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Centre for Civil and Political Rights

The **UN** **Human Rights** Committee A Year In **Review**

2017



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INTRODUCTION

The Human Rights Committee (HR Committee) examined the reports of **Australia, Bangladesh, Bosnia and Herzegovina, Honduras, Cameroon, Democratic Republic of Congo, Dominican Republic, Italy, Jordan, Liechtenstein, Madagascar, Mauritius, Mongolia, Pakistan, Romania, Serbia, Swaziland, Switzerland, Thailand** and **Turkmenistan** in 2017 during its 119th, 120th and 121st Sessions, and adopted 20 corresponding Concluding Observations. In these Sessions, the HR Committee also furthered its jurisprudence by adopting Views on 87 Individual Communications.

This Yearbook examines the thematic issues in respect of the Covenant that emerged from all the Concluding Observations of the HR Committee, and how the HR Committee responded to them through its recommendations. Areas of concern that the HR Committee dealt with in its Observations include application of the Covenant through harmonization of domestic legislation; national human rights institutions and awareness programmes; due process rights; right to life and personal integrity; detention; right to equality and non-discrimination on grounds including gender identity and sexual orientation; protection of vulnerable groups including children, disabled persons, migrants, minorities, and people with HIV/AIDS; and personal freedoms including rights related to free speech, public participation and elections.

Furthermore, selected key Views of the HR Committee adopted in response to Individual Communications have been highlighted under thematic sections to contextualise the HR Committee's recent jurisprudence on the application of varying provisions of the Covenant and Optional Protocol 1 (OP 1) in the domestic order. Admissibility issues that the HR Committee dealt with included non-exhaustion of local remedies, matters pending before another procedure of international investigation or settlement, insufficient substantiation of claims, and jurisdictional elements of *ratione loci*, *ratione temporis*, *ratione materiae* and *ratione personae*.

The Views included substantive issues on arbitrary detention and arrest, right to fair trial including right to counsel of own choosing and sufficient time to prepare one's defense, torture and ill-treatment including rape as torture, right to privacy including that of children in conflict with law in relation to DNA collection, freedom of movement, right to effective remedies including divorce proceedings for foreign same-sex marriages. Remedies included interim measures, like requests to the State for preventing reprisals against the author of a communication, as well as measures for full reparation, including compensation and public acknowledgement of violations. States were recommended to prevent future violations, make their domestic legislation compliant with the Covenant and widely publicise the Views, while also reporting to the HR Committee on the implementation of its Views in a time-bound manner.

Thus, this Yearbook combines a thematic analysis of all Concluding Observations and selected Views of the HR Committee adopted to present a comparative report of the HR Committee's responses to concerns on themes so identified in 2017. It also includes select references to the jurisprudence of the other human rights treaty bodies with respect to the overlapping states reviewed.

FOREWORD

The Centre for Civil and Political Rights is delighted to introduce this analysis of the 2017 findings of the UN Human Rights Committee.

This Yearbook analyses the main concerns emerging from the Concluding Observations and the decisions adopted by the Committee in 2017. This research has systematically been carried out since 2014, which enables us to monitor the main issues discussed by the Committee during the reviews of State Parties, and to keep track of the latest developments in the Committee's jurisprudence. The significant cases are summarized and highlighted in the relevant chapter.

As was the case in the last two years, this research has been completed 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 and analysed all the research materials necessary for this Yearbook. The Centre would like to thank the four students who participated in this project, namely Rita Feger, Maria Gabriela Castillo Cartin, Devashree Pillai and Rouble Sorkkar, as well as Alex Conte, head of the Law Clinic.

Following last year's method, this research also includes an analysis of how other UN Treaty Bodies have dealt with civil and political rights issues. This approach allows for a comparative analysis of the findings of the Human Rights Committee on the one hand, and other Committees on the other hand. The inclusion of the analysis emanating from the other UN Treaty Bodies was possible thanks to the close partnership with TB-Net, the NGO platform working on the UN Treaty Bodies, and in particular with:

- Child Rights Connect for the Committee on the Rights of the Child;
- International Movement Against All Forms of Discrimination and Racism (IMADR) for the Committee on the Elimination of Racial Discrimination; and
- International Disability Alliance (IDA) for the Committee on the Rights of Persons with Disabilities.

The purpose of this research is to make the work of the Human Rights Committee, and more broadly the UN Treaty Bodies, more accessible to and usable for all individuals involved in the promotion and protection of civil and political rights. The Centre would like to thank the Graduate Institute of Geneva and TB-Net for the strong and constructive cooperation.

Patrick Mutzenberg
Director
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ABBREVIATIONS

CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CRC	Convention on the Rights of Child
ICMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
CPED	International Convention for the Protection of All Persons from Enforced Disappearance
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
CRPD	Convention on the Rights of Persons with Disabilities
DRC	The Democratic Republic of Congo
ECTHR	The European Court of Human Rights
HR Committee	Human Rights Committee
HRD	Human Rights Defender
ICCPR/Covenant	International Covenant on Civil and Political Rights
IDPs	Internally Displaced Persons
ICRC	The International Committee of the Red Cross
LGBTI	Lesbian, Gay, Bisexual, Transgender and Intersex
NHRI	National Human Rights Institution
OHCHR	Office of the High Commissioner for Human Rights
OP 1	First Optional Protocol to the International Covenant on Civil and Political Rights
UNCAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

1. APPLICATION OF THE COVENANT

1.1. The Covenant in the Domestic Legal Order

1.1.1. Duty to Implement the Covenant

a. Harmonization of Domestic Legislation

The HR Committee noted that the rights under the Covenant have not been fully implemented in the domestic legal order in various States. Thus, the HR Committee requested the States to adopt domestic legislation to remedy the situation.¹ States were asked to ensure that these rights are applied by the domestic courts as well.²

In this regard, the HR Committee noted the failure of **Australia** to incorporate the Covenant into domestic law and took further notice that not all of the Covenant rights have been given full effect through domestic law in **Bangladesh** and **Pakistan**.³

Bosnia and Herzegovina and **Swaziland** were reminded by the HR Committee of its General Comment No. 31 on the nature of the general legal obligation imposed on State parties, as well as of their obligation under Article 2 (2), to ensure that their domestic laws are consistent with the provisions of the Covenant.⁴

The complexity of **Bosnia and Herzegovina's** constitutional structure and the difficulties of the central Government to carry out legal reforms in some parts of the country were noted to have hindered the full implementation of the Covenant.⁵ Therefore, the State was recommended to ensure implementation of the Covenant in all parts of the federal State.⁶

Since treaties do not apply automatically in **Swaziland**, the HR Committee regretted that the Covenant has not yet been incorporated into domestic law.⁷ It expressed concern about several conflicting laws which impede the efficient implementation of the Constitution.⁸

The HR Committee expressed concern about the lack of application of the Covenant by domestic courts in **Mongolia**, **Mauritius** and **Pakistan**.⁹ In **Madagascar**, even though the Constitution establishes the primacy of international treaties over domestic law and courts may directly invoke the Covenant, the Covenant was rarely applied.¹⁰ The HR Committee regretted the lack of information on the Covenant's application by domestic courts in **Romania**.¹¹

The HR Committee appreciated the establishment of the Parliamentary Joint Committee on Human Rights in **Australia** to scrutinize bills with a view to ensure their compatibility with international Human Rights treaties, including the Covenant. Nevertheless, it expressed concern over reports of **Australia** questioning the quality of some statements of compatibility, notwithstanding the guidelines issued by the Attorney-General and the Parliamentary Joint Committee on Human Rights.¹² It was

1. APPLICATION OF THE COVENANT

¹ Concluding observations on the initial report of Bangladesh, UN Doc. CCPR/C/BGD/CO/1, 2017, **(Bangladesh)**, §8

² Concluding observations on the initial report of Pakistan, UN Doc. CCPR/C/PA/CO/1, 2017, **(Pakistan)**, §6; Concluding observations on the fifth periodic report of Romania, UN Doc. CCPR/C/ROU/CO/5, 2017, **(Romania)**, §6

³ Concluding observations on the sixth periodic report of Australia, UN Doc. CCPR/C/AUS/CO/6, 2017 **(Australia)**, §5; Bangladesh, §7; Pakistan, §5

⁴ Concluding observations on the third periodic report of Bosnia and Herzegovina, UN Doc. CCPR/C/BIH/CO/3, 2017, **(Bosnia and Herzegovina)**, §6; Concluding observations on Swaziland in the absence of a report, UN Doc. CCPR/C/SWZ/CO/1, 2017, **(Swaziland)**, §§8, 11

⁵ Bosnia and Herzegovina, §5

⁶ Bosnia and Herzegovina, §6

⁷ Swaziland, §8

⁸ Swaziland, §10

⁹ Concluding observations on the sixth periodic report of Mongolia, UN Doc. CCPR/C/MNG/CO/6, 2017, **(Mongolia)**, §5; Concluding observations on the fifth periodic report of Mauritius, UN Doc. CCPR/C/MUS/CO/5, 2017, **(Mauritius)**, §5; Pakistan, §5

¹⁰ Madagascar, §5

¹¹ Romania, §5

¹² Australia, §11

¹³ Australia, §12

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recommended that the State strengthen its legislative scrutiny processes to ensure that no bills are adopted before the examination of their compatibility with the Covenant.¹³

In **Bangladesh**, some domestic legislations regarding counter-terrorism, non-discrimination, early marriage, voluntary termination of pregnancy, death penalty, as well as freedom of expression and association, were noted to contain provisions contrary to the Covenant.¹⁴ Moreover, the Constitution of **Jordan** does not clarify the status of the Covenant. To ensure that the Covenant prevails in cases of conflict with sharia law, **Jordan** was advised to ensure that all domestic laws are interpreted and applied in conformity with the Covenant.¹⁵

Finally, the HR Committee expressed concern about certain provisions of the interim Constitution of **Thailand** in 2014, including a provision limiting access to effective remedies, which may lead to immunity of the National Council for Peace and Order for serious human rights violations.¹⁶ Accordingly, the State was asked to amend the interim Constitution of 2014 in the light of its obligations under the Covenant, and make sure that all measures adopted are consistent with the Covenant.¹⁷

b. National Human Rights Institutions

States were generally recommended to adopt legislation that allows a national human rights institution (NHRI) to legally undertake activities in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles). Such NHRIs should be able to fulfil their mandate, have an effective complaints mechanism, and promptly investigate and resolve cases, with full reparation to victims.¹⁸

As to the financial autonomy of the NHRIs, insufficient financial funding was reportedly perceived in almost all States.¹⁹ In this regard, the HR Committee stated that **Australia** should pursue its stated intention to restore the budget of its NHRI and ensure adequate funding, and the **Dominican Republic** should use its annual budget properly and in its entirety.²⁰ In the **DRC**, only 30 per cent of the budget had actually been allocated and the Commission had not received any funding since March 2017. The HR Committee expressed concern that the NHRI in Kinshasa does not have regional offices allowing action in all territories.²¹ It expressed concerns that present financial resources were insufficient for the **Liechtenstein** Human Rights Association to execute its broad mandate successfully and recommended that its ability to carry out its functions not depend on ongoing fundraising efforts.²²

A lack of human resources was noted in **Bangladesh, Bosnia and Herzegovina, DRC, Jordan, Mauritius, Pakistan** and **Swaziland**.²³

Concerning the preservation of an independent functioning of NHRIs, **Australia, Bangladesh, Cameroon, DRC, Dominican Republic, Madagascar, Mongolia, Pakistan, Romania** and **Swaziland** raised the HR Committee's concern.²⁴ The HR Committee expressed concern over the Chairman of the NHRI in **Pakistan** reportedly being denied required authorization to travel

¹⁴ Bangladesh, §§7, 9-10, 11-12, 13-14, 15-16, 23-24, 27-28

¹⁵ Concluding observations on the fifth periodic report of Jordan, UN Doc. CCPR/C/JOR/CO/5, 2017, (**Jordan**), §4

¹⁶ Concluding observations on the second periodic report of Thailand, UN Doc. CCPR/C/THA/CO/2, 2017, (**Thailand**), §7

¹⁷ Thailand, §8

¹⁸ Australia, §§13-14; Bangladesh, §§5-6; Bosnia and Herzegovina, §§9-10;

Concluding observations on the fifth periodic report of Cameroon, UN Doc. CCPR/C/CMR/CO/5, 2017, (**Cameroon**), §§7-8; Concluding observations on the sixth periodic report of Dominican Republic, UN Doc. CCPR/C/DOM/CO/6, 2017 (**Dominican Republic**), §§7-8;

Concluding observations on the fourth periodic report of Democratic Republic of Congo, UN Doc. CCPR/C/COD/CO/4, 2017, (**DRC**), §§9-10; Concluding observations on the second periodic report of Honduras; UN Doc.

CCPR/C/HND/CO/2, 2017, (**Honduras**), §§6-7; Concluding observations on the sixth periodic report of Italy, UN Doc. CCPR/C/ITA/CO/6, 2017, (**Italy**), §§6-7; Madagascar, §8; Mauritius, §8; Pakistan, §10; Romania, §§9-10; Swaziland, §§14-15; Thailand, §§9-10

¹⁹ Australia, §§13-14; Bangladesh, §5; Bosnia & Herzegovina, §9; Cameroon, §§7-8; Dominican Republic, §§7-8; DRC, §§9-10; Honduras, §§6-7; Jordan, §§6-7; Liechtenstein, §§7-8; Madagascar, §8; Mongolia, §§7-8; Pakistan, §10; Swaziland, §15; Switzerland, §§14-15

²⁰ Australia, §14; Dominican Republic, §7

²¹ DRC, §9

²² Concluding observations on the second periodic report of Liechtenstein, UN Doc. CCPR/C/LIE/CO/2, 2017, (**Liechtenstein**), §7

²³ Bangladesh, §5; Bosnia & Herzegovina, §10; DRC, §10; Jordan, §§6-7; Mauritius, §§7-8; Pakistan, §10; Swaziland, §15

²⁴ Australia, §§13-14; Bangladesh, §6; Cameroon, §§7-8; DRC, §9; Madagascar, §8; Mongolia, §§7-8; Romania, §§9-10; Swaziland, §15

²⁵ Pakistan, §9

to Geneva to meet with the HR Committee.²⁵

Regarding the criteria of sufficient transparency, the HR Committee expressed concern over the selection process of the members of the NHRI in **Cameroon**, which was neither participatory nor transparent, requesting the State to review Act No. 2004/016 of 22 July 2004 to ensure a transparent and independent process of selection and appointment of NHRI members, while including rules on conflict of interest for its members.²⁶ The HR Committee took notice of similar issues in **Honduras, Mauritius, Mongolia, Romania** and **Thailand**.²⁷

Liechtenstein was recommended to ensure that the founding legislation of its NHRI ensures that membership is reflective of societal pluralism and diversity.²⁸ Furthermore, legal amendments were suggested to **Pakistan** where the Commission is, according to its constitutive status, prevented from fully cooperating with United Nations human rights mechanisms.²⁹ Moreover, **Swaziland** was asked to adopt an enabling legislation for the NHRI without delay.³⁰ The HR Committee expressed concern over **Italy** and **Switzerland** lacking any body that could be described as a NHRI, and recommended that they establish independent NHRIs with broad mandates and adequate human and financial resources, compliant with the Paris Principles.³¹

The Committee on Economic, Social and Cultural Rights (CESCR) raised this topic multiple times, especially in relation to newly established NHRIs. For instance, compliance with the Paris Principles was highlighted in relation to **Pakistan**; in the case of **Australia**, the Committee asked about the limited mandate of the Australian NHRI, which does not include a mandate to address economic, social and cultural rights.³²

c. Awareness-Raising and Capacity Building

The HR Committee requested **Bangladesh, Liechtenstein, Madagascar, Mauritius, Serbia, Swaziland** and **Pakistan** to raise awareness on the Covenant rights and domestic law giving effect to these rights among judges, lawyers, prosecutors and other public officials to ensure that the Covenant is upheld by the courts.³³ **Australia** was additionally requested to ensure the availability of specific training on the Covenant for federal immigration staff.³⁴ **Cameroon, Jordan, Romania** and **Swaziland** by contrast were recommended to continue their existing measures in sensitizing the judiciary and legal community.³⁵ **Honduras** was asked to increase training and education programmes, especially on the importance of freedoms of expression, association and assembly, for law enforcement officers, military personnel, private security companies' staff, judges and prosecutors.³⁶

Regarding the **DRC**, the HR Committee took note of article 215 of the Constitution, which provides that treaties have greater authority than domestic laws. It regretted that no example was provided of cases in which the Covenant had been invoked before the courts or applied by them.³⁷ Thus, additional efforts in awareness-raising should be ensured by the **DRC**, but also by the **Dominican Republic** and **Mongolia** with regard to the First Optional Protocol.³⁸ **Switzerland** was asked to ensure that the

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²⁶ Cameroon, §§7-8

²⁷ Honduras, §6; Madagascar, §8; Mongolia, §8; Romania, §§9-10; Thailand, §9

²⁸ Liechtenstein, §8

²⁹ Pakistan, §9

³⁰ Swaziland, §15

³¹ Italy, §§6-7; Concluding observations on the fourth periodic report of Switzerland, UN Doc. CCPR/C/CHE/CO/4, 2017, **(Switzerland)**, §14-15

³² CESCR, Concluding observations on the initial report of Pakistan, UN Doc. E/C.12/PAK/CO/1, 2017, §§11-12 **(CESCR, Pakistan)**; CESCR, Concluding observations on the fifth periodic report of Australia, UN Doc. E/C.12/AUS/CO/5, 2017, §§9-10 **(CESCR, Australia)**

³³ Bangladesh, §8; Liechtenstein, §6; Madagascar, §6; Mauritius, §6; Concluding observations on the third periodic report of Serbia, UN Doc. CCPR/C/SRB/CO/3, 2017, **(Serbia)**, §7; Swaziland, §45; Pakistan, §9

³⁴ Australia, §6

³⁵ Cameroon, §6; Jordan, §5; Romania, §6; Swaziland, §11

³⁶ Honduras, §4

³⁷ DRC, §5

³⁸ Dominican Republic, §6; DRC, §6; Mongolia, §5

³⁹ Switzerland, §9

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authorities in all cantons are aware of the HR Committee's recommendations in order to guarantee their proper implementation.³⁹

The HR Committee requested **Mongolia** to strengthen its efforts to promote the effective application of the provisions of the Covenant before domestic courts, including through institutionalized training of legal authorities on international human rights treaties, and awareness-raising among the public at large.⁴⁰ **Swaziland** was requested to redouble its for awareness-raising among the public at large.⁴¹

Finally, the limited consultations with civil society of the **Dominican Republic** and the **DRC** in the preparation of the reports for the HR Committee caused concern.⁴² The HR Committee, in respect of both countries, recommended broad and open consultation with civil society in the preparation of States' periodic reports to the HR Committee and in the implementation of its recommendations.⁴³ The HR Committee found it regrettable that civil society was not even involved in the preparation of the periodic report for **Switzerland**.⁴⁴

1.1.2. Implementation of the HR Committee's Decisions

In accordance with Article 2 (3) of the Covenant, some States were recommended to take all measures necessary to ensure that appropriate procedures exist for implementing the HR Committee's Views to guarantee the right of victims to an effective remedy when there has been a violation of the Covenant.⁴⁵ However, several States failed, in terms of time or substance, to implement fully the HR Committee's recommendations. **Cameroon** was asked to fulfil obligations of implementation under the Covenant within a reasonable period of time, especially with regard to compensation⁴⁶

Accordingly, the HR Committee expressed concern over the lack of information on the implementation of the Views adopted under the Optional Protocol in the cases of the **DRC**, **Mongolia** and **Turkmenistan**.⁴⁷ Failure to implement the HR Committee's Views was observed in respect of **Bosnia and Herzegovina**, and repeatedly in respect of **Australia** and **Turkmenistan**.⁴⁸

The HR Committee expressed concern over the delay in the adoption of the National Plan for Human Rights by the **Dominican Republic**,⁴⁹ and the State was advised to ensure an effective follow-up of the full implementation of the Views adopted by the HR Committee.⁵⁰ In **Honduras** recommendations made by the Truth and Reconciliation Commission in 2011 relating to violations during the 2009 coup were noted to not have been fully implemented.⁵¹

The HR Committee recalled its General Comment No. 33 on the obligations of State parties under the Optional Protocol to the ICCPR, stating that its Views exhibit some of the principal characteristics of a judicial decision and represent an authoritative determination by the organ established under the Covenant. Hence, the HR Committee regarded implementation of remedies indicated in its Views as part of the obligations of States under the Covenant and the Optional Protocol,⁵² and

⁴⁰ Mongolia, §6

⁴¹ Swaziland, §9

⁴² Dominican Republic, §5; DRC, §5

⁴³ Dominican Republic, §6; DRC, §6

⁴⁴ Switzerland, §8

⁴⁵ Australia, §12; Cameroon, §6; DRC, §8;

Madagascar, §§5-6; Mongolia, §6; Serbia, §6; Concluding observations on the second periodic report of Turkmenistan, UN Doc. CCPR/C/TKM/CO/2, 2017, (Turkmenistan), §4

⁴⁶ Cameroon, §§5-6

⁴⁷ DRC, §7; Mongolia, §5; Turkmenistan, §4

⁴⁸ Australia, §11; Bosnia & Herzegovina, §9; Turkmenistan, §4

⁴⁹ Dominican Republic, §5

⁵⁰ Dominican Republic, §6

⁵¹ Honduras, §8⁵² Australia, §11

⁵³ Australia, §§11-12

Australia was asked to implement all pending Views of the HR Committee.⁵³

1.1.3. Reservations to ICCPR and Party Status to the Optional Protocol

As to the Reservations to the Covenant, the HR Committee requested **Australia** to periodically review the justifications for, and the necessity of, maintaining its reservations to Articles 10, 14 (6) and 20 of the Covenant with a view to withdrawing them.⁵⁴ **Liechtenstein** was asked to consider withdrawing its remaining reservations to Articles 14, 17 and 26.⁵⁵

The HR Committee expressed regret that **Pakistan** maintains its reservations to Articles 3 and 25, which limit the application of these Articles to the extent that they are in conformity with Muslim personal law and the law on evidence, and with some provisions of the Constitution.⁵⁶ The State was asked to consider withdrawing its reservations.⁵⁷

Furthermore, the HR Committee reiterated its concern relating to the maintenance by **Switzerland** of its reservations to Articles 12 (1), 20 (1), 25 (b) and 26 owing to the supposed incompatibility of national law with the Covenant.⁵⁸ The State was asked to consider withdrawing its reservations and revise its national law if necessary, and refrain from introducing domestic law provisions that impede the withdrawal of the reservations.⁵⁹

Regarding the First Optional Protocol to the Covenant, which establishes an individual complaint mechanism, the HR Committee said that it would appreciate it if **Bangladesh, Jordan** and **Swaziland** proceeded to its ratification without further delay.⁶⁰

1.2. Individual Communications before the Human Rights

Committee

Individual Communications constitute a key element for the application of the Covenant and OP 1 in the domestic legal order, whereby individuals can bring instances of non-compliance by the States with the ICCPR before the HR Committee. In the following sub-sections, the HR Committee's jurisprudence in selected key communications with regard to admissibility and remedies will be examined.

