A YEAR IN REVIEW 2019

An Overview of the jurisprudence of the UN Treaty Bodies

A TB-Net initiative

Coordinated by the Centre for civil and political rights

CCPR Centre for Civil and Political Rights

With the support of Open Society Justice Initiative

OPEN SOCIETY JUSTICE INITIATIVE

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TB-Net is an informal group of international NGOs and networks working in strategic partnerships with the UN Treaty Bodies. Created in February 2017, **TB-Net's** mission is to support and enhance the effectiveness of the UN Treaty Bodies so that they can better contribute to the realisation of the human rights of all persons. **TB-Net** does so through advocacy, capacity building, technical assistance, and awareness raising through joint activities and projects.

TB-Net comprises the following members: Centre for Civil and Political Rights (CCPR Centre), Child Rights Connect, the Global Initiative for Economic, Social and Cultural Rights (GIESCR), the International Disability Alliance (IDA), The International Movement Against All Forms of Discrimination and Racism (IMADR), International Womens' Rights Action Watch Asia Pacific (IWRAW-Asia Pacific) and the World Organisation Against Torture (OMCT).

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of the UN Treaty Bodies

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Foreword

For most UN Treaty Bodies, the individual communications procedure has been in place for some time. While the Human Rights Committee continues to receive the greatest number of communications and adopt the greatest number of views, many other Treaty Bodies have significantly increased their workload due to an increasing awareness of the complaints procedure, combined with an increasing number of states recognising the competence of the relevant Committee.

This increase has resulted in dozens of new views being adopted across the universal system without any combined assessment of their impact on the jurisprudence. This also makes it difficult to understand how the jurisprudence has moved on issues that apply to more than one Treaty Body.

TB-net has launched this publication to address this gap. This publication, forming part of TB-Net's efforts to capture the work of the UN Treaty Bodies as a singular human rights system, provides human rights defenders and civil society with a comprehensive overview of key movements in the jurisprudence across all Treaty Bodies throughout 2019. In assessing and summarising each of the key cases, this work identifies the main issues of concerns for each Treaty Body, as well as explore themes that are common to more than one mechanism.

We are confident that this publication will be useful to litigators and human rights defenders and hope that this is the first issue in a long series.

Thanks to the support of the Open Society Justice Initiative, we have also been able to publish this analysis in French and Spanish.

