

# Protecting Civil and Political Rights through Economic, Social and Cultural Rights

A tool for stakeholders – raising issues related to civil and political rights  
with the Committee on Economic, Social and Cultural Rights (CESCR)



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By Centre for Civil and Political Rights (CCPR Centre)

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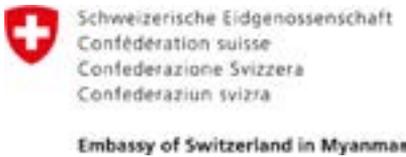
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# 1. FOREWORD

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I am delighted to be writing the foreword to this tool on *“Protecting civil and political rights through economic, social and cultural rights”*.



Jem Collins

<https://eachother.org.uk/virginia-bras-gomes/>

## Virginia Bras Gomes

Former Chair of the UN  
Committee on Economic, Social  
and Cultural Rights

The political discourse on the universality, indivisibility and interdependence of all human rights has been constant since the 1993 World Conference on Human Rights. However, much more needs to be done to make the narrative real on the ground and to enable all stakeholders to benefit from the mutually reinforcing value of the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights.

This action-oriented tool, developed by Daisuke Shirane, from the Centre for Civil and Political Rights, is a good step in that direction. Focusing on the cross cutting provisions and some substantial rights in the Covenants and making use of the Concluding Observations of both Committees –Human Rights, and Economic, Social and Cultural Rights– it provides clear examples of reinforcement and intersection of rights that fall under the monitoring mandate of both Committees.

It is intended to provide information relevant to national contexts and offer opportunities for civil society organisations and other stakeholders to move out of their respective comfort zones related to one specific Covenant and broaden their capacity to engage with both Committees. I am sure that the content of the Tool and the clarity of the message it wishes to convey will be useful to all those dedicated to increasing the enjoyment of all human rights on the ground.

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## 2. INTRODUCTION

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In our work for the protection of civil and political rights on the ground through better implementation of the International Covenant on Civil and Political Rights (ICCPR) and engagement with the UN Human Rights Committee (HR Committee) and national stakeholders, we are often given to understand that the ICCPR and the International Covenant on Economic, Social and Cultural Rights (ICESCR) have a completely different focus and addressing separate sets of issues. The tendency in the approach of stakeholders, including civil society organisations, is for those dealing with issues related to civil and political rights to only engage with the HR Committee, which monitors implementation of ICCPR, but not much or at all with the Committee on Economic, Social and Cultural Rights (CESCR), which monitors the implementation of ICESCR.

While this tendency may be attributed to various factors such as the lack of expertise, capacity or resources, it is more than worth exploring the potential and actual opportunities to protect civil and political rights by also utilising the ICESCR and engaging with the CESCR. As many of the human rights protected by the international human rights laws, including ICCPR and ICESCR, are interlinked and mutually reinforcing, such an approach would enable all stakeholders to address issues at stake from different perspectives and to improve the human rights situation on the ground more comprehensively.

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In this context, this tool attempts to identify possible intersections between the two Covenants and which issues that stakeholders often raise with the HR Committee can also be dealt with by the CESC. It sets out common and similar provisions in both Covenants (articles 1 – 5) and compares the main elements of some of the substantial articles of the ICCPR (articles 6 – 27) and ICESCR (articles 6 – 15). It further analyses the 61 Concluding Observations adopted by the CESC between February 2015 and March 2019 through the review of State parties over 11 sessions of the Committee (54th – 65th sessions). As such, this tool is primarily prepared for those who are working for the protection of civil and political rights on the ground, by offering several examples of related issues that can be raised, not only with the HR Committee but also with the CESC. On the one hand, this tool will help all stakeholders in countries that are already State parties to both ICCPR and ICESCR, to address issues at stake with both Committees. On the other hand, it will also provide new opportunities to those in countries that have already joined ICESCR, but not yet ICCPR, to raise some of their concerns related to civil and political rights with the CESC.

It is worth noting that even if there are issues that are commonly addressed by both Committees, it is in no way to suggest that their work is duplicated since both Covenants and Committees are complementing and reinforcing each other by addressing complex and crosscutting issues of human rights on the ground from different perspectives.

To meet the various needs of the stakeholders on the ground, this tool can also be used in combination with other resources prepared by the CCPR Centre to learn more details about the ICCPR and the work of the HR Committee including how stakeholders can engage and what concrete issues can be raised, as well as how to effectively follow-up to the reviews and holistically utilize the work of UN Human Rights bodies, a number of publications are available on the Centre's website (<http://www.ccprcentre.org/>). Each of these publications, separately or in combination, can also be used as materials for training and capacity building of stakeholders. CCPR Centre can also be contacted for assistance in engaging with the HR Committee (and other UN HR bodies) and/or facilitation of training and strategy planning sessions to more effectively utilize the UN HR system in accordance with the exact context and particular needs on the ground.