1.2.1. Admissibility

a. Admissibility Criteria under Article 1 of OP 1

Article 1 of OP 1 states that the HR Committee is competent to receive claims from individuals subject to the jurisdiction (*ratione loci*) of a State Party to OP 1 (*ratione temporis*) who claim to be victims (*ratione personae*) of a violation of the rights contained in the Covenant (*ratione materiae*).

i. *Ratione loci*

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⁵⁴ Australia, § 8

⁵⁵ Liechtenstein, §§9-10

⁵⁶ Pakistan, § 7

⁵⁷ Pakistan, § 8

⁵⁸ Switzerland, § 10

⁵⁹ Switzerland, § 1

⁶⁰ Bangladesh, § 8; Jordan, § 9; Switzerland, § 9

⁶¹ C. v. Australia, UN Doc. CCPR/C/119/D/2216/2012, 2017, §§8.4-8.5 (C v. Australia)

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In *C. v. Australia*, which addressed the absence of divorce proceedings in Australia for a same-sex marriage contracted abroad which was not recognized under Australian Law, the State argued that such a marriage lacked legal effects in its territory and the fact that the action took place overseas rendered the claim inadmissible *ratione loci*.⁶¹ However, the HR Committee considered that the legal uncertainty of the author's position in Australia caused by the lack of access to divorce proceedings was a legal effect sufficient to render the case admissible.

ii. *Ratione temporis*

The HR Committee referred to its jurisdiction *ratione temporis* vis-à-vis Kazakhstan in *S. Sh. v. Kazakhstan*, *M. Z. v. Kazakhstan*, *Dmitry Tyan v. Kazakhstan* and *Andrei Sviridov v. Kazakhstan*.⁶² In all four cases the HR Committee observed that the claimed violations took place before the date of entry into force of OP 1 for the State Party, i.e. 16 September 2009, and declared the first three claims inadmissible. However, in the case of *Sviridov v. Kazakhstan*, it recalled the exception for violations continuing after the date of entry into force, or continuing to have effects which in themselves constitute a violation of the Covenant, or an affirmation of a prior violation. Therefore, it declared the case admissible as the violation of the author's rights continued after the entry into force of OP 1.⁶³

iii. *Ratione personae (victim status)*

Article 1 of OP 1 states that the HR Committee is competent to receive claims from individuals who claim to be victims of violation of the rights contained in the Covenant. The HR Committee explained who a victim is for the purposes of OP 1 in *M. A. K. v. Belgium*, *Reyes v. Chile*, *Zogo v. Cameroon* and *Yassin v. Canada*.

In *M. A. K. v. Belgium*, the HR Committee recalled that a person cannot claim to be a victim if the State has already taken action to redress the violation. In this case, the author claimed to be a victim of a violation of Article 14.3(c) due to the unreasonable length of 17 years that criminal proceedings took. The HR Committee recalled its jurisprudence on the reasonableness of proceedings having to be assessed case by case, considering the complexity of the issue, the behaviour of the accused and the actions of the authorities. It further noted that the Brussels's Tribunal considered the length of the proceedings when imposing the sentence and gave the author significantly reduced prison time in order to compensate for the violation. The HR Committee therefore concluded that the conduct of the authorities had redressed the author's complaint and that he did not have victim status for purposes of Article 1 of OP 1.⁶⁴

It further explained in *Reyes v. Chile*, in view of the author making claims on behalf of citizens of Santiago de Chile for their right to receive information, that a person is not a victim unless their own rights have actually been violated. It also explained that a person may not object, by *actio popularis* or in theoretical terms, to a law or practice that they consider to be incompatible with the

⁶²S. Sh. v. Kazakhstan, UN Doc. CCPR/C/119/D/2842/2016, 2017, §4.3 (*S. Sh. v. Kazakhstan*); Z. v. Kazakhstan, UN Doc. CCPR/C/119/D/2145/2012, 2017, §11.3 (*M. Z. v. Kazakhstan*); Dmitry Tyan v. Kazakhstan, UN Doc. CCPR/C/119/D/2125/2011, 2017, §8.4 (*Dmitry Tyan v. Kazakhstan*); Andrei Sviridov v. Kazakhstan, UN Doc. CCPR/C/120/D/2158/2012, 2017, §9.4 (*Andrei Sviridov v. Kazakhstan*)

⁶³Andrei Sviridov v. Kazakhstan, §9.4

⁶⁴M. A. K. v. Belgium, UN Doc. CCPR/C/119/D/2148/2012, 2017, §6.4 (*M. A. K. v. Belgium*)

⁶⁵Claudia Andrea Marchant Reyes et al. v. Chile, UN Doc. CCPR/C/121/D/2627/2015, 2017, §6.4 (*Reyes v. Chile*)

Covenant. In consequence, the claim was inadmissible to the extent that it referred to citizens' rights in general terms and not to a specific person.⁶⁵

The victim status is strictly dependent on the particular text of the provision of the Covenant a violation is claimed under. In **Zogo v. Cameroon**, the HR Committee explained that as Article 14(5) refers to 'everyone convicted of a crime', someone who has neither been judged nor convicted could not be considered a victim for the purposes of this provision.⁶⁶

Finally, in **Yassin v. Canada**, the HR Committee recalled its jurisprudence, wherein only individuals, and not legal persons, have the right to submit a communication under Article 1 of OP 1. Here, two authors (the estate of the late Ahmed Issa Abdallah Yassin and the Bil'in Village Council, represented by its Vice-Chair) were legal entities, and the HR Committee therefore declared their claims inadmissible because of the lack of personal standing.⁶⁷

iv. *Ratione materiae*

In **Zogo v. Cameroon**, which addressed the right to a fair trial of the author's father, the HR Committee recalled its jurisprudence on the prohibition of imprisonment for inability to fulfil a contractual obligation not being applicable to criminal prosecutions related to civil debts and that in cases of fraud or embezzlement, prison sentences may be imposed. It therefore declared the author's claim under Article 11 inadmissible *ratione materiae*.⁶⁸ It also found the author's claim under Article 15, of the law being applied retroactively as his father's criminal proceedings were transferred to a recently created jurisdiction, was inadmissible *ratione materiae*, as the change did not modify the qualification of the crime or the applicable penalties.⁶⁹

Finally, the author also claimed a violation under Article 16, arguing that the juridical personality of the company was not being recognized and his father was being erroneously prosecuted instead. The HR Committee noted that the author's father was personally charged with certain crimes, declaring the claim inadmissible *ratione materiae*.⁷⁰

b. Admissibility Criteria under Article 5(2) of OP1

i. Article 5(2)(a) – Same matter under examination by another procedure of international investigation or settlement

The HR Committee had to address the issue in the individual communications of **S. L. v. Netherlands**, **N. K. v. Netherlands** and **M. A. K. v. Belgium**.⁷¹ The authors had previously resorted to the European Court of Human Rights (ECtHR), but all three cases were declared inadmissible. The HR Committee, while confirming its jurisprudence, stated that the cases were no longer pending before the ECtHR, and were admissible before it.

ii. Article 5(2)(b) – Non-exhaustion of local remedies

In the individual communications assessed in 2017, the HR Committee elaborated on the situations that may constitute exceptions to the requirement under Article 5(2)(b). In **S. L. v. Netherlands**, the HR Committee stated that established case-law on an issue may render the domestic remedies ineffective, and the situation may therefore fall within the said exceptions. In this

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⁶⁶ Cyrille Gervais Moutono Zogo v. Cameroon, UN Doc. CCPR/C/121/D/2764/2016, 2017, §6.14 (**Zogo v. Cameroon**)

⁶⁷ Basem Ahmed Issa Yassin et al. v. Canada, UN Doc. CCPR/C/120/D/2285/2013, 2017, §6.3 (**Yassin v. Canada**)

⁶⁸ Zogo v. Cameroon, §6.11

⁶⁹ Zogo v. Cameroon, §6.15

⁷⁰ Zogo v. Cameroon, §6.16

⁷¹ S. L. v. Netherlands, UN Doc. CCPR/C/120/D/2362/2014, 2017, §9.2 (**S. L. v. Netherlands**); N. K. v. Netherlands, UN Doc. CCPR/C/120/D/2326/2013, 2017, §8.3 (**N. K. v. Netherlands**); M. A. K. v. Belgium, UN Doc. CCPR/C/119/D/2148/2012, 2017, §6.2 (**M. A. K. v. Belgium**)

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case, which addressed the mandatory DNA profiling of children in conflict with the law, the author argued that challenging the DNA collection in the context of the objection proceedings provided for by the DNA Testing Act would have been ineffective because it had already been determined by well-established domestic case-law in the Netherlands that the limited scope of the objections under the DNA Testing Act was compatible with the Covenant. In view of the lack of a rebuttal by the State before the HR Committee, the HR Committee concluded that there was no need to exhaust domestic remedies and found the communication admissible.⁷²

Similarly, the HR Committee reiterated that remedies without a real prospect of success fall within the said exceptions. In **C. v. Australia**, which addressed the lack of divorce proceedings for same-sex foreign couples who married abroad given that such unions were not recognized in Australia, the author argued that filing of an application for divorce would be futile and that it would have no real prospect of success, given the express, legislative provisions that denied her eligibility to bring such an application before any Australian court. The HR Committee declared that the claim satisfied the requirements of the Article. 5(2)(b).⁷³

Under a comparable reasoning, in **X. v. Sri Lanka**, in view of the unreasonable delay of the criminal proceedings initiated by the author, i.e. 11 years at the moment of the initial submission of the communication, without a criminal conviction against the culprits and the lack of rebuttal by the State, the HR Committee declared the case admissible.⁷⁴

However, in **B. Z. et al. v. Albania**, the HR Committee recalled that although there is no obligation to exhaust domestic remedies if there is no chance of success, authors of communications must exercise due diligence in the pursuit of available remedies, and that mere doubts or assumptions about their effectiveness do not absolve the authors from exhausting them.

It observed that even if specific proceedings were not available against an eviction order, the authors could have challenged the actions of the municipality under general administrative proceedings. It therefore declared the claim inadmissible.⁷⁵

1.2.2. Remedies

The HR Committee adopted recommendations for effective remedies in the communications where it found violations of the Covenant, depending on the facts, including full reparations, like when the author suffered discrimination through the lack of access to divorce proceedings.⁷⁶ Full reparations may include adequate compensation,⁷⁷ but also other measures, such as when Chile was recommended to 'locate the missing banners and, where possible, return them or provide the authors with information on what happened to them'.⁷⁸ Appropriate means of satisfaction, including public acknowledgement or apology for the violation of rights, were also remedies used by the HR Committee.⁷⁹

Findings of torture or ill-treatment prompted the HR Committee to ask for a prompt and effective investigation, and punishment for perpetrators,⁸⁰ and findings of violations of the right to fair trial led to the State being recommended to conduct a new trial, after quashing the previous conviction.⁸¹

⁷² S. L. v. Netherlands, §9.3

⁷³ C. v. Australia, §8.3

⁷⁴ X. v. Sri Lanka, UN Doc. CCPR/C/120/D/2256/2013, 2017, §6.3 (**X. v. Sri Lanka**)

⁷⁵ B. Z. et al. v. Albania, UN Doc. CCPR/C/121/D/2837/2016, 2017, §§6.3-6.4 (**B. Z. et al. v. Albania**)

⁷⁶ C. v. Australia, §11

⁷⁷ Fakhridin Ashirov v. Kyrgyzstan, UN Doc. CCPR/C/120/D/2435/2014, 2017, §9 (**Ashirov v. Kyrgyzstan**); X. v. Sri Lanka, §9; Khidirnazar Allakulov v. Uzbekistan, UN Doc. CCPR/C/120/D/2430/2014, 2017, §9 (**Khidirnazar v. Uzbekistan**)

⁷⁸ Claudia Andrea Marchant Reyes et al. v. Chile, UN Doc. CCPR/C/121/D/2627/2015, 2017, §9 (**Reyes v. Chile**)

⁷⁹ Zhaslan Suleimenov v. Kazakhstan, UN Doc. CCPR/C/119/D/2146/2012, 2017, §11 (**Zhaslan v. Kazakhstan**); X. v. Sri Lanka, §9; Khidirnazar v. Uzbekistan, §9

⁸⁰ Zhaslan v. Kazakhstan, §11; Ashirov v. Kyrgyzstan, §9

⁸¹ Ashirov v. Kyrgyzstan, §9

Upon request made by the author alleging that the State authorities are pressuring the author to withdraw his complaint, the HR Committee, acting through its Rapporteur on new communications and interim measures, asked the State to prevent any “reprisals against the author, his family, witnesses and representatives as a result of the submission of the communication”.⁸²

The HR Committee re-emphasised the States’ obligation to take steps to prevent similar violations in the future,⁸³ and to review its laws in accordance with the present Views.⁸⁴ The HR Committee also expressed wishes to receive time-bound reports within 180 days on implementation of its Views from the States and requested the States to publish the HR Committee’s Views.⁸⁵

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2.1. Right to Fair Trial

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

Khidirnazar Allakulov v. Uzbekistan,

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

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

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

2.1.1. Arbitrary and Unlawful Detention

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

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⁸² Zhaslan v. Kazakhstan, §5.1 fn.15

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

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

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

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

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

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

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

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

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

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

⁸⁶DRC, §§35-36

⁸⁷Jordan, §§18-19

⁸⁸Cameroon, §§33-34

penitentiary system, which permits the application of a special regime of detention for up to 4 years extendable for two years and its automatic extension, and the lack of judicial review thereof.⁹¹

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

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

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

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

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

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

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

See Sections 2.3. (Procedural safeguards), 3.1.2. (Extrajudicial, summary and arbitrary killings), 3.1.3. (Enforced disappearances), 3.2. (Prohibition of torture, cruel, inhuman or degrading treatment

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⁸⁹ Mauritius, §§31-32

⁹⁰ Thailand, §§25-26

⁹¹ Italy, §§32-33

⁹² DRC, §§35-36

⁹³ Cameroon, §§33-34

⁹⁴ Mauritius, §§31-32

⁹⁵ Italy, §§32-33

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or punishment), 3.3. (Detention conditions), 5.2.3 (Immigration detention) for more.

Pre-trial Detention

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

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

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

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

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

⁹⁶ Mauritius, §§29-30

⁹⁷ Mongolia, §§23-24

⁹⁸ Madagascar, §§35-36

⁹⁹ Mauritius, §§29-30

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

2.1.2. Access to Justice

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

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

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

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

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

Adequate Legal Aid

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

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

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

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

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¹⁰¹ Italy, §§34-35; Serbia, §§34-35;

Madagascar, §§45-46

¹⁰² DRC, §§37-38

¹⁰³ Madagascar, §§45-46

¹⁰⁴ Serbia, §§34-35

¹⁰⁵ DRC, §§37-38

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

¹⁰⁷ Swaziland, §32, 40

¹⁰⁸ Serbia, §§34-35

¹⁰⁹ Honduras, §§32-33

¹¹⁰ Italy, §§34-35

¹¹¹ DRC, §§37-38

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

2.1.3. Independence of Judiciary

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

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

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

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

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

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

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

¹¹² Australia, §§39-40

¹¹³ Pakistan, §18

¹¹⁴ Swaziland, §§32, 40-41

¹¹⁵ Honduras, §§32-33

¹¹⁶ Dominican Republic, §§27-28;

Turkmenistan, §§30-31; Serbia, §§34-

35; Cameroon, §§37-38; Swaziland,

§§38-39; Mongolia, §§31-32;

Madagascar, §§45-46; Honduras, §§

4-35; Romania, §§39-40

¹¹⁷ Turkmenistan, §§30-31

¹¹⁸ Serbia, §§34-35

¹¹⁹ Cameroon, §§37-38

¹²⁰ Honduras, §§34-35

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

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

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

2.1.4. Military and Traditional Tribunals

Military Tribunals

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

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

With regard to **Thailand**, while noting that Order 55/2016 transferred cases concerning civilians from military courts to civil ones from September 2016, the HR Committee expressed concern about reports of ongoing cases and arrest warrants for civilians before military courts; cases of civilians convicted by military

2. DUE PROCESS AND PROCEDURAL GUARANTEES

¹²¹ Dominican Republic, §§27-28

¹²² Serbia, §§34-35

¹²³ Cameroon, §§37-38

¹²⁴ Honduras, §§34-35

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

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

¹²⁷ Pakistan, §23

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courts without the right to appeal; and reports of military courts not implementing all procedural guarantees under Article 14 of the Covenant.¹²⁸ Furthermore, the HR Committee expressed concern over the wide jurisdiction of the State Security Court in **Jordan**, including over cases of civilians accused of terrorism, and its reported lack of impartiality and independence.¹²⁹

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

Traditional Tribunals

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

2.2. Right to an Effective Remedy and Transitional Justice

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

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

¹²⁸ Thailand, §§31-32

¹²⁹ Jordan, §§26-27

¹³⁰ DRC, §§37-38

¹³¹ Pakistan, §23

¹³² Thailand, §§25-26

¹³³ Jordan, §§26-27

¹³⁴ Swaziland, §§38-39

¹³⁵ Madagascar, §§45-46

¹³⁶ Swaziland, §§38-39

¹³⁷ Swaziland, §§38-39

¹³⁸ Madagascar, §§13-14

prosecutions, particularly against middle and high ranking officials, for war crimes committed during the armed conflict in **Serbia**; the narrow definitions of 'victim' and 'injured parties' under the Law on Civilian Invalids of War and the Criminal procedure code; the lack of appointment of a new War Crimes prosecutor and the lack of resources allocated to this office; and the reports of government pressure on the office of the prosecutor.¹⁴⁰

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

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

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

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

The CESCR recommended that **Sri Lanka** incorporate economic, social and cultural rights into the policies and mechanisms of

2. DUE PROCESS AND PROCEDURAL GUARANTEES

¹³⁹ DRC, §§ 11-12

¹⁴⁰ Serbia, §§ 22-23

¹⁴¹ Bosnia & Herzegovina, §§ 17-18

¹⁴² Ibid, §§ 17-18

¹⁴³ Madagascar, §§ 13-14

¹⁴⁴ DRC, §§ 11-12

¹⁴⁵ Serbia, §§ 22-23

¹⁴⁶ Madagascar, §§ 17-18

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transitional justice.¹⁴⁷ The CEDAW recommended **Sri Lanka** and **Thailand** to fully involve women at all stages of the post-conflict reconstruction process. **Sri Lanka** was specifically urged to incorporate better safeguards to ensure the independence and effectiveness of the judiciary and witness protection programmes, in line with international standards; and take steps to remove persisting barriers to women's access to justice, including gender, language and culture sensitive measures. With respect to **Thailand**, the CEDAW recommended to increase its efforts to end the conflict in the southern border provinces and ensure that the military, law enforcement officials and non-State armed groups abide by international humanitarian and human rights law, in particular with regard to the protection of women and girls who are not engaged in conflict from all forms of violence.¹⁴⁸

2.3. Procedural Safeguards

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

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

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

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

In relation to Madagascar, the HR Committee referred with concern to the possibility of extending police custody up to 12 days on the basis of insufficiently defined criteria; the difficulties detainees experience to access legal services; and the possibility of contributing to police operative costs in order to speed up investigations, which undermines equal access to justice.¹⁵⁰ Similarly, the HR Committee expressed concern over the

¹⁴⁷ CESCR, Sri Lanka, §§71-72

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

¹⁴⁹ Thailand, §§25-26

¹⁵⁰ Madagascar, §§33-34

prosecutor being able to authorize remand in custody of persons arrested on the basis of a criminal charge, with possibility of extension and no judicial control, and the lack of interpreters for Russian speaking defendants in Turkmenistan;¹⁵¹ detainees not being informed of the reasons for their arrest and their right to legal counsel in DRC.¹⁵² It also highlighted detainees neither being provided with immediate access to a lawyer or a doctor, nor the opportunity to contact their families, and the lack of investigation of detainees' rights violations complaints in **Mongolia**;¹⁵³ and the lack of access to detention registers, and the difficulty individuals in police custody face to be examined by an independent doctor in **Honduras**.¹⁵⁴

2.3.1. Counter-Terrorism Measures

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

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

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

The HR Committee also expressed concern over **Mauritius'** Prevention of Terrorism Act, which allows the denial of bail and detention for 36 hours, without access to anyone, including counsel; and the lack of data on the application of this

2. DUE PROCESS AND PROCEDURAL GUARANTEES

¹⁵¹ Turkmenistan, §§24-25

¹⁵² DRC, §§35-36

¹⁵³ Mongolia, §§23-24

¹⁵⁴ Honduras, §§32-33

¹⁵⁵ DRC, §§35-36

¹⁵⁶ Mongolia, §§23-24

¹⁵⁷ Madagascar, §§33-34

¹⁵⁸ Turkmenistan, §§24-25

¹⁵⁹ Honduras, §§32-33

¹⁶⁰ Jordan, §§12-13

¹⁶¹ Cameroon, §§11-12

¹⁶² CAT, Cameroon §§13-14

¹⁶³ Swaziland, §§36-37

¹⁶⁴ Turkmenistan, §§14-15

¹⁶⁵ Romania, §§33-34

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legislation.¹⁶⁶ In relation to **Bangladesh**, it expressed concern over unclear legal terminology which grants the State broad powers to detain in cases of 'prejudicial acts' and 'terrorist acts'; and the adoption of death penalty for financing terrorists.¹⁶⁷ Similarly, in relation to **Pakistan's** Anti-Terrorism Act, the HR Committee highlighted several aspects, such as the broad definition of terrorism; the Act's supremacy over other laws, which enables Anti-terrorism courts to try juveniles in spite of the Juvenile Justice System Ordinance of 2000; and detention up to one year and admission of confessions obtained in police custody as evidence in court.¹⁶⁸

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

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

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

2.4. Corruption

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

¹⁶⁶ Mauritius, §§27-28

¹⁶⁷ Bangladesh, §§9-10

¹⁶⁸ Pakistan, §21

¹⁶⁹ Australia, §§15-16

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

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

¹⁷² Dominican Republic, §§29-30

¹⁷³ Madagascar, §§11-12

¹⁷⁴ Cameroon, §§9-10

The HR Committee made general recommendations related to the issues of corruption, on the basis of the States' duties not only to ensure a fair trial (Article 14), but also to take all necessary measures to ensure the rights provided in the Covenant are implemented (Article 2), including rights to ensure public participation (Article 25) and non-discrimination (Article 26).¹⁷⁵ The HR Committee made recommendations for the States to reinforce efforts to counter and eradicate corruption and impunity, by prosecuting and sanctioning the culprits. It recommended that **Dominican Republic** consider the recommendations of the UN Convention Against Corruption in relation to the Criminal Code on bribery and embezzlement, misappropriation or other diversion of property, that **Madagascar** establish public oversight mechanisms such as the independent anti-corruption offices; and that **Cameroon** adopt a strict anti-corruption policy for public officers.¹⁷⁶

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

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

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

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

3. PERSONAL INTEGRITY AND DETENTION

3. PERSONAL INTEGRITY AND DETENTION

3.1. Right to Life

3.1.1. Death Penalty

The HR Committee expressed concern over the application of death penalty in **Pakistan**, **Jordan** and **Bangladesh** in a manner inconsistent with the Covenant.

