concerned about reports of Malta indicating that migrants in vulnerable situations, including unaccompanied children, were immediately detained and that they were not systematically provided with free legal representation.³⁹ Therefore, the State was advised to develop specific needs assessments for migrants, particularly for unaccompanied children, and guarantee that every unaccompanied child receives free legal assistance for the duration of the administrative proceedings.⁴⁰

Although the Committee welcomed Chile's new bill on migration, it regretted that the extension of the time limit for lodging appeals against expulsion decisions (48 hours) was extremely short. Consequently, the Committee urged the State party to ensure that persons subject to deportation proceedings benefit from an effective right to be heard, and to have proper representation and sufficient time to lodge appeals against expulsion decisions.⁴¹ With regard to the USA, the Committee recommended to review its policies of mandatory detention and deportation in order to allow for individualized decisions; furthermore, it recommended the State party identify ways to facilitate access to adequate health-care services for undocumented immigrants and immigrants who have been residing lawfully in the USA with their family for less than five years.⁴²

With regard to refugees and asylum seekers, the Committee stressed the principle of non-refoulement in cases of extradition, expulsion, return and transfer of individuals to other countries. The States parties were strictly advised to apply an absolute prohibition against refoulement under articles 6 and 7 of the Covenant.⁴³ In Sudan, the Committee indicated that the principle of non-refoulement has not always been observed, in particular with regard to Eritrean refugees and asylum seekers.⁴⁴

Furthermore, the Committee recommended States parties, inter alia, to develop specific needs assessments of unaccompanied children, to establish in its legislation a specific time limit for, and alternatives to, detention, as well as including a right of appeal to an independent appeals body without further delay.⁴⁵

The Committee also expressed concerns at the practice of administrative detention of migrants and asylum seekers in some States parties examined in 2014. In the Concluding Observations on Israel, Malta, Latvia and Japan, the Committee expressed concerns regarding the automatic – and often prolonged – detention of asylum seekers.⁴⁶ It recommended State parties to justify each administrative detention as reasonable, necessary and proportionate.⁴⁷

2.4. Minorities

Another concern raised by the Committee was the promotion and protection of the rights of minorities. While education is a key component of the protection of minorities' identity, the Committee expressed particular concern at the access to education, the language of educational instruction and the cultural content of education.⁴⁸

The States parties were advised to strengthen their efforts to ensure representation of minorities in political and public bodies at all levels, including the judiciary and law enforcement, to facilitate education in minority languages for children belonging to minority ethnic groups.⁴⁹ Additionally, States parties were required not only to ensure equal access for all to education, but also to ensure non-discrimination in the quality of education provided.⁵⁰

The Committee was particularly concerned about the situation of Roma, Ashkali and Egyptian children in Montenegro. It advised the State party to take immediate measures to identify children lacking birth registration

2. Vulnerable Groups

and improve their living conditions and access to basic services.⁵¹ With regard to Sri Lanka, the Committee recommended the State party prevent and stop all attacks against Christian and Muslim minorities, including on their places of worship and business.⁵²

2.5. Persons with disabilities and older persons

Several other concerns were raised by the Committee about persons with disabilities and older persons, in particular their involuntary hospitalization and/or forced medication.

The Committee expressed concern about the reports from Japan that a large number of persons with mental disabilities are subject to involuntary hospitalization and that they are left without access to an effective remedy to challenge violations of their rights.⁵³ Therefore, the State was required to increase community based or alternative services for persons with mental disabilities, and to ensure that forced hospitalization should be imposed only as a last resort for the purpose of protecting the person from harm or preventing injury to others.⁵⁴

Moreover, the States parties were strongly encouraged to ensure that the use of non-consensual psychiatric medication, electroshock, and other restrictive and coercive practices in mental health service, should be applied in exceptional cases as a measure of last resort and only where absolutely necessary for the benefit of the persons concerned.⁵⁵ Furthermore, the Committee recommended States parties ensure the enjoyment of the right to privacy and to vote by secret ballots for blind persons and persons with visual impairment.⁵⁶

In the Concluding Observations on Malawi the Committee also included a recommendation on persons with albinism directed to implementing the Disability Act as well as adopting programmes specifically addressing the needs of this group of persons.⁵⁷

2.6. Children

Children constitute a group at risk throughout the majority of Concluding Observations of 2014. They are often victims of trafficking (please confer to 2.7. Trafficking).

Paramilitaries and militaries continue to use children as soldiers.⁵⁸ Regarding Sudan, the Committee tellingly recommended the State party "redouble its efforts to detect and eradicate the recruitment and use of child soldiers as well as to ensure their prompt disarmament, demobilization and reintegration".⁵⁹

Another risk for children lies in their assimilation with adults. The Committee expressed concern at the age of criminal responsibility for children, set at 10 years in 2010, in Malawi.⁶⁰ In Malta, juveniles between the age of 16 to 18 years are sometimes tried as adults.⁶¹ Furthermore, children in some States continue to be married at a very early age.⁶² In its recommendations, the Committee stressed the importance of age-adequate treatment⁶³ and of the respect for "international standards" with regard to children.⁶⁴

Corporal punishment continues to be an important problem in many States parties' reports examined in 2014.⁶⁵ Interestingly, the Committee employs an identically phrased recommendation⁶⁶ to all of the concerned States parties, namely to adopt legislative measures, encourage non-violent forms of discipline as well as conduct public information campaigns.⁶⁷ It welcomes the amendment to the Maltese Criminal Code aimed at prohibiting corporal punishment in all settings.⁶⁸

The Committee is furthermore concerned about sexual abuse of children in Malawi.⁶⁹ It recommended the State party, inter alia, to amend its domestic legislation, and ensure that all perpetrators are brought to justice.

2. Vulnerable Groups

2.7. Victims of trafficking

The issue of human trafficking was addressed in 15 out of 18 Concluding Observations of 2014, including both developing and developed countries.⁷⁰ Affected persons are often asylum seekers and refugees⁷¹ as well as other minority groups⁷², but also women,⁷³ and children⁷⁴. The situations of human trafficking addressed by the Committee included sexual exploitation, forced labour, domestic servitude, forced marriage, and the commerce of human organs.⁷⁵ The Committee also expressed concern about newborn infants being trafficked due to a lack of regulations concerning adoption in Kyrgyzstan.⁷⁶

The Committee also criticized the lack of coherent legislation and insufficient collections of data.⁷⁷ However, it also denounced the insufficient support granted to victims.⁷⁸ Instead, victims are often criminalized for acts they were forced to commit.⁷⁹ The Committee encourages reforms of existing domestic legislation to prevent human trafficking, and specific training for border personnel and other relevant staff, as well as the adoption of legislation relating to adequate reparation for the victims.⁸⁰

3. Women and Girls

The Committee addressed the issue of discrimination against women and girls in almost all States examined in 2014. Even though women and girls represent approximately half of any State's population, they are subject to distinct violations of their human rights due to their gender. Such discriminations may be of a rather general character, like a law in Malawi denying women equal rights with regard to nationality⁸¹ or regarding marital status in Chile.⁸²

Other forms of discriminations towards women are distinctly tailored to gender-specificities, like Japan's position on its sexual slavery practices against so-called comfort women during wartime.⁸³ Article 3 of the ICCPR tackles both forms of discrimination against women and girls by stressing the equal right of women to all rights granted in the Covenant. In 2014, the Committee expressed concern about violations of the rights of women and girls with regard to several specific subjects in almost every Concluding Observation. Interestingly, the Committee did not mention rights of women in the Concluding Observations of Israel⁸⁴ and in the case of the USA it only addressed the issue of violence against women.⁸⁵

3.1. Participation in public and private spheres

Like in previous years' Concluding Observations,⁸⁶ the Committee stated that women's participation in the public and in the private sphere is not equal to men's. Women remain underrepresented in both sectors, especially with regard to any kind of decision-making process.⁸⁷ In most cases, the Committee welcomed the adoption of national legal provisions aimed at addressing these issues,⁸⁸ but stated that legal provisions alone remain largely ineffective given the "persistence of deep-rooted and negative patriarchal stereotypes regarding the roles of women and men in the family and in society at large"⁸⁹. To surmount these obstacles, the Committee recommended *inter alia* awareness-raising campaigns⁹⁰, "temporary special measures"⁸² and the funding of institutions, which promote gender equality⁹².

3.2. Equal pay for work of equal value

Unlike the topic of women's participation in public and private spheres, the issue of equal pay for work of equal value was only addressed in three Concluding Observations in 2014.⁹³ Where the Committee raised this form of inequality, however, it usefully made use of concrete numbers. In two reports, it mentioned the wage gap between women and men of 13-17% in the private sector in Latvia⁹⁴ and a woman's average salary as 58% of the salary received by a man for equivalent work in Japan.⁹⁵ With regard to the wording of the recommendations, the Committee uses relatively strong language. It reiterated its previous recommendation to Chile and urged the State party to "*urgently* adopt tangible measures".⁹⁶ To Japan it recommends the State party "*redouble* its efforts to close the wage gap (...)"⁹⁷.

3.3. Domestic violence and violence against women

Domestic violence and violence against women feature in many of the Concluding Observations of 2014, including both developing⁹⁸ and developed countries⁹⁹. In developed States parties, violence against women and domestic violence mostly affect individuals from marginalized or particularly vulnerable groups.¹⁰⁰

Even though all States parties have legislation in place, most lack sufficient investigations and provide lenient sentences for perpetrators.¹⁰¹ Furthermore, the existing legislation is not comprehensive and there is an obvious lack of data on violence against women.¹⁰² The Committee's recommendations in this area are remarkably specific.¹⁰³ In cases where it reiterates previous Concluding Observations, it employs stronger language: "(...) the State party should *redouble* its efforts (...)"¹⁰⁴

3.4. Abortion

Abortion was only raised in six States parties' Concluding Observations.¹⁰⁵

The Committee addressed the issue of discrimination against women and girls in almost all States examined in 2014.

3. Women and Girls

States which have a complete prohibition of abortion or provide only insufficient exceptions in their domestic legislation, may force women to seek clandestine abortions, risking their health and lives.

The Committee recommended States to allow exceptions to a general prohibition for therapeutic reasons or pregnancies resulting from rape or incest.¹⁰⁶ It argued that states which have a complete prohibition of abortion or provide only insufficient exceptions in their domestic legislation, may force women to seek clandestine abortions, risking their health and lives.¹⁰⁷

In some cases, where the Committee raised the subject of abortion, it linked it also to aspects of maternal mortality.¹⁰⁸ Maternal mortality constitutes a problem that was mostly encountered in developing countries in the Concluding Observations of 2014.¹⁰⁹ The high rate of maternal mortality is very difficult to regulate with purely legislative provisions, subsequently the Committee recommends awareness-raising campaigns and the provision of funds to guarantee accessible reproductive health services.¹¹⁰

3.5. Harmful traditional practices

Harmful traditional practices cited by the Committee include early marriages¹¹¹ and female genital mutilation¹¹², as well as the dowry system¹¹³ and witchcraft accusations¹¹⁴ or adverse practices towards widows¹¹⁵, all of which almost exclusively affect girls and women. Of the States parties reviewed, such practices persist mainly in rural areas of Chad and Sierra Leone, and constitute an area of great concern for the Committee.¹¹⁶ In other States parties, harmful practices like early marriages prevail mainly within minority groups, like Roma communities in Montenegro.¹¹⁷ Kyrgyzstan has an "Elders' Court", which rules on the basis of cultural and moral norms that may affect women adversely.¹¹⁸

In order to address these issues effectively, the Committee recommends legislative measures,¹¹⁹ the training of judicial personnel¹²⁰, the collection of data¹²¹ as well as awareness-raising campaigns.¹²² Female genital mutilation should be criminalized.¹²³ To Kyrgyzstan in particular, it recommended to ensure that the Elders' courts function in full compliance with the provisions of the Covenant and that their members are trained on the rights under the Covenant.¹²⁴

4. Administration of Justice and Procedural Guarantees

In the administration of justice, various institutions and organs of a State are expected to adhere to the procedural guarantees prescribed by the Covenant. However, in many instances agents/organs of a State act outside the limits of the law, for instance by ill-treating individuals with the purpose of obtaining confessions or detaining individuals without trial.

4.1. Pre-trial detention

With regard to pre-trial detention, the Committee expressed concern in many Concluding Observations of an excessively long, often arbitrarily set, period of pre-trial detention, which runs counter to the provisions of the Covenant.¹²⁵ Beyond a revision of the domestic provisions and more comprehensive, clearer legislation on this issue,¹²⁶ the Committee also recommended States parties consider alternative measures to pre-trial detention, such as bail, home arrest, suspended sentences, parole and community service.¹²⁷ Finally, the Committee recommended to Burundi, Haiti and Malawi that they urgently address the situation of persons who have been in pre-trial detention for years.¹²⁸

Often, convicted detainees are not held separately from pre-trial inmates, a situation that the Committee is very concerned about.¹²⁹

4.2. Conditions of prisons and detention centres

The Committee referred to a great number of States examined in 2014, in which the conditions of detention facilities are not adequate.¹³⁰ Many States parties seem to have identified this issue as a problem by themselves, as is proven by numerous references by the Committee to steps taken by the State parties.¹³¹ Nevertheless, the Committee maintains that many conditions require further improvements. It expressed concern at *inter alia* overcrowding, unsanitary conditions and an inadequate provision of basic services, including medical care.¹³²

4.3. Military tribunals

The Committee mentioned the existence of military tribunals in the Concluding Observations of Chile, Israel, Kyrgyzstan and Sudan.¹³³ It expressed concern in all four Concluding Observations that the competence of the military courts is too broad, including also under certain circumstances the trial of civilians. In Sudan, for instance, the military tribunals have broad jurisdiction over civilians in relation to a broad range of offences provided for under domestic legislation.¹³⁴

In Kyrgyzstan, the jurisdiction over civilians is more limited but civilians can be jointly accused with military personnel before military courts.¹³⁵ In Chile, the Committee expressed concern at the fact that military tribunals continue to have competence to adjudicate offenses committed by military personnel, including police, against civilians.¹³⁶ The Committee recommends all these States parties limit the powers of these tribunals over civilians.¹³⁷

With regard to Israel, the Committee focused on the exercise of powers towards Palestinian children. It takes note of positive developments, but remained concerned about the military courts' practice relating to arbitrary arrest and the limitation of the procedural rights of Palestinian children.¹³⁸

5. Death Penalty and Torture/ill-treatment

The Committee welcomed the fact that Burundi and Kyrgyzstan abolished the death penalty

5.1. Death penalty

The Committee welcomed the ratification of the Second Optional Protocol to the Covenant by Chile (2008)¹³⁹ and Nepal (1998),¹⁴⁰ as well as Kyrgyzstan (2013),¹⁴¹ Latvia (2013),¹⁴² and Malta (1994).¹⁴³

Not only is the accession or ratification of this instrument of international law welcomed, but also welcomed were domestic steps aimed at the abolition of the death penalty. The Committee welcomed the fact that Burundi and Kyrgyzstan abolished the death penalty by adopting national legal provisions.¹⁴⁴

However, the Committee expressed concern about Haiti, who withdrew the ratification of the treaty from the Parliament's agenda.¹⁴⁵ The Committee recommended Haiti consider ratifying the Second Optional Protocol "as soon as possible".¹⁴⁶ Israel was also recommended to consider acceding to the Optional Protocol.¹⁴⁷

In the Concluding Observations on Sri Lanka,¹⁴⁸ the issue of the death penalty was not mentioned, even though the State is not a party to the Second Optional Protocol.