Patrick Mutzenberg
Director of the Centre for Civil and Political Rights

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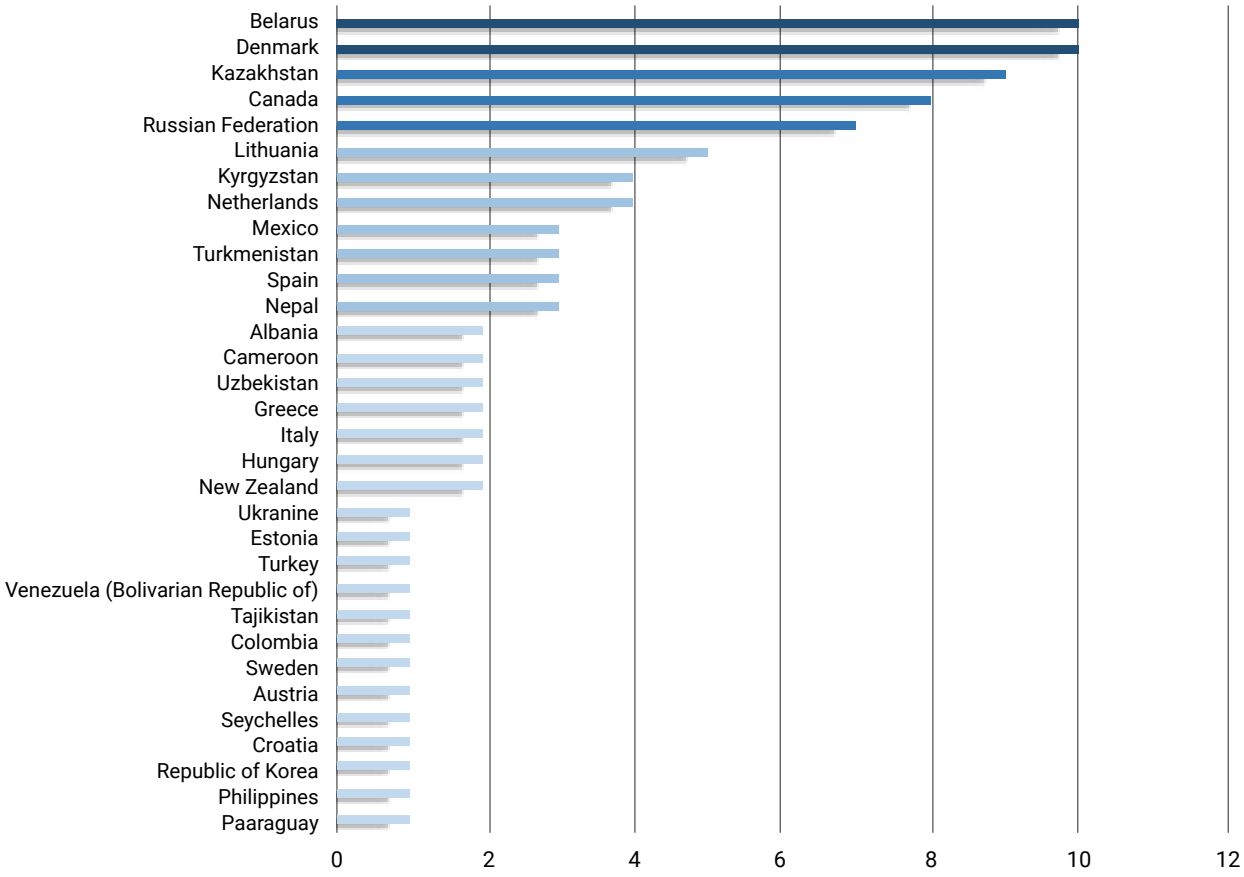
Human Rights Committee (HRCttee)

The Human Rights Committee adopted views on **96 individual communications.**

Geographic trends

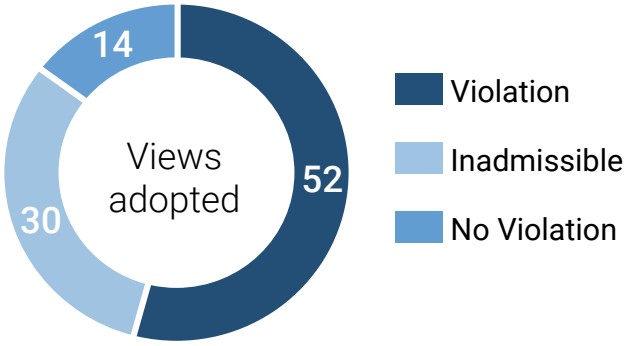
The cases related to **32 states** in 2019. The spread of geographical origin is as follows:



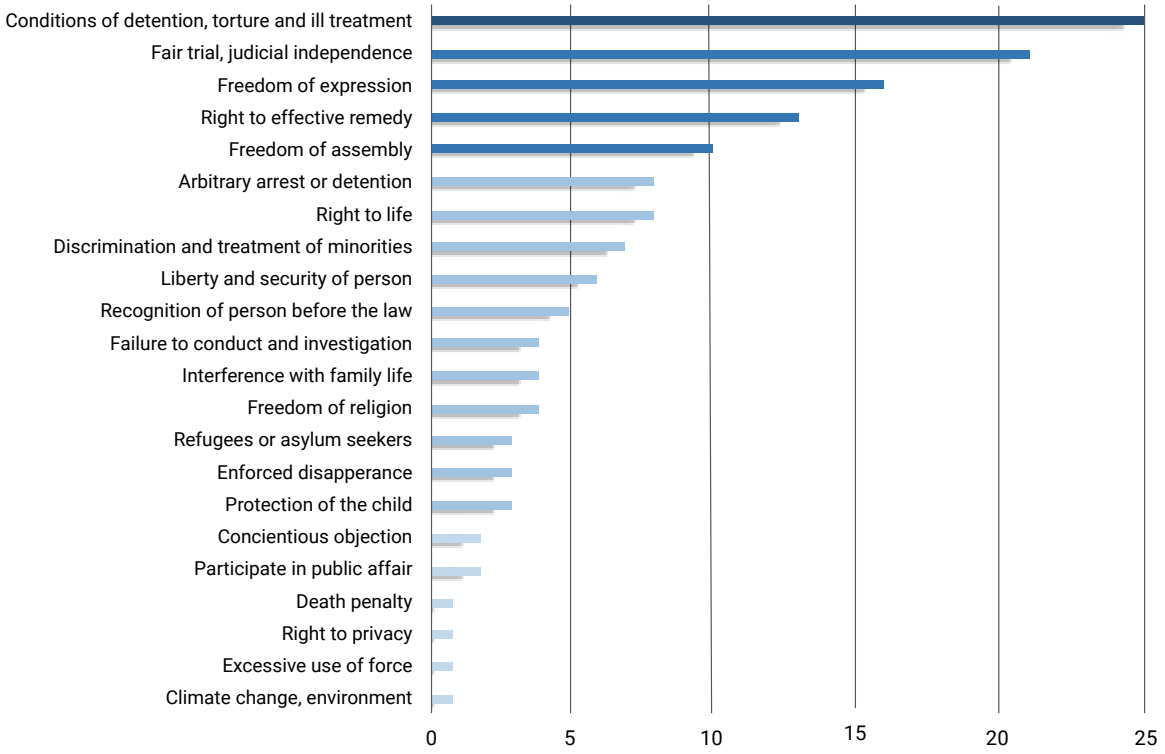
Geographical distribution of individual communication views adopted by the Committee in 2019.

Violations of the Covenant

Of the **96** views on individual communications issued by the Human Rights Committee in 2019, **52** were found to contain violations of the Covenant. **30** were found to be inadmissible, and the remaining **14** were found to contain no violation.



Thematic trends within violations



Quantitative thematic breakdown of themes identified in individual communication Views revealing a violation of the Covenant, adopted by the Human Rights Committee in 2019. Note individual communications may contain more than one theme.

Conditions of detention, torture and ill-treatment

Individual communications alleging a violation of the author's rights relating to detention, torture or ill-treatment were most frequently found to contain a violation of the Covenant (25). Three of which involved an author in Belarus, alleging violations of article 7 at the hands of law enforcement or mistreatment during judicial processes. Four violations involved treatment by Russian law enforcement when arresting suspects, including the eliciting of forced confessions. Five violations related to enforced disappearances, including three perpetrated in Mexico and two in Nepal, as detailed below.

The right to a fair trial

Similarly, there was a substantial crossover in communications alleging ill-treatment and those related to deficiencies in trial procedures. Judicial independence was found to be an issue in 21 individual communications during 2019, against Kyrgyzstan, Nepal, Belarus, the Philippines, Turkey, Turkmenistan, Uzbekistan, Venezuela, Belarus, Kazakhstan, Lithuania and Tajikistan. One violation involved an imposition of a death sentence in Belarus where the accused did not enjoy the right to be presumed innocent, leading to the arbitrary deprivation of their right to life.