The case of **Pakistan** was concerning, given that the death penalty is being applied to juveniles and persons with psychosocial and intellectual disabilities; death penalty is used for crimes which are not the most serious such as 'blasphemy' and 'drug trafficking'; there were reports of executions performed in a cruel, inhuman and degrading fashion that may constitute torture. The HR Committee further expressed concern over **Pakistan** becoming one of the States with the highest rates of executions after lifting the moratorium on death penalty in December 2014 and its 'policy of blanket refusal of clemency applications'.¹⁷⁸

In respect of **Bangladesh** and **Jordan**, the HR Committee's noted the death penalty being applied in crimes which are not the most serious.¹⁷⁹ For instance, smuggling, food adulteration, the production and consumption of 'intoxicant materials' and financing terrorism are capital crimes in **Bangladesh**.¹⁸⁰ It also expressed concern over **Jordan** ending the *de facto* death penalty moratorium since 2007, by carrying out executions in 2014 and 2017.¹⁸¹

While acknowledging the *de jure* moratorium in **DRC** since 2003, and *de facto* moratoriums in **Cameroon** and **Thailand**, the HR Committee expressed concern about death penalty sentences still being pronounced and the high rate of detainees waiting for execution in **DRC**;¹⁸² the significant number of civilians condemned to death penalty by military tribunals as a result of the fight against terrorism in **Cameroon**;¹⁸³ and the punishment of crimes related to corruption, bribery and drugs with death penalty in **Thailand**.¹⁸⁴

The HR Committee consistently recommended that States consider the abolition of death penalty, the accession to the Second Optional Protocol and/or reinstalling lifted moratoriums; that they ensure that the death penalty is applied only after a procedure in compliance with fair trial standards, especially when military tribunals try civilians; and that States ensure that death penalty is applied only in the most serious cases. It recommended that **Pakistan** ensure that commutation is available in all cases, that the death penalty is not applied to persons below 18 years old, or with intellectual or psychological disabilities; that effective and independent age determination and review proceedings for identifying persons with disabilities are conducted; and that execution protocols respect international human rights standards.¹⁸⁵

¹⁷⁸ Pakistan, §17

¹⁷⁹ Bangladesh, §23; Jordan, §§14-15

¹⁸⁰ Bangladesh, §23

¹⁸¹ Jordan, §§14-15

¹⁸² DRC, §§23-24

¹⁸³ Cameroon, §§23-24

¹⁸⁴ Thailand, §§17-18

¹⁸⁵ Pakistan, §§17-18

It also recommended that **DRC** consider implementing a political and legislative procedure aiming to abolish death penalty, implement measures to sensitize public opinion and promote its abolition, and commute the penalties of current detainees.¹⁸⁶ **Cameroon** was also recommended to commute death sentences.¹⁸⁷

3.1.2. Extrajudicial, Summary and Arbitrary Killings

The persistence of extrajudicial killings as a result of excessive use of force by governmental security forces, mob justice practices, and extrajudicial killings in the context of ongoing armed conflicts and counter-terrorism activities were common issues of concern with regard to **DRC, Cameroon, Swaziland, Bangladesh, Pakistan, Madagascar, Honduras, Thailand** and **Dominican Republic**.

With regard to **DRC**, the HR Committee expressed concern about reports of continuous extrajudicial executions by both armed groups and the State security forces, and excessive use of force by the latter. Instances of concern were the death and injury of several people following the public demonstrations of 19-21 September 2016 and 19-20 December 2016, Operation Likofi of 5 November 2013, a common grave found in Kinshasa in March 2015, and the situation in Kasai.¹⁸⁹ The HR Committee also referred to reports on extrajudicial killings being a constant practice in **Cameroon**. It highlighted reports on violent searches and detention by State officers that often resulted in extrajudicial killings as part of the measures to fight terrorism. It recalled two interventions by the 'Quick intervention Brigade' in Bornon, and Magdémé and Doublé in 2014, resulting in 200 arrests, 130 disappearances and 25 deaths.¹⁹⁰

In relation to **Swaziland**, the HR Committee expressed concern over reports of excessive use of lethal force and arbitrary killings by law enforcement officers; the law's permissive conditions which granted discretion to police officers for deciding when use of force is necessary; and prosecution immunity to game rangers for using force against poachers.¹⁹¹ It also noted reports of extrajudicial executions by security forces in **Madagascar**, particularly where Dahalo cattle raiders operate; allegations of indiscriminate attacks on presumed groups of cattle raiders; Operation Tandroka in 2012 which resulted in a large number of people being killed; and reprisals against mob justice.¹⁹² The HR Committee also expressed concern over the high rates of extrajudicial killings in **Bangladesh** and **Pakistan**, allegedly committed by the government security forces; the excessive use of security forces in **Bangladesh**; and the lack of investigation and redress for family members in both countries.¹⁹³

The CAT expressed concern over the cordon and search operations conducted by the defence forces in **Cameroon**. The Committee also noted that members of **Pakistan's** military forces, intelligence forces, and paramilitary forces have been implicated in a significant number of cases of extrajudicial executions involving torture and enforced disappearances. **Pakistan** was recommended to ensure military personnel are tried in civil courts for acts of torture and to end the use of paramilitary forces to carry out law enforcement tasks.¹⁹⁴

3. PERSONAL INTEGRITY AND DETENTION

¹⁸⁶ DRC, §§23-24

¹⁸⁷ Cameroon, §§23-24

¹⁸⁸ Mauritius, §§17-18

¹⁸⁹ DRC, §§27, 29, 43

¹⁹⁰ Cameroon, §§25-26

¹⁹¹ Swaziland, §§30-31

¹⁹² Madagascar, §§27-28

¹⁹³ Bangladesh, §§19-20; Pakistan, §19

¹⁹⁴ CAT, Cameroon, §9; CAT, Pakistan, §§10-11

3. PERSONAL INTEGRITY AND DETENTION

Welcoming the adoption of the Ethics Code of the National Police and regulation of use of force, compliant with the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the HR Committee expressed concern over the excessive force used by the police and the high rate of extrajudicial executions in **Dominican Republic**.¹⁹⁵

The HR Committee expressed concern about reports of extrajudicial executions in **Thailand**, notably in cases of shooting of civilians during the political violence of 2010;¹⁹⁶ the impunity and the slow progress of investigations; and reports of 'social cleansing' and other forms of extrajudicial execution; and excessive use of force by the police and the armed forces in **Honduras**.¹⁹⁷

Mob justice in **Cameroon** and **Madagascar** caused concern.¹⁹⁸ For the latter, the HR Committee expressed concern over mob justice being caused by the distrust in the justice system, and reports of the discontinuance of criminal proceedings against the responsible actors.

Common recommendations to the States included: ensuring that the legislation on the use of force and firearms by law enforcement officials, and training materials are compatible with the Covenant and the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; impartial and prompt investigations on all alleged cases of extrajudicial killings and excessive use of force by security forces; all necessary measures to prevent executions and excessive use of force; ensuring that all members of security forces receive adequate training in accordance with international standards and human rights; and to full reparations to the victims.

Bangladesh was asked to provide information on the investigations conducted, the number of convictions and the penalties imposed in its next periodic review;¹⁹⁹ **Pakistan** was recommended to create a mechanism for reparations to victims and their families;²⁰⁰ **Thailand** was asked to review the Martial Law and Emergency Decree with a view to lifting it;²⁰¹ **Dominican Republic** was recommended to amend its legislation to introduce State civil responsibility for the actions of police officers;²⁰² and **Madagascar** was recommended to continue the awareness raising campaigns on the illegality of mob justice.²⁰³

3.1.3. Enforced Disappearances

The persistence of enforced disappearances of human rights defenders, political opponents and enforced disappearances in the context of current and past armed conflicts were common concerning in respect of **Thailand, Bangladesh, Honduras, Bosnia and Herzegovina, Turkmenistan, Serbia** and **Pakistan**. Common shortcomings included lack of criminalization of enforced disappearances, and lack of effective investigations and sanctions.

For instance, the HR Committee addressed the lack of criminalization of enforced disappearances in **Thailand**, noting reports of human rights defenders being subject to enforced disappearances at the southern border provinces, and the widespread impunity in this regard. It referred to the lack of

¹⁹⁵ Dominican Republic, §§ 17-18

¹⁹⁶ Thailand, § 21

¹⁹⁷ Honduras, §§ 22-23

¹⁹⁸ Cameroon, §§ 25-26; Madagascar, §§ 25-26

¹⁹⁹ Bangladesh, §§ 19-20

²⁰⁰ Pakistan, § 20

²⁰¹ Thailand, §§ 21-22

²⁰² Dominican Republic, §§ 17-18

²⁰³ Madagascar, §§ 25-26

²⁰⁴ Thailand, §§ 21-22

proper investigation of the enforced disappearances of Somchai Neelapaijit and Porlajee "Billy" Rakchongcharoen.²⁰⁴ It also referred to reports about secret detention and a large number of enforced disappearances of convicted persons in **Turkmenistan**, including persons convicted for the assassination attempts on the former President and the former Foreign Minister Boris Shikmuradov.²⁰⁵

The HR Committee also highlighted the large number of enforced disappearances that remain unsolved and the accompanying impunity in **Honduras** and **Bangladesh**, and it regretted the latter's lack of recognition of the matter.²⁰⁶

Concerns regarding **Pakistan** were expressed over the high incidence of enforced disappearances supposedly committed by the police and military forces; the lack of criminalization of said action; the 'Actions in Aid of Civil Power' regulation of 2011, which permits detention by the army, without guarantees or judicial supervision, and indefinite detention in military facilities; the high number of cases of secret detention; the reports of victims' family members being intimidated to discourage complaints; the lack of investigation, and the inadequacy of remedies and reparations. The HR Committee expressed concerns over the Commission of Inquiry on Enforced Disappearances having insufficient powers and resources, the non-compliance of relevant authorities with the Commission's orders, and the high number of unresolved complaints before the Commission.²⁰⁷

In the context of past armed conflicts, the HR Committee praised **Bosnia and Herzegovina** for the creation of a central register of missing persons; while regretting the verification process not being completed in the time frame set by the Law on Missing Persons, the budget cuts to the Missing Persons Institute, and the State not complying with its Constitutional Court's decision ordering the creation of a fund to support families of missing persons.²⁰⁸ With regard to **Serbia**, the HR Committee expressed concern over the little progress made in the search of disappeared persons, and the requirement that victims be declared dead to obtain compensation for them; and regretted the lack of redress for parents of newborn children who died or disappeared from maternity wards during the 1970s and 1990s.²⁰⁹

Generally, the HR Committee recommended that States criminalize enforced disappearances; and, ensure that all cases are investigated promptly, thoroughly and impartially and that culprits are tried and punished accordingly. It further recommended that States provide the truth about the circumstances in such cases, clarify the whereabouts of victims and ensure full reparation for the victims. It asked **Bangladesh** to report on investigative outcomes in the next periodic review;²¹⁰ and **Thailand** to amend the Martial Law Act, Emergency Decree and Order 3/2015 to include guarantees against incommunicado detention.²¹¹

It also recommended that **Turkmenistan** end the practice of secret detention and enforced disappearances, allowing visits from the families of detainees and confidential access to their lawyers.²¹² **Bosnia and Herzegovina** was asked to provide adequate resources to the Missing Persons Institute and to

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²⁰⁵ Turkmenistan, §§ 16-17
²⁰⁶ Honduras, §§ 22-23; Bangladesh, §§ 19-20
²⁰⁷ Pakistan, § 19
²⁰⁸ Bosnia & Herzegovina, §§ 19-20
²⁰⁹ Serbia, §§ 24-25
²¹⁰ Bangladesh, §§ 19-20
²¹¹ Thailand, §§ 21-22
²¹² Turkmenistan, §§ 16-17
²¹³ Bosnia & Herzegovina, §§ 19-20
²¹⁴ Serbia, §§ 24-25

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establish the fund for supporting the families of missing persons 'as a matter of urgency'.²¹³ It was recommended that **Serbia** adopt a law for redress for the parents of disappeared new-born children;²¹⁴ and that **Pakistan** review the 'Actions in Aid of Civil Power' Regulation of 2011 so that it complies with international standards, and strengthen the authority and resources of the Commission of Inquiry on Enforced Disappearances.²¹⁵

On the issue of enforced disappearances, the CAT noted that despite the establishment of a central register of missing persons in **Bosnia and Herzegovina**, more than half of the cases of missing persons have not been verified, that the Missing Persons Institute continues to experience budget cuts, understaffing and lack of necessary equipment, and that a fund for families of missing persons has not been established due to political disagreement. **Cameroon** was noted not to have indicated whether investigations had been launched to establish the whereabouts of the individuals reported as missing or killed during cordon-and-search operations. In its review of **Pakistan**, the CAT also stressed upon the need to criminalise enforced disappearances as a distinct offence and to sufficiently fund and maintain independence of National Commission of Inquiry on Enforced Disappearances.²¹⁶

3.1.4. Armed Conflict Zones

The HR Committee expressed its concern over the areas of armed conflict in **DRC**, particularly in relation to the Kasai situation. It recalled reports of rape, torture and extrajudicial killings, committed against civilians in areas where armed militias are active. It noted that the violence included sexual violence, mutilation, recruitment of child soldiers, and destruction of schools, homes and state infrastructure, which could amount to international crimes. It also expressed concern about reports of military forces and affiliated groups committing abuses against civilians on the basis of ethnic criteria. The HR Committee also regretted the murders of two UN experts Michael Sharp and Zaida Catalan, and their 4 companions who were on an enquiry mission to assess the violations in Central Kasai.²¹⁷

It recommended that **DRC** ensure that armed forces provide effective protection for the victims of serious violations.²¹⁸ With regard to the Kasai, the HR Committee recommended establishing an efficient, transparent and independent mechanism to establish the truth about human rights violations; taking measures to dismantle and disarm the pro-government armed groups suspected of engaging in said violations; and collaborating with the UN agencies and team of experts in charge of conducting the fact-finding mission in Kasai.²¹⁹

3.1.5. Non-State Actors

The HR Committee recalled **Honduras's** duty to protect the rights of persons under its jurisdiction from the actions of third party actors. In this regard, the HR Committee highlighted the high rates of homicide, physical assault, property damage and recruitment of children by gangs; and expressed concern about the militarization of law enforcement, the insufficient regulation of private security companies, and inadequate control over weapons possession.²²⁰

²¹⁵ Pakistan, §19

²¹⁶ CAT, Bosnia & Herzegovina, §26; CAT, Cameroon, §9; CAT, Pakistan, §§24-25

²¹⁷ DRC, §§25-27

²¹⁸ Ibid, §§25-26

²¹⁹ Ibid, §§27-28

²²⁰ Honduras, §§18-21, 22-23

It recommended prompt, thorough and impartial investigations into all violent crimes and other offences; prosecution and punishment of the perpetrators; and ensuring that all victims receive full reparation. Recommendations were also made to strengthen the national police forces so that armed forces are no longer necessary for law enforcement functions; to pursue the certification process for police members in a transparent, impartial manner; to adopt a legislative framework that guarantees that private sector companies operate in accordance with the Covenant; to improve the supervision of these companies by the Security Company Oversight Unit; and to exercise effective control over the possession and use of firearms.²²¹

3.2. Prohibition of Torture, Cruel, Inhuman or Degrading Treatment or Punishment

3.2.1. Torture or Cruel, Inhuman or Degrading Treatment or Punishment

Reports of torture and cruel, inhuman or degrading treatment were the common cause for concern in the periodic reviews of **Bangladesh, Bosnia and Herzegovina, Cameroon, DRC, Honduras, Mauritius, Mongolia, Romania, Thailand** and **Turkmenistan**.

The HR Committee expressed its concern about reports of a high rate of custodial deaths caused by torture and ill-treatment performed by State agents in **DRC**, in spite of the adoption the law n° 11/08 in July 2011;²²² and reports of **Mauritius'** security forces inflicting ill-treatment on detained persons, and the lack of information on the number of complaints, investigations, convictions and sanctions imposed.²²³ It expressed concern over the numerous reports of abuse and ill-treatment during detention, and police brutality, especially against the Roma people, in **Romania**.²²⁴

With regard to **Turkmenistan**, the HR Committee referred to reports of severe beatings and electric shocks to extract confessions; allegations of torture and ill-treatment of detainees at Seydi labour camp and at the Ovadan Depe prison used for political opponents; placement of prisoners in 'kartsers' in extreme temperatures with mosquito infestations and miniscule amounts of food and water; prolonged detention periods in 'hunchback cells' where there is no room to stand; deaths in custody, including that of Lukman Yaylanov and Narkuly Baltayev; and the hazing of conscripts in armed forces which caused two deaths in 2014.²²⁵ In relation to **Thailand**, it referred to reports of torture and ill-treatment perpetrated by law enforcement officers and the military against human rights defenders; while highlighting the case of Kritsuda Khunasenb who was subjected to torture.²²⁶

The HR Committee noted that in spite of **Bangladesh's** adoption of the Torture and Custodial Death (Prevention) Act, 2013, torture and ill-treatment to obtain confessions was a widespread practice among police and military officers; and that the State reported no ongoing investigations in this regard.²²⁷ It also referred to the lack of information on ill-treatment complaints related to detentions pursuant to the February 2014 demonstrations in **Bosnia and Herzegovina**.²²⁸

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²²¹ Honduras, §§22-23

²²² DRC, §§31-32

²²³ Mauritius, §§33-34

²²⁴ Romania, §§27-28

²²⁵ Turkmenistan, §§20-21

²²⁶ Thailand, §§21-22

²²⁷ Bangladesh, §§21-22

²²⁸ Bosnia & Herzegovina, §§45-46

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The HR Committee further highlighted that torture and ill-treatment were common and widespread in **Pakistan** and **Cameroon**. It noted reports on numerous such cases in detention facilities controlled by the 'Quick detention brigade' and the 'General Directorate for external research' leading to custodial deaths and grave disabilities, and the existence of secret detention facilities that operate without any supervision in **Cameroon**.²²⁹

Another common concern was the legal inconformity with international standards, the incompatibility or lack of torture definitions in the domestic legislation; and the lack of effective independent mechanisms to receive and investigate complaints in **Jordan, Turkmenistan, Mongolia, Serbia, Madagascar, Liechtenstein, Honduras, Thailand, Pakistan, Switzerland** and **Italy**. For instance, the HR Committee noted that the torture definition included in the penal code in **Jordan** does not comply with the international definition, and that the law on public security permits the Public Security Directorate to decide over acts of torture, which are treated as minor offences with penalties up to three years of imprisonment. It further noted the lack of an independent mechanism to receive and investigate alleged cases of torture and ill-treatment.²³⁰

The HR Committee also expressed concern over the possibility of using the definition of torture in **Turkmenistan's** Criminal Code, which includes a note that exempts criminal liability for 'infliction of severe pain or physical or mental suffering as a result of lawful acts (justifiable defense of oneself or others)', to circumvent the prohibition on it.²³¹

Zhaslan Suleimenov v. Kazakhstan, UN Doc. CCPR/C/119/D/2146/2012, 2017.