Some States examined in 2014 have not yet abolished the death penalty, but have adopted a moratorium. This is the case of Sierra Leone, Chad and Malawi. With regard to Sierra Leone, which has a moratorium on the death penalty in place, the Committee regrets the slow process to abolish it and remove it from the State party's Constitution.¹⁴⁹ In Chad and Malawi, however, the death penalty continues to be imposed in spite of the moratorium, including to crimes such as aggravated robbery.¹⁵⁰ The Committee recommended the States parties consider abolishing the death penalty,¹⁵¹ or at least limit its imposition to the most serious crimes in conformity with article 6, paragraph 2, of the Covenant.¹⁵²

The death penalty remains in practice in Japan, in the USA, as well as in Sudan. In Japan, the Committee expressed concern about some capital offenses that do not comply with the Covenant's requirement of the "most serious crimes" and a lack of basic procedural guarantees.¹⁵³ The Committee recommended the State party abolish or, if it was not willing to abolish, reform its death penalty system.

The recommendation to Sudan focused more on the crimes for which a death penalty could be imposed in accordance with the Covenant, namely only for the "most serious crimes" within the meaning of article 6, paragraph 2, of the Covenant.¹⁵⁴ With regard to the USA, the Committee welcomed the overall decline in the number of executions, but expressed concern about imposed death penalties. The State party also received a recommendation on how to regulate the death penalty in a manner compatible with the provisions of the ICCPR, such as ensuring that the death penalty is not imposed as a result of racial bias, strengthening safeguards against wrongful sentencing to death, ensuring adequate compensation for persons who are wrongfully convicted, ensuring that lethal drugs used for executions originate from legal, regulated sources and considering establishing a moratorium.¹⁵⁵

5.2. Torture and ill-treatment

Reports of torture and ill-treatment are discussed in almost all of the Concluding Observations of 2014.¹⁵⁶ The Committee mostly focuses on torture inflicted by organs or agents of the State, typically by the police, by defence and security forces or by intelligence services that continue to enjoy impunity in domestic proceedings.¹⁵⁷ Only the Concluding Observations on the USA additionally include torture committed by private persons and recommended the State party to adjust its domestic laws to provide for adequate penalties, regardless of who committed the act of torture.¹⁵⁸

The Concluding Observations of 2014 referred mainly to physical torture

and ill-treatment. Only in two cases did the Committee specifically mention mental torture.¹⁵⁹

Beyond the actual infliction of torture and ill-treatment, the Committee criticized States parties for their lack of sufficient and comprehensive legislation prohibiting torture.¹⁶⁰ It recommended that States parties bring their domestic legislation into line with the Covenant, including all elements,¹⁶¹ such as psychological torture for instance,¹⁶² and extending short statute of limitations provisions.¹⁶³ The Committee also noted that torture and ill-treatment also influence judicial proceedings as confessions obtained during torture are often used in courts.¹⁶⁴

In its recommendations, the Committee often referred to the "Istanbul Protocol", a manual on effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment.¹⁶⁵

5. Death Penalty and Torture/Ill-Treatment

6. Freedom of Expression, Protection of Journalists and Human Rights Defenders, Right to Privacy and Freedom of Conscience and Religion

With regard to the right to privacy, the Committee expressed concern about reports on widespread surveillance of Muslims in Japan by law enforcement officials, of former combatants in Sri Lanka, and racial profiling and surveillance targeting certain ethnic minorities and Muslims in the USA.

6.1. Freedom of expression

The Committee expressed concern about legislation excessively limiting the work of journalists, for example, reducing the protection of their sources and the subjects that they may cover,¹⁶⁶ as well as the maintenance of press offenses.¹⁶⁷ Likewise, the Committee expressed concern that these provisions are accompanied by criminal prosecution, heavy fines for the media, as well as the suspension or closure of newspapers.¹⁶⁸ Consequently, the Committee recommended revising the legislation and guaranteeing that any restrictions on press and media activities is in strict compliance with article 19, paragraph 3, of the Covenant.¹⁶⁹ It also recommended removing the excessively heavy fines and criminal prosecution of journalists.¹⁷⁰ The Committee also recommended Ireland remove the prohibition of blasphemy from the Constitution.¹⁷¹

6.2. Protection of journalists and human rights defenders

The Committee expressed particular concern about reports of threats, including physical threats, and acts of harassment and intimidation being directed at journalists and human rights defenders,¹⁷² as well as defamation campaigns and blocking their websites.¹⁷³ In this context, the Committee recommended States parties ensure that journalists and human rights defenders are protected from threats and intimidation, give them the freedom they need to carry out their work and investigate, prosecute and convict persons who harass, threaten or intimidate them.¹⁷⁴

6.3. Right to privacy

With regard to the right to privacy, the Committee expressed concern about reports on widespread surveillance of Muslims in Japan by law enforcement officials,¹⁷⁵ of former combatants in Sri Lanka,¹⁷⁶ and racial profiling and surveillance targeting certain ethnic minorities and Muslims in the USA.¹⁷⁷ It recommended Japan and the USA train enforcement personnel on the inadmissibility of racial profiling, including the widespread surveillance of Muslims, and ensure access to effective remedies for victims.¹⁷⁸ Sri Lanka was asked to adopt national legislation that clearly and narrowly defines the exceptional conditions under which former combatants could be subject to surveillance, and to ensure such persons have access to procedural safeguards, and that the State party prosecute and punish perpetrators of such violations.¹⁷⁹

6.4. Freedom of conscience and religion

With regard to the freedom of conscience, the Committee expressed concern that in Chile the legislation does not recognize the right to conscientious objection to military service. Consequently, the Committee recommended the States party to adopt legislation that recognizes the rights of conscientious objection to military service.¹⁸⁰ The Committee also recommended Israel refrain from repeated imprisonment for refusal to serve in the armed forces.¹⁸¹

Regarding freedom of religion, the Committee expressed concern about cases of religious intolerance, including harassment and verbal and physical assault against persons belonging to religious minorities,¹⁸² as well as interferences in their worship activities and acts of vandalism.¹⁸³ The Committee recommended the States parties strongly condemn acts of violence and hate speech against religious minorities and awareness-raising campaigns aimed at promoting tolerance for diversity.¹⁸⁴ It also recommended States parties investigate, prosecute and convict the authors of these violations, and to provide adequate compensation to the victims.¹⁸⁵ It also recommended Sudan abolish the crime of apostasy and eliminate other discriminatory laws and practices against non-Muslims.¹⁸⁶ The Committee also recommended Ireland amend the Constitution articles that require religious oaths to take up senior public office positions, and to adopt legislation prohibiting discrimination in access to schools on the grounds of religion beliefs.¹⁸⁷

7. Accountability for Past Human Rights Violations

In many cases the Committee has addressed the issue of accountability for past human rights violations, among them the Concluding Observations on Chile, Georgia, Haiti, Japan, Israel, Montenegro, Nepal, Sierra Leona, Sri Lanka, Sudan, and the USA.

In the case of Chile, the Committee recommended the State party repeal or amend article 103 of the Criminal Code that has the effect of reducing or softening penalties for serious human rights violations committed during the dictatorship. It also recommended making public the documents of the Truth and Reconciliation Commission and the National Commission on Political Prisoners and Torture.¹⁸⁸ With regard to the Amnesty Decree-Law (2191 of 1978) the Committee welcomed the fact that the Chilean courts no longer apply it, but it recommended repealing it so as to completely close the possibility that it might be applied.¹⁸⁹

Regarding Georgia, the Committee expressed concerns about the slow progress in investigating, identifying and prosecuting perpetrators of human rights violations that may constitute war crimes and crimes against humanity, committed during or in the immediate aftermath of the 2008 armed conflict. It thus recommended Georgia ensure that all allegations are effectively, independently and impartially investigated, that perpetrators are prosecuted and sanctioned in a manner commensurate with the gravity of the acts committed, and that victims are provided with effective remedies, including compensation.¹⁹⁰

The Committee expressed a similar concern and recommendation to Montenegro regarding the armed conflict that took place in the 1990s and the persistence of impunity for serious human rights violations committed in this context.¹⁹¹ In the case of Nepal, and in addition to similar concerns and recommendations, the Committee further recommended the State party create a transitional justice mechanism and ensure its effective and independent functioning, including by prohibiting amnesties for gross violations of international human rights law and serious violations of international humanitarian law.¹⁹²

With regard to Haiti, the Committee recommended the State party pursue the investigations in the Duvalier case and bring to justice all those responsible for serious violations of human rights committed during this presidency and give victims fair and equitable reparation. It also recommended Haiti implement the recommendations of the National Commission on Truth and Justice.¹⁹³

The Committee expressed concern about Japan's contradictory position declaring that "comfort women" were not "forcibly deported" by Japanese military during wartime, but that their "recruitment, transportation and management" in comfort stations was done in many cases against their will. The Committee also expressed concern about re-victimization of the former "comfort women" by attacks on their reputations, including by public officials, noting that such attacks are encouraged by the State party's position.

In this context, the Committee recommended Japan take immediate legislative and administrative measures to ensure that all allegations of human rights violations perpetrated by the Japanese military during wartime against the "comfort women" are effectively, independently and impartially investigated and that perpetrators are prosecuted and, if found guilty, punished. It also recommended the State party provide access to justice and full reparation to victims and their families; disclose all available evidence; educate students and the general public about this issue; issue a public apology and official recognition of the responsibility of Japan; and condemn any attempts to defame victims or to deny the events.¹⁹⁴

In Sierra Leona's Concluding Observations, the Committee recommended the State party include in its Reparations Programme all measures that are consistent with the right to reparation, such as rehabilitation, fair and adequate compensation and access to social programmes, including full reintegration of child soldiers and psychological treatment for victims of sexual violence. It also

The Committee expressed concern about Japan's contradictory position declaring that "comfort women" were not "forcibly deported" by Japanese military during wartime, but that their "recruitment, transportation and management" in comfort stations was done in many cases against their will.

7. Accountability for Past Human Rights Violations

recommended providing the Reparations Programme with the necessary resources to carry out its mandate.¹⁹⁵

With regard to the concerns and recommendations of the Committee on the issue of accountability for past human rights violations in Israel, Sri Lanka, Sudan and the USA, please refer to section 8.



8.1. Israel

In its Concluding Observations on Israel, the Committee addressed diverse issues, some of them discussed in the previous sections, but put special emphasis on the on-going conflicts.

Israel maintains that international human rights law does not apply when international humanitarian law is applicable.¹⁹⁶ Subsequently, according to Israel, the provisions of the Covenant are not applicable in the Occupied Territories, where an armed conflict or an occupation persists.¹⁹⁷ The Committee has clearly expressed its disagreement with this interpretation and recommended Israel review its legal position with regard to the applicability of human rights law and international humanitarian law.¹⁹⁸

The Committee proceeded to examine the accountability for alleged human rights violations committed during Israel's three most recent military operations in the Gaza Strip dating from 2008-2009, 2012 and 2014. The Committee expressed concern about allegations of various violations of international humanitarian and human rights law.¹⁹⁹ It recommended the State party continue reforming its investigating system, and ensure that perpetrators, and in particular persons in positions of command, are prosecuted and adequately sanctioned, and that victims are provided with an effective remedy.²⁰⁰

The Committee expressed concern about the long-standing controversial issue of Jewish settlement in the West Bank, the recent policy of punitive demolition, as well as the displacement of Bedouins.²⁰¹ It recommended in strong terms that Israel end these violations of the Covenant.²⁰² Likewise, it reiterated its concerns and recommendations of the previous Concluding Observations with regard to the on-going blockade of the Gaza Strip²⁰³ and the Wall issue.²⁰⁴

With regard to equality and non-discrimination, the Committee recalled the inequality between Jewish and non-Jewish populations, and the three-tiered system of laws differentiating between Jewish Israeli citizens, Palestinian citizens of Israel and Palestinian residents of East Jerusalem.²⁰⁵ It also addressed issues such as the ill-treatment of Palestinian children,²⁰⁶ and the adverse treatment of Israeli citizens with Palestinian spouses.²⁰⁷

8.2. Sri Lanka

In 2009, a 25 year long conflict between Sri Lanka and the Liberation Tigers of Tamil Eelam (LTTE) ended.²⁰⁸ Even though the Committee issued its previous Concluding Observations on Sri Lanka in 2003,²⁰⁹ in 2014 it did not expressly highlight the recent conflict and its impact on many of the addressed issues.

One of the few concerns expressed by the Committee relating directly to the conflict deals with former combatants and reports of arbitrary surveillance, torture, detention, enforced disappearance and sexual violence against them.²¹⁰ The recommendations included *inter alia* the prosecution and punishment of perpetrators, the adoption of national legislation leaving only exceptional conditions under which former combatants can be monitored and the strengthening of rehabilitation and reintegration support measures.²¹¹

With regard to the right to life, the Committee referred to "reports of unlawful use of force and violations of the right to life by State agents and/or paramilitary groups (...) at the end of the conflict" and recommended in a detailed manner, *inter alia*, that the State party cooperate with the Office of the UN High Commissioner for Human Rights.²¹² The conflict was also mentioned with regard to the freedom of assembly and the freedom of association recommendations, and more specifically relating to restrictions of "ceremonies commemorating the loss of loved ones during the armed conflict".²¹³ The Committee recommended in a general manner that the State party ensure the protection of these rights.²¹⁴

8. Specific Country Situations

8.3. Sudan

The Committee expressed concerns at reports of serious human rights violations, including rape, torture, arbitrary detention, large-scale displacements, recruitment and the use of child soldiers, and extrajudicial killings, which have been and continue to be committed in conflict-affected areas, in particular Darfur, South Kordofan and Blue Nile.²¹⁵ The Committee also expressed concern at reports indicating that Sudanese authorities have at times arbitrarily denied the timely access of life-saving humanitarian assistance for civilian populations in some conflict-affected areas, particularly those controlled by rebel groups.²¹⁶

In this context, the Committee made, among others, the following recommendations: to ensure that State forces and groups under its control do not perpetrate human rights violations under any circumstances and to take all feasible measures to avoid civilian casualties; to ensure that no financial support or material is afforded to groups that deliberately target civilians; to ensure that all allegations of human rights violations are independently and thoroughly investigated and that perpetrators are brought to justice and, if convicted, are adequately sanctioned; to guarantee that victims receive adequate reparation, including rehabilitation services.²¹⁷

The Committee also recommended Sudan ensure that investigations and prosecutions regarding the serious human rights violations committed in Darfur since February 2003 are accelerated, and that the State party increase its cooperation with international mechanisms of accountability, including the International Criminal Court.²¹⁸

The Committee further recommended Sudan authorize and facilitate the timely and unrestricted access of humanitarian assistance to civilian populations in all conflict-affected areas in full compliance with the prohibition of arbitrary denial of humanitarian access.²¹⁹

8.4. United States of America

Among the different issues addressed – some of them covered in the previous sections – are four that deserve special attention due to its link to the particular approach of the USA to some civil and political rights: the detainees at Guantanamo Bay; the surveillance activities and its impact on the right to privacy; targeted killings using drones; and the secret rendition, interrogation and detention programmes.