## 3. COMMON AND SIMILAR PROVISIONS OF ICCPR AND ICESCR

| Articles | ICCPR <sup>1</sup>  | ICESCR   |
|----------|---|--|
| 1        | Right of peoples to self-determination  | Right of peoples to self-determination   |
| 2        | Non-discrimination on grounds such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.<br><br>Constitutional and legal framework within which the Covenant is implemented, and access to remedy | Non-discrimination on grounds such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.<br><br>Maximum available resources and economic rights of non-nationals |
| 3        | Equal rights of men and women   | Equal rights of men and women  |
| 4        | Derogation  | Limitations on the rights  |
| 5        | Prohibition of misuse and saving clause   | Prohibition of misuse and saving clause  |

### Article 1

of both Covenants is identical and protects the **right of peoples to self-determination**. It reads as follows:

1. *All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.*
2. *All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.*

<sup>1</sup> For the detailed explanation of the ICCPR and its provisions, please also refer to the NGO Guidelines (<http://ccprcentre.org/ccpr-ngo-guidelines>) and the Simple Guide on ICCPR ([http://ccprcentre.org/files/media/ICCPR\\_easy\\_to\\_read\\_commentary\\_WEB.pdf](http://ccprcentre.org/files/media/ICCPR_easy_to_read_commentary_WEB.pdf)) prepared by the CCPR Centre

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3. *The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.*

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## Article 2

of both Covenants sets out the principle of **non-discrimination** in the protection of the rights recognised in them and specifies the same grounds for discrimination. It is an open-ended list; the reference to other status allows for the consideration of other grounds for discrimination included in other human rights treaties (such as *ethnic origin, disability* and/or *age*). Article 2 **ICCPR** in addition stipulates the obligation of State parties to take **necessary legislative measures** to implement the Covenant and also guarantees the right of everyone to an effective remedy. Article 2 **ICESCR** similarly states the obligation of State parties to take all appropriate steps, to the **maximum of their available resources**, particularly legislative, to realise full implementation of the Covenant. Article 2 ICESCR also specifies that **developing countries** may determine the **extent of the protection of economic rights of non-nationals**.

## Article 3

of both Covenants guarantees the **equal right of men and women** to the enjoyment of the rights set forth in the respective Covenant.

## Article 4

**ICCPR** deals with the possible **derogation** States parties can make from certain articles of the ICCPR, while **article 4 ICESCR** talks about the **limitations** State parties may put on the enjoyment of rights recognised in the ICESCR.

In almost the same language, **article 5** of both Covenants **prohibits misuse** of the respective Covenant to limit rights of others and clarifies that the Covenants should be regarded as setting out **minimum standards**.

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## 4. INTERSECTIONS BETWEEN ARTICLES OF ICCPR AND ICESCR

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Some articles of ICCPR and ICESCR deal with topics of the same nature, with a concrete focus either on civil and political rights, or economic, social and cultural rights. As such they become the basis for both Committees to address similar issues from different perspectives. The table below provides a comparison of the topics addressed by some substantial articles of ICCPR and ICESCR and the explanation that follows highlights several intersections between them.

| Articles | ICCPR <sup>2</sup>   |       | ICESCR  |
|----------|--|-------|---|
| 22       | Freedom of association, including the right to form and join trade unions  | 8     | Freedom to form and join trade unions, for trade unions to function freely, and right to strike         |
| 23       | Entitlement of the family to protection of society and the State   | 10.1  | Widest possible protection and assistance to be accorded to the family                                  |
| 24       | Protection of the child without discrimination   | 10.3. | Special measures of protection and assistance for all children and young persons without discrimination |
| 27       | Enjoyment by ethnic, religious or linguistic minorities of the right to their own culture, religion, and language. | 15    | Participation in cultural life and in benefits from scientific progress                                 |

### Article 22

ICCPR protects the right of everyone to **freedom of association**, which includes the right to form and join trade unions, while **article 8** ICESCR more comprehensively deals with the **right of everyone to form and join trade unions** as well as the **rights of trade unions**. It also includes the **right to strike**.