Key jurisprudence of the Human Rights Committee

Ioane Teitiota v. New Zealand

CCPR/C/127/D/2728/2016

Claim of a violation of the right to life due to removal to Kiribati impacted by climate change, no violation as threshold of real, personal risk not met

- The communication involves a national of the Republic of Kiribati who claimed asylum in New Zealand owing to the fact that his rights under the Covenant were threatened due to climate change. After having his claim rejected, he and his family were removed back to Kiribati.
- The author claimed that this removal violated his right to life, on the basis that increased salinisation impacted the availability of fresh water.
- **Outcome:** The majority of the **Committee found no violation of the right to life** on the basis of the environmental conditions as they were presented, however signalled that if conditions worsened, a violation could be found if the removal happened in the future.
- Two Committee members issued separate dissenting opinions, expressing disagreement with the majority firstly on the basis that the Committee did not take into account the rights of dependent children, and secondly that the Committee should not wait until life is at risk of being taken to find a violation.

1. Facts

The author is a national of the Republic of Kiribati who claimed that New Zealand violated his rights under article 6 (1) of the Covenant by removing him to Kiribati in 2015. The author claimed that fresh-water had become scarce on Tawara due to increased salinization and overcrowding. The author further claimed that attempts to combat sea level rise have largely been ineffective, inhabitable land on Tawara has been eroded, resulting in a housing crisis and land disputes that have caused numerous fatalities. The author claimed that such circumstances driven by climate change and oceanic sea-level rise had forced him to migrate from the island of Tarawa in Kiribati to New Zealand.

The author applied for asylum in New Zealand however in June 2013 the application was declined. The domestic authorities considered numerous instruments (including the 2007 National Adaptation Programme of Action filed by Kiribati under the United Nations Framework Convention on Climate Change) and the expert opinion of a doctoral candidate researching climate change in Kiribati, John

Corcoran, who informed the Tribunal that the territory was an island state in crisis owing to climate change and population pressure. Unemployment was high and as the highest point in the country rose 3m above sea level, land was increasingly scarce, leading to tensions amount the population.

The Tribunal accepted that the right to life must be interpreted broadly, however could not point to any act or omission by the Government of Kiribati that might indicate a risk that the author would be arbitrarily deprived of his life within the scope of article 6 of the Covenant. The author appealed the decision of the Tribunal all the way to the Supreme Court, however the Supreme Court was not persuaded that a miscarriage of justice had occurred, finding that environmental degradation due to climate change could not "create a pathway into the Refugee Convention or other protected person jurisdiction".

2. Complaint

The author claimed that by removing him to Kiribati, New Zealand had violated his right to life under the Covenant on the basis that sea-level rise in Kiribati have resulted in firstly the scarcity of habitable space, which in turn created violent land disputes that endanger life, and secondly environmental degradation which has damaged freshwater supplies.

3. Merits

The Committee recalled its general comment 31 on the nature of the legal obligations imposed on state parties, namely the obligation not to extradite, deport, expel or remove a person where there are **substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated in articles 6 and 7 of the Covenant.** Further, the Committee recalled that such a risk must be personal, and cannot derive merely from the general conditions in the receiving state, except in the most extreme cases, and that there is a high threshold for providing substantial grounds to establish such a risk exists.

The Committee further recalled that it is for the state party organs to make the determination of whether such a risk exists, unless it can be established that the assessment was clearly arbitrary or amounted to a manifest error or denial of justice.

On the merits of the case, the Committee recalled its general comment 36, in which they stated that the obligation of a state to protect life extends to reasonably foreseeable threats which can result in the loss of life. Further, that environmental degradation, climate change and unsustainable developments constitute some of the most serious and pressing threats (Para 62). However, the Committee in this case could not find a procedural deficiency at the Tribunal level in New Zealand which amounted to 'clearly arbitrary or amounted to a manifest error or denial of justice'.

On the **question of land scarcity driven violence**, the Committee noted that general situation of violence is only of sufficient intensity to create a real risk of irreparable harm under articles 6 or 7 of the Covenant in the most extreme cases, where there is a real risk of harm simply by virtue of an individual being exposed to such violence on return. The Committee found in this instance the **risk to the author was not personal enough to meet this threshold**.