The detainees at Guantanamo Bay²²⁰

The Committee noted President Obama's commitment to close the Guantanamo Bay facility, but regretted the lack of a clear timeline for its closure. In this context, the Committee recommended to expedite its closure. In its follow-up report of 1st April 2015, the Government of the USA affirmed that it is taking all feasible steps to reduce the detainee population at Guantanamo and to close it in a responsible manner that protects its national security.²²¹

The Committee also expressed concerns at the fact that the detainees held in Guantanamo and in military facilities in Afghanistan are not dealt with through the ordinary criminal justice system. It recommended the State party end the system of administrative detention without charge or trial and ensure that the detainees in Guantanamo and Afghanistan are afforded the fair trial guarantees enshrined in Article 14 of the ICCPR, and that any criminal cases against them are dealt with through the criminal justice system rather than through military commissions.

It is also to be noted that in the section related to positive aspects, the Committee welcomed the recognition by the American Supreme Court of the extraterritorial application of constitutional habeas corpus rights to aliens detained in Guantanamo (*Boumediene v Bush*, 2008).²²²

In its follow-up response to priority recommendations, the Government of the USA informed, with regard to the military facilities in Afghanistan, that as of 10th December 2014 the Department of Defense no longer operates

8. Specific Country Situations

detention facilities in that country.²²³ Concerning the system of administrative detention and military commissions, the USA stated that current laws preclude transfers of detainees from Guantanamo for the purpose of prosecutions in the USA. It added that military commissions incorporate fundamental procedural guarantees that meet or exceed the fair trial safeguards required by Common Article 3 of the Geneva Conventions. It also stressed that the detainees have a right to appeal to the American Court of Appeals for the District of Columbia Circuit and then to the American Supreme Court. The State party informed the Committee that there are no current plans to end prosecutions by military commissions.²²⁴

Regarding the recommendation of the Committee to expedite the transfer of detainees of Guantanamo, the USA informed that more than 80% of the detainees in Guantanamo have been repatriated or resettled, including 27 after the adoption of the Committee's Concluding Observations. It added that of the 122 who remain at Guantanamo, 56 are designated for transfer, 10 are currently facing charges, awaiting sentencing, or serving criminal sentences, and the remaining 56 are eligible for review by the Periodic Review Board.²²⁵

The Committee had welcomed the establishment of the Periodic Review Board in 2011 and recommended the USA expedite the review process in order to ensure that Guantanamo's detainees are either tried or immediately released. The USA explained that the Periodic Review Board is a discretionary, administrative inter-agency process to review whether continued detention of certain individuals detained at Guantanamo remains necessary to protect against a continuing significant threat to the security of the USA.²²⁶

It is to be noted that according to the USA, its obligations under the ICCPR apply only with respect to individuals who are both within the territory of a State party and within its jurisdiction. In this context, the USA considers that it has legal authority under the law of war to detain Guantanamo detainees until the end of hostilities, consistent with domestic USA law and applicable international law.²²⁷

The Committee reiterated its concern about this analysis and recommended the USA review its legal position so as to acknowledge the extraterritorial application of the ICCPR under certain circumstances (see General Comment N° 31), in conformity with the Committee's interpretation of the application of the ICCPR, its jurisprudence, the jurisprudence of the ICJ and State practice.²²⁸ The Committee also reiterated its concern at the broad approach of the USA to the definition and geographical scope of "armed conflict", including the end of hostilities.²²⁹

The surveillance activities and its impact on the right to privacy²³⁰

The Committee expressed its concern about the surveillance of communications conducted by the National Security Agency (NSA) both within and outside the USA, and the adverse impact on individuals' right to privacy. The Committee considered that the current oversight system of the activities of the NSA fails to effectively protect the rights of the persons affected, which have no access to effective remedies in case of abuse.

In this context, the Committee recommended the USA ensure that its surveillance activities are, both within and outside the USA, in conformity with article 17 of the ICCPR, in particular the principles of legality, proportionality and necessity, regardless of the location of the individuals whose communications are under direct surveillance.

In its follow-up report, the USA declared that the Committee's recommendation that an interference has to be essential or necessary and proportionate to achieve a legitimate objective goes beyond what is required by Article 17 of the ICCPR, and that those are legal concepts derived from certain regional jurisprudence, but are not broadly accepted internationally. It reiterated that the obligations under the ICCPR apply only to individuals who are both within the territory of the

The Committee considered that the current oversight system of the activities of the NSA fails to effectively protect the rights of the persons affected, which have no access to effective remedies in case of abuse.

8. Specific Country Situations

State party and within its jurisdiction.²³¹

It is to be noted that already in its Concluding Observations in 2004, the Committee expressed a similar concern on the surveillance activities conducted by the NSA, and recommended the USA ensure that any infringement on individuals' rights to privacy is strictly necessary and duly authorized by law, and that the rights of individuals to follow suit in this regard are respected.²³²

Targeted killings using drones²³³

The Committee expressed its concern about the practice of the USA of targeted killings in extraterritorial counter-terrorism operations using drones, and the lack of accountability for the loss of life resulting from such operations. The Committee reiterated its concern about the very broad approach of the USA to the definition and geographical scope of "armed conflict" in its fight against Al-Qaida, the Taliban and associated forces, including the end of hostilities, the unclear interpretation of "imminent threat" and who is a combatant or a civilian taking direct part in hostilities, as well as the precautionary measures taken to avoid civilian casualties.

In this context, the Committee recommended that the USA revisit its position regarding the legal justifications for the use of deadly force through drone attacks, and in particular respect the principles of precaution, distinction and proportionality in the context of an armed conflict. The Committee also recommended the USA conduct independent, impartial, prompt and effective investigations of allegations of violations of the right to life, bring those responsible to justice, and provide victims or their families with an effective remedy and adequate compensation.

The secret rendition, interrogation and detention programmes²³⁴

Regarding issues of accountability for past human rights violations, the Committee welcomed the adoption of Presidential Executive Order 13491 of 22 January 2009 directed at ensuring lawful interrogations and terminating the programme of secret rendition, detention and interrogation operated by the CIA. However, the Committee expressed concern that all reported investigations of allegations of enforced disappearances and torture committed in the context of this secret programme were closed in 2012, resulting in a low number of criminal charges against only low-level operatives.

The Committee thus recommended that the USA effectively, independently and impartially investigate all cases of unlawful killings, torture, unlawful detention or enforced disappearances, to prosecute and sanction the perpetrators – in particular persons in positions of command – and to provide effective remedies to the victims. The Committee also recommended the USA declassify and make public the report on the CIA secret detention programme elaborated by the Senate Special Committee on Intelligence. Similar recommendations were made by the Committee in its Concluding Observations to the second and third periodic reports of the USA in 2006.²³⁵

In its follow-up report, the USA referred to a number of prosecutions conducted at the federal, State and local levels. The majority of these prosecutions, however, are not related to the CIA's programme of secret rendition, detention and interrogation.²³⁶ The USA also highlighted the public release of the findings and conclusions of the Senate Select Committee on Intelligence report on the CIA's former Detention and Interrogation Program. The USA affirmed that the harsh interrogation techniques described in this report are not representative of how the USA deals with the threat of terrorism today.²³⁷

9. Individual Cases and Individual Events

In a handful of instances in this year's Concluding Observations, the Committee raised individual events or named specific victims of human rights violations.

The Committee raised the case of Khadidja Ousmane Mahamat, who has been held in pre-trial detention in Chad for over 10 years, during which she was a victim of repetitive sexual abuse.²³⁸ While in prison, she has given birth to two children.²³⁹ This situation had also been examined in the Committee's previous Concluding Observations on Chad,²⁴⁰ but has not been solved. Consequently, the Committee now employed stronger language by indicating that the State party "should urgently order the immediate release (...)".²⁴¹

The 2014 Concluding Observations on Japan included the Fukushima nuclear disaster, which had stirred worldwide concern. The Committee focuses on the right to life of local people who are given no choice but to return to highly contaminated areas due to the decision of the authorities to cancel evacuation areas.²⁴²

The Concluding Observations on Latvia raised the case of journalist Leonids Jakobsons; the investigations of the physical attack against him are pending since March 2012.²⁴³ This attack had stirred international attention and had *inter alia* been condemned by OSCE Representative on Freedom of the Media, Dunja Mijatovic.²⁴⁴

A childbirth operation called symphysiotomy, performed on girls and women in public and private hospitals between 1944 and 1987 without their free and informed consent, was thoroughly examined by the Committee in its Concluding Observations on Ireland.²⁴⁵ Despite the fact that the last case occurred in 1987, the State party has still not initiated investigations into the individual cases, neither has it provided effective remedies to the survivors.²⁴⁶



Overview of the decisions adopted in 2014

Introduction

Under the First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR/the Covenant), the Human Rights Committee (the Committee) has the mandate to receive and examine individual communications from any individual under the jurisdiction of a State party to the First Optional Protocol who claims that his or her rights under the ICCPR have been violated by the State Party.

At the end of the procedure, and after addressing issues of admissibility and merits, the Committee adopts “Views” by which it concludes if there has been a violation of the Covenant’s rights, and includes recommendations to the State party on how to redress the violation.

In 2014, the Committee adopted 101 Views during its 110th, 111th and 112th sessions. It found a violation of the rights recognized in the Covenant in 74 of the communications received. In 7 cases it considered that there were

no violations of Covenant rights, and in 20 cases the Committee considered the communication inadmissible.²⁴⁷

The Views adopted by the Committee in 2014 – in which it found a violation of rights under the ICCPR – covered a wide variety of issues. The most recurring ones, though, could be grouped under the following four topics: enforced disappearances, fair trial, freedom of expression, association, and religion and torture.

This article examines the Views of the Committee under these four topics as it provides a method of finding common patterns in the analysis performed by the Committee on the merits, as well as on the conclusions reached.



1. Admissibility and Procedural Issues

An interesting question of admissibility, though singular in the jurisprudence of enforced disappearances in 2014, arose in the light of two authors neither holding the nationality of the concerned State party (Libya) nor having lived on the State party's territory at the time when the facts took place.²⁴⁸ The authors argued that their respective fathers' disappearances had not only violated their fathers' rights but also their own. The Committee accepted the admissibility of the case concerning all alleged violations regarding the disappeared persons,²⁴⁹ and furthermore extended its jurisdiction to the alleged violations of the rights of the authors themselves. It argued that the enforced disappearances of the victims (their fathers) had a direct negative impact on the lives of the authors, and that subsequently the obligations of the State party applied to them as well, even though they did not possess any kind of link with Libya.²⁵⁰

It is also interesting to note that in *Ilyasov v. Kazakhstan*,²⁵¹ the Committee found inadmissible *ratione temporis* the author's allegation that his right to a fair trial (under article 14, paragraph 1 of the Covenant) had been violated. In this case, the court proceedings at the domestic level took place before the entry into force of the Optional Protocol for the State party. However, as this case involved the continuous refusal to allow the author to enter the territory of the State party, with actions that occurred even a year and a half after the Optional Protocol entered into force for Kazakhstan, the Committee declared admissible the other allegations raised in the communication (mainly the ones under articles 12, 17, 19, paragraph 2, and 23 of the Covenant), and found a violation of the provisions related to interference with family life in articles 17 and 23.

Another case is particularly worth mentioning. In *Vojnovic v. Croatia*, the author had filed a case with the European Court of Human Rights (ECHR), which had been struck out of the list due to a friendly settlement reached by the parties.²⁵² The Committee considered that this amounted to an "examination" by the ECHR in the sense of article 5, paragraph 2 (a) of the Optional Protocol, because the ECHR had determined that the settlement was based on respect for human rights, as defined in the European Convention on Human Rights.²⁵³

It is also worthy to note that in a number of Views adopted in 2014,²⁵⁴ some members of the Committee (Gerald Neuman, Anja Seibert-Fohr, Yuji Iwasawa, and Konstantine Vardzelashvili; and Fabian Salvioli and Victor Rodríguez-Rescia) expressed divergent positions regarding the applicability of article 2, paragraph 2 of the Covenant in the context of individual communications, under the First Optional Protocol.

According to Committee member Neuman, for example, the Committee should maintain its position, i.e. that article 2, paragraph 2, does not provide a substantive right that individuals can invoke, and therefore these complaints should be inadmissible. Moreover, Neuman considers that the experience of the Committee since July 2014 has confirmed that leaving open the possibility to invoke article 2, paragraph 2 in conjunction with other provisions of the Covenant, leads the Committee to unproductive discussions and makes no practical contribution to the protection of human rights. The Committee, thus, should abandon the "Poljakov formula".²⁵⁵

Rodríguez-Rescia has expressed disagreement with the Committee's interpretation of article 2, paragraph 2 of the Covenant. According to him, the application of this article is directed to impose an obligation on the State party to amend a national law that runs counter to a substantive right enshrined in the Covenant, to ensure it ceases to be an obstacle to the enjoyment of that substantive right.²⁵⁶

In the Views adopted on *Leven v Kazakhstan*,²⁵⁷ Salvioli did not agree with the Committee's interpretation regarding article 2 in that they "do not afford any separate individual right that can be invoked in conjunction with other provisions of the Covenant in a claim in a communication under the Optional Protocol". Salvioli considered that the jurisprudence of the Committee indicates that article 2 alone may not give rise to a claim in a communication under the Optional Protocol,

1. Admissibility and Procedural Issues

but that it does not generalize that any of the provisions of article 2 may not be invoked in conjunction with another provision of the Covenant.

At the same time, Salvioli considered that the Committee's General Comment on article 2 of the Covenant does not differentiate among the different paragraphs of article 2 in terms of the possibility of invoking or applying them, and the Committee should therefore not conclude otherwise.