### Article 23

ICCPR and **article 10** ICESCR both deal with matters related to **family** and **marriage**, recognising that *“the family is the natural and fundamental group unit of society”* and prohibiting **forced marriage**. While **the** ICCPR pays particular attention to the **equality of**

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<sup>2</sup> For the detailed explanation of the ICCPR and its provisions, please also refer to the *NGO Guidelines* (<http://ccprcentre.org/ccpr-ngo-guidelines>) and *the Simple Guide on ICCPR* ([http://ccprcentre.org/files/media/ICCPR\\_easy\\_to\\_read\\_commentary\\_WEB.pdf](http://ccprcentre.org/files/media/ICCPR_easy_to_read_commentary_WEB.pdf)) prepared by the CCPR Centre

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**rights and responsibility of spouses**, ICESCR stipulates special **protection of mothers** before and after childbirth.

**Article 10 § 3** ICESCR provides **protection of children** without any discrimination, e.g. from **exploitation, child labour, child marriage** and **corporal punishment**, while such protection is guaranteed by **article 24 ICCPR**, which also protects the right of the child to prompt **birth registration**, to have a **name** and to acquire a **nationality**.

## **Article 27**

ICCPR protects the **right of individuals belonging to ethnic, religious or linguistic minorities**, in community with other members of their group, to enjoy their **own culture**, to profess and practice their **own religion**, or to use their **own language**. **Article 15 ICESCR**, in a more general manner, protects the **right of everyone to take part in cultural life** and **benefit from scientific progress**.

While the cross-cutting provisions and substantial rights mentioned above and in the chapter 2 deserve particular attention, some of **other provisions** of the Covenants also provide **entry points** to both Committees, for example: the *right to life* (art.6 in ICCPR) and the *rights to social security*, to *an adequate standard of living* and to *health* (arts. 9, 11 and 12 in ICESCR); *rights of individuals belonging to minorities to their own language* (art.27 of ICCPR) and the *right to education* and *to take part in cultural life* (arts. 13, 14 and 15 of ICESCR).

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## 5. EXAMPLES OF ISSUES ADDRESSED BY HR COMMITTEE AND CESCR

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As many of the human rights enshrined in the ICCPR and ICESCR are interlinked, there are various issues that stakeholders can raise with both Committees, although the **exact approach, context and focus can differ in accordance with the differences between the two Covenants and the mandate of both Committees**. Below are some examples of **issues that are addressed by both the HR Committee and the CESCR** through the review of State parties to the ICCPR and ICESCR. Given the purpose and focus of this tool, these issues are termed and listed in the way that is usually addressed by the HR Committee.

### General topics and crosscutting issues

Both Committees quite commonly raise the issue of **applicability of the Covenant** concerned (HR Committee on ICCPR, and CESCR on ICESCR) in the **domestic legal system**. In case of countries with a monist legal system, questions are asked whether and how provisions of the Covenant concerned are actually invoked before and by domestic courts and about the precedence of the Covenant over domestic legislation including the Constitution. With the dualist countries, both Committees usually seek to clarify how effectively the respective Covenant is incorporated in the domestic legislation. States are recommended to take all necessary measures to ensure full and effective applicability of Covenant provisions and to train and/or raise awareness among judges, lawyers, prosecutors, law enforcement officers and other stakeholders. The **National Human Rights Institution** (NHRI) is another topic that both Committees regularly raise with their State parties, whereby they encourage them to establish or strengthen the NHRI in accordance with the Paris Principles and to allocate adequate resources for their functioning, with the CESCR further recommending that NHRI have a clear mandate for economic, social and cultural rights.

In accordance with article 2 of each Covenant, both Committees address various issues of **discrimination** in the protection and enjoyment of the rights enshrined in the Covenant they monitor. An issue commonly raised by both Committees in this context is the existence and application of **comprehensive anti-discrimination legislation** in State parties. **Discrimination against women** in law and practice is another common issue addressed by both Committees based on articles 2 and 3 of both Covenants. Moreover, in conjunction with the principle of non-discrimination and other relevant provisions of the Covenant concerned, both Committees pay particular attention to the **rights of vulnerable groups** in the State party concerned, such as children, minorities, indigenous peoples, migrants, refugees, asylum seekers, persons with disabilities, persons with HIV/AIDS, LGBTI, sex workers, IDPs, stateless persons etc.

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## Corruption

Both Committees commonly address corruption as a cross-cutting problem that weakens the rule of law and effective protection of human rights, and ask State parties to provide relevant information and data. States are often recommended to strengthen their fight against corruption including by addressing impunity associated with it, criminalising corruption offences, establishing a specialised body and implementing robust policies, properly investigating cases, prosecuting those responsible including high-level officials, and protecting whistle-blowers.