[Key words: Torture; Prompt and impartial investigation; Freedom of thought, conscience or religion; Conditions of detention]

This communication was brought by a disabled person alleging ill-treatment and lack of adequate medical assistance during his detention imposed by law enforcement authorities in Kazakhstan.

The HR Committee found that despite a number of verifiable complaints from the author, no prompt and impartial investigation was carried out, and therefore found a violation of the author's rights under Article 7 of the Covenant. Furthermore, the detention facilities where the author was held were not suited for disabled persons, and the HR Committee noted that the State is under an obligation to provide medical care and treatment for sick prisoners, in accordance with the UN Standard Minimum Rules for the Treatment of Prisoners. The failure of the State to ensure certain minimum standards of detention amounted to a violation of the author's right to be treated with humanity and with respect for the inherent dignity of the human person under Article 10 (1) of the Covenant.

Therefore, the State was recommended to conduct a prompt and impartial investigation into the author's allegations of torture and ill-treatment, as well as to provide the author with adequate compensation and appropriate medical care

²²⁹ Cameroon, §§27-28

²³⁰ Jordan, §§16-17

²³¹ Turkmenistan, §§18-19

considering his disability and medical condition. The State was also under an obligation to take all steps necessary to prevent similar violations in the future.

It also expressed concern over **Madagascar's** law not providing penalties for ill-treatment, and the non-applicability of statutory limitations for acts of torture, and **Honduras'** lack of objective criteria to determine the penalty for these crimes.²³² While noting the creation of a new Police Complaints Division within the National Human Rights Commission of **Mauritius**, the HR Committee highlighted the lack of information on the human and financial resources allocated to it.²³³ It noted that despite **Swaziland's** Constitution forbidding torture, it was not legally criminalized, that there is no independent body to investigate complaints of torture or ill-treatment by law officers, and that there is a lack of progress on the ratification of the UNCAT's Optional Protocol, despite the State's commitment to do so.²³⁴

The HR Committee also expressed concern about how **Australia's** coroners, who are in charge of investigating allegations of excessive use of force by the police, may be influenced by their close relationship with police investigations.²³⁵

In general, the HR Committee asked the States to ensure that law enforcement officers and judges respect the prohibitions of forced confessions and the inadmissibility of evidence obtained through such means; to provide adequate training on torture prevention and humane treatment; to implement effective complaint mechanisms; and, to ensure that all allegations of torture and ill-treatment, hazing and deaths in custody are investigated, prosecuted and punished, and victims fully repaired, which may include rehabilitation.²³⁶ It also recommended reviewing criminal legislation to harmonize the definition of torture with international standards, incorporating an absolute prohibition, wherein no statute limitation applies to cases of torture; applying adequate sanctions proportionate to the crimes' gravity; and establishing an independent mechanism to receive and investigate complaints.²³⁷

Fakhrudin Ashirov v. Kyrgyzstan, UN Doc. CCPR/C/120/D/2435/2014, 2017.

[Key words: *Torture; Fair trial; Legal assistance; Arbitrary arrest and detention; discrimination on the ground of ethnic origin*]

This communication involved allegations of ill-treatment and torture during pre-trial detention and forced confessions in a criminal proceeding before national courts. The HR Committee found a lack of effective investigations into the allegations of torture, despite a witness statement from the author's father, and a medical certificate indicating injuries on the author's body. Furthermore, the failure to justify the exclusion of relatives of the author from being present during the hearings was found to be a disproportionate restriction on the author's rights to a fair and public hearing.

The State Party was found to be under an obligation to quash the author's conviction, release the author, conduct a new trial

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²³² Madagascar, §§29-30; Honduras, §§24-27

²³³ Mauritius, §§33-34

²³⁴ Swaziland, §§32-33

²³⁵ Australia, §§31-32

²³⁶ Turkmenistan, §§20-21

²³⁷ Jordan, §§16-17

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with all procedural safeguards, conduct a prompt and impartial investigation into the allegations of torture, and provide the author with adequate compensation.

It recommended that **DRC** enhance the training of all security and justice officers on the content of the law N°11/08 and establish a national mechanism for the prevention of torture in accordance with the UNCAT's Optional Protocol;²³⁸ that **Swaziland** establish an independent system for monitoring detention places, and accelerate the ratification procedure of UNCAT's Optional Protocol;²³⁹ that **Turkmenistan** ensure that torture cannot be justified both in law and practice;²⁴⁰ and that **Mongolia** provide adequate training on investigation and detection of torture in accordance with the Protocol of Istanbul for law enforcement officials.²⁴¹

The HR Committee also recommended that **Serbia** remove all obstacles to victims' right to judicial remedies;²⁴² that **Mauritius** extend video recording to all police and detention settings to prevent ill-treatment;²⁴³ that **Jordan** permit further independent visits to all places of detention, including the facilities of the General intelligence directorate;²⁴⁴ and that **Honduras** reinforce the independence and investigative capacity of the Office of the Special Prosecutor for Human Rights to ensure adequate investigation in accordance with the Istanbul Protocol, and provide it and the national torture prevention mechanism with adequate human and financial resources.²⁴⁵

The CAT dealt with the issue of ill-treatment and torture in police holding facilities in its review of **Bosnia and Herzegovina, Pakistan, Italy** and **Cameroon**. The Committee expressed serious concern at the findings of the report by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) following its visit to **Bosnia and Herzegovina** in 2015, which indicated that detainees were routinely ill-treated or even tortured in police holding facilities and that the practice of repeated slaps, punches, kicks and blows with a truncheon in order to extort a confession was even considered as normal. The absence of a well-defined crime of torture that unambiguously reaffirm the absolute prohibition of torture was noted in **Pakistan**. In **Cameroon** there have never been any cases in which the court has declared evidence obtained through torture or under duress to be inadmissible. It was noted that in **Italy** the crime of torture is subject to a statute of limitations of 18 years.²⁴⁶

3.2.2. Ill-treatment of migrants and asylum seekers by law enforcement officers

The HR Committee highlighted its concern over reports of police brutality in **Switzerland**, especially against asylum seekers, migrants and foreigners, and recommended the establishment of an independent mechanism for receiving complaints, conducting effective and impartial investigations, and maintaining centralized and disaggregated statistics.²⁴⁷

It expressed concern about reports of excessive force used by **Italy's** law enforcement officers when conducting migrant identification procedures, the prevailing impunity in this regard,

²³⁸ DRC, §§31-32

²³⁹ Swaziland, §§32-33

²⁴⁰ Turkmenistan, §§18-19

²⁴¹ Mongolia, §§21-22

²⁴² Serbia, §§26-27

²⁴³ Mauritius, §§33-34

²⁴⁴ Jordan, §§18-19

²⁴⁵ Honduras, §27

²⁴⁶ CAT, Bosnia and Herzegovina, §§12-14,38; CAT, Pakistan, §§6-9, 14-1; CAT, Italy, §§10-13; CAT, Cameroon, §§21,29

²⁴⁷ Switzerland, §§28-29

and the criminal code requiring victims to file complaints. It recommended increasing training; introduction of a code of conduct; the mandatory use of identification tags by law enforcement officers; and amending the criminal code so that instances of ill-treatment and excessive use of force are investigated without victim complaints.²⁴⁸

The CAT expressed its concern about reports of alleged arbitrary detention, ill-treatment, acts of violence, sexual exploitation and extortion of asylum seekers in the Far North of **Cameroon** by military personnel, who had allegedly taken them to be members of Boko Haram. **Italy** was urged to clarify the legal basis for deprivation of liberty and the use of force to obtain fingerprints from uncooperative asylum seekers and migrants, ensure that law enforcement officials receive appropriate professional training, including on how to avoid excessive use of force and how to handle the fingerprinting of uncooperative migrants and asylum seekers, and take necessary measures to ensure appropriate reception conditions for asylum seekers and irregular migrants.²⁴⁹

3.3. Detention conditions

While **Section 2.1.1** addresses circumstances that render detention, arbitrary and unlawful, including pre-trial detention, this Section will focus on the material conditions of detention. *See Section 5.2.3. (Immigration detention) for more.*

Common findings on poor detention conditions in 2017 relate to overcrowding, poor sanitation and hygiene, lack of access to healthcare, poor nutrition, and lack of separation between detainees according to detention regimes and age. In general, the HR Committee recommended the States to take practical measures to reduce overcrowding, such as applying alternatives to detention; to ensure the humane and dignified treatment of detainees; separation of detainees by age and detention regime; to ensure that conditions of detention comply with the UN Standard Minimum Rules for the Treatment of Prisoners; to provide adequate training for all justice and prison staff; and to investigate, prosecute and punish all cases of inmate deaths, and provide full reparation to the victims.

The issue of overcrowding in prisons was also addressed by the CAT in its concluding observations on **Bosnia and Herzegovina**, **Cameroon**, **Italy** and **Pakistan**.²⁵⁰

The HR Committee referred to reports of excessive use of restraining devices and sexual harassment in **Thailand**;²⁵¹ reports of suicides in **Mauritius's** prisons;²⁵² overrepresentation of foreigners and poor recreational facilities in detention and immigration centers in **Italy**;²⁵³ the lack of meaningful activities for prisoners in **Serbia**;²⁵⁴ and, inadequate mental healthcare facilities, and the use of solitary confinement and routine strip searches in **Australia**.²⁵⁵ It also noted the limited time out of cells and understaffing in **Romania**;²⁵⁶ the lack of specialized units for minors in pretrial detention in **Bosnia and Herzegovina**;²⁵⁷ and the requirement that prisoners with commuted death sentences serve 10 out of 30 years in solitary confinement in **Mongolia**.²⁵⁸

The HR Committee also highlighted the poor conditions in almost

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²⁴⁸ Italy, §§20-21

²⁴⁹ CAT, Cameroon, §17; CAT, Italy, §§24-25

²⁵⁰ CAT, Bosnia & Herzegovina, §22; CAT, Cameroon, §§33-35; CAT, Italy, §§32-33; CAT, Pakistan, §§16-17

²⁵¹ Thailand, §§33-34

²⁵² Mauritius, §§35-36

²⁵³ Italy, §§30-31

²⁵⁴ Serbia, §§28-29

²⁵⁵ Australia, §§41-42

²⁵⁶ Romania, §§31-32

²⁵⁷ Bosnia & Herzegovina, §§32-33

²⁵⁸ Mongolia, §19

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all of **Cameroon's** penitentiary facilities, which lead to riots, custodial deaths and violence among inmates; and regretted the obstacles faced by the detainees' family members when trying to visit, especially when the person has been condemned by a military tribunal.²⁵⁹ In regards to **DRC**, it also expressed concern about the numerous deaths caused by poor conditions in almost all of its prisons; and the insufficient and unprofessional prison staff.²⁶⁰ Similarly, the HR Committee expressed concern over reports of numerous custodial deaths in **Swaziland**, including in the cases of Luciano Reginaldo Zavale on 12 June 2015 and Siphon Jele in May 2010; and the undue delay in the investigation of these cases.²⁶¹

In respect of **Switzerland**, the HR Committee noted with concern that juveniles are held with adults in certain regional institutions, and that, despite establishing a working group on the treatment of inmates with mental illnesses, persons with psycho-social disabilities are placed in regular prisons or psychiatric institutions for 5 year periods, which are renewable.²⁶² In relation to **Bangladesh**, it also noted the practice of extortion of inmates and family members in exchange of basic rights by prison guards, and the high number of deaths in prison, allegedly caused by detention conditions, authorities' negligence, lack of access to treatment and injuries caused by torture.²⁶³ In relation to **Honduras**, it regarded with concern the use of military facilities for detaining civilians; the high number of deaths and incidents like the fire of the Comayagua prison; the disregard for detained women's special needs; and lack of separation between men and women in some mixed detention centers.²⁶⁴

The HR Committee noted reports of exposure of inmates to extreme temperatures in the Ovadan-Depe and Turkmenbashi prisons; the practice of isolation of inmates; out of cell time at Ovadan-Depe being only once a week, for seven minutes; the lack of separation of prisoners with tuberculosis from others; and the lack of an independent body for monitoring and investigating prisons conditions and abuse by law enforcement officials in **Turkmenistan**.²⁶⁵

In general, the HR Committee recommended that States take practical measures to reduce overcrowding, such as applying alternatives to detention; ensure the human and dignified treatment of detainees; separate detainees by age and detention regime; ensure that conditions of detention comply with the UN Standard Minimum Rules for the Treatment of Prisoners; provide adequate training for all justice and prisons staff; and investigate, prosecute and punish all cases of inmate deaths and provide full reparation to victims.

In particular, it recommended that **Cameroon** ensure that family members are able to visit detainees regularly;²⁶⁶ that **Italy** conduct a study on discrimination against foreigners in criminal proceedings and develop alternatives to detention for foreigners;²⁶⁷ that **Bangladesh** ensure prompt determination of bails and reasonable periods for preventive detention;²⁶⁸ and that **Honduras** ensure that military facilities are not used for detaining civilians.²⁶⁹

It also recommended **Australia** to ensure adequate mental

²⁵⁹ Cameroon, §§29-30

²⁶⁰ DRC, §§33-34

²⁶¹ Swaziland, §§32-33

²⁶² Switzerland, §§36-39

²⁶³ Bangladesh, §§25-26

²⁶⁴ Honduras, §§30-31

²⁶⁵ Turkmenistan, §§22-23

²⁶⁶ Cameroon, §§29-30

²⁶⁷ Italy, §§30-31

²⁶⁸ Bangladesh, §§25-26

²⁶⁹ Honduras, §§30-31

healthcare for prisoners; to use solitary confinement only in the most exceptional circumstances and for strictly limited periods; and to act upon the commitment to ratify the Optional Protocol to the UNCAT.²⁷⁰ Furthermore, it asked **Switzerland** to ensure that persons with disabilities are placed in specialized establishments or receive adequate therapeutic treatment in regular prisons; and to ensure that confinement in psychiatric institutions is used only as a last resort measure, aiming at rehabilitation and reintegration of the person where possible.²⁷¹

For **Turkmenistan**, recommendations included establishing a system of regular and independent monitoring of detention facilities; facilitating effective monitoring by independent organizations; granting meaningful access to the ICRC; and ensuring the availability of effective complaint mechanisms.²⁷²

3.4. Measures to Combat Human Trafficking, Slavery and Forced Labour

3.4.1. Human Trafficking

The HR Committee noted with concern the shortcomings in States' measures to prevent and counter human trafficking, such as lack of adequate resources, legislation, proper identification of victims, support services and shelters for victims. The HR Committee expressed concerns about the persistence of trafficking of women, children and persons of Haitian descent in **Dominican Republic**, and reports of nationals of **Madagascar** being victims of trafficking in North Africa and the Middle East.²⁷³ It also noted with concern the presence of criminal national and foreign groups engaged in trafficking and exploitation of migrants and refugees in **Serbia**; and that **Romania** remains a source, transit and destination for trafficking in persons.²⁷⁴ It also noted the increase of child victims being trafficked for forced begging and sex-exploitation in **Romania**.²⁷⁵

Andrei Androsov v. Kazakhstan, UN Doc. CCPR/C/121/D/2403/2014, 2017.

[Key words: Torture; Ill-treatment; Prompt and impartial investigation; Arbitrary arrest; Detention; Fair trial]

This communication involved torture and ill-treatment of a drug-addicted suspect during pre-trial detention. The HR Committee found that the description of facts and other materials as submitted by the author did not provide sufficient evidence to prove that he had been tortured and ill-treated by police officers and detention staff. Furthermore, the author failed to show that his injuries were caused due to lack of adequate supervision of the detention conditions.

Accordingly, the HR Committee could not conclude that the author was subjected to treatment in violation of Article 7 and that the State party failed in its obligations under Article 2(3) to investigate these claims.

It highlighted the insufficient resources to provide assistance for victims and the limited number of shelters in **Dominican Republic**;²⁷⁶ **Cameroon's** lack of disaggregated statistical data, and that cases in **Cameroon** are being detected mainly by civil

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²⁷⁰ Australia, §§41-42

²⁷¹ Switzerland, §§36-39

²⁷² Turkmenistan, §§22-23

²⁷³ Dominican Republic, §§19-20;

Madagascar, §§39-40

²⁷⁴ Serbia, §§30-31; Romania, §§37-38

²⁷⁵ Romania, §§37-38

²⁷⁶ Dominican Republic, §§19-20

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society organizations;²⁷⁷ the insufficient resources for the implementation of the task force against human trafficking, and the delay in the implementation of the victim identification guidelines in **Swaziland**;²⁷⁸ the reports of victims being arrested for acts committed as a result of being trafficked in **Mongolia**;²⁷⁹ and the reports of victims being deported without conducting a proper assessment of protection in **Thailand**.²⁸⁰ It further mentioned the lack of a work plan or proper budget for the anti-trafficking coordinator in **Serbia**, and the lack of services for victims and training for law enforcement officials, judges and prosecutors in **Romania**.²⁸¹

With regard to **Switzerland**, while satisfied with the ordinance on the prevention of offences related to human trafficking, the establishment of the Anti-Trafficking and Migrant Smuggling Coordination Unit and the adoption of the Second National Action Plan to Combat Trafficking in Persons 2017-2020; the HR Committee expressed concern over reports of insufficient human and financial resources to implement the Plan, the lack of a common procedure between the cantons to identify the victims and the lack of training of police and judicial authorities.²⁸²

In general, the HR Committee recommended the States to strengthen efforts to fight human trafficking, to ensure the identification of victims, and the provision of medical, social, psychological and legal assistance, and adequate and sufficient shelters for traffic victims; to collect disaggregated statistical data; and to ensure effective investigation, prosecution and adequate punishment of culprits in all human trafficking cases.

It asked **Cameroon** to ensure that its human trafficking legislation is in accordance with international standards; and, to reinforce institutional mechanisms working against human trafficking, such as the Network against Human Trafficking and Child Exploitation and the Inter-ministerial HR Committee for the Prevention and Combat against Human Trafficking, by providing adequate human and financial resources.²⁸³ **Madagascar** was asked to strictly enforce the Ant-trafficking Act of 2015; allocate adequate resources to the National Anti-trafficking office so that it can fulfil its mandate; strengthen monitoring mechanisms; and to oversee placement agencies to ensure that migrant workers are not exploited abroad.²⁸⁴

It also recommended that **Honduras** adopt legislation on human trafficking in accordance with the Palermo Protocol;²⁸⁵ and that **Switzerland** establish a uniform and coordinated procedure for identifying victims, and implement awareness-raising and training programs for police and judicial authorities.²⁸⁶

The CEDAW urged **Jordan** and **Thailand** to take concrete measures to address the root causes of trafficking and exploitation of women and girls in prostitution. **Jordan** and **Sri Lanka** were recommended to address the legal gaps that impede upon the investigation, prosecution and punishment of such acts, including adoption of a comprehensive definition of trafficking. The CEDAW recommended that **Sri Lanka** and **Thailand** repeal laws and end practices that involved violent raids and entrapments that resulted in subjecting the victims to harassment, sexual bribery and

²⁷⁷ Cameroon, §§31-32

²⁷⁸ Swaziland, §§42-43

²⁷⁹ Mongolia, §§27-28

²⁸⁰ Thailand, §§23-24

²⁸¹ Serbia, §§30-31; Romania, §§37-38

²⁸² Switzerland, §§40-41

²⁸³ Cameroon, §§31-32

²⁸⁴ Madagascar, §§39-40

²⁸⁵ Honduras, §§36-37

²⁸⁶ Switzerland, §§40-41

extortion. The CAT expressed concern at the shortcoming of state measures in **Bosnia and Herzegovina** and at reports of a sharp rise in trafficking of Nigerian women and girls, some as young as 11 years old in **Italy**, particularly in the context of mixed migration flows.²⁸⁷

3.4.2. Prohibition of Slavery and Forced Labour

The HR Committee highlighted reports on persistent child labour in domestic sectors, and labour exploitation and forced labour of Haitian migrant workers in the sugar agricultural sector in **Dominican Republic**;²⁸⁸ forced labour for sexual exploitation, fishing, agriculture and domestic purposes in **Thailand**, including migrants from China and North Korea subjected to forced labour like conditions in mining, construction and other sectors;²⁸⁹ and the limited number of inspectors and funding and the low public awareness in **Mongolia**.²⁹⁰

For **Turkmenistan**, the HR Committee expressed concern over the forced labour by farmers, students, public and private sector workers during cotton harvests under threats of loss of land, expulsion from universities, loss of wages and termination of employment.²⁹¹ For **Honduras**, it referred to reports of slavery and forced labour conditions in the Maquila industry, domestic work and dive fishing, which usually involve vulnerable populations such as women, children, indigenous peoples, afro-Hondurans and rural communities.²⁹²

The HR Committee's recommendations included preventing, combating and punishing all forms of slavery and forced labour; providing adequate training for government officials, and creating or strengthening labour inspectorates. It recommended that **Mongolia** prohibit the use of children as jockeys;²⁹³ that **Serbia** ensure that children are removed from families responsible for their exploitation and recognized as victims, and develop programs to rehabilitate the victims;²⁹⁴ and that **Turkmenistan** put an end to forced labour practices during cotton harvests, enforce the legal framework on forced labour, communicate to the public in general that mobilization of persons to pick cotton under coercion is unlawful, prosecute the culprits and provide full reparation to victims.²⁹⁵

See Section 5.1.3. (Child labour) for more.