The ability to invoke or apply article 2, paragraph 2 of the Covenant (and the other paragraphs also, according to Salvioli) is of great relevance, specifically in regards to providing certainty to individuals about whether they are able to base their complaints on this article. It is thus necessary for the Committee to clarify this question and homogenize its jurisprudence, and for the members of the Committee to speak with one voice in this important matter.

2. Enforced Disappearances

During 2014, the Committee examined and found violations in 24 individual communications dealing with the issue of enforced disappearances. These cases concerned the following States parties: Algeria (11 cases), Bosnia and Herzegovina (5 cases), Libya (4 cases), Nepal (3 cases), and Turkmenistan (1 case). Except for one case, the authors were represented by human rights organizations, namely TRIAL ("Track Impunity Always") (15 cases), Alkarama (5 cases) and Collectif des Familles de Disparu(e)s en Algérie (3 cases).

In terms of admissibility, one particularity – apart from the often-invoked non-exhaustion of local remedies – can be traced throughout the Committee's jurisprudence on enforced disappearances in 2014. It concerns Algeria's constant refusal to accept the jurisdiction of the Committee on the basis of its "Charter for Peace and National Reconciliation" dealing with the "national tragedy".²⁵⁸ Algeria argues that its society will best overcome the atrocities committed between 1993 to 1998 by covering them up and *inter alia* stopping proceeding in all individual claims to its national courts, including suppressing new proceedings.²⁵⁹

The Committee, however, regularly dismissed this objection and highlighted the incompatibility of the Algerian Charter with the Covenant's provisions.²⁶⁰ For some members of the Committee, this approach is not sufficient. Salvioli and Rodríguez-Rescia expressed in three joint concurring opinions in 2014 that the Committee "should also have found a violation of article 2, paragraph 2, read in conjunction with other substantive provisions of the Covenant. With regard to redress, [they considered] that the Committee should have recommended that the State bring Ordinance No. 06-01 into line with the Covenant."²⁶¹

With regard to the merits of the cases, it is possible to identify three interesting features in the jurisprudence on enforced disappearances of 2014. First, a recurrent theme constitutes the different legal solutions provided to almost identical facts in cases of enforced disappearances. Committee members themselves have pointed to striking divergences on several occasions.²⁶² The first difference deals with the question whether the Committee should only focus on the alleged violations of the Covenant or go beyond this to consider other pertinent provisions that might have been violated, even if the author did not raise them.

For instance, article 6 of the Covenant protects the life of a person. In cases of enforced disappearances, the victim or the dead body is rarely found; it is consequently not entirely certain whether the life of the person has been taken or not. In 2011, the Committee started to consider that article 6, paragraph 1, is violated, not only if the dead body is found, but also if the body is not found or the victim reappears, hence when the person is not necessarily deceased.²⁶³ The Committee argued that the State party had not succeeded in protecting the life of the victim as the victims were deprived of the security of the law.²⁶⁴ Despite the fact that the jurisprudence appears to be consistent on this issue, the Committee did not raise a violation of article 6 *proprio motu* in one of the cases on enforced disappearances in 2014.²⁶⁵ Committee member Salvioli criticized this "inconsistent approach".²⁶⁶

Another variance in the jurisprudence refers to article 24, paragraph 1, of the Covenant, related to the protection of children. If the victim of the enforced disappearance is the parent of a child, the latter is deprived of his or her parent. In two cases involving minors, the Committee reached two different solutions. In *Tripathi v. Nepal*, it found a violation of article 7 with regard to the child and decided not to examine article 24, paragraph 1, without providing any further explanation.²⁶⁷ In *Almegaryaf and Matar v. Libya*, the Committee found a violation of article 24, paragraph 1, read in conjunction with article 7, "bearing in mind that he was a minor at the time his father was abducted, and that such suffering and anguish was thus twofold."²⁶⁸ The reliance on article 24, paragraph 1 in the second case could be explained by the fact that the minor children were the only authors whereas in *Tripathi v. Nepal* the wife and

Algeria argues that its society will best overcome the atrocities committed between 1993 to 1998 by stopping all proceedings before national courts

2. Enforced Disappearances

the daughter submitted the complaint,²⁶⁹ but the Committee once again did not provide any explanation for its decision.

With regard to these discrepancies,²⁷⁰ Committee member Salvioli considered that by employing “this inconsistent approach (which is more comparable to one used by a common law court than by an international human rights body), the Committee incomprehensibly limits its own powers. The task of every human rights body is to apply the law on the basis of the established facts.”²⁷¹ This is an expression of the principle *iura novit curia*, a Latin maxim meaning “the court knows the law” which implies simultaneously that the parties do not have to present the court with legal reasoning as to what law applies to a case, and that the court is not limited to the conclusions reached by the parties.

A second interesting feature relates to the violations of the Covenant in Bosnia and Herzegovina during the armed conflict concerning its independence from Yugoslavia. Most of these cases established the responsibility of Bosnia and Herzegovina for the lack of investigations of acts committed by non-state groups in its territory. As the disappearance as such was not attributable to the State party, the Committee focused on a violation of (procedural) article 2, paragraph 3, in connection with (substantive) articles 6, 7 and 9 of the Covenant.²⁷² However, in subsequent Views, the Committee found a violation of articles 6, 7 and 9, read in conjunction with article 2, paragraph 3, of the Covenant, hence focusing more on the substantive implications for the victim.²⁷³ Committee members Rodríguez Rescia and Salvioli have criticized this divergence in the jurisprudence in the 111th session.²⁷⁴

A third and important development is the fact that the Committee considered rape as “a form of extreme gender-based violence”.²⁷⁵ The Committee had referred to rape as a form of “gender-based violence” already in its General Comment No. 28 in 2000,²⁷⁶ but this case constitutes the first time that this classification, based on a gender perspective, is stated in an individual communication.²⁷⁷ Committee members Salvioli and Rodríguez Rescia highlighted this development as “a step forward” and suggested “the establishment of adequate redress in the form of education and training for law enforcement officials on gender issues and women’s rights in order to ensure the non-recurrence of such events.”²⁷⁸



3. Fair Trial

During 2014, the Committee found violations of the right to a fair trial in 13 cases, which involved the following States Parties: Belarus (5); Azerbaijan (1); Benin (1); Libya (1); Netherlands (1); Russian Federation (1); Turkmenistan (1); Ukraine (1); Venezuela (1).²⁷⁹

Most of these communications included allegations of violations of other rights of the Covenant such as torture/ill-treatment, freedom of expression, liberty and security of persons and non-discrimination, among others, in addition to fair trial rights.

An interesting case related to the existence or not of fair trial rights (some or all of them) for aliens in cases involving refugees and/or expulsion. In *Mr. X and Ms. X v. Denmark*,²⁸⁰ the authors claimed that the decisions of the Refugee Board are the only proceedings that become final without a possibility of being appealed to a court, and that the State party thus violates article 14. The Committee recalled that according to its jurisprudence, proceedings relating to the expulsion of aliens do not fall within the ambit of a determination of "rights and obligations in a suit at law" within the meaning of article 14, paragraph 1,²⁸¹ but are governed by article 13 of the Covenant. The Committee added that article 13 offers some of the protection afforded by article 14, paragraph 1, but not the right of appeal. The Committee therefore considered inadmissible *ratione materiae* the authors' claim under article 14.

With regard to the merits, the Committee addressed different situations related to fair trial rights, in particular on the presumption of innocence, equality of arms, right to appeal, and unduly delay.

On the issue of presumption of innocence, in 2014, the Committee addressed individual communications with similar facts: the author was handcuffed and placed in a cage during proceedings; the national authorities made public statements on the author's guilt before the outcome of the trial; State-owned TV channels and newspapers disseminated reports proclaiming the author's guilt before final verdict,²⁸² among other allegations.

When assessing these facts, the Committee recalled, based on its General Comment No. 32, that persons accused are presumed innocent until proven guilty according to law, and that, accordingly, it is a duty for all public authorities to refrain from prejudging the outcome of a trial. Moreover, the Committee reminded that defendants should normally not be shackled or kept in cages during trials, or otherwise presented to the court in a manner indicating that they may be dangerous criminals. Consequently, the Committee found violations, in all of these cases, of the presumption of innocence reflected in article 14, paragraph 2, of the Covenant.²⁸³

Another group of communications involved, among others, the following allegations: that the hearing took place without notifying the defence or the author; that the authors were not informed about the nature of the charges against them or of his right to counsel; that the authors did not have sufficient time to prepare their defence or consult their lawyers.²⁸⁴

In all these cases, the Committee recalled that under the principle of equality of arms recognized by the Covenant, the same procedural rights are to be afforded to both parties, unless distinctions are based on law and can be justified on objective and reasonable grounds, not entailing actual disadvantage or other unfairness to the defendant. It also referred to its General Comment No. 32, according to which the courts must make available the information regarding the time and venue of oral hearings. Consequently, in all these cases the Committee found that the States parties infringed the principle of equality of arms, in violation of the authors' rights under article 14, paragraph 1 of the Covenant.²⁸⁵

With regard to the right to have a counsel, in *Dorofeev v. Russia*,²⁸⁶ the author was convicted of having committed a number of criminal offences, including murder which can attract the death penalty. The author claimed that he was not informed of his right to counsel, and that this omission affected his position during the appeal. He requested a

3. Fair Trial

revision based on the violation of his right to defence, but it was rejected. In its Views, the Committee found that by not informing the author of his right to Counsel, which led him to be unrepresented in the cassation phase, his right to defence under article 14, paragraph 3(d) of the Covenant was violated.

In two cases,²⁸⁷ the Court found a violation of the right to have one's conviction and sentence reviewed by a higher tribunal according to law and/or to be provided with the facilities necessary for a proper appeal (article 14, paragraph 5 of the Covenant). It is interesting to note that in one of these cases (Timmer v. Netherlands), the Committee considered that the financial compensation proposed by the Netherlands did not constitute an effective remedy, because it did not provide for a review of the criminal sentence and conviction adopted against the author, and that it did not remedy the harm inflicted upon his reputation.²⁸⁸

In one case, the Committee recalled that an important aspect of the fairness of a hearing is its expeditiousness, and that delays in proceedings that cannot be justified by the complexity of the case or the behaviour of the parties are not compatible with the principle of a fair trial enshrined in paragraph 1 of article 14. The Committee therefore found that the delay of more than 13 years in the domestic proceedings of the author's case constituted a violation of article 14, paragraph 1 of the Covenant.²⁸⁹

An interesting case, but based on article 6 of the Covenant, was adopted by the Committee in Johnson v. Ghana.²⁹⁰ In this case, the author was sentenced to death for the offence of murder, the only penalty available for the crime of murder in Ghana. The Committee noted that the mandatory imposition of the death penalty in Ghana is based solely upon the category of crime for which the offender is found guilty, with no margin for the judge to evaluate the circumstances of the particular offence. In this context, the Committee recalled its jurisprudence to the effect that the automatic and mandatory imposition of the death penalty constitutes an arbitrary deprivation of life, in violation of article 6, paragraph 1, of the Covenant.

Furthermore, the Committee recalled that the existence of a right to seek pardon or commutation (article 6, paragraph 4, of the Covenant) does not secure adequate protection to the right to life, as these discretionary measures are subject to a wide range of other considerations compared to appropriate judicial review. Therefore, the Committee found that the automatic imposition of the death penalty in this case violated the author's rights under article 6, paragraph 1 of the Covenant. It recommended Ghana provide the author with an effective remedy, including the commutation of his death sentence. It also recommended Ghana avoid similar violations in the future by, *inter alia*, adjusting its legislation to the provisions of the Covenant.

4. Freedom of Expression, Association and Religion

In 2014, the Committee addressed a number of individual communications in which it found violations of Covenant rights that can be grouped under the rubric of the rights to freedom of expression, association, and religion (21 communications).²⁹¹

It is interesting to note that almost all of these communications dealt with violations of the right to freedom of expression (16 out of 20), and that in almost all of the cases on freedom of expression decided by the Committee in 2014, the complaint was against the same State party: Belarus (only one of these 13 cases decided during the 2014 sessions was against another State party: Kazakhstan).

In other three cases against Belarus, the Committee found violations of the right to freedom of association, and in two cases, one against Kazakhstan and the other one against Korea, the Committee found a violation of the right to freedom of religion.

4.1. Freedom of expression

As noted in the previous paragraphs, almost all of the cases in which the Committee found violations of the right to freedom of expression were filed against Belarus (except for one).²⁹² With regard to the merits, in almost all cases the Committee dealt with different measures adopted by the State party that had an impact on the right to freedom of expression. According to the author's allegations, these measures included: confiscation of leaflets, greeting cards, information materials and books; participation in public events; holding a one-person picket or holding an art-mob; and refusal of accreditation of a journalist to the House of Representatives. The measures involved, in most cases, the imposition of fines against and/or arrest of the authors. The domestic legal basis for the adoption of these measures by Belarus was the Code on Administrative Offences, the Law on Press and Other Media, the Law on Mass Events, and/or the Law on Fighting Extremism.

In all these cases, the Committee first analysed if the measures adopted by the State party constituted a restriction to the author's freedom of expression – within the meaning of article 19, paragraph 3 of the Covenant – in particular with the right to impart information and ideas of all kinds (most of the time criticizing the State party's authorities or policies). Invariably, the Committee found that the measures adopted constituted restrictions to the right to freedom of expression, and in some of these cases it also made conclusions on restrictions to the right of peaceful assembly.

Subsequently, the Committee analysed whether the restrictions imposed on the author's right to freedom of expression were justified under any of the criteria set out in article 19, paragraph 3 of the Covenant, i.e. restrictions provided by law and necessary (a) for respect of the rights and reputation of others; and (b) for the protection of national security or public order, or of public health or morals.

The Committee referred to its General Comment 34 and recalled that the rights to freedom of opinion and expression are indispensable conditions for the full development of the person and constitute the foundation stone for every free and democratic society. It also reaffirmed that any restrictions to these freedoms must conform to strict tests of necessity and proportionality, be applied only for those purposes for which they were prescribed, and must be directly related to the specific need on which they are predicated. The Committee recalled that, if a State Party imposes a restriction, it has the burden to demonstrate that the restriction was necessary.

According to the Committee, the State party did not demonstrate the necessity or proportionality of the imposed restrictions in any of the examined cases. The Committee, thus, concluded that in the absence of any other pertinent explanations from the State party, the facts as submitted amounted to a violation by the State party of the author's rights to freedom of expression, and in some cases also a violation of the right of peaceful assembly.

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4. Freedom of Expression, Association and Religion

Consequently, the Committee recommended the State party (Belarus) provide the author with an effective remedy (in some cases including reimbursement on any legal costs incurred by him, together with compensation), and to take steps to prevent similar violations in the future. In several cases the Committee recommended Belarus review its national legislation, in particular the Law on Mass Events.