Issues raised by CESCR include: transparency in public administration; protection of victims of corruption, their lawyers, anti-corruption activists and witnesses; awareness raising among the general public and government officials; and accountability on the part of government services. Transparency in natural resource management including contracts with international mining companies is also one of the main subjects of concern of CESCR, while the HR Committee has also raised the issue in several cases.<sup>3</sup> The HR Committee more specifically addresses corruption in the context of independence of the judiciary (article 14 ICCPR).<sup>4</sup>

## Human Rights Defenders (HRDs)

The situation of HRDs is a subject over which the HR Committee regularly raises concerns as, due to their activity of defending human rights, they themselves become the target of further human rights violations. The issues addressed include: crack downs on HRDs and civil society; restrictions on the fundamental freedoms of HRDs, e.g. freedom of expression, association and peaceful assembly; harassment, threats and reprisals against HRDs, including torture and ill-treatment, arbitrary detention and arrest, enforced disappearance and murder; arbitrary use of counter-terrorism measures or criminal provisions against HRDs; arbitrary restrictions on the freedom of movement, e.g. travel bans; and preventive detention and forced hospitalisation.

The situation and protection of HRDs has also been addressed by CESCR, especially concerning HRDs defending economic, social and cultural rights<sup>5</sup> and working under restrictive conditions often being subjected to various forms of harassment, violence and/or reprisals such as those in the environment and mining sectors, HRDs of indigenous peoples, minorities and LGBTI persons. In certain cases, CESCR has also raised concern over the shrinking space for HRDs and non-governmental organisations (NGOs) due to overbroad restrictions put on their activities and operation.<sup>6</sup>

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3 CCPR/C/NER/CO/2, §s 10-11

4 CCPR/C/PRY/CO/4, §s 34-35; CCPR/C/LBR/CO/1, §s 36-37;

5 Also ref. Statement of the CESCR on HRDs, E/C.12/2016/2: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f2016%2f2&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f2016%2f2&Lang=en)

6 E/C.12/BGD/CO/1, §s 11-12; E/C.12/AGO/CO/4-5, §s 17-18; E/C.12/KGZ/CO/2-3, § 6; E/C.12/UGA/CO/1, § 11; E/C.12/TJK/CO/2-3, § 10

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## Rights of indigenous peoples

Both Committees address various issues of discrimination against indigenous peoples in accordance with article 2 of both Covenants prohibiting discrimination. In addition, various rights of individuals belonging to indigenous communities are also protected by different provisions of both Covenants, and dealt with by both Committees accordingly. Issues addressed by the HR Committee in this context include: access of indigenous persons to their personal ID documents; protection of the rights of the child belonging to an indigenous community; representation of indigenous peoples in public life and relevant decision-making processes; recognition and status of indigenous peoples; and land rights of indigenous peoples including the practice of free, prior and informed consent and appropriate compensation. CESCR also addresses particular issues affecting individuals belonging to indigenous peoples in relation to different articles of the ICESCR such as: attacks against indigenous HRDs, multiple discrimination and vulnerability of indigenous women including those with disabilities; obstacles to obtain ID documents and birth registration<sup>7</sup>; unemployment (article 6 ICESCR); (domestic) violence against indigenous women (article 10 ICESCR); access to land and resources, displacement, poverty, housing, and land expropriation (article 11 ICESCR), health (article 12 ICESCR), education (articles 13-14 ICESCR), cultural rights including protection and promotion of indigenous languages (article 15 ICESCR), and the effect of climate change<sup>8</sup>.

At the same time, CESCR more frequently addresses the collective rights of indigenous peoples based on article 1 ICESCR, while article 1 of both Covenants is identical, and the HR Committee rarely invokes article 1 ICCPR when dealing with the rights of indigenous peoples. Issues addressed by CESCR in relation to article 1 ICESCR include: constitutional and legislative recognition of the existence of indigenous peoples and protection of their rights<sup>9</sup>; right of the indigenous peoples to own, use, develop and control their lands, territories and natural resources<sup>10</sup>; right to prior consultation and to the free, prior and informed consent (FPIC) in decision-making processes that affect their rights including natural resource development, exploitation projects and extractive activities on the lands and territories of indigenous peoples, expropriation of their ancestral lands, and remedies and reparation to the affected indigenous peoples<sup>11</sup>; return of the lands of indigenous peoples occupied by non-indigenous groups<sup>12</sup>; protection of indigenous peoples being at risk of physical and cultural extinction<sup>13</sup>.