The issue of bonded labour in **Pakistan** was raised by the CAT and the CESCR. The CAT expressed its concern over the consistent reports that refer to high levels of trafficking in persons for sexual exploitation and forced or bonded labour, including exploitation of children as domestic workers in slave-like conditions. Whilst the terms 'slavery' and 'forced labour' are not used in the CESCR's work, issues of appalling working conditions and lack of labour protections for workers in the informal economy, are regularly discussed. It recommended **Pakistan** to take all measures necessary to tackle the root causes of bonded labour; provide victims of bonded labour with a sustainable means of living; reinforce the enforcement of the Bonded Labour System (Abolition) Act 1992 by strengthening labour inspections and increasing the penalties for perpetrators and public officials complicit in violations of the Act; and enhance the understanding of judges, particularly those in the lower courts, of the Act.²⁹⁶

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²⁸⁷ CAT, Bosnia and Herzegovina, §34; Concluding observations on the sixth periodic report of Jordan, CEDAW/C/JOR/CO/6, 2017, §35-36 (CEDAW, Jordan); CEDAW, Sri Lanka, §§26-27; CEDAW, Thailand, §§24-27; CAT, Italy, §§46-47

²⁸⁸ Dominican Republic, §§19-20

²⁸⁹ Thailand, §§23-24

²⁹⁰ Mongolia, §§29-30

²⁹¹ Turkmenistan, §§26-27

²⁹² Honduras, §§36-37

²⁹³ Mongolia, §§27-28

²⁹⁴ Serbia, §§30-31

²⁹⁵ Turkmenistan, §§26-27

²⁹⁶ CAT, Pakistan, §§28-29; CESCR, Pakistan, §§45-46

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4.1. Harmful Traditional or Customary Practices

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

4.1.1. Early or Forced Marriages and Polygamy

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

4.1.2. Discriminatory Customary Laws

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

4.1.3. Right to Transfer Nationality

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

²⁹⁷ Cameroon, §§17-18; Pakistan, §§41-42

²⁹⁸ Bangladesh, §§13-14

²⁹⁹ Swaziland, §25; Madagascar, §20; Jordan, §9; Cameroon, §§17-18

³⁰⁰ Madagascar, §20; Pakistan, §42; Serbia, §19; Swaziland, §25; Switzerland, §27

³⁰¹ DRC, §15

³⁰² Jordan, §§8-9; Madagascar, §§19-20; Swaziland, §24

³⁰³ Jordan, §§8-9; Madagascar, §§19-20

³⁰⁴ Jordan, §§8-9; Madagascar, §§19-20; Swaziland, §24

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

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4.1.4. Mutilation of Female Organs and Honour-Killings

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

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

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

4.2. Representation of Women in Public and Private Spheres

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

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

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

³⁰⁶ Cameroon §§19-20; Switzerland §§26-27

³⁰⁷ Pakistan, §§3-14

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

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

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

³¹¹ Turkmenistan, §§10-11

³¹² Bangladesh, §12; Bosnia & Herzegovina, §26; Dominican Republic, §39; Honduras, §13; Madagascar, §18; Romania, §21-22; Serbia, §19; Swaziland, §54; Thailand, §15; Turkmenistan, §§10-11

³¹³ Switzerland, §§18-19

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

4.3. Equal Pay for Work of Equal Value

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

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

4.4. Violence against Women and Girls

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

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

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

³¹⁴ Liechtenstein, §§13-14

³¹⁵ Madagascar, §18

³¹⁶ Mauritius, §12; Switzerland, §19

³¹⁷ Romania, §22

³¹⁸ CESCR, Concluding observations on the fifth periodic report of Australia, UN Doc. E/C.12/AUS/CO/5, 2017, §25-26 (**CESCR, Australia**); Jordan (CESCR) §43-44; CESCR, Pakistan, §§39-40; Romania (CESCR) §28-29

³¹⁹ DRC, §17; Dominican Republic, §13; Honduras, §14; Madagascar, §23; Mauritius, §20; Romania, §23; Switzerland, §26; Turkmenistan, §12

³²⁰ Bosnia & Herzegovina, §27; Cameroon, §19; DRC, §19; Mauritius, §19; Mongolia, §18; Pakistan, §13; Romania, §23; Switzerland, §26; Thailand, §13

³²¹ Turkmenistan, §§12-13

³²² Australia, §21

³²³ Honduras, §14

³²⁴ Switzerland, §27

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

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

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

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

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

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

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

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

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³²⁵ Jordan, § 11

³²⁶ Bangladesh, § 18

³²⁷ DRC, § 20

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

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

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

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

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

4.5. Sexual and Reproductive Health Rights

4.5.1. Gender Assignment and Associated Rights

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

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

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

³³⁰ Pakistan, §14

³³¹ Cameroon, §20; DRC, §18; Jordan, §11; Mauritius, §9; Madagascar, §23

³³² Australia, §22; Bosnia & Herzegovina, §28; Dominican Republic, §14; Liechtenstein, §20

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

³³⁴ Australia, §25; Switzerland, §24

³³⁵ Switzerland, §25; Australia, §26

³³⁶ Serbia, §§12-13

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

4.5.2. Forced Sterilization

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

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

4.5.3. Voluntary Termination of Pregnancy

General Prohibition on Abortion

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

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

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

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

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³³⁷ Romania, §§ 15-16

³³⁸ Australia, § 28; Dominican Republic, § 15

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

³⁴⁰ Jordan, § 21; Mauritius, § 16

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

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

Procedural and Other Obstacles to Abortion

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

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

4.5.4. Access to Contraception and Sexual and Reproductive Health Services

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

³⁴¹ Italy, §17; Romania, §25; Swaziland, §28

³⁴² Italy, §17; Romania, §26; Swaziland, §28

³⁴³ Honduras, §17; Mauritius, §§15-16; Swaziland, §28

³⁴⁴ Pakistan, §16; Swaziland, §28

³⁴⁵ Jordan, §20

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

5. NON-DISCRIMINATION AND PROTECTION OF VULNERABLE GROUPS

5.1. Children

The HR Committee expressed concerns regarding children in respect of several States.³⁴⁷ It noted the use of child soldiers during the Kasai conflict and the high numbers of street children exposed to abuse in **DRC**, and recommended that **DRC** criminalise the recruitment of children under 18 years of age.³⁴⁸ The significant institutionalisation of children in **Romania**, especially from single-parent households and disadvantaged communities, and of children with disabilities, who then face abuse and exploitation, prompted the HR Committee to recommend alternatives to institutionalisation, including placement in family-based settings, and regular monitoring of childcare facilities.³⁴⁹

5.1.1. Early or Forced Marriage

Bangladesh, having one of the highest rates of early marriage in the world, with 32 percent of girls married before the age of 15% of girls married before the age of 18, and 90% refugee families having a member below 18 years of age, was of concern to the HR Committee. The State was asked to amend its child marriage restraint bill to maintain the legal minimum age of marriage for girls at 18 years.³⁵⁰

The HR Committee expressed concern about arranged marriages involving Roma minors in **Bosnia and Herzegovina**, including those between the ages of 12 and 14 years, and the reluctance of prosecutors to investigate cases that may involve child trafficking. Programmes specifically designed to reduce the incidence of child marriages and training of prosecutors to investigate cases of early marriage were recommended.³⁵¹

The HR Committee noted the different ages of marriage for girls and boys in **Cameroon** at 15 and 18, respectively, urging the State to amend such laws with adverse effects on girls.³⁵² It also recommended raising the minimum age of marriage from 16 to 18 years to eradicate *de jure* and *de facto* child marriage in the **Dominican Republic**.³⁵³ **Pakistan** was asked to ensure that the minimum age for marriage is set at 18 for all, and forced marriage is eradicated and legal remedies are available to victims.³⁵⁴

5.1.2. Harmful Traditional Practices

The HR Committee expressed concern over continuation of harmful traditional practices such as the imposition of the payment of dowries on the families of girls in **Bangladesh** and recommended that the State implement and widely publicise legislation outlawing dowry.³⁵⁵ In **DRC**, reports of abuse of children accused of witchcraft concerned the HR Committee, and it recommended that the State protect minors from abuse, especially through care and awareness programs targeting religious leaders and parents, and criminalising persecution of children accused of witchcraft.³⁵⁶

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³⁴⁷ Australia, §§25-28, 43-44; Bangladesh, §§13-14; Bosnia & Herzegovina, §§29-34, 39-40; Cameroon, §§17-18, 31-32; DRC §§45-46; Dominican Republic, §§33-34; Honduras, §§18-19, 36-37; Italy, §§10-11; Madagascar, §§31-32, 37-39, 41-42, 47-48; Mongolia, §§17-18, 27-28; Pakistan, §§41-42; Romania, §§11-12, 19-20, 23-24, 41-42; Serbia, §§14-15, 20-21, 30-31; Swaziland, §§42-43, 46-51; Switzerland, §§24-25; Thailand, §§41-42

³⁴⁸ DRC, §§27, 45-46

³⁴⁹ Romania, §§41-42

³⁵⁰ Bangladesh, §§13-14

³⁵¹ Bosnia & Herzegovina, §§33-34

³⁵² Cameroon, §§17-18

³⁵³ Dominican Republic, §§33-34

³⁵⁴ Pakistan, §§41-42

³⁵⁵ Bangladesh, §§13-14

³⁵⁶ DRC, §§45-46

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The requirement for setting 18 as the minimum age for marriage was emphasised by the CESCR in **Pakistan** and **Sri Lanka**. The CRC noted that customary marriages below the legal age continues in the **DRC**. It also echoed the HR Committee's concerns relating to reports of abuse of children accused of witchcraft in the **DRC**. The Committee recommended **Romania** to conduct awareness-raising campaigns concerning the many negative consequences of child marriage.³⁵⁷

5.1.3. Child Labour

The HR Committee expressed concern over reports of children in **Cameroon** being trafficked to work as domestic workers, and recommended to strengthen institutional mechanisms, especially the network against child trafficking and exploitation.³⁵⁸ The HR Committee noted with concern the economic exploitation of children in **DRC** and urged the State to eliminate child labour, especially in extractive industries.³⁵⁹ The HR Committee also urged **Swaziland** to fully eliminate child labour, being concerned about reports of children, orphans in particular, being forced into sex work and domestic servitude.³⁶⁰

Similar exploitation of children in **Serbia** and **Romania**;³⁶¹ engagement of children in dangerous and hazardous work, such as in agriculture, mining and horse-riding, in **Mongolia**;³⁶² recruitment of children for criminal activities by gangs (*maras*), slavery and forced labour, and trafficking for sexual exploitation in **Honduras**;³⁶³ children engaged in domestic work, agricultural work, mining and quarrying, and being commercially sexually exploited in **Madagascar**;³⁶⁴ and children doing hazardous and slavery-like labour in **Pakistan**,³⁶⁵ were of concern to the HR Committee, with protection-oriented recommendations being made to the respective States.

5.1.4. Juvenile Justice System

While noting the rebuttable presumption that a child between the ages of 10 and 14 years of age is incapable of committing a crime, the HR Committee expressed concerns over the minimum age of criminal responsibility in **Australia** being 10 years and recommended that it be raised in accordance with international standards.³⁶⁶

The HR Committee noted reports on the lack of units for minors in pre-trial detention in **Bosnia and Herzegovina** and recommended ensuring the separation of minor and adult detainees during all stages of deprivation of liberty.³⁶⁷ The same was recommended for **Madagascar**.³⁶⁸

Concerned at the lack of a specific judicial framework for minors in **Swaziland**, the HR Committee asked that the minimum age of criminal responsibility be commensurate with international standards; minors and adults be separately detained; juvenile chambers with trained judges be established; and international juvenile justice standards be implemented.³⁶⁹

The CAT noted that 80% of the children in custody in **Cameroon** were being held in pre-trial detention and it echoed the concerns of the HR Committee with respect to lack of special units for minors in **Bosnia and Herzegovina**. The CAT urged **Pakistan** to

³⁵⁷ CESCR, Pakistan, §§55-57; CESCR, Sri Lanka, §§41-42; CRC, Concluding observations on the combined third to fifth periodic reports of the Democratic Republic of Congo, UN Doc. CRC/C/COD/CO/3-5, 2017, §§27-28, (CRC, DRC); CRC, Concluding observations on the fifth periodic report of Romania, UN Doc. CRC/C/ROU/CO/5, 2017, §27, (CRC, Romania)

³⁵⁸ Cameroon, §§31-32

³⁵⁹ DRC, §§45-46

³⁶⁰ Swaziland, §§42-43

³⁶¹ Serbia, §§30-31; Romania, §§41-42

³⁶² Mongolia, §§27-28

³⁶³ Honduras, §§18-19; 36-37

³⁶⁴ Madagascar, §§41-42

³⁶⁵ Pakistan, §§43-44

³⁶⁶ Australia, §§43-44

³⁶⁷ Bosnia & Herzegovina, §§29-30

³⁶⁸ Madagascar, §§37-38

³⁶⁹ Swaziland, §§46-47

ensure the existence of effective mechanisms for appealing age determination in a timely manner in cases of execution of individuals who were reportedly minors at the time of the offence. The Committee on the Elimination of Racial Discrimination (CERD) recommended **Australia** to address the high proportion of incarceration of indigenous children and make provisions for placement in alternative care, in consultation with the indigenous peoples.³⁷⁰

5.1.5. Violence against Children

The HR Committee expressed concerns over severe forms of violence against children, including domestic violence, in **Serbia** and the inadequacy of response of law enforcement and judicial authorities to such cases. Adequate response through investigation, prosecution and punishment; allocation of resources to address the issue; and public awareness campaigns on the adverse effects of such violence were recommended.³⁷¹

While noting that the Action Plan for Children of **Bosnia and Herzegovina** (2015-2018) envisages prohibition of corporal punishment of children in all settings, the HR Committee recommended practical steps, including legislative measures and public information campaigns to end corporal punishment, raise awareness about its harmful effects, and encourage non-violent forms of discipline.³⁷²

The HR Committee made the same recommendations to **Swaziland**,³⁷³ where the use of corporal punishment as a judicial sentence for children had been abolished, but it remains lawful in the home, alternative care, day care, schools and penal institutions; to **Madagascar**,³⁷⁴ where the practice is not yet formally prohibited in schools; and to **Romania**.³⁷⁵ Similar recommendations were made for **Mongolia**, where both domestic violence against children and corporal punishment remain causes of concern.³⁷⁶

Issues relating to violence against children were dealt with by the CESCR and the CRC. Despite significant progress made in **Sri Lanka**, the CESCR remained concerned over children employed as street vendors, in domestic service, in agriculture, mining, construction, manufacturing, transport and fishing. The CRC noted the violence perpetrated against children by police, especially those involved in protests and under suspicion of association with Boko Haram in **Cameroon**. It urged the state to direct the prosecution office to expeditiously investigate and prosecute reported cases of torture by police, ensuring that perpetrators are severely sanctioned and adequate compensation and rehabilitation is provided for the victims. It recommended that **DRC** develop a comprehensive national action plan to combat sexual violence and abuse of children both by civilians and in the context of armed conflict and to undertake a study on the extent and forms of sexual violence and collect disaggregated data on gender-based violence. The CRC called for the explicit prohibition of corporal punishment in law in all settings and strengthening of mechanisms for early detention and prevention of child abuse in **Cameroon, DRC** and **Romania**.³⁷⁷

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³⁷⁰ CERD, Concluding observations on the eighteenth to twentieth periodic reports of Australia, CERD/C/AUS/CO/18-20, 2017, §§25-26 (**CERD, Australia**); CAT, Bosnia & Herzegovina, §30; CAT, Cameroon, §31; CAT, Pakistan, §§40-41
³⁷¹ Serbia, §§20-21
³⁷² Bosnia & Herzegovina, §§31-32
³⁷³ Swaziland, §§50-51
³⁷⁴ Madagascar, §§31-32
³⁷⁵ Romania, §§23-24
³⁷⁶ Mongolia, §§17-18
³⁷⁷ CRC, Cameroon, §§23-25; CRC, DRC, §§23-26; CRC, Romania, §§24-26; CESCR, Sri Lanka, §43

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5.1.6. Right to Identity

The HR Committee was concerned about low birth registration or absence of identity registration of births in its observations regarding several countries, including **Bosnia and Herzegovina**, **DRC**, **Dominican Republic**, **Madagascar**, **Pakistan**, **Serbia**, **Swaziland**, and **Thailand**.³⁷⁸

While acknowledging the efforts made by the **Bosnia and Herzegovina** to eliminate discrimination against and exclusion of the Roma people, including by improvements in birth registration, the HR Committee recommended that the State continue its efforts, particularly for the Roma people.³⁷⁹ The HR Committee was concerned about the continued difficulties for internally displaced Roma in **Serbia** in registering births and acquiring identification documents, including as a result of a narrow interpretation of the law on permanent and temporary residence. The State was recommended to increase its efforts to facilitate and enable registration of children born to parents without identification documents, including by reviewing the law on residence.³⁸⁰

With respect to the low rate of birth registration noted in **DRC**, **Dominican Republic**, **Madagascar**, **Pakistan**, and **Swaziland**, the states were recommended to intensify efforts to facilitate birth registration, including by raising public awareness, and facilitating and expediting access to civil registry offices. **DRC**, **Madagascar**, **Pakistan** and **Swaziland** were recommended to expedite the registration of all births, including children who remain unregistered, and run public and family awareness-raising campaigns concerning birth registration.³⁸¹ Reports of barriers and unreasonable requirements for the registration of children in cases where one of the parents does not hold Dominican nationality, especially children of Haitian descent, concerned the HR Committee and the **Dominican Republic** was recommended to continue efforts to ensure that all children born in its territory, including those who were not born in a hospital or whose parents are not of Dominican nationality, are registered and issued with an official birth certificate.³⁸²

The HR Committee acknowledged the progress made by **Thailand** since the adoption of the Civil Registration Act of 2008, its regulations on birth and late registration of children, and its commitments to eliminating statelessness by 2024; but was still concerned about the high number of stateless people, in particular among indigenous peoples and ethnic minorities, which has a detrimental impact on access to basic services. **Thailand** was recommended to ensure that rural and isolated populations are informed of and have access to the procedures relating to the acquisition of nationality.³⁸³

5.1.7. Education

The HR Committee expressed concerns over Roma children and disabled children accessing education in **Bosnia and Herzegovina** and **Romania**.³⁸⁴ Measures against statelessness were recommended as its detrimental impact on the access to education for children of indigenous people and ethnic minorities in **Thailand** was noted.³⁸⁵

³⁷⁸ Bosnia & Herzegovina, §§39-40; DRC, §§45-46; Dominican Republic, §§33-34; Madagascar, §§47-48; Pakistan, §§43-44; Serbia, §§14-15; Swaziland, §§48-49; Thailand, §§41-42

³⁷⁹ Bosnia & Herzegovina, §§39-40

³⁸⁰ Serbia, §§14-15

³⁸¹ DRC, §§45-46; Madagascar, §§47-48; Pakistan, §§43-44; Swaziland, §§48-49

³⁸² Dominican Republic, §§33-34

³⁸³ Thailand, §§41-42

³⁸⁴ Bosnia & Herzegovina, §§31-32, 39; Romania, §§11-12, 19-20

³⁸⁵ Thailand, §§41-44

The CERD urged **Serbia** to put an end to de facto public-school segregation of Roma children and ensure access to quality education for Roma children, including through anti-racism and human rights training for school staff, awareness-raising efforts targeting parents and increased employment of Roma teachers. **Serbia** was also asked to take measures to avoid a so-called "white flight" from schools where Roma are enrolled, including by developing effective mechanisms with a view to preventing further de facto segregation in schools.³⁸⁶

5.1.8. Equal Protection for Children Living in Same-Sex Families

The HR Committee expressed concern over the law in **Italy** not affording full legal protection to children living in same-sex families, recommending that the State ensure the same legal protection for such children as for those living in heterosexual families.³⁸⁷

5.1.9. Intersex Children and Children with Gender Dysphoria

The HR Committee addressed the issue of irreversible and invasive medical interventions for gender assignment of children born with intersex variations in **Australia** and **Switzerland**, recommending an end to such procedures unless they constitute an absolute medical necessity, due to the inability of such children to provide fully informed and free consent.³⁸⁸ The HR Committee welcomed **Australia's** willingness to reconsider the requirement for authorization by the Family Court for stage two hormone treatment for young people diagnosed with gender dysphoria, as the delays and costs associated with obtaining such authorization may compromise the success of such treatment and cause psychological harm. The State was asked to consider ways to expedite access to the treatment, including removal of the need for court authorization in cases featuring uncontested agreement among guardians, the child and the medical team.³⁸⁹

The CESCR urged the **Netherlands** to review the practice of early surgery and medical interventions on intersex children, in order to make sure that they are mature enough to be consulted on their preferred treatments on the basis of their informed choices and consent. The CRC recommended **Denmark** to undertake investigation of incidents of surgical and other medical treatment of intersex children without informed consent and adopt legal provisions in order to provide redress to the child victims of such treatment, including adequate compensation.³⁹⁰

5.2. Migrants, Asylum Seekers, Stateless Persons and Internally

Displaced Persons (IDPs)

The HR Committee expressed concern over reports that **Bangladesh** intends to relocate over 30,000 Rohingya refugees to the island of Thengar Char, an area which is prone to flooding and currently lacks the infrastructure necessary for respect of basic human rights, and that such relocation might take place without the full and free consent of the affected individuals. It recommended that the refugees not be forcibly relocated and that planned relocation sites not have conditions of life

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³⁸⁶ CERD, Concluding observations on the combined second to fifth periodic reports of Serbia, CERD/C/SRB/CO/2-5, 2018, §§20-21, **(CERD, Serbia)**

³⁸⁷ Italy, §§10-11

³⁸⁸ Australia, §§25-26; Switzerland, §§24-25

³⁸⁹ Australia, §§27-28

³⁹⁰ CRC, Concluding observations on the fifth periodic report of Denmark, UN Doc. CRC/C/DNK/CO/5, 2017, §24, **(CRC, Denmark)**; CESCR, Concluding observations on the sixth periodic report of the Netherlands, UN Doc. E/C.12/NLD/CO/6, 2017, §§48-49, **(CESCR, Netherlands)**

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incompatible with the international obligations of the State.³⁹¹ The HR Committee noted with concern the reports of Jordan stripping the nationality of its Palestinian-origin nationals and the forcible return of Palestinian refugees to the Syrian Arab Republic.³⁹² Similarly, situations in Serbia and Thailand were also cause for concern.³⁹³

Unaccompanied minors arriving in **Italy** as asylum seekers were identified as especially vulnerable, and insufficient safeguards for them prompted the HR Committee to recommend: (i) ensuring that age assessment procedures are based on safe and scientifically sound methods, accounting for the children's mental well-being; (ii) reviewing the guardian assignment procedure to ensure that all of them are provided with legal guardians in a timely manner; (iii) ensuring adequate conditions in reception facilities, including segregation from adults; (iv) preventing their disappearance and finding the whereabouts of those already missing.³⁹⁴

The HR Committee found it regrettable that **Madagascar** did not have a coherent legal framework on refugees and stateless persons, notwithstanding that there had been very few refugees and asylum seekers in the State. It recommended the amendment of laws to ensure that asylum seekers have access to a fair and satisfactory procedure for the determination of their status as refugees; and to consider ratifying the Protocol relating to the Status of Refugees.³⁹⁵

While welcoming the end to the use of sedatives during forced repatriations by air, as well as the presence of the National Commission for the Prevention of Torture during such operations by **Switzerland**, the HR Committee recommended the expedited investigation into the case of Chiakwa, who died in 2010 during such repatriation.³⁹⁶ **Pakistan** was commended for hosting millions of Afghan refugees for years and the State's plan for registration of undocumented Afghans in August 2017 was welcomed. It was recommended that **Pakistan** expedite the adoption of national refugee law in compliance with international human rights and humanitarian standards; and investigate allegations of abuse against refugees by the government forces, while taking measures to prevent such abuses.³⁹⁷

The CRC and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) jointly adopted a General Comment on Migrant Children in 2017. The CEDAW and the CERD echoed the call for **Jordan** to end the practice of stripping the nationality of its Palestinian-origin nationals. **Italy** was recommended by the CEDAW to set in place a gender-appropriate and culturally and age sensitive reception centres and provide individual screening and assessment procedures. It was also urged not to prevent rescue boats of NGOs to disembark on Italian ports.³⁹⁸

5.2.1. Non-Refoulement

The HR Committee expressed concerns that the domestic legal framework governing extradition, transfer or removal of non-

³⁹¹ Bangladesh, §§31-32

³⁹² Jordan, §§24-25

³⁹³ Serbia, §§32-33; Thailand, §§27-30

³⁹⁴ Italy, §§26-27

³⁹⁵ Madagascar, §§43-44

³⁹⁶ Switzerland, §§32-33

³⁹⁷ Pakistan, §§45-46

³⁹⁸ CEDAW, Italy, §§15-16; CEDAW, Jordan, §§11-12; CERD, Jordan, §§16-17

citizens, including asylum seekers and refugees in **Australia**, does not afford full protection against non-refoulement.