In the sole case not involving Belarus but Kazakhstan, the Committee followed the same reasoning and also found a violation by the State party of the author's rights to freedom of expression and of peaceful assembly, for arresting and imposing a fine for the organization of an art-mob event. The Committee, recommended Kazakhstan, *inter alia* to review its national legislation, in particular the Law on the Order of Organization and Conduct of Peaceful Assemblies, Meetings, Processions, Pickets and Demonstrations.

4.2. Freedom of association

The Committee found violations of the right to freedom of association in three communications submitted against Belarus.²⁹³ In these cases, Belarus challenged the admissibility of the communications on the same grounds outlined in the previous section, followed by the same rejections by the Committee.

With regard to the merits, the Committee analysed whether the measures adopted by Belarus (refusal to register an association) constituted an unjustified restriction of the right to freedom of association of the author(s). The Committee recalled that any restriction on the right to freedom of association must cumulatively meet the following conditions: (a) it must be provided for by law; (b) it may only be imposed for one of the purposes set out in paragraph 2 of article 22 (in the interests of national security or public safety; public order; the protection of public health or morals; or the protection of the rights and freedoms of others); and that (c) it must be "necessary in a democratic society" for achieving one of these purposes.

According to the Committee, in none of the three cases, these criteria were fulfilled. Belarus merely pointed to its relevant domestic law but did not advance substantial arguments amounting to a justification in the sense required by paragraph 2 of article 22. The Committee concluded that the measures adopted by Belarus (mainly the denial of registration of a civil association) constituted a violation of the author's right to freedom of association. Consequently, the Committee recommended Belarus, among other measures, provide the author(s) with an effective remedy, including reconsideration of the application for registration of the association(s).

4.3. Freedom of conscience and religion

The Committee found a violation of the right to freedom of religion in a communication filed against Kazakhstan.²⁹⁴ In this case, a German citizen born in Kazakhstan was convicted of conducting missionary activity without prior registration, as required under domestic law, and was sentenced to a fine and expulsion from Kazakhstan. The author was convicted while he was waiting for his application for Kazakh citizenship to be approved.

With regard to the merits, the Committee recalled that the right to freedom to manifest one's religion or beliefs (article 18 of the Covenant) may be subject to certain limitations, but only those prescribed by law, and necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others. In the present case, the Committee considered that the conviction and sentence to a fine as well as deportation (for preaching and conducting religious rituals among the followers of the church), and the resulting loss of his residence permit, constitute limitations to the right of freedom to manifest one's religion.

The Committee recommended Kazakhstan provide the author with an

4. Freedom of Expression, Association and Religion

effective remedy, including review of his conviction and review of the cancellation of his residence permit, and to prevent similar violations in the future.

The Committee also found a violation of the right to freedom of religion and conscience in *Kim et. al. v. Korea*.²⁹⁵ In this case, 50 Korean nationals refused to be drafted for compulsory military service on the ground of their religious beliefs. As there were no alternatives to compulsory military service in Korea, the authors were convicted and imprisoned.

The Committee recalled its prior jurisprudence that, although the Covenant does not explicitly refer to a right of conscientious objection, such a right derives from the right to freedom of thought, conscience and religion, and that this right must not be impaired by coercion. It also stated that a State party may, if it wishes, compel the objector to undertake a civilian alternative to military service, compatible with respect for human rights. The Committee, therefore, found that the authors' subsequent convictions and sentences amounted to an infringement of their freedom of conscience, in breach of article 18, paragraph 1 of the Covenant.

The Committee recommended Korea provide the authors with an effective remedy, including expunging their criminal records and providing them with adequate compensation. It also recommended Korea avoid similar violations of the Covenant in the future by, *inter alia*, adopting legislative measures guaranteeing the right to conscientious objection.

5. Torture

In 2014, 33 Views dealt mainly with allegations of torture. In only 16 cases²⁹⁶ the Committee found a violation of article 7 of the Covenant, 9 cases²⁹⁷ were inadmissible and in 8 cases²⁹⁸, the Committee did not find a violation of article 7.

In cases related to torture, interim measures are of special importance. Compared to the three other analyzed topics, fair trial, freedom of expression, association and religion, as well as enforced disappearances, cases relating to torture are those most likely to deal with an act that has not yet taken place (extradition/expulsion) or is still ongoing (physical or mental attribution of pain). Consequently, the Committee often decides to take interim measures in order to avoid adverse effects to the victim during the period of its deliberations.

In 2014, authors asked the Committee to request interim measures in 16 cases;²⁹⁹ only in 3 cases³⁰⁰, the Committee refused to grant them. Solely in *X.Q.H. v. New Zealand*, it gave reasons for this refusal. In this case dealing with the extradition of a Chinese national from New Zealand, the author had at the time of the complaint been in hiding for fear of deportation. This compelled the Committee to deny interim measures.³⁰¹

States parties respected the requested interim measures, except in 3 cases.³⁰² In *Ali Aarrass v. Spain* and in *Valetov v. Kazakhstan*, the Committee stated in strong terms that Spain and Kazakhstan had ignored its request for interim measures and found that the States parties had committed a grave breach under the Optional Protocol by prematurely extraditing the authors.³⁰³ In *Yuzepchuk v. Belarus*, a case dealing with torture as well as the imposition of the death penalty, the Committee went even further by issuing a press release after the State party had proceeded to execute the author of the communication.³⁰⁴ In response to the objection by the State party that according to article 5, paragraph 3, of the Optional Protocol, examinations of communications must be held in closed meetings, the Committee replied that this does not prevent it “from making public information regarding the failure of States parties to cooperate with it in the implementation of the Optional Protocol”.³⁰⁵

Regarding the Committee's considerations on the merits, two main issues can be distinguished. Firstly, 11 Views focused on deportation and/or removal to a country where the author's right to article 7 of the Covenant would presumably be violated.³⁰⁶ These Views are consistent with the long standing practice of the Committee to assess the absolute nature of the prohibition of non-refoulement under the ICCPR, and that such practice recognises that States have an obligation to prevent future violations of Covenant rights. The Committee analyses whether the State party where the person is located would violate article 7 of the Covenant by removing the author to his or her country of origin, due to a real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant. The Committee thus examines whether the State party has duly taken into consideration all elements of the procedure. Typical factors taken into consideration by the Committee include belonging to a religious minority³⁰⁷ or the existence of criminal charges pending against the author in the State of origin.³⁰⁸

In this context, *B.L. v. Australia* triggered an interesting debate between three members of the Committee regarding the question of whether the Committee had added a new factor to take into consideration when the removing State is analyzing the circumstances of an individual. The communication dealt with a Senegalese Christian and the Committee found that in a different (internal) region of Senegal, the author would not bear the risk of religious persecution.³⁰⁹

Committee members Neumann and Iwasawa as well as Seetulsingh attributed these considerations to the doctrine of internal flight.³¹⁰ This was vigorously disputed by Committee member Salvioli, who argued that the Committee only based its decision on the fact that Senegal is a secular State and not on the never before invoked internal flight alternative doctrine.³¹¹ He stressed that the Committee's reliance on this doctrine would “represent a setback for the consideration of future cases

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and would undermine the standards of protection established (...)”.³¹²

Second, another issue often discussed when addressing article 7 of the Covenant is the topic of physical or mental suffering. *Zinsou v. Benin* constituted an interesting case, relating to the threshold for mental suffering.³¹³ The author had been forced to wear a jacket with a logo of “Cotonou Civil Prison” as well as handcuffs when he appeared at a public hearing, albeit not yet proven guilty by a court.³¹⁴ The Committee argued that “given the public nature of the hearing, the author may well have experienced a feeling of humiliation over and above the unavoidable humiliation associated with appearing in court”, and thus found a violation of article 7 of the Covenant.³¹⁵ Committee members Shany and Kälin disputed this conclusion by arguing that the “minimum degree of intensity required to constitute degrading treatment” had not been reached in this case.³¹⁶

5. Torture



Endnotes

- ¹ The sessions took place in Geneva, Switzerland, from 10 March 2014 to 28 March 2014 (110th session), from 7 July 2014 to 25 July 2014 (111th session) and from 7 October 2014 to 31 October 2014 (112th session).
- ² The examination of the report of the USA was postponed from 2013 to 2014 due to the “shutdown” of the country in 2013.
- ³ Burundi, CCPR/C/BDI/CO/2, § 5; Ireland, CCPR/C/IRL/CO/4, § 5; Malawi, CCPR/C/MWI/CO/1/Add.1, § 5; Sierra Leone, CCPR/C/SLE/CO/1, § 7; Sudan, CCPR/C/SDN/CO/4, § 7.
- ⁴ Burundi, CCPR/C/BDI/CO/2, § 5; Chad, CCPR/C/TCD/CO/2, § 4; Haiti, CCPR/C/HTI/CO/1, § 5; Japan, CCPR/C/JPN/CO/6, § 6; Kyrgyzstan, CCPR/C/KGZ/CO/2, § 5; Malawi, CCPR/C/MWI/CO/1/Add.1, § 5; Malta, CCPR/C/MLT/CO/2, § 5; Montenegro, CCPR/C/MNE/CO/1, § 5; Sierra Leone, CCPR/C/SLE/CO/1, § 7; Sudan, CCPR/C/SDN/CO/4, § 7.
- ⁵ Haiti, CCPR/C/HTI/CO/1, § 5; Kyrgyzstan, CCPR/C/KGZ/CO/2, § 5.
- ⁶ Israel, CCPR/C/ISR/CO/4, § 5.
- ⁷ Israel, CCPR/C/ISR/CO/4, § 5; USA, CCPR/C/USA/CO/4, § 4.
- ⁸ *Ibid.*
- ⁹ USA, CCPR/C/USA/CO/4, § 4.
- ¹⁰ Burundi, CCPR/C/BDI/CO/2, § 7; Chad, CCPR/C/TCD/CO/2, § 5; Kyrgyzstan, CCPR/C/KGZ/CO/2, § 7; Malawi, CCPR/C/MWI/CO/1/Add.1, § 6; Nepal, CCPR/C/NPL/CO/2, § 7; Sierra Leone, CCPR/C/SLE/CO/1, § 6.
- ¹¹ Burundi, CCPR/C/BDI/CO/2, § 7; Chad, CCPR/C/TCD/CO/2, § 5; Chile, CCPR/C/CHL/CO/6, § 6; Haiti, CCPR/C/HTI/CO/1, § 6; Latvia, CCPR/C/LVA/CO/3, § 5; Malawi, CCPR/C/MWI/CO/1/Add.1, § 6; Sierra Leone, CCPR/C/SLE/CO/1, § 6.
- ¹² Malawi, CCPR/C/MWI/CO/1/Add.1, § 6.
- ¹³ Malta, CCPR/C/MLT/CO/2, § 7; Montenegro, CCPR/C/MNE/CO/1, § 7.
- ¹⁴ Ireland, CCPR/C/IRL/CO/4, § 6.
- ¹⁵ Burundi, CCPR/C/BDI/CO/2, § 7; Chad, CCPR/C/TCD/CO/2, § 5; Ireland, CCPR/C/IRL/CO/4, § 6; Kyrgyzstan, CCPR/C/KGZ/CO/2, § 7; Malawi, CCPR/C/MWI/CO/1/Add.1, § 6; Nepal, CCPR/C/NPL/CO/2, § 7; Sierra Leone, CCPR/C/SLE/CO/1, § 6.
- ¹⁶ Burundi, CCPR/C/BDI/CO/2, § 7; Chile, CCPR/C/CHL/CO/6, § 6; Haiti, CCPR/C/HTI/CO/1, § 6; Ireland, CCPR/C/IRL/CO/4, § 6; Kyrgyzstan, CCPR/C/KGZ/CO/2, § 7; Latvia, CCPR/C/LVA/CO/3, § 5; Malawi, CCPR/C/MWI/CO/1/Add.1, § 6; Montenegro, CCPR/C/MNE/CO/1, § 7; Sierra Leone, CCPR/C/SLE/CO/1, § 6.
- ¹⁷ Malta, CCPR/C/MLT/CO/2, § 7; Montenegro, CCPR/C/MNE/CO/1, § 7.
- ¹⁸ Malawi, CCPR/C/MWI/CO/1/Add.1, § 6; Nepal, CCPR/C/NPL/CO/2, § 7; Sierra Leone, CCPR/C/SLE/CO/1, § 6.
- ¹⁹ Malawi, CCPR/C/MWI/CO/1/Add.1, § 6.
- ²⁰ Japan, CCPR/C/JPN/CO/6, § 7.
- ²¹ USA, CCPR/C/USA/CO/4, § 4d.
- ²² Chile, CCPR/C/CHL/CO/6, § 5; Ireland, CCPR/C/IRL/CO/4, § 5; Israel, CCPR/C/ISR/CO/4, § 5c; Malta, CCPR/C/MLT/CO/2, § 6; USA, CCPR/C/USA/CO/4, § 4e.
- ²³ Burundi, CCPR/C/BDI/CO/2, § 6; Ireland, CCPR/C/IRL/CO/4, § 5d; Sierra Leone, CCPR/C/SLE/CO/1, § 7; Sudan, CCPR/C/SDN/CO/4, § 7; USA, CCPR/C/USA/CO/4, § 4c.
- ²⁴ Burundi, CCPR/C/BDI/CO/2, § 6; Chad, CCPR/C/TCD/CO/2, § 5; Israel, CCPR/C/ISR/CO/4, § 5e; Japan, CCPR/C/JPN/CO/6, § 13f; Malawi, CCPR/C/MWI/CO/1/Add.1, § 11a; Sierra Leone, CCPR/C/SLE/CO/1, § 18; Sudan, CCPR/C/SDN/CO/4, § 14; USA, CCPR/C/USA/CO/4, § 8; Haiti, CCPR/C/HTI/CO/1, § 11. See also Sri Lanka, CCPR/C/LKA/CO/5.
- ²⁵ Malawi, CCPR/C/MWI/CO/1/Add.1, § 11a; Sierra Leone, CCPR/C/SLE/CO/1, § 18; USA, CCPR/C/USA/CO/4, § 8.
- ²⁶ Georgia, CCPR/C/GEO/CO/2, § 5; Kyrgyzstan, CCPR/C/KGZ/CO/2, § 6; Nepal, CCPR/C/NPL/CO/2, § 6; Sri Lanka, CCPR/C/LKA/CO/5, § 6.
- ²⁷ Haiti, CCPR/C/HTI/CO/1, § 9; Burundi, CCPR/C/BDI/CO/2, § 8; Malawi, CCPR/C/MWI/CO/1/Add.1, § 10; Malta, CCPR/C/MLT/CO/2, § 10; Japan, CCPR/C/JPN/CO/6, § 10; Sierra Leone, CCPR/C/SLE/CO/1, § 11; Chile, CCPR/C/CHL/CO/6, § 14; Montenegro, CCPR/C/MNE/CO/1, § 8; Georgia, CCPR/C/GEO/CO/4, § 8.
- ²⁸ Georgia, CCPR/C/GEO/CO/4, § 8.
- ²⁹ Japan, CCPR/C/JPN/CO/6, § 10.
- ³⁰ Haiti, CCPR/C/HTI/CO/1, § 9; Burundi, CCPR/C/BDI/CO/2, § 8; Malawi, CCPR/C/MWI/CO/1/Add.1, § 10; Malta, CCPR/C/MLT/CO/2, § 10; Japan, CCPR/C/JPN/CO/6, § 10; Sierra Leone, CCPR/C/SLE/CO/1, § 11; Chile, CCPR/C/CHL/CO/6, § 14; Montenegro, CCPR/C/MNE/CO/1, § 8; Georgia, CCPR/C/GEO/CO/4, § 8.
- ³¹ Confer for instance Malawi, CCPR/C/MWI/CO/1/Add.1, § 10.
- ³² Malawi, CCPR/C/MWI/CO/1/Add.1, § 10.
- ³³ USA, CCPR/C/USA/CO/4, § 25.
- ³⁴ Chile, CCPR/C/CHL/CO/6, § 10.
- ³⁵ Japan, CCPR/C/JPN/CO/6, § 26.
- ³⁶ USA, CCPR/C/USA/CO/4, § 25.
- ³⁷ Nepal, CCPR/C/NPL/CO/2, § 8.
- ³⁸ USA, CCPR/C/USA/CO/4, § 15; Malta, CCPR/C/MLT/CO/2, § 9, 14, 16, 17, 18; Japan, CCPR/C/JPN/CO/6, § 10, 19; Chile, CCPR/C/CHL/CO/6, § 23.
- ³⁹ Malta, CCPR/C/MLT/CO/2, § 16.
- ⁴⁰ *Ibid.*
- ⁴¹ Chile, CCPR/C/CHL/CO/6, § 23.
- ⁴² USA, CCPR/C/USA/CO/4, § 15.
- ⁴³ Japan, CCPR/C/JPN/CO/6, § 19; Malta, CCPR/C/MLT/CO/2, § 16, 17; Ireland, CCPR/C/IRL/CO/4, § 19; Sudan, CCPR/C/SDN/CO/4, § 23; Nepal, CCPR/C/NPL/CO/2, § 14; Sierra Leone, CCPR/C/SLE/CO/1, § 23; Malawi, CCPR/C/MWI/CO/3, § 27; USA, CCPR/C/USA/CO/4, § 13; Latvia, CCPR/C/LVA/CO/3, § 14; Israel, CCPR/C/ISR/CO/4, § 20.
- ⁴⁴ Sudan, CCPR/C/SDN/CO/4, § 23.
- ⁴⁵ Latvia, CCPR/C/LVA/CO/3, § 20; Malta, CCPR/C/MLT/CO/2, § 16.
- ⁴⁶ Israel, CCPR/C/ISR/CO/4, § 20; Japan, CCPR/C/JPN/CO/6, § 19; Malta, CCPR/C/MLT/CO/2, § 16; Latvia, CCPR/C/LVA/CO/3, § 14.
- ⁴⁷ *Ibid.*
- ⁴⁸ See for example Latvia, CCPR/C/LVA/CO/3, § 20, 21.
- ⁴⁹ Latvia, CCPR/C/LVA/CO/3, § 20, 21; Malawi, CCPR/C/MWI/CO/3, § 21; Kyrgyzstan, CCPR/C/KGZ/CO/2, § 27; Georgia, CCPR/C/GEO/CO/4, § 19; Sri Lanka, CCPR/C/LKA/CO/5, § 23.
- ⁵⁰ *Ibid.*
- ⁵¹ Montenegro, CCPR/C/MNE/CO/1, § 17, 18, 19, 20.
- ⁵² Sri Lanka, CCPR/C/LKA/CO/5, § 23.
- ⁵³ Japan, CCPR/C/JPN/CO/6, § 17.
- ⁵⁴ *Ibid.*
- ⁵⁵ Ireland, CCPR/C/IRL/CO/4, § 12; Latvia, CCPR/C/LVA/CO/3, § 16; USA, CCPR/C/USA/CO/4, § 18.
- ⁵⁶ Malta, CCPR/C/MLT/CO/2, § 21.
- ⁵⁷ Malawi, CCPR/C/MWI/CO/1/Add.1, § 19.
- ⁵⁸ Sudan, CCPR/C/SDN/CO/4, § 24; Chad, CCPR/C/TCD/CO/2, § 21.
- ⁵⁹ Sudan, CCPR/C/SDN/CO/4, § 24.
- ⁶⁰ Malawi, CCPR/C/MWI/CO/1/Add.1, § 18.
- ⁶¹ Malta, CCPR/C/MLT/CO/2, § 20.
- ⁶² Malawi, CCPR/C/MWI/CO/1/Add.1, § 25; Sierra Leone, CCPR/C/SLE/CO/1, § 13; Montenegro, CCPR/C/MNE/CO/1, § 20; Chad, CCPR/C/TCD/CO/2, § 21; Burundi, CCPR/C/BDI/CO/2, § 11.
- ⁶³ *Ibid.*
- ⁶⁴ Burundi, CCPR/C/BDI/CO/2, § 11; Malta, CCPR/C/MLT/CO/2, § 20;
- ⁶⁵ Ireland, CCPR/C/IRL/CO/4, § 14; USA, CCPR/C/USA/CO/4, § 17; Sri Lanka, CCPR/C/LKA/CO/5, § 23; Kyrgyzstan, CCPR/C/KGZ/CO/2, § 21; Montenegro, CCPR/C/MNE/CO/1, § 13; Burundi, CCPR/C/BDI/CO/2, § 15; Japan, CCPR/C/JPN/CO/6, § 25; Sudan, CCPR/C/SDN/CO/4, § 16; Nepal, CCPR/C/NPL/CO/2, § 15; Sierra Leone, CCPR/C/SLE/CO/1,