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7 E/C.12/CAF/CO/1, §§ 21-22

8 E/C.12/AUS/CO/5, §§ 11-12; E/C.12/CAN/CO/6, §§ 53-54

9 E/C.12/AUS/CO/5, §§ 15-16; E/C.12/BGD/CO/1, §§ 15-16; E/C.12/AGO/CO/4-5, §§ 19-20; E/C.12/NAM/CO/1, §§ 15-16; E/C.12/THA/CO/1-2, §§ 9; E/C.12/CHL/CO/4, § 8; E/C.12/UGA/CO/1, § 13

10 E/C.12/CRI/CO/5, §§ 8-9; E/C.12/BGD/CO/1, §§ 17-18; E/C.12/ARG/CO/4, §§ 18-19; E/C.12/CMR/CO/4, §§ 12-13; E/C.12/SWE/CO/6, §§ 13-16

11 E/C.12/RUS/CO/6, §§ 14-15; E/C.12/NZL/CO/4, §§ 8-9; E/C.12/BGD/CO/1, §§ 15-16; E/C.12/MEX/CO/5-6, §§ 12-13; E/C.12/ARG/CO/4, §§ 20-21; E/C.12/HND/CO/2, §§ 11-12; E/C.12/CAN/CO/6, §§ 13-14; E/C.12/VEN/CO/3, §9

12 E/C.12/CRI/CO/5, §§ 8-9

13 E/C.12/COL/CO/6, §§ 17-18

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## Violence against women

The HR Committee addresses the issue of violence against women including domestic violence; marital rape; early and forced marriage; female genital mutilation and other harmful practices against women and girls; femicides; coercive sterilisation; forced abortion; honour and dowry killings, mainly in the context of articles 3 (equal rights of men and women) and 7 (prohibition of torture) ICCPR. Concerns are also raised over domestic legal provisions prohibiting all forms of violence against women; definitions of sexual and gender based violence, rape and marital rape in domestic legislation especially in the Penal Code; underreporting of cases of violence against women due to stigmatisation of victims, fear of reprisals, and lack of trust in law enforcement authorities.

CESCR addresses the issue of violence against women and gender based violence, mainly in the context of articles 3 and 10 ICESCR, including domestic violence, sexual harassment, rape including gang and marital rape, femicides, honour killings and acid attacks, violence against women with disabilities and violence against women accused of witchcraft.<sup>14</sup> Concerns are also raised over the lack of recognition of marital rape as a punishable offence; exoneration of rapists through marriage to the victims; stigmatisation and discrimination of victims; low level of reporting of cases; limited or lack of protection, support services and remedies provided for victims such as shelters, safe homes, legal aid and redress mechanisms; inadequate funding to legal aid providers to victims; limited or lack of enforcement of relevant laws; lack of capacity and resources among those in charge of handling cases; high rates of impunity including lack of effective investigations and prosecutions of perpetrators; insufficient legal (criminal) provisions addressing domestic violence or lenient punishment imposed on perpetrators of domestic violence, as well as customary or traditional ways to mediate cases of violence against women that override the rights of victims.<sup>15</sup> Furthermore, CESCR addresses the issue of harmful practices against women and girls including polygamy, early and forced marriage, bride kidnapping, virginity testing, sexual initiation and female genital mutilation.<sup>16</sup>

## Trafficking in human beings

The HR Committee addresses trafficking in human beings for labour and sexual exploitation, mainly in the context of article 8 ICCPR, which prohibits slavery, slave trade, servitude and forced or compulsory labour, often in conjunction with articles 3 (trafficking

14 E/C.12/PAK/CO/1, §§ 59-60; E/C.12/BGD/CO/1, §§ 52-53; E/C.12/MEX/CO/5-6, §§ 39-40; E/C.12/ARG/CO/4, §§ 39-40; E/C.12/POL/CO/6, §§ 30-31; E/C.12/BFA/CO/1, §§ 27-28; E/C.12/GBR/CO/6, §§ 45-46; E/C.12/HND/CO/2, §§ 25-26; E/C.12/MKD/CO/2-4, §§ 39-40; E/C.12/CAN/CO/6, §§ 33-34; E/C.12/KEN/CO/2-5, §§ 37-38; E/C.12/NAM/CO/1, §§ 45-46; E/C.12/BDI/CO/1, §§ 35-36; E/C.12/GRC/CO/2, §§ 27-28; E/C.12/GUY/CO/2-4, §§ 36-37; E/C.12/ITA/CO/5, §§ 36-37; E/C.12/MAR/CO/4, §§ 31-32 and 37-38; E/C.12/CHL/CO/4, § 23; E/C.12/IRL/CO/3, § 22; E/C.12/KGZ/CO/2-3, § 16; E/C.12/MNG/CO/4, § 21; E/C.12/VEN/CO/3, § 23; E/C.12/GMB/CO/1, § 18; E/C.12/TJK/CO/2-3, § 25