It recommended that **Australia** (i) repeal section 197(c) of the Migration Act 1958, wherein persons can be removed without an assessment of non-refoulement and irrespective of non-refoulement obligations; (ii) review its policy and practices during interceptions at sea, including on-water assessments, to ensure that all persons under the State party's jurisdiction in need of international protection have access to fair and efficient asylum procedures within the territory of the State, including access to legal representation where appropriate, and to legal remedies, and allow monitoring of the processing of intercepted persons by international observers, including the UNHCR; (iii) consider repealing the Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014 with its 'fast track' assessment process for illegal maritime arrivals that removes key procedural safeguards at merits review, includes a limited paper appeal process, restricts consideration of new evidence, narrows access to free government-funded legal assistance for most asylum seekers, and excludes certain categories of asylum seekers from the limited merits review.³⁹⁹

Reports that large numbers of asylum seekers fleeing violence in Myanmar were returned to Myanmar at the border of **Bangladesh** concerned the HR Committee, and the State was recommended to comply with the non-refoulement principle, as also ratify the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.⁴⁰⁰

Reports of ill-treatment of refugees and asylum-seekers, and collective expulsion for alleged terrorist affiliations in **Cameroon** concerned the HR Committee, wherein it reiterated importance of the obligation of non-refoulement, the training of border personnel and access to refugee status determination procedures according to international standards at all border areas.⁴⁰¹

The **Dominican Republic** was urged to review its laws and practices to ensure compliance with international standards on asylum-seekers and refugees; train its border personnel; and publish relevant statistics over concerns about high number of deportations and mass expulsions of persons of Haitian descent, including unaccompanied minors; and remedy the restrictive criteria for admissibility, insufficient procedural guarantees for asylum-seekers and refugees, lack of information on procedures of asylum and of access to lawyers.⁴⁰²

The principle was reaffirmed in the context of forced expulsion or return by the CAT in its review of **Cameroon, Pakistan** and **Italy**. The CRC recommended **Cameroon** to ensure that the best interests of the child are a primary consideration in all decisions and agreements in relation to the transfer of any asylum-seeking or refugee children, and that all returns are voluntary. **Romania** was asked to improve its administrative practices to ensure adequate protection measures for asylum-seeking and refugee children, including qualified legal representatives (guardians) and proper age-assessment procedures that take into consideration the psychological characteristics and maturity of children. The CERD urged **Serbia** to take urgent measures to ensure timely and fair

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³⁹⁹ Australia, §§33-34

⁴⁰⁰ Bangladesh, §§31-32

⁴⁰¹ Cameroon, §§35-36

⁴⁰² Dominican Republic, §§23-24

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processing of asylum claims, including sufficient funding for relevant decision-making bodies and to ensure consistent respect for the principle of non-refoulement.⁴⁰³

5.2.2. Immigration Detention

The HR Committee noted that the significant levels of control and influence exercised by **Australia** over the operation of the offshore regional processing centres in Papua New Guinea (Manus Island), Nauru, and Christmas Island, including over their establishment, funding and services provided therein, meet the effective control standard as set out in its General Comment No. 31. It recommended that the State end its offshore transfer arrangements and cease any further offshore transfers of refugees or asylum seekers; take all measures necessary to protect the rights of refugees and asylum seekers affected by the closure of processing centres, and ensure their transfer to Australia or their relocation to other safe countries; and consider closing the Christmas Island detention centre.⁴⁰⁴

The HR Committee, while noting that the mandatory detention scheme under the Migration Act 1958 does not meet the legal standards under Article 9 of the Covenant, expressed concern about the use of detention as a general deterrent against unlawful entry, rather than in response to an individual risk, and the continued mandatory detention of children and unaccompanied minors, despite the reduction in the number of children in immigration detention. It recommended that **Australia** reduce initial mandatory detention period; ensure that detention beyond the initial period is justified and subject to judicial review; expand the use of alternatives to detention; consider introducing a time limit on overall detention; provide meaningful appeal remedies; ensure that children are not detained except as a last resort; address the conditions of detention in immigration facilities; provide adequate mental health care; refrain from applying force or physical restraints against migrants and ensure that all victims of excessive of force have effective redress.⁴⁰⁵

Prolonged detention in **Italy** was of concern to the HR Committee, wherein it reiterated that immigration detention is to be applied only for the shortest period possible and as a measure of last resort.⁴⁰⁶ Alternatives to migrant detention and separation of minors from adults were also strongly recommended to **Switzerland**.⁴⁰⁷

With respect to **Italy**, the CAT noted that detention pending deportation should be further reduced and only applied as an exceptional measure. The CESCR urged **Australia** to halt its policy of offshore processing of asylum claims; and complete the closure of the regional processing centres, repatriate all concerned persons to **Australia** and process their asylum claims with all procedural safeguards, while respecting their right to family reunification. The CERD too urged **Australia** to amend the Maritime Powers Act 2013 to remove powers to detain, halt its policy of offshore processing of asylum claims and process the remaining claims while guaranteeing all procedural safeguards, and to use detention only as a measure of last resort and to ensure regular judicial review of detention decisions.⁴⁰⁸

⁴⁰³ CAT, Cameroon, §17; CRC, Cameroon, §40; CAT, Italy, §§20-21; CAT, Pakistan, §§34-35; CRC, Romania, §40; Serbia (CRC) §§26-27

⁴⁰⁴ Australia, §§35-36

⁴⁰⁵ Australia, §§37-38

⁴⁰⁶ Italy, §§25-26

⁴⁰⁷ Switzerland, §§34-35

⁴⁰⁸ CAT, Italy, §§28-29; CESCR, Australia, §§17-18; CERD, Australia, §§29-33

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5.2.3. Migrant Workers

While recognizing **Jordan's** efforts to protect migrant workers, the HR Committee expressed concerns about allegations that employers withhold passports and salaries, and restrict the freedoms of employees; and that the authorities detain undocumented migrant workers for prolonged periods before bringing them before a competent judicial authority. **Jordan** was asked to ensure that migrant domestic workers are afforded the same rights as other workers under labour laws and that legislation preventing their abuse is enforced.⁴⁰⁹ **Pakistan** was asked to ensure that Pakistani migrant workers sentenced to death overseas are provided with sufficient legal and consular services throughout their legal proceedings.⁴¹⁰

The CESCR recommended **Australia** to take steps to raise awareness among migrant workers about their rights and existing avenues to file complaints, and increase labour inspections, including to industries where migrant workers are numerous, with a view to detecting labour rights violations, bringing exploitative employers to justice, and compensating victims. It recommended **Sri Lanka** to ensure that workers enjoy their trade union rights without undue restrictions or interference, and urges it to effectively investigate all allegations of violations of trade union rights and ensure that migrant workers have the right to join trade unions freely and to take part in trade union activities.⁴¹¹

The CEDAW echoed the plight of migrant women workers specifically in **Jordan** and recommended the abolition of the *kafalah* system and urged the state to take steps to ensure their protection while the legal proceedings were under way. It recommended **Sri Lanka** to abolish the Family Background Report, with a view to lifting the sex-specific restrictions on migration, which impose restrictions only on migrant women, namely to appoint guardians for any children under six years of age.⁴¹²

5.2.4. Stateless Persons

The HR Committee regretted the decision TC 0168/13 of the Constitutional Court of **Dominican Republic**, which left thousands of Dominicans, the majority being of Haitian descent, without Dominican nationality and in a situation of statelessness; the State's denial of cases of statelessness; and the State's non-compliance with the August 2014 judgment of the Inter American Court of Human Rights in the case of expelled Dominicans and Haitians. It was recommended that the State adopt necessary *de jure* and *de facto* measures to prevent and reduce statelessness, including restoration of Dominican nationality to all persons affected by State Court's judgment.⁴¹³ Birth registration difficulties, especially for children of Haitian descent even when one of the parents is of Dominican origin, putting such children at high risk of statelessness were to be done away with.⁴¹⁴

Complicated statelessness determination procedures in **Italy**, which put children at a high risk of inheriting the stateless status of their parents, prompted the HR Committee to recommend simplification of statelessness determination procedures, reformation of the citizenship law and expedition of adoption of legislation to reduce statelessness.⁴¹⁵

⁴⁰⁹ Jordan, §§22-23

⁴¹⁰ Pakistan, §18 (e)

⁴¹¹ CESCR, Australia, §§27-28; CESCR, Sri Lanka, §§34-37

⁴¹² CEDAW, Jordan, §§45-46; CEDAW, Sri Lanka, §§38-39

⁴¹³ Dominican Republic, §§25-26

⁴¹⁴ Ibid, §§33-34

⁴¹⁵ Italy, §§22-23

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Statelessness among indigenous people and ethnic minorities in **Thailand** was of concern as it has a detrimental impact on access to basic services and leads to increased vulnerability to criminal trafficking and prostitution networks. The State was asked to spread awareness on the acquisition of nationality and to ensure protection for the stateless.⁴¹⁶

5.2.5. Internally Displaced Persons

While welcoming **Bosnia and Herzegovina's** efforts towards closing collective centers for internally displaced persons and providing them with alternative housing, the HR Committee remained concerned that returnees and internally displaced persons continue to face discrimination, including in employment and education, which hampers their reintegration into society, and that persons granted subsidiary international protection do not receive access to services on an equal basis with refugees. The State was asked to strengthen efforts to fully implement the revised strategy for the implementation of annex VII to the Dayton Peace Agreement to facilitate reintegration of returnees and internally displaced persons and enjoyment of their rights without discrimination; and ensure that persons with international subsidiary protection receive access to services on an equal basis with refugees, including for family reunification and travel documents.⁴¹⁷

Honduras was asked to step up its efforts to prevent internal displacements; ensure that victims receive care, assistance and full reparation, with particular consideration for the needs of women and girls; and ensure secure and viable options for return, local integration or resettlement elsewhere in the country.⁴¹⁸ The HR Committee recommended that **Serbia** work with internally displaced Roma communities to develop durable solutions that are suitable to them, including their local integration into Serbian society.⁴¹⁹

The HR Committee also mentioned reports of force displacement caused by State officials in **DRC** and the lack of a legal framework to address the situation of internally displaced persons, wherein 1.3 million internally displaced persons had fled from the Kasai conflict. Establishing a legal framework and a national strategy to assist and protect internally displaced people according to international standards; and creating the necessary conditions for displaced persons to attain durable solutions, including voluntary return in total security, were recommended.⁴²⁰

The CESCR recommended **Sri Lanka** to effectively implement the National Policy on Durable Solutions for Conflict-Affected Displacement (adopted in 2016) and urgently address the factors that impede a resettlement of internally displaced persons and was urged to provide compensation for destroyed housing and assistance to returnees to enable them to repair or build houses and to ensure that basic infrastructural needs are met, including adequate roads, schools and hospitals where people have been or are to be resettled. The CRC recommended the **DRC** to establish a coherent database and national programmes for refugee and internally displaced children, with a view to ensuring full protection of their rights.⁴²¹

⁴¹⁶ Thailand, §§41-44

⁴¹⁷ Bosnia & Herzegovina, §§35-36

⁴¹⁸ Honduras, §§28-29

⁴¹⁹ Serbia, § 15

⁴²⁰ DRC, §§25-26

⁴²¹ CRC, DRC, §4; CESCR, Sri Lanka, §51

5.3. Indigenous Peoples

The HR Committee expressed concern about the significant overrepresentation of indigenous Australians in prisons.⁴²² It recommended that **Australia** take robust measures to address the issue, by identifying and revising regulations and policies leading to high rates of incarceration, including the mandatory sentencing laws and imprisonment for fine default. Ensuring adequate, culturally-appropriate and accessible legal services, and reviewing the impact of restrictions on prisoner voting on political participation by indigenous peoples were also recommendations made by the HR Committee.⁴²³

Furthermore, the HR Committee recommended that **Australia** (i) provide adequate funding to the National Congress of Australia's First Peoples; (ii) consider revising the Constitution to recognize the special status and fully protect the equal rights of Aboriginal and Torres Strait Islander peoples; (iii) take measures to protect and promote their rights; and (iv) ensure genuine consultations with land holders and effective protection and management of indigenous heritage sites.⁴²⁴ It noted with concern the extreme difficulties in obtaining compensation under the current native title scheme for those people who had their native title extinguished, and that many of the recommendations of the Australia Law Reform Commission and the Council of Australian Governments on the matter had not been implemented.

Australia was asked to remove the barriers to the full protection of indigenous land rights and to establish a national reparation mechanism for victims of the 'stolen generation'.⁴²⁵

For **Bangladesh**, the HR Committee similarly recommended the recognition of the legal status of indigenous peoples; facilitation of reporting, investigation, prosecution and compensation in case of violations of their rights; resolution of land disputes through the implementation of the Chittagong Hill Tracts Land Dispute Resolution Commission Act 2016 and through the use of an independent land commission; and inclusion of indigenous persons in political and decision-making processes.⁴²⁶

Noting the disproportionate effect that gender-based violence has on indigenous women, the HR Committee recommended intensifying preventive measures and their implementation, including those funded through the Indigenous Advancement Strategy's Safety and Wellbeing Programme in **Australia**, and providing effective remedies in **Bangladesh**.⁴²⁷

The HR Committee expressed concern over the particular vulnerability of the Pygmies in **DRC**, including discrimination against them especially in health and education sectors; serious violations of human rights and forced displacement in Tanganyika Province; and the delay in adopting the law on the rights of indigenous peoples. The State was urged to recognize the Pygmies as indigenous people, enact and implement laws to protect them, and consult with them for decisions affecting them.⁴²⁸

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⁴²² Australia, §39

⁴²³ Ibid, §§40, 47-48

⁴²⁴ Ibid, §§49-50

⁴²⁵ Australia, §§51-54

⁴²⁶ Bangladesh, §12

⁴²⁷ Australia, §§21-22; Bangladesh, §§17-18

⁴²⁸ DRC, §§49-50

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The indigenous community in **Honduras** was identified as at risk of violence, discrimination, trafficking and forced labour, and the State was asked to protect them.⁴²⁹

The CESCR highlighted the serious socio-economic disadvantage faced by the indigenous peoples in its concluding observations on **Australia**. The CERD expressed regret over the under-resourcing and low level of implementation in the “Closing the gap” strategy adopted by the state. **Australia** was asked to carry out genuine consultations with indigenous peoples, their representatives, and non-governmental organizations to refresh the strategy and to provide detailed updates on the impact and results of such measures in its next periodic report. The CERD also recommended the lowering of the standard of proof required to establish the claims of indigenous peoples to land by amending the Native Title Act 1993. The CRC urged **Cameroon** to allocate adequate resources for the implementation of the national action plan for indigenous peoples, the Pygmies and the Mbororo, ensuring its objective is to respect, protect and promote the rights of indigenous children, including education, and to eliminate their food insecurity, poverty and vulnerability to violence and exploitation, with their full and effective participation.⁴³⁰

5.4. Persons with Disabilities

The HR Committee welcomed the ratification of the Convention on the Rights of Persons with Disabilities and/or its Optional Protocol by **Australia, Bangladesh, DRC, Honduras, Italy, Madagascar, Mauritius, Pakistan, Romania, Swaziland, Switzerland** and **Thailand**.⁴³¹

The HR Committee, while noting the Senate Standing Committee on Community Affairs recommendations for limiting the practice of sterilizing persons for psychosocial reasons and strengthening the safeguards against abuse in **Australia**, remained concerned about the compatibility of the practice of involuntary non-therapeutic sterilization of women and girls with intellectual disabilities and/or cognitive impairments with the provisions of the Covenant, including those concerning the prohibition against cruel, inhuman and degrading treatment, the right to privacy and equality before the law, and recommended abolition of the practice.⁴³² **Australia** was also asked to ensure that legislation does not discriminate against persons with intellectual and psychosocial disabilities by denying them the right to vote on bases that are disproportionate or have no reasonable relation to their ability to vote.⁴³³

The HR Committee raised similar concerns in this context over limited access to justice, education, employment and political participation; forced placement in medical institutions; isolation and forced treatment of large numbers of persons with mental, intellectual and psychosocial disabilities; reported tendency to resort to the deprivation of legal capacity; inadequacy of the current legal frameworks to achieve deinstitutionalization and enhance appropriate community-based support; and limited scope of protections against discrimination on grounds of disability in **Serbia**.⁴³⁴

⁴²⁹ Honduras, §§ 10-11, 36-37, 40-41

⁴³⁰ CESCR, Australia, §§ 23, 31-33, 40-58; CERD, Australia, §§ 17-22, 27-28; CRC, Cameroon, § 42

⁴³¹ Australia, § 4; Bangladesh, § 4; DRC, § 4; Honduras, § 4; Italy, § 4; Madagascar, § 4; Mauritius, § 4; Pakistan, § 4; Romania, § 4; Swaziland, § 7; Switzerland, § 4; Thailand, § 4

⁴³² Australia, §§ 23-24

⁴³³ Australia, §§ 47-48

⁴³⁴ Serbia, §§ 16-17

The disproportionate effect that domestic violence has on women with disabilities in **Australia** was noted, and the HR Committee recommended improved support services.⁴³⁵

The HR Committee expressed concern over personal disability benefits received by civilian victims of war in **Bosnia and Herzegovina** being significantly lower than those received by war veterans and asked for harmonization of such disability benefits "so that personal disability benefits received by civilian victims are comparable to personal disability benefits received by war veterans".⁴³⁶

The CRPD recommended **Bosnia and Herzegovina** to revise the provisions of disability allowances by harmonizing laws and regulations at all levels of government in order to repeal the current discriminatory practice that is based on the cause of impairment, in particular for war-related and non-war-related disabilities.⁴³⁷

Bangladesh, Italy and **Pakistan** were asked to adopt anti-discrimination legislation that protects against direct and indirect discrimination in the public and private sphere based on a comprehensive list of grounds for discrimination, including disability.⁴³⁸ Similarly, **Cameroon**, with almost 10% of its population suffering from disabilities, **Mongolia** and **Romania** were urged to ensure accessibility to employment, public services and infrastructure.⁴³⁹ In this regard, **Liechtenstein** was asked to ensure that employers fulfil their obligation to give access for disabled persons to the labour market by providing reasonable accommodation as one of the measures to ensure enjoyment of their rights.⁴⁴⁰

Noting that children with disabilities remain outside the education system altogether in **Bosnia and Herzegovina**,⁴⁴¹ the HR Committee recommended special efforts for integrating them in regular schools, and in special schools where absolutely necessary.