§ 19; Georgia, CCPR/C/GEO/CO/4, § 9.

⁶⁶ The only exception to this identically phrased recommendation is Sudan, CCPR/C/SDN/CO/4, § 16; however, in this State party, corporal punishment does not mainly concern children, but the society as a whole, in contrast to all other States parties examined by the Committee in 2014.

⁶⁷ Burundi, CCPR/C/BDI/CO/2, § 15; Chad, CCPR/C/TCD/CO/2, § 14 (adding that the State party should ensure the effective application of a national legal provision); Georgia, CCPR/C/GEO/CO/4, § 9; Japan, CCPR/C/JPN/CO/6, § 25; Kyrgyzstan, CCPR/C/KGZ/CO/2, § 21; Montenegro, CCPR/C/MNE/CO/1, § 13; Nepal, CCPR/C/NPL/CO/2, § 15; Sierra Leone, CCPR/C/SLE/CO/1, § 19; Ireland, CCPR/C/IRL/CO/4, § 14; USA, CCPR/C/USA/CO/4, § 17 (adding one phrase: "The State party should also promote the use of alternatives to the application of criminal law to address disciplinary issues in schools."); Sri Lanka, CCPR/C/LKA/CO/5, § 19.

⁶⁸ Malta, CCPR/C/MLT/CO/2, § 3.

⁶⁹ Malawi, CCPR/C/MLW/CO/1/Add.1, § 24.

⁷⁰ The Committee deals with this thematic in the Concluding Observations on Sierra Leone, Montenegro, Nepal, Malawi, Latvia, Ireland, USA, Burundi, Chad, Japan, Kyrgyzstan, Malta, Sri Lanka, Sudan and Chile. It does not feature in the Concluding Observations on Georgia, Haiti and Israel.

⁷¹ Confer for instance Sudan CCPR/C/SDN/CO/4, § 23.

⁷² Montenegro, CCPR/C/MNE/CO/1, § 14.

⁷³ Latvia, CCPR/C/LVA/CO/3, § 8; Chile, CCPR/C/CHL/CO/6, § 20.

⁷⁴ Nepal, CCPR/C/NPL/CO/2, § 18; Chad, CCPR/C/TCD/CO/2, § 22; Kyrgyzstan, CCPR/C/KGZ/CO/2, § 22.

⁷⁵ Nepal, CCPR/C/NPL/CO/2, § 18.

⁷⁶ Kyrgyzstan, CCPR/C/KGZ/CO/2, § 12.

⁷⁷ Nepal, CCPR/C/NPL/CO/2, § 18; Burundi, CCPR/C/BDI/CO/2, § 16.

⁷⁸ Japan, CCPR/C/JPN/CO/6, § 15; Ireland, CCPR/C/IRL/CO/4, § 20; Malawi, CCPR/C/MWI/CO/1/Add.1, 17; Malta, CCPR/C/MLT/CO/2, § 15.

⁷⁹ USA, CCPR/C/USA/CO/4, § 14.

⁸⁰ Chad, CCPR/C/TCD/CO/2, § 22; Kyrgyzstan, CCPR/C/KGZ/CO/2, § 12; Sri Lanka, CCPR/C/LKA/CO/5, § 20.

⁸¹ Malawi, CCPR/C/MWI/CO/1/Add.1, § 7.

⁸² Chile, CCPR/C/CHL/CO/6, § 12; Chad, CCPR/C/TCD/CO/2, § 7.

⁸³ Japan, CCPR/C/JPN/CO/6, § 14.

⁸⁴ Israel, CCPR/C/ISR/CO/4.

⁸⁵ USA, CCPR/C/USA/CO/4, § 16.

⁸⁶ Confer for instance: CCPR/C/PER/CO/5, § 9, with regard to Peru.

⁸⁷ Chile, CCPR/C/CHL/CO/6, § 13; Ireland, CCPR/C/IRL/CO/4, § 7; Japan, CCPR/C/JPN/CO/6, § 9; Nepal, CCPR/C/NPL/CO/2, § 8; Montenegro, CCPR/C/MNE/CO/1, § 10; Sierra Leone, CCPR/C/SLE/CO/1, § 10; Burundi, CCPR/C/BDI/CO/2, § 10; Malta, CCPR/C/MLT/CO/2, § 11.

⁸⁸ Confer for instance: Sierra Leone, CCPR/C/SLE/CO/1, § 10; Latvia, CCPR/C/LVA/CO/3, § 6.

⁸⁹ Sierra Leone, CCPR/C/SLE/CO/1, § 10; similarly phrased in Nepal, CCPR/C/NPL/CO/2, § 8; Chad, CCPR/C/TCD/CO/2, § 7; Haiti, CCPR/C/HTI/CO/1, § 8; Sri Lanka, CCPR/C/LKA/CO/5, § 7.

⁹⁰ Georgia, CCPR/C/GEO/CO/4, § 7; Sierra Leone, CCPR/C/SLE/CO/1, § 10.

⁹¹ Montenegro, CCPR/C/MNE/CO/1, § 10; Chile, CCPR/C/CHL/CO/6, § 13; Sri Lanka, CCPR/C/LKA/CO/5, § 7.

⁹² Ireland, CCPR/C/IRL/CO/4, § 7.

⁹³ Chile, CCPR/C/CHL/CO/6, § 13; Latvia, CCPR/C/LVA/CO/3, § 6; Japan, CCPR/C/JPN/CO/6, § 9.

⁹⁴ Latvia, CCPR/C/LVA/CO/3, § 6.

⁹⁵ Japan, CCPR/C/JPN/CO/6, § 9.

⁹⁶ Chile, CCPR/C/CHL/CO/6, § 13, emphasis added.

⁹⁷ Japan, CCPR/C/JPN/CO/6, § 9, emphasis added.

⁹⁸ Sierra Leone, CCPR/C/SLE/CO/1, § 15; Nepal, CCPR/C/NPL/CO/2, § 13; Malawi, CCPR/C/MWI/CO/1, Add.1, § 14; Burundi, CCPR/C/BDI/CO/2, § 12; Chad, CCPR/C/TCD/CO/2, § 9.

⁹⁹ Latvia, CCPR/C/LVA/CO/3, § 9; Ireland, CCPR/C/IRL/CO/4, § 8; Japan, CCPR/C/JPN/CO/6, § 10.

¹⁰⁰ Ireland, CCPR/C/IRL/CO/4, § 8; USA, CCPR/C/USA/CO/4, § 16; Japan, CCPR/C/JPN/CO/6, § 10.

¹⁰¹ Montenegro, CCPR/C/MNE/CO/1, § 11; Haiti, CCPR/C/HTI/CO/1, § 13; Malta, CCPR/C/MLT/CO/2, § 12.

¹⁰² Montenegro, CCPR/C/MNE/CO/1, § 11; Nepal, CCPR/C/NPL/CO/2, § 13; Ireland, CCPR/C/IRL/CO/4, § 8; Chile, CCPR/C/CHL/CO/6, § 16; Sri Lanka, CCPR/C/LKA/CO/5, § 10.

¹⁰³ See for instance, Burundi, CCPR/C/BDI/CO/2, § 12; Kyrgyzstan, CCPR/C/KGZ/CO/2, § 11.

¹⁰⁴ Sudan, CCPR/C/SDN/CO/4, § 12.

¹⁰⁵ Sierra Leone, Ireland, Chile, Malta, Malawi and Sri Lanka.

¹⁰⁶ Confer for instance, Sierra Leone, CCPR/C/SLE/CO/1, § 14; Ireland, CCPR/C/IRL/CO/4, § 9; Chile, CCPR/C/CHL/CO/6, § 15; Malta, CCPR/C/MLT/CO/2, § 13.

¹⁰⁷ Malawi, CCPR/C/MWI/CO/1/Add.1, § 9; Sri Lanka, CCPR/C/LKA/CO/5, § 10.

¹⁰⁸ Sierra Leone, CCPR/C/SLE/CO/1, § 14; Malawi, CCPR/C/MWI/CO/1/Add.1, § 9; Chile, CCPR/C/CHL/CO/6, § 15.

¹⁰⁹ Sierra Leone, Malawi, Chile and Sri Lanka.

¹¹⁰ Sierra Leone, CCPR/C/SLE/CO/1, § 14; Sri Lanka, CCPR/C/LKA/CO/5, § 10.

¹¹¹ Sierra Leone, CCPR/C/SLE/CO/1, § 13; Burundi, CCPR/C/BDI/CO/2, § 11; Chad, CCPR/C/TCD/CO/2, § 7.

¹¹² Malawi, CCPR/C/MWI/CO/1/Add.1, § 8; Chad, CCPR/C/TCD/CO/2, § 8; Sudan, CCPR/C/SDN/CO/4, § 13.

¹¹³ Nepal, CCPR/C/NPL/CO/2, § 8.

¹¹⁴ *Ibid.*

¹¹⁵ Malawi, CCPR/C/MWI/CO/1/Add.1, § 8.

¹¹⁶ Sierra Leone, CCPR/C/SLE/CO/1, §§ 12, 13; confer also to the strong wording in Chad, CCPR/C/TCD/CO/2: "L'État partie devrait redoubler d'efforts (...)".