15 E/C.12/CPV/CO/1, §§ 48-49; E/C.12/LKA/CO/5, §§ 39-40; E/C.12/MDA/CO/3, §§ 44-45; E/C.12/COL/CO/6, §§ 45-46; E/C.12/AUS/CO/5, §§ 33-34; E/C.12/CYP/CO/6, §§ 31-32; E/C.12/RUS/CO/6, §§ 38-40; E/C.12/EST/CO/3, §§ 34-35; E/C.12/TKM/CO/2, §§ 27-28; E/C.12/NLD/CO/6, §§ 33-34; E/C.12/KAZ/CO/2, §§ 36-37; E/C.12/IRQ/CO/4, §§ 39-40; E/C.12/UGA/CO/1, § 26

16 E/C.12/ZAF/CO/1, §§ 54-55; E/C.12/MLI/CO/1, §§ 32-33; E/C.12/CMR/CO/4, §§ 46-47; E/C.12/AGO/CO/4-5, §§ 39-40; E/C.12/SWE/CO/6, §§ 33-34; E/C.12/KEN/CO/2-5, §§ 39-40; E/C.12/NAM/CO/1, §§ 43-44; E/C.12/IRQ/CO/4, §§ 41-42; E/C.12/SDN/CO/2, §§ 41-42; E/C.12/KGZ/CO/2-3, § 17; E/C.12/GMB/CO/1, § 14

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of women), 7 (inhumane and degrading treatment), 12 (freedom of movement) and 24 (trafficking of children) ICCPR. Concerns are also raised about the situation of vulnerable persons, including women, minorities, indigenous peoples, migrants, domestic workers, refugees and asylum seekers, coerced to work under exploitative conditions as well as child labour and forced begging.

CESCR addresses the issue mainly in the context of article 10 ICESCR, including the lack of decisive actions from State actors to combat trafficking, such as the adoption of relevant legislation, proper investigations into cases and prosecution of perpetrators; penalties commensurate with the gravity of the offence; and sufficient remedies, protection and support provided to victims.<sup>17</sup> At the same time, CESCR addresses various issues related to trafficking from the perspective of protecting labour rights, such as the prohibition of forced and bonded labour as well as debt bondage<sup>18</sup>; conditions of work, especially for those vulnerable to exploitation, such as women, children, minorities, indigenous peoples, migrants, domestic, agricultural and sex workers, including in informal sectors.

### **Voluntary termination of pregnancy**

The HR Committee addresses the issue of abortion i.e. voluntary termination of pregnancy, mainly in relation to article 6 ICCPR that protects the right to life. It recommends State parties to provide safe, legal and effective access to abortion. Restriction on abortion is only permissible as long as it does not violate the rights of women and girls, jeopardise their lives, subject them to physical or mental pain or suffering, discriminate against them, or arbitrarily interfere with their privacy.

CESCR addresses the issue from the perspective of protecting the sexual and reproductive health of women in the context of article 12 ICESCR on the right to the highest attainable standard of physical and mental health. Concerns raised by CESCR include the criminalisation of abortion or excessive restrictions on abortion, conscientious objections by medical personnel and other factors that force women to undergo unsafe, dangerous and clandestine abortions; limited access of women to reproductive and sexual health services and information, especially among women belonging to disadvantaged and marginalised groups; lack of age-appropriate sexual education; lack of access to modern contraceptives; forced sterilisation of women or forced abortion<sup>19</sup>; and high rates of maternal and infant mortality due to the limited or lack of access to safe and legal abortion. At the same time, concerns are also raised over the (too prevalent) use of abortion as a de facto contraceptive measure due to the lack of other contraceptive means<sup>20</sup>. State parties are often recommended to, e.g. decriminalise abortion and ensure access to safe abortion; ensure that sexual and reproductive health services and relevant information are accessible, available and affordable to all women and adolescents including in rural areas; ensure that conscientious objections by medical personnel do

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17 E/C.12/CYP/CO/6, §§ 33-34; E/C.12/MDA/CO/3, §§ 46-47; E/C.12/ARG/CO/4, §§ 41-42; E/C.12/PHL/CO/5-6, §§ 41-42; E/C.12/THA/CO/1-2, §§ 26; E/C.12/GMB/CO/1, § 20

18 E/C.12/MLI/CO/1, §§ 26-27; E/C.12/TKM/CO/2, §§ 23-24; E/C.12/PAK/CO/1, §§ 45-46; E/C.12/BDI/CO/1, §§ 29-30; E/C.12/THA/CO/1-2, §§ 20

19 E/C.12/MDA/CO/3, § 62; E/C.12/PRY/CO/4, § 19

20 E/C.12/RUS/CO/6, §§ 54-55

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not hamper women's access to safe and legal abortion; and in certain cases, to empower women to decide upon the number and spacing of births<sup>21</sup>.