On the issue of **lack of freshwater,** the Committee took note of advice provided by experts and concluded that although water would need to be rationed, there was insufficient information indicating that the supply of fresh water is inaccessible, insufficient or unsafe so as to produce a reasonably foreseeable threat of a health risk that would impair his right to enjoy a life with dignity.

Finally, on the issue of **lack of access to sustenance**, the Committee found that while crops were harder to grow, they were not impossible, and that the author had failed to provide sufficient information establishing that if removed, he would be exposed to a situation of indigence, deprivation of food or extreme precarity resulting in a threat to his life, or a life with dignity.

The Committee accepted the authors assertion

that sea level rise is likely to render the island inhabitable in 10-15 years, however concluded that this timeline did not satisfy the need for the risk to be real, personal and imminent in order for removal to violate the Covenant.

On this basis, the Committee found that removing the author did not constitute a violation of article 6.

4. Separate Opinions

Individual opinion of Committee member Duncan Laki Muhumuza (dissenting)

Committee member Duncan Laki Muhumuza did not agree with the majority as he felt the circumstances laid out by the author resulting from climate change are significantly grave, and pose a real, personal and reasonably foreseeable risk of a threat to his life. This was on the basis that it would be **counter-intuitive to the protection of life to wait for deaths to be frequent and considerable in number in order to consider the threshold of risk as met**.

Individual opinion of Committee member Vasilka Sancin (dissenting)

Committee member Vasilka Sancin refused to join the majority on the basis that the state party had failed to consider the author's and his dependent children's access to safe drinking water.

Norma Portillo Cáceres et al. v. Paraguay

CCPR/C/127/D/2728/2016

Claim of a violation of the right to life due to state failure to protect authors from agribusiness driven environmental degradation on adjacent property, violation of right to life and freedom from arbitrary interference with family

- The communication involved twelve Paraguayan nationals who claimed that the State party violated their rights under article 6, 7, 17 and 2(3) owing to its failure to protect the authors from environmental degradation and pollution caused by fumigation and the spray of toxic agrochemicals to nearby plantations. Following an increase in agribusiness in 2005, the authors began to experience increasingly frequent symptoms of pesticide and chemical poisoning, such as nausea, dizziness, headaches, fever, stomach pains, vomiting, diarrhoea, coughing and skin lesions. One of the authors passed away while experiencing symptoms. The authors filed criminal proceedings as well as proceedings against four government agencies and obtained an order by a local court enforce environmental standards, however this was never implemented.
- **Outcome:** The Committee found that the failure of Paraguay to enforce the environmental regulations leading to the author's experiencing nausea, dizziness, headaches, fever, stomach pains, vomiting, diarrhoea, coughing and skin lesions, and the death of Mr. Portillo Cáceres, revealed a violation of the right to life in article 6 of the Covenant.
- Further, the impacts of the fumigation on the farm animals, crops, fruit trees, water resources, fish and crops constituted an arbitrary infringement on the author's right to privacy, family life and home under article 17.
- Finally, given that the motions for enforcement of environmental regulations filed by the authors, as well as criminal proceedings, had not resulted in any progress in eight years, the Committee found a violation of the right to an effective remedy in article 2(3) read in conjunction with article 6 and 17.

1. Facts

The authors are twelve Paraguayan nationals who claimed that the State party has violated their rights under articles 6, 7, and 17 of the Covenant, read alone and in conjunction with article 2(3). One of the authors, Norma Portillo Cáceres, submitted the claim on her own behalf and on behalf of her deceased brother, Rubén Portillo Cáceres.

The authors engaged in family farming for their own consumption and sale in Colonia Yerutí, a small settlement of State-owned land established in 1991 which has been distributed to campesinos under the agrarian reform program. The authors noted that in 2011, no more than 400 people resided in the settlement due to emigration prompted by the lack of decent living conditions, including poor access to public services, repeated crop fumigation with toxic agrochemicals and the increasing contamination of waterways in the area. Since 2005, the area has seen a rapid increase in agribusiness, and plantations often breach domestic regulations in terms of density and location. The failure of the State to monitor and enforce regulation relating to the industry has been cited has a major justification for businesses to continue to act in this manner.