The CRC recommended **Romania** to develop a national policy on disability with a human rights perspective that specifically addresses children with disabilities and aims to ensure their full participation in society and provide sufficient human and financial resources for the implementation of the Strategy on the Rights of Persons with Disabilities and Roma Inclusion and for the National Authority for People with Disabilities to carry out its mandate effectively. The CESCR discussed the situation of Persons with Disabilities in the context of access to education in **Liechtenstein**, healthcare and work in **Netherlands** and **Pakistan**, and violence against persons with disabilities in **Australia**.⁴⁴²

5.5. Persons with HIV/AIDS

While acknowledging the efforts made by **Swaziland** to promote and protect the life and health of persons with HIV/AIDS, the HR Committee remained concerned at the continued high number of infections; the persistence of stigma and discrimination against such persons; and the absence of laws prohibiting discrimination

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⁴³⁵ Australia, §§21-22

⁴³⁶ Bosnia & Herzegovina, §§17-18

⁴³⁷ CRPD, Concluding observations on the initial report of Bosnia and Herzegovina, UN Doc. CRPD/C/BIH/CO/1, 2017, §51, (**CRPD, Bosnia and Herzegovina**)

⁴³⁸ Bangladesh, §12; Italy, §9; Pakistan, §12

⁴³⁹ Cameroon, §§15-16; Mongolia, §§13-14; Romania, §§19-20

⁴⁴⁰ Liechtenstein, §17

⁴⁴¹ Bosnia & Herzegovina, §§31-32

⁴⁴² CRC, Romania, §§31-32; CESCR, Concluding observations on the combined second and third periodic reports of Liechtenstein, UN Doc. E/C.12/LIE/CO/2-3, 2017, §18, (**CESCR, Liechtenstein**); CESCR, Netherlands, §52, CESCR, Pakistan, §23; CESCR, Australia, §§35-36

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on the basis of HIV/AIDS. The State was urged to intensify efforts to fight stigma and prohibit discrimination in this context.⁴⁴³

Serbia was asked to remedy the situation of discrimination against such persons and violations of their right to privacy, especially in the context of health care, by strengthening measures to eradicate social stigmatization, discrimination and violence against such persons, as were **Madagascar** and **Romania**.⁴⁴⁴

Turkmenistan was asked to lift its HIV-related travel restrictions.⁴⁴⁵

5.6. Persons with Albinism

The HR Committee expressed concern over reports of discrimination and violence against persons with albinism in **Swaziland**, where the State is yet to adopt effective strategies to ensure that they are afforded equal protection. It recommended that the State remedy this gap in protection.⁴⁴⁶

X v Tanzania, UN Doc. CRPD/C/18/D/22/2014, 2017

[Key words: Torture, inhuman and degrading treatment; discrimination against a person with albinism]

The author is a Tanzanian national with albinism who had one of his arms cut off by two strangers due to his condition of albinism. He claimed that his right to access to justice had been significantly limited due to the unduly prolonged investigation process.

The CRPD found that the State's failure to take all necessary measures to prevent, efficiently investigate and punish acts of violence amounted to discrimination based on disability and that there had been a failure to protect his physical and mental integrity, in violation of articles 5 (Equality and non-discrimination) and 15 (Freedom from torture or cruel, inhuman or degrading treatment or punishment) of the CRPD.

It also considered that the suffering experienced by the author due to a lack of State's action became a cause of re-victimization and amounted to psychological torture and/or ill-treatment, violating article 17 (Protecting the integrity of the person) in conjunction with article 4 (General obligations).

5.7. Minorities

Racism, hate speech and hate crimes caused concern to the HR Committee, resulting in recommendations to **Australia**, **Bangladesh**, **Serbia**, **Honduras**, **Pakistan**, **Romania**, **Switzerland**, and **Thailand**,⁴⁴⁷ to promote tolerance, protect people, provide adequate remedies, investigate cases and prosecute perpetrators.

The HR Committee welcomed efforts made to eliminate discrimination against the Roma people in **Bosnia and Herzegovina**, including improvements in birth registration and increased enrolment of Roma children in schools, but remained concerned about persistent *de facto* discrimination with respect to Roma children accessing education, high unemployment rates and the lack of access to adequate housing. The State was recommended to continue to tackle the discrimination through practical measures, and awareness-raising initiatives to ensure full

⁴⁴³ Swaziland, §§20-21

⁴⁴⁴ Serbia, §§12-13; Madagascar, §16; Romania, §§17-18

⁴⁴⁵ Turkmenistan, §33

⁴⁴⁶ Swaziland, §§22-23

⁴⁴⁷ Australia, §§19-20; Bangladesh, §§11-

12; Serbia, §§10-11; Honduras, §§10-11;

Pakistan, §34; Romania, §§13-14, 43-44;

Switzerland, §§20-23; Thailand, §§11-12,

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enjoyment of all their Covenant rights.⁴⁴⁸ The Roma community continue to suffer from widespread discrimination and exclusion, unemployment, forced eviction, and *de facto* housing and educational segregation even in **Serbia** and **Romania**,⁴⁴⁹ wherein the HR Committee recommended inclusion strategies. Discrimination against and segregation of Roma, Sinti and Camminanti communities in **Italy** made the HR Committee recommend that the State intensify its efforts to eradicate such practices.⁴⁵⁰ **Switzerland** was asked to establish a coordinated action plan with its cantons to ensure sufficient stopping areas for its nomadic 'Travelers'.⁴⁵¹

The HR Committee asked **Cameroon** to remove any unnecessary restrictions on the freedom of assembly and demonstration, especially for the country's English-speaking minorities.⁴⁵² Afro-Hondurans in **Honduras** were a vulnerable group being trafficked or forced into slavery, and the State was called upon to combat this.⁴⁵³ While noting the adoption of quotas for minority persons in parliaments and in public services in **Pakistan**, the HR Committee expressed concern that the minority quota are applied only to religious minorities, and regretted the absence of sufficient information on the implementation of these quotas. It expressed concern over the removal of Ahmadis from the general electoral list and their registration on a separate voting list, and asked the State to ensure that all citizens can exercise their right to vote.⁴⁵⁴ Interestingly, the HR Committee specifically requested that **Bangladesh** and **Pakistan** consult minority and marginalized groups in preparing their next periodic reports.⁴⁵⁵

Notably, with regard to **Australia's** voluntary, non-binding postal survey on the legalization of same-sex marriage, the HR Committee stated that "resort to public opinion polls to facilitate upholding rights under the Covenant in general, and equality and non-discrimination of minority groups in particular, is not an acceptable decision-making method and that such an approach risks further marginalizing and stigmatizing members of minority groups."⁴⁵⁶

The CESCR urged **Pakistan** to take urgent legal measures to recognize the status of minorities other than religious ones, including racial, ethnic and linguistic minorities, in order to enable persons belonging to all minorities to enjoy their relevant rights and benefit from the policies and programmes designed for the protection of minority groups. It also recommended **Sri Lanka** to conduct a comprehensive census that includes the element of the right to free self-identification of the Veddah people and that it address the root causes of their socio-economic marginalization.⁴⁵⁷

5.8 Human Rights Defenders

The HR Committee repeatedly expressed concern over various instances of intimidation, harassment, threats and violence against human rights defenders, journalists, civil society organizations, political opponents and individuals.

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⁴⁴⁸ Bosnia & Herzegovina, §§39-40

⁴⁴⁹ Serbia, §§14-15; Romania, §§11-12

⁴⁵⁰ Italy, §§14-15

⁴⁵¹ Switzerland, §§50-51

⁴⁵² Cameroon, §42

⁴⁵³ Honduras, §§36-37

⁴⁵⁴ Pakistan, §§47-48

⁴⁵⁵ Bangladesh, §35; Pakistan, §51

⁴⁵⁶ Australia, §29 (Australia has since then legalized same-sex marriage with effect from 9 December 2017, following a favorable public opinion survey)

⁴⁵⁷ CESCR, Pakistan, §§29-30; CESCR, Sri Lanka, §§69-70

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5.9. LGBTI Persons

The HR Committee noted with concern the prevalence of violence and discrimination against LGBTI persons, and made observations and recommendations on their rights of same-sex couples in the context of several States.

5.9.1. Stigmatization and Discrimination

Noting that the stigmatization of LGBTI persons has resulted in barriers to their seeking employment, the HR Committee recommended to **Bangladesh** that it remove such barriers and violations of the dignity of such persons.⁴⁵⁸ Similar observations were made for **Mongolia**, **Romania**, **Serbia** and **Swaziland**.⁴⁵⁹

For the eradication of all forms of social stigmatization, the HR Committee made recommendations to (i) adopt legislation that prohibited hate crimes, (ii) ensure that all acts of discrimination are investigated, that perpetrators are prosecuted, and if convicted, punished with appropriate penalties, and that victims are provided with full reparation, and (iii) provide training and sensitization of law enforcement personnel to vigorously combat stereotypes and negative attitudes towards LGBTI persons.⁴⁶⁰

5.9.2. Decriminalization of Same-Sex Relationships

The HR Committee called for the decriminalization of consensual sex between same-sex individuals in **Bangladesh**, **Cameroon**, **Mauritius**, **Swaziland** and **Turkmenistan**.⁴⁶¹ In its observations on **Turkmenistan**, the HR Committee, while acknowledging diversity of cultures and beliefs, stressed on universality of human rights and recommended that States ensure that there exists no form of discrimination or violence against these individuals.⁴⁶²

C v. Australia, UN Doc. CCPR/C/119/D/2216/2012, 2017.

[Key words: *Non-discrimination; Equal access to court*]

The author claimed that she had been discriminated against by Australia on the basis of her sexual orientation as the State did not recognize foreign same sex marriages, and therefore, did not provide for divorce proceedings.

The HR Committee considered that the author being precluded from accessing divorce proceedings, while other heterosexual foreign marriages, which would not be legal if carried out in Australia, were recognized, amounted to a differential treatment. It recalled that for such a treatment not to constitute discrimination it has to derive from reasonable and objective criteria which aim to achieve a legitimate purpose. However, it considered that State's justification for recognizing the other categories of marriages so as to enable them to access assistance, relief and help in relation to children's, property and maintenance matters was not reasonable, as Australia failed to explain why these motives did not apply for same sex marriages.

The HR Committee therefore declared a violation of Article 26 of the Covenant. The State was asked to make full reparations and prevent future violations.

⁴⁵⁸ Bangladesh, § 12

⁴⁵⁹ Mongolia, § 11; Romania, § 15; Serbia, § 12; Swaziland, § 18

⁴⁶⁰ Bangladesh, § 12; Mongolia, § 12; Romania, § 16; Serbia, § 13; Swaziland, § 19

⁴⁶¹ Bangladesh, § 12; Cameroon, § 14; Mauritius, § 10; Swaziland, § 19;

Turkmenistan, § 9

⁴⁶² Turkmenistan, § 9

5.9.3. Marriage Equality and Rights of Same-Sex Couples

The HR Committee made observations and recommendations on the rights of same-sex couples in the context of **Australia**,⁴⁶³ **Honduras**, **Italy**, **Mauritius** and **Mongolia**.

The HR Committee expressed concern over laws in **Italy** that do not provide same-sex couples with the right to adopt children and do not afford full legal protection to children living in same-sex families. It also expressed concerns about the continued denial of access to in vitro fertilization. The HR Committee recommended the review of the relevant laws to make them non-discriminatory on the grounds of gender identity or sexual orientation.⁴⁶⁴

The HR Committee also recommended the equal legal recognition and protection of same-sex couples, removal of restrictions on them from entering into marriage or civil partnerships, and non-denial of other rights relating to their personal status in **Honduras**, **Mauritius** and **Mongolia**.⁴⁶⁵

5.9.4. Violence against LGBTI Persons

The HR Committee noted with concern the prevalence of violence against LGBTI Persons in **Bangladesh**, **Bosnia and Herzegovina**, **Cameroon**, **Honduras**, **Mauritius**, **Mongolia**, **Romania**, **Serbia**, **Swaziland** and **Turkmenistan**.

For example, in **Bosnia and Herzegovina**, the HR Committee noted that police officers do not investigate attacks against LGBT persons, especially during public assemblies.⁴⁶⁶ For **Bangladesh**, the HR Committee expressed concern over the invasive and humiliating medical examination required to prove an individual's transgender status.⁴⁶⁷ In the context of **Swaziland**, the HR Committee expressed concern over the murder of two individuals directly linked to their sexual orientation and the rape of a gay man in detention, despite the laws criminalizing same sex relations between men not being enforced in practice.⁴⁶⁸

The HR Committee recommended that States ensure effective identification, recording, investigation, prosecution and adequate punishment of acts of violence motivated by sexual orientation or gender identity of victims, and that they intensify efforts to combat stereotypes and prejudice against LGBTI persons, including by training law enforcement officials and providing the victims access to reparations.⁴⁶⁹ The HR Committee recommended that **Honduras** collect disaggregated data on assaults and murders among LGBTI persons.⁴⁷⁰

The CAT was concerned by reports of violence against LGBTI persons in **Cameroon** and noted that cases of violence, harassment, "corrective rape" and murder against LGBTI persons, and against the human rights defenders who report these violations, are not subject to thorough investigation. A similar pattern of threatening and intimidation was noted by the CAT in **Bosnia and Herzegovina**. The CEDAW recommended **Italy** to amend article 3 of the Constitution and Act No. 205/1993 to protect LGBTI persons from intersecting forms of discrimination or hate crimes. With respect to **Pakistan**, the CESCR recommended

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⁴⁶³ **Australia** has since then legalised same-sex marriage with effect from 9 December 2017, following a favourable public opinion survey.

⁴⁶⁴ Italy, §§10-11

⁴⁶⁵ Honduras, §9, Mauritius, §10; Mongolia, §12

⁴⁶⁶ Bosnia & Herzegovina, §25

⁴⁶⁷ Bangladesh, §11 (e)

⁴⁶⁸ Swaziland, §18

⁴⁶⁹ Bosnia & Herzegovina, §25;

Cameroon, §14; Mongolia, §12;

Romania, §16; Serbia, §13; Swaziland,

§19; Turkmenistan, §9

⁴⁷⁰ Honduras, §41 (f)

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that the State party decriminalize same-sex relations between consenting adults and take the measures necessary to raise public awareness and combat discrimination based on sexual orientation and gender identity.⁴⁷¹

⁴⁷¹ CAT, Bosnia & Herzegovina, §36; CAT, Cameroon, §43; CEDAW, Italy, §18; CESCR, Pakistan, §21

6. FREEDOMS AND RIGHTS OF INDIVIDUALS

6.1. Right to Privacy

6.1.1. Surveillance by Intelligence Services

The issue of government surveillance on private communications and data retention was addressed by the HR Committee with respect to several States. The HR Committee recommended that the States review their legislation on surveillance and data collection to make them compliant with Article 17 of the Covenant, establish effective administrative oversight mechanisms with judicial authorization requirements and ensure effective redress to victims.⁴⁷²

The absence of appropriate and adequate oversight mechanisms in surveillance and monitoring of private communications, the lack of strict judicial authorization requirements for accessing such data, and the victims' difficulty in accessing remedies in **Honduras** and **Turkmenistan**⁴⁷³ were noted by the HR Committee.

The HR Committee expressed concern about the interception of personal communications in **Italy** by intelligence agencies who employed hacking techniques without explicit authorization from judicial authorities,⁴⁷⁴ and the intrusive surveillance powers given to **Switzerland's** intelligence services on the basis of insufficiently defined objectives such as 'national interest', without any limitation on the time period of retention of such data.⁴⁷⁵

The HR Committee noted that companies based in **Italy** were engaged in providing surveillance equipment to governments holding records of human rights abuses. It was recommended that **Italy** ensure that corporations under its jurisdiction, including technology corporations, respect human rights standards when engaging in operations abroad.⁴⁷⁶

In **Australia**, while there were administrative oversight mechanisms in place, the HR Committee noted that the metadata retained by telecommunication for 2 years was used extensively for 'national security', without any judicial authorization.⁴⁷⁸ The HR Committee recommended that **Australia** strengthen the safeguards against arbitrary interference by introducing judicial control over such access.⁴⁷⁹

6.1.2. Laws on Cybersecurity and Cybercrime

The HR Committee recommended strengthening and review of legislations on cybersecurity and cybercrime to ensure that the rules on data retention and access thereof are limited to what is strictly necessary and consistent with the Covenant.⁴⁸⁰ It was noted that network operators and service providers were mandated to retain data on private communications for a period of 10 years in **Cameroon**,⁴⁸¹ and a year in **Pakistan**.⁴⁸²

⁴⁷² Australia, §46; Cameroon, §40; Honduras, §39; Italy, §37; Pakistan, §36; Switzerland, §47; Turkmenistan, §36
⁴⁷³ Honduras, §38; Turkmenistan, §36
⁴⁷⁴ Italy, §36
⁴⁷⁵ Switzerland, §46
⁴⁷⁶ Italy, §37
⁴⁷⁸ Australia, §46
⁴⁷⁹ Ibid, §46
⁴⁸⁰ Cameroon, §40; Pakistan, §37
⁴⁸¹ Cameroon, §39
⁴⁸² Pakistan, §36
⁴⁸³ Mongolia, §35

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6.1.3. Interference into Family Life

The HR Committee noted with concern the reports of the impact of urban redevelopment in Ulaanbaatar on the right to privacy and family life of residents facing the risk of forced eviction,⁴⁸³ and recommended to **Mongolia** that it put in place adequate safeguards against forced evictions and guarantee alternative housing.⁴⁸⁴

6.1.4. DNA Profiling

While expressing its views on individual communications against Netherlands, the HR Committee found that mandatory DNA profiling of minors in conflict with law was not proportionate to the legitimate aim pursued by the State and it constituted an arbitrary interference into the privacy of such minors.

S. L. v. Netherlands, UN Doc. CCPR/C/120/D/2362/2014, 2017; N. K. v. Netherlands, UN Doc. CCPR/C/120/D/2326/2013, 2017.

These communications involved the legally mandated DNA profiling of convicted children in conflict with law. The HR Committee found that specific attention should be given to the need for the protection of children's privacy in criminal trials, as children differ from adults in their physical and psychological development, and their emotional and educational needs. Accordingly, the HR Committee found that, although lawful, the interference in the author's privacy was not proportionate to the legitimate aim of prevention and investigation of serious crimes and therefore arbitrary, and in violation of Article 17 of the Covenant.

The State party was recommended to provide the authors with adequate compensation and prevent such acts in the future.

6.2. Freedom of Expression and Opinion

6.2.1. Regulation of Media and Content

The HR Committee noted the regulation of media content in **Bosnia and Herzegovina, DRC, Pakistan, Serbia** and **Turkmenistan**, and made recommendations to the States to guarantee full freedom of expression in the press and media by making all provisions on media regulation compliant with Article 19 of the Covenant,⁴⁸⁵ and its General Comment No. 34.⁴⁸⁶

In **Bosnia and Herzegovina**, the HR Committee noted that the excessive influence of government, political and private interest groups on the media led to self-censorship and subjective reporting.⁴⁸⁷ The HR Committee recommended that **DRC** ensure that the Superior Council for Audio-visual and Communication exercise its role, impartially and independently.⁴⁸⁸ The HR Committee noted with concern the suspension of twenty programmes in the past four years in **Pakistan** as a form of media content regulation. Transparency in media ownership was noted

⁴⁸⁴ Mongolia, §36

⁴⁸⁵ Bosnia & Herzegovina, §22; DRC, §40; Pakistan, §34; Serbia, §39; Turkmenistan, §43

⁴⁸⁶ Bosnia & Herzegovina, §22; Pakistan, §34; Serbia, §39; Turkmenistan, §43

⁴⁸⁷ Bosnia & Herzegovina, §21

⁴⁸⁸ DRC, §39

as necessary for genuine, free and independent media in **Serbia** and **Turkmenistan**.⁴⁸⁹

6.2.2. Criminalization of Speech

The HR Committee noted with concern the laws in **Jordan** and **Thailand** that penalised criticism against the King with prosecution and sanctions, including with imprisonment up to 15 years in **Thailand**.⁴⁹⁰ The HR Committee recommended the decriminalization of blasphemy laws in **Bangladesh, Italy** and **Pakistan**.⁴⁹¹ It also noted with concern the provision for non-suspended sentences for online insult or defamation against state officials in **Madagascar**.⁴⁹²

Claudia Andrea Marchant Reyes et al. v. Chile, UN Doc. CCPR/C/121/D/2627/2015, 2017.

This communication involved a violation of the freedom of expression by the removal of a previously authorized artistic work entitled 'Bridges of Memory' from nine bridges in Santiago de Chile. The HR Committee, noting that the right to freedom of expression constitutes the foundation stone for every free and democratic society, found that the State party failed to demonstrate the necessity and proportionality of the specific actions taken, in restricting the freedom. Accordingly, the HR Committee concluded that the State violated the authors' right to freedom of expression under Article 19 (2).

Thus, the State was recommended to locate the missing banners, and return them or provide the authors with information on them where possible. The State was further recommended to make a public acknowledgement of the violation of the rights and adopt any other appropriate measure of satisfaction. Additionally, the State was recommended to prevent such violations from happening in the future.

While stressing that imprisonment is not an appropriate penalty for defamation, it was recommended that States ensure that restrictions imposed on activities of the press and media, and on access to the Internet, are strictly in accordance with Article 19 (3) of the Covenant; and that States consider the decriminalization of defamation and ensure the application of criminal law in only the most serious cases.⁴⁹³

6.2.3. Intimidation, Harassment, Threats and Violence against Human Rights Defenders (HRDs), Journalists, Civil Society Organizations and Individuals

The HR Committee noted with grave concern various instances of intimidation, harassment, threats and violence against human rights defenders, journalists, civil society organizations, political opponents and individuals in **Bangladesh, Bosnia and Herzegovina, Cameroon, DRC, Dominican Republic, Honduras, Jordan, Madagascar, Mongolia, Pakistan, Serbia, Swaziland, Thailand** and **Turkmenistan**.