## **Enforced disappearance**

The HR Committee addresses the issue of enforced disappearance, mainly in the context of article 6 ICCPR, including the State's duty to criminalise enforced disappearances in domestic legislation, to conduct thorough, credible and impartial investigations into all, including alleged, cases of disappeared persons, prosecute and punish those responsible, and to provide victims including their families with full reparation.

CESCR deals with cases of enforced disappearance of HRDs, in particular in relation to land rights and environmental activists<sup>22</sup> as well as from the perspective of the protection and support provided to the families of disappeared persons for the full enjoyment of their economic, social and cultural rights.<sup>23</sup>

## **Independence of the judiciary including administration of justice and fair trial**

The independence of the judiciary including governance of tenure, appointment, dismissal and disciplining of the members of judiciary as well as corruption in the judiciary, is an issue that is regularly and comprehensively addressed by the HR Committee, especially in relation to article 14 ICCPR, which guarantees equality before courts and tribunals and the right to a fair trial, and in some cases also article 2 ICCPR, which guarantees the right to an effective remedy.

Although ICESCR does not have any article directly or explicitly dealing with the independence of the judiciary, CESCR has been addressing it mainly in the context of article 2 ICESCR, as a key step to guarantee the full realisation of the rights recognised in the ICESCR. Issues and concerns raised by CESCR in this context include the lack of independence, impartiality or competence of the judiciary in general<sup>24</sup>; the lack of proper procedures and transparency in the appointment of judges and magistrates including the lack of guarantee of their tenure<sup>25</sup>; other institutional weaknesses including an insufficient number of judges, a lack of resources<sup>26</sup> as well as the need to guarantee the safety of the judiciary in the exercise of its functions<sup>27</sup>, and corruption in the judiciary<sup>28</sup>.

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21 E/C.12/PAK/CO/1, § 78

22 E/C.12/THA/CO/1-2, § 11

23 E/C.12/MEX/CO/5-6, §§ 43-44

24 E/C.12/TJK/CO/2-3, § 8; E/C.12/PRY/CO/4, § 12; E/C.12/IRQ/CO/4, §§ 9-10; E/C.12/LKA/CO/5, §§ 11-12; E/C.12/TKM/CO/2, §§ 8-9; E/C.12/AGO/CO/4-5, §§ 11-12; E/C.12/HND/CO/2, §§ 15-16; E/C.12/IRQ/CO/4, §§ 9-10

25 E/C.12/VEN/CO/3, § 10; E/C.12/BDI/CO/1, §§ 7-8; E/C.12/DOM/CO/4, §§ 11-12; E/C.12/BDI/CO/1, §§ 7-8

26 E/C.12/UGA/CO/1, § 6

27 E/C.12/HND/CO/2, §§ 15-16; E/C.12/AGO/CO/4-5, §§ 11-12

28 E/C.12/MNG/CO/4, § 11; E/C.12/ITA/CO/5, §§ 10-11; E/C.12/GUY/CO/2-4, §§ 18-19; E/C.12/PHL/CO/5-6, §§ 17-18

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## Conditions of detention

Article 10 ICCPR sets out the minimum standard of treatment of persons deprived of their liberty, i.e. conditions of detention. It covers detention of all persons including non-nationals, in prisons, hospitals, psychiatric facilities, immigration detention centres, and correctional institutions. Issues addressed by the HR Committee in this context include living conditions in all detention facilities including overcrowding, infrastructure, sanitary conditions, nutrition and violence in the facility; procedures governing detention; juvenile detention; torture and ill-treatment of detainees; complaint mechanisms, etc.

CESCR has addressed several issues related to the conditions of detention, including at immigration detention centres, under articles 10, 11 and 12 ICESCR. This includes substandard living conditions; excessive overcrowding; malnutrition; lack of health care; insufficient access to food and drinking water; as well as lengthy or indefinite immigration related detention<sup>29</sup>.

## Fundamental freedoms, especially freedom of expression

Articles 18, 19, 20, 21 and 22 ICCPR protect the right of everyone to the fundamental freedoms, i.e. religion, expression, association and peaceful assembly. The HR Committee comprehensively addresses issues related to the protection of these freedoms as well as permissible limitations to their enjoyment.