¹¹⁷ Montenegro, CCPR/C/MNE/CO/1, § 20.

¹¹⁸ Kyrgyzstan, CCPR/C/KGZ/CO/2, § 19.

¹¹⁹ Sudan, CCPR/C/SDN/CO/4, § 13; Malawi, CCPR/C/MWI/CO/1/Add.1, § 8; Burundi, CCPR/C/BDI/CO/2, § 11; Nepal, CCPR/C/NPL/CO/2, § 8; Chad, CCPR/C/TCD/CO/2, § 8.

¹²⁰ Kyrgyzstan, CCPR/C/KGZ/CO/2, § 19; Malawi, CCPR/C/MWI/CO/1/Add.1, § 8.

¹²¹ Montenegro, CCPR/C/MNE/CO/1, § 20; Malawi, CCPR/C/MWI/CO/1/Add.1, § 8.

¹²² Sierra Leone, CCPR/C/SLE/CO/1, § 12; Burundi, CCPR/C/BDI/CO/2, § 11; Malawi, CCPR/C/MWI/CO/1/Add.1, § 8; Montenegro, CCPR/C/MNE/CO/1, § 20; Nepal, CCPR/C/NPL/CO/2, § 8; Sierra Leone, CCPR/C/SLE/CO/1, § 12, 13; Sudan, CCPR/C/SDN/CO/4, § 13; Chad, CCPR/C/TCD/CO/2, § 8.

¹²³ Malawi, CCPR/C/MWI/CO/1/Add.1, § 8; Sierra Leone, CCPR/C/SLE/CO/1, § 12; Sudan, CCPR/C/SDN/CO/4, § 13.

¹²⁴ Kyrgyzstan, CCPR/C/KGZ/CO/2, § 19.

¹²⁵ Chad, CCPR/C/TCD/CO/2, § 15; Burundi, CCPR/C/BDI/CO/2, § 17; Haiti, CCPR/C/HTI/CO/1, § 15; Latvia, CCPR/C/LVA/CO/3, § 13; Malawi, CCPR/C/MWI/CO/1/Add.1, § 15; Sierra Leone, CCPR/C/SLE/CO/1, § 20.

¹²⁶ Burundi, CCPR/C/BDI/CO/2, § 17; Chad, CCPR/C/TCD/CO/2, § 15.

¹²⁷ Nepal, CCPR/C/NPL/CO/2; Latvia, CCPR/C/LVA/CO/3, § 12; Sri Lanka, CCPR/C/LKA/CO/5, § 18; in the following Concluding Observations, the Committee referred to the Tokyo Rules, the UN Standard Minimum Rules for Non-custodial Measures: Sierra Leone CCPR/C/SLE/CO/1, § 20; Haiti, CCPR/C/HTI/CO/1, § 15; Malawi, CCPR/C/MWI/CO/1/Add.1, § 15.

¹²⁸ Burundi, CCPR/C/BDI/CO/2, § 17; Haiti, CCPR/C/HTI/CO/1, § 15; Malawi, CCPR/C/MWI/CO/1/Add.1, § 15; Sierra Leone, CCPR/C/SLE/CO/1, § 20.

¹²⁹ Confer for instance Malawi, CCPR/C/MWI/CO/1/Add.1, § 15.

¹³⁰ Burundi, CCPR/C/BDI/CO/2, § 18; Chad, CCPR/C/TCD/CO/2, § 17; Chile, CCPR/C/CHL/CO/6, § 21; Haiti, CCPR/C/HTI/CO/1, § 15, addresses merely the aspect of overcrowding of detention facilities; Ireland, CCPR/C/IRL/CO/4, § 15; Kyrgyzstan, CCPR/C/KGZ/CO/2, § 17; Malawi, CCPR/C/MWI/CO/1/Add.1, § 16; Malta, CCPR/C/MLT/CO/2, § 18; Nepal, CCPR/C/NPL/CO/2, § 12; Sierra Leone, CCPR/C/SLE/CO/1, § 21; Sri Lanka, CCPR/C/LKA/CO/5, § 18; USA, CCPR/C/USA/CO/4, § 20, expressly addresses the poor detention conditions in death-row facilities.

- 131 Confer for instance Sierra Leone, CCPR/C/SLE/CO/1, § 21.
- 132 Confer for instance Nepal, CCPR/C/NPL/CO/2, § 12.
- 133 Chile, CCPR/C/CHL/CO/6, § 22; Israel, CCPR/C/ISR/CO/4, § 19; Kyrgyzstan, CCPR/C/KGZ/CO/2, § 20; Sudan, CCPR/C/SDN/CO/4, § 19.
- 134 Sudan, CCPR/C/SDN/CO/4, § 19.
- 135 Kyrgyzstan, CCPR/C/KGZ/CO/2, § 20.
- 136 Chile, CCPR/C/CHL/CO/6, § 22.
- 137 *Ibid.*
- 138 Israel, CCPR/C/ISR/CO/4, § 19.
- 139 Chile, CCPR/C/CHL/CO/6, § 4.
- 140 Nepal, CCPR/C/NPL/CO/2, § 4.
- 141 Kyrgyzstan, CCPR/C/KGZ/CO/2, § 4.
- 142 Latvia, CCPR/C/LVA/CO/3, § 4.
- 143 Malta, CCPR/C/MLT/CO/2, § 4.
- 144 Burundi, CCPR/C/BDI/CO/2, § 3; Kyrgyzstan, CCPR/C/KGZ/CO/2, § 3
- 145 Haiti, CCPR/C/HTI/CO/1, § 11.
- 146 *Ibid.*
- 147 Israel, CCPR/C/ISR/CO/4, § 5.
- 148 Sri Lanka, CCPR/C/LKA/CO/5.
- 149 Sierra Leone, CCPR/C/SLE/CO/1, § 18.
- 150 Chad, CCPR/C/TCD/CO/2, § 10; Malawi, CCPR/C/MWI/CO/1/Add.1, § 11.
- 151 Chad, CCPR/C/TCD/CO/2, § 10.
- 152 Malawi, CCPR/C/MWI/CO/1/Add.1, § 11.
- 153 Japan, CCPR/C/JPN/CO/6, § 13.
- 154 Sudan, CCPR/C/SDN/CO/4, § 14.
- 155 USA, CCPR/C/USA/CO/4, § 8.
- 156 Torture and ill-treatment are not mentioned specifically in the Concluding Observations on Ireland, CCPR/C/IRL/CO/4; in the Concluding Observations on Georgia, CCPR/C/GEO/CO/4, § 10 f., they are discussed in the context of the countries' accountability for past human rights situations (confer to the chapter in this article).
- 157 Malawi, CCPR/C/MWI/CO/1/Add.1, § 13; Burundi, CCPR/C/BDI/CO/2, § 14; Nepal, CCPR/C/NPL/CO/2, § 10; Sierra Leone, CCPR/C/SLE/CO/1, § 16; Chad, CCPR/C/TCD/CO/2, § 13; Chile, CCPR/C/CHL/CO/6, § 19; Sudan, CCPR/C/SDN/CO/4, § 15; Sri Lanka, CCPR/C/LKA/CO/5, § 16; Montenegro, CCPR/C/MNE/CO/1, § 12; Malta, CCPR/C/MLT/CO/2, § 14; Latvia, CCPR/C/LVA/CO/3, § 12; Kyrgyzstan, CCPR/C/KGZ/CO/2, § 15; Japan, CCPR/C/JPN/CO/6, § 18; Israel, CCPR/C/ISR/CO/4, § 14; Chile, CCPR/C/CHL/CO/6, § 19.
- 158 USA, CCPR/C/USA/CO/4, § 12.
- 159 Montenegro, CCPR/C/MNE/CO/1, § 6; USA, CCPR/C/USA/CO/4, § 12; in Haiti, CCPR/C/HTI/CO/1, § 12, it regretted the absence of psychological torture in the legal definition of torture.
- 160 Haiti, Israel, Malawi, Nepal, Sierra Leone, Sudan, Haiti, USA, Chile, Japan.
- 161 Malawi, CCPR/C/MWI/CO/1/Add.1, § 13; Nepal, CCPR/C/NPL/CO/2, § 10; Sierra Leone, CCPR/C/SLE/CO/1, § 16; Sudan, CCPR/C/SDN/CO/4, § 15; Haiti, CCPR/C/HTI/CO/1, § 12; Japan, CCPR/C/JPN/CO/6, § 18.
- 162 USA, CCPR/C/USA/CO/4, § 12; Haiti, CCPR/C/HTI/CO/1, § 12.
- 163 Chile, CCPR/C/CHL/CO/6, § 17.
- 164 Burundi, CCPR/C/BDI/CO/2, § 14; Japan, CCPR/C/JPN/CO/6, § 13.
- 165 Sudan, CCPR/C/SDN/CO/4, § 15; Sierra Leone, CCPR/C/SLE/CO/1, § 16; Nepal, CCPR/C/NPL/CO/2, § 10; Montenegro, CCPR/C/MNE/CO/1, § 12; Latvia, CCPR/C/LVA/CO/3, § 12; Chad, CCPR/C/TCD/CO/2, § 13; Burundi, CCPR/C/BDI/CO/2, § 14.
- 166 Burundi, CCPR/C/BDI/CO/2, § 20.
- 167 Chad, CCPR/C/TCD/CO/2, § 19; Malta, CCPR/C/MLT/CO/2, § 22.
- 168 Chad, CCPR/C/TCD/CO/2, § 19; Sudan, CCPR/C/SDN/CO/4, § 21.
- 169 Burundi, CCPR/C/BDI/CO/2, § 20; Chad, CCPR/C/TCD/CO/2, § 19; Sudan, CCPR/C/SDN/CO/4, § 21.
- 170 Burundi, CCPR/C/BDI/CO/2, § 20; Chad, CCPR/C/TCD/CO/2, § 19; Malta, CCPR/C/MLT/CO/2, § 22.
- 171 Ireland, CCPR/C/IRL/CO/4, § 22.
- 172 Burundi, CCPR/C/BDI/CO/2, § 20; Chad, CCPR/C/TCD/CO/2, § 19; Haiti, CCPR/C/HTI/CO/1, § 19; Kyrgyzstan, CCPR/C/KGZ/CO/2, § 22; Malawi, CCPR/C/MWI/CO/1/Add.1, § 22; Nepal, CCPR/C/NPL/CO/2, § 19; Sri Lanka, CCPR/C/LKA/CO/5, § 21; Sudan, CCPR/C/SDN/CO/4, § 22.
- 173 Sri Lanka, CCPR/C/LKA/CO/5, § 21.
- 174 Burundi, CCPR/C/BDI/CO/2, § 20; Chad, CCPR/C/TCD/CO/2, § 19; Haiti, CCPR/C/HTI/CO/1, § 19; Kyrgyzstan, CCPR/C/KGZ/CO/2, § 22; Malawi, CCPR/C/MWI/CO/1/Add.1, § 22; Nepal, CCPR/C/NPL/CO/2, § 19; Montenegro, CCPR/C/MNE/CO/1, § 21; Sri Lanka, CCPR/C/LKA/CO/5, § 21; Sudan, CCPR/C/SDN/CO/4, § 22.
- 175 Japan, CCPR/C/JPN/CO/6, § 20.
- 176 Sri Lanka, CCPR/C/LKA/CO/5, § 12.
- 177 USA, CCPR/C/USA/CO/4, § 7.
- 178 Japan, CCPR/C/JPN/CO/6, § 20; USA, CCPR/C/USA/CO/4, § 7.
- 179 Sri Lanka, CCPR/C/LKA/CO/5, § 12.
- 180 Chile, CCPR/C/CHL/CO/6, § 24.
- 181 Israel, CCPR/C/ISR/CO/4, § 23.
- 182 Georgia, CCPR/C/GEO/CO/4, § 10; Kyrgyzstan, CCPR/C/KGZ/CO/2, § 22; Sri Lanka, CCPR/C/LKA/CO/5, § 23.
- 183 Georgia, CCPR/C/GEO/CO/4, § 10; Sri Lanka, CCPR/C/LKA/CO/5, § 23.
- 184 Georgia, CCPR/C/GEO/CO/4, § 10.
- 185 Georgia, CCPR/C/GEO/CO/4, § 10; Kyrgyzstan, CCPR/C/KGZ/CO/2, § 22; Sri Lanka, CCPR/C/LKA/CO/5, § 23.
- 186 Sudan, CCPR/C/SDN/CO/4, § 20.
- 187 Ireland, CCPR/C/IRL/CO/4, § 22.
- 188 Chile, CCPR/C/CHL/CO/6, § 8.
- 189 *Ibid.*, § 9.
- 190 Georgia, CCPR/C/GEO/CO/2, § 10.
- 191 Montenegro, CCPR/C/MNE/CO/1, § 9.
- 192 Nepal, CCPR/C/NPL/CO/2, § 5.
- 193 Haiti, CCPR/C/HTI/CO/1, § 7.
- 194 Japan, CCPR/C/JPN/CO/6, § 14.
- 195 Sierra Leone, CCPR/C/SLE/CO/1, § 8.
- 196 Israel, CCPR/C/ISR/CO/4, § 5.
- 197 Israel, CCPR/C/ISR/CO/3, § 5 (Concluding Observations of 2010 – cited by the Committee in its Concluding Observations of 2014).
- 198 Israel, CCPR/C/ISR/CO/4, § 5.
- 199 *Ibid.*, § 6.
- 200 *Ibid.*
- 201 *Ibid.*, § 9.
- 202 *Ibid.*, the Committee uses terms like “immediately put an end”.