In the context of **Bangladesh**, the HR Committee expressed concern over the lack of police protection and legal response to

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⁴⁸⁹ Serbia, §39; Turkmenistan, §43

⁴⁹⁰ Jordan, §30; Thailand, §38

⁴⁹¹ Bangladesh, §28; Italy, §39; Pakistan, §34

⁴⁹² Madagascar, §49

⁴⁹³ Bangladesh, §28; Honduras, §41; Italy, §39; Jordan, §31; Madagascar, §50; Pakistan, §34; Thailand, §36

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the violent killings of “secular bloggers”, noting that their arrest under *de facto* blasphemy laws limited the freedom of expression and opinion.⁴⁹⁴

The HR Committee expressed concerns over the reports of torture and ill-treatment of journalists; that lawsuits against the media or journalists that can be assimilated to opinion trials; prohibitions on the holding of press conferences; internet connection interruptions for several months; and the retaliation against human rights defenders in **Cameroon**.⁴⁹⁵ For **DRC**, the HR Committee expressed concern over the allegations of the detention of journalists to prevent them from covering the events of September 2016 and judicial harassment, threats and abuse against media professionals, human rights defenders and political opponents.⁴⁹⁶

The HR Committee noted with concern the intimidation, harassment and ill-treatment of journalists, political opponents and human rights defenders; and the non-suspended sentences for online insult or defamation against State officials in **Madagascar**.⁴⁹⁷ The HR Committee also noted the repeated reports of disappearance, killing and intimidation of journalists, human rights defenders and lawyers by State and non-State actors, and the low rate of prosecution and conviction of perpetrators in **Pakistan**.⁴⁹⁸

The HR Committee recommended that the States take steps to avoid unjustified or disproportionate interference with the freedom of expression of the media, and protect journalists from any form of torture or ill-treatment and investigate, prosecute and convict those responsible for such acts; take all necessary measures to ensure the protection of human rights defenders against threats and intimidation and to investigate, prosecute and convict those responsible for such acts, and ensure that victims obtain assistance, protection and comprehensive reparations.⁴⁹⁹

With regard to **Honduras**, **Swaziland** and **Thailand**, the HR Committee also recommended that law enforcement personnel be appropriately trained in this respect.⁵⁰⁰ Additionally, the HR Committee recommended that **Bangladesh** repeal its law limiting foreign donation to NGOs,⁵⁰¹ and that **Honduras** collect disaggregated data on assaults and murders.⁵⁰²

The CEDAW recommended **Thailand** to adopt and implement, without delay, effective measures for the protection of women HRDs to enable them to freely undertake their important work, and to effectively investigate, prosecute and adequately punish all cases of harassment, violence and intimidation against them. The CESCR urged **Pakistan** to take every effort to protect human rights defenders from abduction, killings and intimidation; promptly and thoroughly investigate all reported cases of harassment, disappearance and killing of human rights defenders and bring the perpetrators to justice; and take all measures necessary to ensure a safe and favourable environment for human rights defenders and civil society actors.⁵⁰³ The CESCR also released a statement on HRDs and their economic, social and cultural rights.⁵⁰⁴

6.2.4. Access to Information

On access to information, the HR Committee made observations on **Bosnia and Herzegovina**, **Cameroon**, **DRC**, **Italy**, **Mongolia** and **Turkmenistan** and recommended that all restrictions on the right to

⁴⁹⁴ Bangladesh, §27

⁴⁹⁵ Cameroon, §41

⁴⁹⁶ DRC, §39

⁴⁹⁷ Madagascar, §49

⁴⁹⁸ Pakistan, §37

⁴⁹⁹ Bosnia & Herzegovina, §38;

Cameroon, §42; DRC, §40; Dominican Republic, §32; Jordan, §31;

Madagascar, §50; Mongolia, §38;

Pakistan, §34; Swaziland, §45;

Turkmenistan, §43

⁵⁰⁰ Honduras, §41; Swaziland, §45;

Thailand, §36

⁵⁰¹ Bangladesh, §28

⁵⁰² Honduras, §41

⁵⁰³ CEDAW, Thailand, §§30-31; CESCR,

Pakistan, §§13-14

⁵⁰⁴ Statement of CESCR on HRD, U.N.

Doc. ESCR: E/C.12/2016/2

access information be strictly compliant with Article 19(3) of the Covenant.⁵⁰⁵

The HR Committee noted the restrictions placed on access to Internet and disproportionate limitations on online content in **Cameroon**, **Mongolia** and **Turkmenistan**.⁵⁰⁶ Concerned that authorities in **Italy** refuse to answer a request without proper justification, and that it is possible to challenge the non-disclosure decisions only through judicial proceedings, the HR Committee recommended the implementation of freedom of information Act, and that authorities be required to justify refusal, with the possibility of review of such refusal.⁵⁰⁷

The HR Committee expressed concern over the closure of public spaces following the events of September 2016 in **DRC**. The situation has been characterized by social media suspensions, television program suspensions and radio interference, restrictions on foreign media, and allegations of journalists being detained to prevent them from covering the news.⁵⁰⁸ It was noted that the law on access to information was not implemented in **Bosnia and Herzegovina**.⁵⁰⁹

6.3. Freedom of Religious Belief and Conscience

In this context, the HR Committee expressed concern over the lack of any protection against discrimination on the basis of religion at the federal level in **Australia**, and the HR Committee recommended that the State consolidate existing non-discrimination provisions in comprehensive federal law for procedural protection against discrimination on grounds of religion, as well as access to effective remedies.⁵¹⁰

Concerned about the restrictions on freedom of religion, including the prevention of marriage or denial of inheritance rights to those who renounce Islam, the HR Committee advised **Jordan** to ensure the respect for freedom of religion or belief for all, and suggested the adoption of a unified personal status act for all citizens and residents of the State, regardless of religion.⁵¹¹

The inability to reach an agreement between two municipalities in **Liechtenstein** to amend the Constitution, and the resulting adverse effects on religious communities other than the Roman Catholic denomination raised further concern of the HR Committee.⁵¹² The State was recommended to redouble efforts to reach an agreement, and to provide funding for religious organizations of all religious communities on a basis of equality.⁵¹³

The HR Committee expressed its concern about blasphemy laws under the **Pakistan** Penal Code that carry severe penalties, including the mandatory death penalty, and reportedly have a discriminatory effect against Ahmadi persons.⁵¹⁴ Repeal or amendment of these laws in compliance with the Covenant and the HR Committee's General Comment No. 34 was recommended.⁵¹⁵ Due to numerous false blasphemy cases, and violence against those accused of blasphemy, the State was to ensure that all who incite or engage in such violence as well as falsely accuse others, are brought to justice;⁵¹⁶ and, judges and others involved in blasphemy cases who

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⁵⁰⁵ Bosnia & Herzegovina, §38; Cameroon, §42; DRC, §40
⁵⁰⁶ Cameroon, §41; Mongolia, §37; Turkmenistan, §43
⁵⁰⁷ Italy, §§40-41
⁵⁰⁸ DRC, §39
⁵⁰⁹ Bosnia & Herzegovina, §37
⁵¹⁰ Australia, §§17-18
⁵¹¹ Jordan, §§28-29
⁵¹² Liechtenstein, §27
⁵¹³ Liechtenstein, §28
⁵¹⁴ Pakistan, §33
⁵¹⁵ Ibid, §34
⁵¹⁶ Ibid, §§33-34

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are harassed and threatened are given adequate protection.⁵¹⁷ The HR Committee regretted the absence of information on the implementation of the Supreme Court judgment of 19 June 2014 and requested that it be fully implemented.

Moreover, the HR Committee suggested that religiously biased content of curricula in public schools be removed, that human rights education be incorporated therein, and that Madrasas be regulated.⁵¹⁸ Continued reports of hate speech and hate crimes against religious minorities and their places of worship raised further concern.⁵¹⁹ Investigation and prosecution in such cases were recommended.

The HR Committee also noted incidents of hate speech against religious minorities and obstacles to their exercise of religious freedom, such as conducting burials in accordance with their faith in **Romania**.⁵²⁰ The State was recommended to enforce the prohibition of any advocacy of religious hatred, and to remove barriers to exercise of religious freedom.⁵²¹

Regarding **Serbia**, the HR Committee reiterated its concerns about the practical consequences of the legal differentiation between 'traditional' and 'non-traditional' religions, and the State was asked to guarantee that Article 18 of the Covenant is respected.⁵²² As to **Switzerland**, the HR Committee expressed concern, about the proliferation of regulations relating to the school environment or the attire worn in public, and the imposition of significant fines that appear to affect Muslims in particular.⁵²³ The State was asked to reconsider these regulations in the light of the Covenant.⁵²⁴

Reported denial of registration of religious minority communities; raids and confiscation of religious literature and intimidation; arrests and imprisonment of members of religious communities; and demolition of mosques and churches in Ashgabat in **Turkmenistan** were of concern.⁵²⁵ The State was recommended to investigate all such undue interference.⁵²⁶ Repeated prosecution and imprisonment of Jehovah's Witnesses refusing to perform compulsory military service caused concern, and legal recognition of the right to conscientious objection and alternative civilian service options were suggested.⁵²⁷

6.4. Right to Peaceful Assembly and Association

The HR Committee expressed concern about reports of violations of the freedom of assembly in **Cameroon**, such as the Anglophone crisis, and the excessive use of force by police officials in dissolving demonstrations, which led to many deaths and injuries on 1 October 2017.⁵²⁸ The lack of information on the measures taken to guarantee the right to assembly and free association in the **Dominican Republic** caused further regret of the HR Committee, because the exercise of these rights leads to job losses or deportation in the State.

The abolition of the right to freedom of association and trade union activity on the part of employers or employees were concerning.⁵²⁹ Moreover, the HR Committee expressed concern over allegations that the requests for authorization of protests by

⁵¹⁷ Ibid, §34

⁵¹⁸ Pakistan, §34

⁵¹⁹ Ibid, §33

⁵²⁰ Romania, §43

⁵²¹ Pakistan, §44

⁵²² Serbia, §§36-37

⁵²³ Switzerland, §44

⁵²⁴ Ibid, §45

⁵²⁵ Turkmenistan, §38

⁵²⁶ Ibid, §39

⁵²⁷ Ibid, §§40-41

⁵²⁸ Cameroon, §41

⁵²⁹ Dominican Republic, §31

the political opposition in the **DRC** were systematically refused, contrary to cases of demonstrations supporting the Government.⁵³⁰

Concerning **Honduras**, the HR Committee regretted the excessive recourse to defamation and other criminal offence provisions against persons exercising rights to freedom of assembly and association. Concerns were caused by the conviction of three students on 7 June 2017, and by the criticism that members of the Government levelled at the Office of the High Commissioner for Human Rights (OHCHR) and the Office of the NHRI, in relation to their work promoting respect for the right to peaceful protest.⁵³¹ The State party was recommended to consider the decriminalization of defamation, applying criminal law only in the most serious cases.⁵³²

Jordan was requested by the HR Committee to guarantee the right to peaceful assembly, in conformity with Article 21 of the Covenant.⁵³³ The Act on public gatherings of 2011 to facilitate peaceful assembly was noted as being circumvented: many demonstrations have been prohibited and civil society organizations have been subjected to severe restrictions; participants and organizers have been detained under the Acts on crime prevention and prevention of terrorism; many have been forced to sign pledges not to demonstrate.⁵³⁴

Denial of permits for public protests by trade unions and NGOs, and restrictions on joining trade unions in **Madagascar** raised the HR Committee's concern. Political opponents are reportedly systematically denied the right to protest publicly, even when exercised peacefully.⁵³⁵ Thus, the State was asked to ensure that individuals and political parties enjoy the right to peaceful assembly and freedom of association.⁵³⁶

The HR Committee expressed concern at the broad and vague grounds for cancellation of the registration of NGOs under the Policy for Regulation of International Non-Governmental Organizations in **Pakistan**, which also may constrict the registration of NGOs and their activities, and a review of the legislation was suggested.⁵³⁷

Proposed amendments to the Public Order Act in **Swaziland** will reportedly severely restrict freedom of assembly and association, and the State was therefore asked to take all measures necessary to protect the right to freedom of peaceful association and assembly.⁵³⁸

With regard to **Switzerland**, the HR Committee expressed its concern about the law of 1 November 2008 on public demonstrations and the law of 14 October 2016 on the charging of security costs incurred during demonstrations in the Canton of Geneva. The excessive nature of the conditions that must be satisfied in order to organize a mass event, including an event of a political nature, was of concern, a review of the legislation was suggested.⁵³⁹

The HR Committee expressed concern over the banning of any public gathering of more than five people, and political

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⁵³⁰ DRC, § 41

⁵³¹ Honduras, § 40

⁵³² Honduras, § 41

⁵³³ Jordan, § 33

⁵³⁴ Jordan, § 32

⁵³⁵ Madagascar, § 51

⁵³⁶ Ibid, § 52

⁵³⁷ Pakistan, §§ 39-40

⁵³⁸ Swaziland, §§ 44-45

⁵³⁹ Switzerland, §§ 48-49

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gatherings of more than four people in **Thailand**. The Public Assembly Act (2015) establishing criminal penalties for failing to provide prior notification to authorities regarding the organization of peaceful assemblies, and the arrest of hundreds of people for organizing or participating in peaceful gatherings were of concern.⁵⁴⁰ The State was requested to avoid restrictions that are not compliant with Article 4 of the Covenant, and refrain from detaining individuals who do not present a serious risk to national security or public safety.⁵⁴¹

As to **Turkmenistan**, the HR Committee expressed its concern over reports that assemblies are rare due to fear of reprisals for expressing dissenting views, and that insufficient venues are designated for holding authorized assemblies. The HR Committee noted forcible mass mobilization of the population for participation in mass events organized by the authorities.⁵⁴² The State was asked to revise its laws and practices, including the 2015 Organization and Conduct of Gatherings, Meetings, Demonstrations and Other Mass Events Act, according to Article 21 of the Covenant.⁵⁴³ Also of concern in **Turkmenistan** was the 2014 Voluntary Association Act, with its provisions allowing wide monitoring powers to authorities, over activities and finances of associations and the broad legal grounds for closing them down by court order. The HR Committee expressed concern about the limited number of registered human rights NGOs.⁵⁴⁴ The State party was therefore advised to revise relevant laws and practices to make them compliant with Articles 19 and 22 of the Covenant.⁵⁴⁵

The HR Committee expressed concern about provisions permitting representatives of the Central Election HR Committee and of the Ministry of Justice in **Turkmenistan** to monitor meetings of political parties.⁵⁴⁶ Thus, the State was recommended to take all measures necessary to guarantee the proper functioning of political parties in accordance with the principles of legality, necessity and proportionality.⁵⁴⁷

6.5. Freedom of Movement

The HR Committee noted that various lists exist to control entry into or exit from **Pakistan** and regretted the lack of information on the grounds for the listing, its process and the safeguards against misuse of these lists.⁵⁴⁸ The HR Committee raised further concern that the Exit Control List is allegedly used to restrict the freedom of movement of dissenting persons and that the circumstances under which passports are cancelled or confiscated are not stated in Article 8 of the Passports Act.⁵⁴⁹ **Pakistan** was asked to review its legislation and policies relating to the Exit Control List, the Black List, the Passport Control List and the Visa Control List to comply with Article 12 of the Covenant.⁵⁵⁰

The HR Committee expressed its concern regarding arbitrary restrictions on freedom of movement in **Turkmenistan**, including overly broad grounds for restricting travel abroad under the Migration Act; the alleged use of informal and arbitrary travel bans on individuals, such as journalists, activists, religious leaders and former government officials holding opposition views, as well

⁵⁴⁰ Thailand, §39

⁵⁴¹ Thailand, §40

⁵⁴² Turkmenistan, §44

⁵⁴³ Ibid, §45

⁵⁴⁴ Ibid, §46

⁵⁴⁵ Ibid, §47

⁵⁴⁶ Ibid, §48

⁵⁴⁷ Ibid, §49

⁵⁴⁸ Pakistan, §29

⁵⁴⁹ Ibid, §29

⁵⁵⁰ Ibid, §30

as the reported application of a non-official curfew requiring the population to return home before 10 pm and arrest of non-compliant individuals for 24 hours for explanation and identification purposes.⁵⁵¹ The HR Committee advised the State to end the informal and arbitrary system, and review its laws and practices to ensure that any travel restrictions or curfews are justified under Articles 9, 12 and 17 of the Covenant.⁵⁵²

6.6. Political Participation and Participation in Public Life

6.6.1. Right to Vote and Be Elected

The HR Committee made observations on the right to vote and be elected in its review of **Australia, Bosnia and Herzegovina, Bangladesh, DRC, Honduras, Madagascar, Mongolia, Pakistan, Swaziland** and **Turkmenistan**. The safety and security of individuals was stated as necessary for unhindered and free exercise of the right to vote and be elected in **Bangladesh, DRC, Honduras** and **Serbia**.⁵⁵³

Restrictions on the right of persons to vote included the exclusion of persons of 'unsound mind' and prisoners serving a prison sentence, most of whom are indigenous persons, in **Australia**;⁵⁵⁴ removal of Ahmadis from the general electoral list in **Pakistan**;⁵⁵⁵ exclusion of persons not belonging to 'constituent peoples' in **Bosnia and Herzegovina**,⁵⁵⁶ and exclusion of prisoners in **Mongolia** and **Turkmenistan**.⁵⁵⁷ A blanket denial of the right to all convicted prisoners in **Turkmenistan** was found to be inconsistent with Articles 10(3) and 25.⁵⁵⁸

In **Bosnia and Herzegovina**, the HR Committee recommended adoption of an electoral system that guarantees equal enjoyment of the rights of all citizens under Article 25, irrespective of ethnicity, by amending offending laws and strengthening anti-corruption measures.⁵⁵⁹

The HR Committee recommended that **Swaziland** adopt constitutional reforms to devolve power from the hands of the King to democratically elected branches of government.⁵⁶⁰ Noting the concern that corruption remains fairly widespread within the political community and the lack of independence of the Independent National Electoral Commission in **Madagascar** which may undermine the national reconciliation process, perpetuate the lack of trust in the State party's institutions among the citizens and foster impunity for some perpetrators of human rights violations, **Madagascar** was recommended to ensure strict respect for the principle of separation of powers and redouble its efforts to combat corruption and related impunity; to ensure that free and fair elections are held; to speed up the national reconciliation process before the next electoral deadlines; and to ensure the participation of all citizens in forthcoming elections.⁵⁶¹

Concerned about excessive restrictions on the establishment and functioning of political parties in **Turkmenistan**, the HR Committee recommended that it take steps to guarantee the proper functioning of political parties, free from unnecessary interference, and ensure that any limitations on the establishment of a political party are construed narrowly.⁵⁶²

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⁵⁵¹ Turkmenistan, §28

⁵⁵² Turkmenistan, §29

⁵⁵³ Bangladesh, §30; DRC, §48;

Honduras, §44; Serbia, §40

⁵⁵⁴ Australia, §47

⁵⁵⁵ Pakistan, §47

⁵⁵⁶ Bosnia & Herzegovina, §11

⁵⁵⁷ Mongolia §39; Turkmenistan, §50

⁵⁵⁸ Turkmenistan, §50

⁵⁵⁹ Bosnia & Herzegovina, §12

⁵⁶⁰ Swaziland, §53

⁵⁶¹ Madagascar, §§11-12, 53-54

⁵⁶² Turkmenistan, §48

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6.6.2. Impartiality and Independence of Electoral Monitoring Bodies

Concerned about reports of lack of independence and impartiality of the members of the electoral monitoring body, ELECAM, in **Cameroon**, the HR Committee recommended that it take necessary measures to guarantee its independence, and to ensure holding of successful elections in 2018 and the future.⁵⁶³

The HR Committee expressed its concern over reports of delays by the National Independent Electoral Commission in the process of voter registration in **DRC**, particularly in Kasai, as well as delays in the implementation of the agreement to conduct presidential, legislative and provincial elections by 31 December 2017.⁵⁶⁴

The HR Committee recommended the establishment of an independent and effective election monitoring body in **Serbia** in response to the reports of coerced voting and allegations of attacks on opposition figures.⁵⁶⁵ The HR Committee also recommended the fostering of political pluralism and ensuring the independence and effectiveness of the Elections and Boundaries Commission in **Swaziland**.⁵⁶⁶ The security of ballot boxes was recommended to **Honduras** to prevent the possibility of fraud while in transit from polling stations.⁵⁶⁷

6.6.3. Low Participation

The HR Committee made recommendations to **Jordan**, **Liechtenstein**, **Madagascar**, **Mauritius**, **Pakistan** and **Serbia** to take measures, including temporary special measures to address the low participation of certain sections of their population, such as women,⁵⁶⁸ persons with disabilities⁵⁶⁹ and minorities,⁵⁷⁰ in the public affairs of the State and their access to public services.

The CEDAW made observations on the low degree of political participation of women and the need for temporary special measures in **Jordan**, **Italy**, **Romania** and **Thailand**. The CESCR also noted this in its review of **Liechtenstein** and **Sri Lanka**.⁵⁷¹

⁵⁶³ Cameroon, §§43-44

⁵⁶⁴ DRC, §47

⁵⁶⁵ Serbia, §41

⁵⁶⁶ Swaziland, §53

⁵⁶⁷ Honduras, §45

⁵⁶⁸ Jordan, §35; Liechtenstein, §16;

Madagascar, §54; Mauritius, §41;

Pakistan, §47

⁵⁶⁹ Madagascar, §54; Pakistan, §47

⁵⁷⁰ Mauritius, §41; Pakistan, §48; Serbia, §40

⁵⁷¹ CEDAW, Italy, §§31-32; CEDAW, Jordan, §27; CEDAW, Romania, §§24-25; CEDAW, Thailand, §§16-17; CESCR, Liechtenstein, §15-16; CESCR, Sri Lanka, §§23-24

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