ICESCR does not have provisions directly or explicitly protecting these freedoms. However, CESCR addresses certain issues related to them especially in the context of article 15 ICESCR, protecting the right to take part in cultural life, as it is "*intrinsically linked*"<sup>30</sup> to those freedoms. As such concerns are raised over restrictions, including censorship as well as excessive interpretation and application of *lèse majesté*, imposed on the freedoms, especially to expression, indispensable for the enjoyment of cultural life and creative activities<sup>31</sup>. General concern was also expressed by the CESCR over shrinking space for HRDs including journalists, trade union activists, civil society activists and for dissenting voices.<sup>32</sup>

## Freedom of religion

Article 18 ICCPR protects the freedom of all individuals to have (or not to have, or change) one's thought, conscience and religion or belief, while this freedom cannot be used as a justification for any infringement or abuse of other rights guaranteed in the ICCPR. The HR Committee accordingly addresses various issues related to this freedom, including the protection of the right to change religion and regulations on conversion; registration of religions and its restrictions; subsidisation of State religion(s); protection of the places of worship; requirements to have State religion to hold a public position including in the judiciary; and conscientious objection to military service and religious classes at school.

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29 E/C.12/THA/CO/1-2, § 28; E/C.12/KGZ/CO/2-3, § 18

30 General Comment 21 of CESCR, E/C.12/GC/21, § 19

31 E/C.12/LBN/CO/2, §§ 66-67; E/C.12/SDN/CO/2, §§ 55-56; E/C.12/THA/CO/1-2, § 35; E/C.12/VEN/CO/3, § 31

32 E/C.12/BGD/CO/1, §§ 11-12; E/C.12/KGZ/CO/2-3, § 6; E/C.12/UGA/CO/1, § 11

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Although ICESCR does not have provisions protecting or dealing with the freedom of religion directly, CESCR has raised concerns over the practice of forced conversion (of women in the context of forced marriage) in the context of articles 3 and 10 ICESCR<sup>33</sup>.

## Freedom of association

Article 22 ICCPR protects the right of everyone to the freedom of association with others including the right to form and join trade unions as well as the freedom to choose, change or not to join associations. It covers various types of associations such as human rights, political, economic, social, religious, cultural or sport related. However, associations that incite hatred, discrimination or violence may be prohibited under this article (and in conjunction with other ICCPR articles such as 19, 20 and 21).

Most of the issues raised by CESCR in relation to the freedom of association focus on trade union rights in the context of article 8 ICESCR. These include the violation of or restrictions put on the right of individuals, including foreigners, to form and join trade unions, and to strike including of civil servants, domestic workers and workers in informal sector; and unfair dismissal, discrimination, threats, harassments, violence and reprisals against union leaders, activists and members. In certain cases, CESCR has also addressed the broader issue of the freedom of association, in particular concerning the registration and operation of civil society organisations (CSOs) and NGOs such as undue restrictions put on their operation and activities, especially those receiving foreign funding<sup>34</sup> as well as the difficulty faced by human rights NGOs in setting up and registering due to excessive requirements and control<sup>35</sup>.

## Birth registration

The HR Committee addresses issues related to birth registration, usually in the context of articles 16 (recognition as a person before the law) and 24 (rights of the child) ICCPR, such as low rates of birth registration, especially in rural or remote areas, and obstacles faced by certain groups to obtain it e.g. indigenous peoples; refugees, asylum seekers and stateless persons<sup>36</sup>; and children born outside marriage.

CESCR also raises the issue mainly in the context of article 10 ICESCR and recommends registration of all children<sup>37</sup> including among (religious) minorities, foreigners including refugees and asylum seekers<sup>38</sup>, and children of a single parent<sup>39</sup>.

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33 E/C.12/PAK/CO/1, §§ 57-58

34 E/C.12/RUS/CO/6, §§ 7-8; E/C.12/TJK/CO/2-3, § 10; E/C.12/KGZ/CO/2-3, § 6; E/C.12/UGA/CO/1, § 11

35 E/C.12/TKM/CO/2, §§ 12-13; E/C.12/KAZ/CO/2, §§ 8-9

36 CCPR/C/AGO/CO/2, §§ 39-40; CCPR/C/PRY/CO/4, §§ 40-41; CCPR/C/MRT/CO/2, §§ 36-37

37 E/C.12/PAK/CO/1, §§ 61-62; E/C.12/CPV/CO/1, §§ 46-47; E/C.12/CMR/CO/4, §§ 44-45

38 E/C.12/BGD/CO/1, §§ 47-48; E/C.12/AGO/CO/4-5

39 E/C.12/ZAF/CO/1, §§ 50-51



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