203 *Ibid.*, § 12.
204 *Ibid.*, § 17.
205 *Ibid.*, § 7.
206 *Ibid.*, § 15.
207 *Ibid.*, § 21.
208 <http://www.bbc.com/news/world-south-asia-11999611>, last accessed 26 April 2015.
209 Sri Lanka, CCPR/CO/79/LKA.
210 *Ibid.*, § 12.
211 *Ibid.*
212 *Ibid.*, § 14.
213 *Ibid.*, § 22.
214 *Ibid.*
215 Sudan, CCPR/C/SDN/CO/4, § 8.
216 *Ibid.*
217 *Ibid.*, § 8a, 8b, 8c, 8d, 8g.
218 *Ibid.*, § 8d.
219 *Ibid.*, § 8f.
220 USA, CCPR/C/USA/CO/4, § 21.
221 USA Follow-up Response to Priority Recommendations, pp. 9-10. For the content of this document see http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fCO%2fUSA%2f19957&Lang=en, last accessed 9 April 2015.
222 USA, CCPR/C/USA/CO/4, § 3b.
223 USA, Follow-up Response to Priority Recommendations, § 10.
224 *Ibid.*, § 11.
225 *Ibid.*, § 10.
226 *Ibid.*
227 *Ibid.*, § 9.
228 USA, CCPR/C/USA/CO/4, § 4a. An almost identical concern and recommendations was included in the Committee's Concluding Observations of the USA previous periodic report in 2004. See: USA, CCPR/C/USA/CO/3/Rev.1. In this document the Committee also regretted that the USA did not integrate information on the implementation of ICCPR with respect to individuals under its jurisdiction and outside its territory into its report.
229 USA, CCPR/C/USA/CO/4, § 9.
230 *Ibid.*, § 22.
231 USA, Follow-up Response to Priority Recommendations, § 12.
232 USA, CCPR/C/USA/CO/3/Rev.1, § 21.
233 USA, CCPR/C/USA/CO/4, § 9.
234 *Ibid.*, § 5.
235 USA, CCPR/C/USA/CO/3/Rev.1, § 12, 14 and 16.
236 USA, Follow-up Response to Priority Recommendations, § 1-6.
237 *Ibid.*, § 7.
238 Chad, CCPR/C/TCD/CO/2, § 16.
239 *Ibid.*
240 Chad, CCPR/C/TCD/CO/1, § 32.
241 Chad, CCPR/C/TCD/CO/2, § 17.
242 Japan, CCPR/C/JPN/CO/6, § 24.
243 Latvia, CCPR/C/LVA/CO/3, § 18.
244 <http://www.osce.org/fom/89378>, last visited 26 April 2015.
245 Ireland, CCPR/C/IRL/CO/4, § 11.
246 *Ibid.*
247 See the table of jurisprudence at the web page of the Human Rights Committee: <http://www.ohchr.org/EN/HRBodies/CCPR/Pages/Jurisprudence.aspx> (last accessed: 26 April 2015).
248 *Almegaryaf and Matar v. Libya*, CCPR/C/110/D/2006/2010.
249 *Ibid.*, § 6.4.
250 *Ibid.*, § 6.5.
251 See for example *Ilyasov v. Kazakhstan*, CCPR/C/111/D/2009/2010, § 6.4.
252 *Vojnovic v. Croatia*, CCPR/C/112/D/2068/2011, § 6.2.
253 *Ibid.*
254 *Poliakov v. Belarus*, CCPR/C/111/D/2103/2011; *Sudalenko v. Belarus*, CCPR/C/112/D/2114/2011; *Leven v. Kazakhstan*, CCPR/C/112/D/2131/2012; *Kuznetsov et al. v. Belarus*, CCPR/C/111/D/1976/2010; *Marouf v. Algeria*, CCPR/C/110/D/1889/2009; *Terafi v. Algeria*, CCPR/C/110/D/1899/2009; *Griffiths v. Australia*, CCPR/C/112/D/1973/2010.
255 See *Poliakov v. Belarus*, CCPR/C/111/D/2030/2011, § 7.4. Views adopted on 17 July 2014 and *Sudalenko v. Belarus*, CCPR/C/112/D/2114/2011
256 *Sudalenko v. Belarus*, CCPR/C/112/D/2114/2011.
257 *Leven v. Kazakhstan*, CCPR/C/112/D/2131/2012.
258 On 3 May 2010, Algeria contested in general the admissibility of all individual communications dealing with enforced disappearances that took place during the period from 1993 to 1998; see for a detailed explanation of the State party's position for instance *Terafi v. Algeria*, CCPR/C/110/D/1899/2009, § 4.1. f.
259 See for example, *Bouzeriba v. Algeria*, CCPR/C/111/D/1931/2010, § 4.3.
260 See for example, *Marouf v. Algeria*, CCPR/C/110/D/1889/2009, § 6.4; *Boudehane v. Algeria*, CCPR/C/111/D/1924/2010, § 8.2; *Ammari v. Algeria*, CCPR/C/112/D/2098/2011, § 8.2.; this national legislation has also been examined in the Committee's Concluding Observations on Algeria, CCPR/C/DZA/CO/3, § 7.
261 Direct citation from Joint Opinion, *Marouf v. Algeria*, CCPR/C/110/D/1889/2009, § 2; similarly phrased in Joint Opinion, *Terafi v. Algeria*, CCPR/C/110/D/1899/2009, § 4; Joint Opinion, CCPR/C/110/D/1900/2009, § 1, 4, 5.
262 Confer for example: *Ammari v. Algeria*, CCPR/C/112/D/2098/2011, Concurring Opinion, § 5; *Shikhmuradova v. Turkmenistan*, CCPR/C/112/D/2069/2011, Concurring Opinion, §§ 8 f.
263 *Ammari v. Algeria*, CCPR/C/112/D/2098/2011, Concurring Opinion, § 4.
264 For instance *Shikhmuradova v. Turkmenistan*, CCPR/C/112/D/2069/2011, § 6.3.
265 *Ammari v. Algeria*, CCPR/C/112/D/2098/2011, § 9.
266 Individual (concurring) opinion, *Ammari v. Algeria*, CCPR/C/112/D/2098/2011, § 6.
267 *Tripathi*, CCPR/C/112/D/2111/2011, § 7.5.
268 *Almegaryaf and Matar*, CCPR/C/110/D/2006/2010, § 7.10.
269 The difference could also potentially be explained by the need to focus on this particular article in *Almegaryaf and Matar v. Libya* in order to justify the issue of nationality raised at the stage of the admissibility (see Section 2.1 on Admissibility, page 4).
270 Albeit this part only focuses on discrepancies in the jurisprudence on enforced disappearances, it is important to notice that discrepancies can also be found in other issues, confer for instance to the jurisprudence on torture: *Chaulagain v. Nepal*, CCPR/C/112/D/2018/2010, Partly dissenting opinion.
271 *Ammari v. Algeria*, CCPR/C/112/D/2098/2011, Concurring Opinion, § 6.
272 110th session of March 2014: *Rizvanovic and Rizvanovic v. Bosnia and Herzegovina*, CCPR/C/110/D/1997/2010, § 10.

- ²⁷³ 111th session of July 2014: Duric and Duric v. Bosnia and Herzegovina, CCPR/C/111/D/1956/2010, §9.6.; Selimovic et al. v. Bosnia and Herzegovina, CCPR/C/111/D/2003/2010, § 12.6; 112th session of December 2014: Kozljak and Kozljak v. Bosnia and Herzegovina, CCPR/C/112/D/1970/2010, § 9.6; Hero, Hero and Hero v. Bosnia and Herzegovina, CCPR/C/112/D/1966/2010, § 9.6.
- ²⁷⁴ Duric and Duric v. Bosnia and Herzegovina, CCPR/C/111/D/1956/2010, Concurring Opinion; Selimovic et al. v. Bosnia and Herzegovina, CCPR/C/111/D/2003/2010, Concurring Opinion.
- ²⁷⁵ Mehalli v. Algeria, CCPR/C/110/D/1900/2009, § 7.10; also *ibid.* Concurring Opinion, § 6.
- ²⁷⁶ General Comment No. 28 on Article 3 (The equality of rights between men and women), HRI/GEN/1/Rev.9 (Vol. I), § 8.
- ²⁷⁷ Mehalli v. Algeria, CCPR/C/110/D/1900/2009, Concurring Opinion, § 6.
- ²⁷⁸ *Ibid.*, Concurring Opinion, § 7.
- ²⁷⁹ For a detailed list of these communications, please refer to the Annex.
- ²⁸⁰ Mr. X and Ms. X, CCPR/C/112/D/2186/2012, § 6.3.
- ²⁸¹ This constitutes an established jurisprudence of the Committee since PK v. Canada, CCPR/C/89/D/1234/2003. Confer in particular to § 7.4 and § 7.5.
- ²⁸² See for example: Kozulina v. Belarus, CCPR/C/112/D/1773/2008; Pinchuk v. Belarus, CCPR/C/112/D/2165/2012; Zinsou v. Benin, CCPR/C/111/D/2055/2011; Pustovoit v. Ukraine, CCPR/C/110/D/1405/2005.
- ²⁸³ *Ibid.*
- ²⁸⁴ See for example: Quliyev v. Azerbaijan, CCPR/C/112/D/1972/2010; Evrezov, Nepomnyashchikh, Polyakov, Rybchenko v. Belarus, CCPR/C/112/D/1999/2010; Shikhmuradov v. Turkmenistan, CCPR/C/112/D/2069/2011; Volchek v. Belarus, CCPR/C/111/D/1991/2010.
- ²⁸⁵ *Ibid.*
- ²⁸⁶ Dorofeev v. Russia, CCPR/C/111/D/2041/2011.
- ²⁸⁷ Shikhmuradov v. Turkmenistan, CCPR/C/112/D/2069/2011; Timmer v. Netherlands, CCPR/C/111/D/2097/2011.
- ²⁸⁸ Timmer v. Netherlands, CCPR/C/111/D/2097/2011, § 9.
- ²⁸⁹ Garcia Bolivar v. Venezuela, CCPR/C/112/D/2085/2011.
- ²⁹⁰ Johnson v. Ghana, CCPR/C/110/D/2177/2012.
- ²⁹¹ For a list of these individual communications see the Annex.
- ²⁹² Toregozhina v. Kazakhstan, CCPR/C/112/D/2137/2012.
- ²⁹³ Kalyakin et al. v. Belarus, CCPR/C/112/D/2153/2012; Pinchuk v. Belarus, CCPR/C/112/D/2165/2012; Mikhailovskaya, Volchek v. Belarus, CCPR/C/111/D/1993/2010.
- ²⁹⁴ Leven v. Kazakhstan, CCPR/C/112/D/2131/2012.
- ²⁹⁵ Kim and al. V. Korea, CCPR/C/112/D/2179/2012.
- ²⁹⁶ For an overview of these 16 cases, please refer to the annex.
- ²⁹⁷ G.J. v. Lithuania, CCPR/C/110/D/1894/2009; O.K. v. Latvia, CCPR/C/110/D/1935/2010; Y.B. v. Russian Federation, CCPR/C/110/D/1983/2010; E.V. v. Belarus, CCPR/C/112/D/1989/2010; Huseynov v. Azerbaijan, CCPR/C/111/D/2042/2011; Vojnovic v. Croatia, CCPR/C/112/D/2068/2011; X.Q.H. v. New Zealand, CCPR/C/110/D/2197/2012; Foumbi v. Cameroon, CCPR/C/112/D/2325/2013; N.U. v. Norway, CCPR/C/112/D/2341/2014.
- ²⁹⁸ Kozulina v. Belarus, CCPR/C/112/D/1773/2008; Fedsi v. Algeria, CCPR/C/111/D/1964/2010; Quliyev v. Azerbaijan, CCPR/C/112/D/1972/2010; Z. v. Australia, CCPR/C/111/D/2049/2011; B.L. v. Australia, CCPR/C/112/D/2053/2011; Johnson v. Ghana, CCPR/C/110/D/2177/2012; Mr. X and Ms. X v. Denmark, CCPR/C/112/D/2186/2012; Husseini v. Denmark, CCPR/C/112/D/2243/2013.
- ²⁹⁹ Yuzepchuck v. Belarus, CCPR/C/112/D/1906/2009; X. v. Republic of Korea, CCPR/C/110/D/1908/2009; Fedsi v. Algeria, CCPR/C/111/D/1964/2010; Bousselob v. Algeria, CCPR/C/111/D/1974/2010; X. v. Denmark, CCPR/C/110/D/2007/2010; Aarrass v. Spain, CCPR/C/111/D/2008/2010; Z. v. Australia, CCPR/C/111/D/2049/2011; B.L. v. Australia, CCPR/C/112/D/2053/2011; Valetov v. Kazakhstan, CCPR/C/110/D/2104/2011; Khakdar v. Russian Federation, CCPR/C/112/D/2126/2011; Mr. X and Ms. X v. Denmark, CCPR/C/112/D/2186/2012; X.Q.H. v. New Zealand, CCPR/C/110/D/2197/2012; Husseini v. Denmark, CCPR/C/112/D/2243/2013; N.U. v. Norway, CCPR/C/112/D/2341/2014; Johnson v. Ghana, CCPR/C/110/D/2177/2012; Foumbi v. Cameroon, CCPR/C/112/D/2325/2013.
- ³⁰⁰ Fedsi v. Algeria, CCPR/C/111/D/1964/2010; Bousselob v. Algeria, CCPR/C/111/D/1974/2010; X.Q.H. v. New Zealand, CCPR/C/110/D/2197/2012.
- ³⁰¹ X.Q.H. v. New Zealand, CCPR/C/110/D/2197/2012, § 3.5.
- ³⁰² Yuzepchuck v. Belarus, CCPR/C/112/D/1906/2009; Aarrass v. Spain, CCPR/C/111/D/2008/2010; Valetov v. Kazakhstan, CCPR/C/110/D/2104/2011.
- ³⁰³ Aarrass v. Spain, CCPR/C/111/D/2008/2010, § 6.2 as well as 8.1, 8.2 and 8.3; Valetov v. Kazakhstan, CCPR/C/110/D/2104/2011, § 12.1, 12.2 and 12.3.
- ³⁰⁴ Yuzepchuck v. Belarus, CCPR/C/112/D/1906/2009, § 6.1 – 6.6.
- ³⁰⁵ *Ibid.*, § 6.6.
- ³⁰⁶ X. v. Republic of Korea, CCPR/C/110/D/1908/2009; X. v. Denmark, CCPR/C/110/D/2007/2010; Aarrass v. Spain, CCPR/C/111/D/2008/2010; Z. v. Australia, CCPR/C/111/D/2049/2011; B.L. v. Australia, CCPR/C/112/D/2053/2011; Valetov v. Kazakhstan, CCPR/C/110/D/2104/2011; Khakdar v. Russian Federation, CCPR/C/112/D/2126/2011; Mr. X and Ms. X v. Denmark, CCPR/C/112/D/2186/2012; X.Q.H. v. New Zealand, CCPR/C/110/D/2197/2012; Husseini v. Denmark, CCPR/C/112/D/2243/2013; N.U. v. Norway, CCPR/C/112/D/2341/2014.
- ³⁰⁷ Confer for instance X v. Republic of Korea, CCPR/C/110/D/1908/2009, § 11.4, regarding the extradition of a Christian to Iran.
- ³⁰⁸ Confer for instance Aarrass v. Spain, CCPR/C/111/D/2008/2010, § 10.4., relating to the extradition of a suspected terrorist to Morocco.
- ³⁰⁹ B.L. v. Australia, CCPR/C/112/D/2053/2011, § 7.4.
- ³¹⁰ *Ibid.*, Concurring Individual Opinions.
- ³¹¹ *Ibid.*, Concurring Individual Opinion.
- ³¹² *Ibid.*, § 6.
- ³¹³ Zinsou v. Benin, CCPR/C/111/D/2055/2011.
- ³¹⁴ *Ibid.*, § 7.4.
- ³¹⁵ *Ibid.*, § 7.5.
- ³¹⁶ *Ibid.*, Concurring Separate Opinion.

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