The author's resided on the south-eastern border of Colonia Yerutí bordering industrial farms both inside and outside the settlement. The authors submitted that the increasing large-scale use of toxic agrochemicals has had a severe impact on the authors' living conditions, livelihoods and health, noting that contaminated water resources and aquifers have rendered it impossible to use nearby natural resources. Since the agribusiness increase in 2005, the authors submit that they have experienced a range of physical symptoms following the fumigation spraying, including nausea, dizziness, headaches, fever, stomach pains, vomiting, diarrhoea, coughing and skin lesions. The authors noted that every year they lodge complaints with various ministerial, administrative and judicial authorities however have never received a reply.

On 3 January 2011, Mr. Portillo Cáceres began experiencing vomiting, diarrhoea, fever and general discomfort. Over the coming days his condition continued to worsen, and his family took him to a district hospital in Curuguaty, however he passed away while en route and was unable to be revived at the hospital. Between 8 and 14 January, 22 other inhabitants of the settlement were hospitalised after experiencing similar symptoms.

Following the death of Mr. Portillo Cáceres and the poisoning of members of the community, the authors lodged a complaint with the district prosecutor's office, resulting in criminal charges being brought against seven individuals. However, following a hearing in June 2013, the criminal court stayed the proceedings in September 2013. The authors also filed a writ of *amparo* against four government agencies responsible for environmental protection, and a District Court ordered the institutions to carry out their assigned functions. However, no steps have been taken to enforce the decision.

2. Complaint

The authors submitted that the State party has failed to provide the required protections necessary to comply with the obligation to protect the authors' right to life. The authors also submitted that their rights under article 17 have been violated owing to the State's failure to enforce regulation which would limit the environmental pollution which has caused an unlawful and arbitrary interference with their privacy and family. The authors claimed that the State bears *culpa in vigilando* in its failure to enforce the laws. Finally, the authors claim that the State party has violated their right to an effective legal remedy on the basis that the environmental pollution which poisoned the authors and led to the death of Mr. Portillo Cáceres has not been the object of an effective, appropriate, impartial or diligent investigation.

3. Merits

The Committee noted the authors claim that the events presented constitute a violation

by omission of article 6 of the Covenant, in respect of both Mr. Portillo Cáceres who died while exhibiting symptoms of pesticide poisoning and the authors themselves, due to the state party's failure to provide protection.

The Committee noted that a narrow interpretation of article 6 not properly convey the full protection available under the Covenant, and further recalled its *General Comment No. 36*, which provides that the right to life entitles "individuals to enjoy a life with dignity and to be free from acts or omissions that would cause their unnatural or premature death". Further, "States parties should take all appropriate measures to address the general conditions in society that may give rise to threats to the right to life or prevent individuals from enjoying their right to life with dignity", which includes threats from environmental pollution.

In the present case, the Committee found that heavily spraying the area with toxic agrochemicals posed a reasonably foreseeable to the authors' lives given that such large-scale fumigation bas contaminated the area in which the authors live, the rivers in which they fish, the water that they drink and the produce which they eat. Despite numerous complaints and motions filed, the fumigation continued. On this basis, and in view of the acute poisoning suffered by the authors and of the death of Mr. Portillo Cáceres, the Committee found a violation of article 6 of the Covenant. In light of this, the Committee did not consider whether the facts disclosed a violation of article 7.

The Committee also considered the authors claim that the farm animals, crops, fruit trees, water resources, fish and crops constituted components of their privacy, family life and homes, and that the State party's failure to enforce the environmental standards constituted an arbitrary interference on their rights under article 17. The Committee recalled that the term "home" is to be interpreted as a place where a person resides or carries out his or her usual occupation, and further that the aforementioned elements constitute components of the way of life of the authors, owing to their attachment to and dependency on the land (General Comment No. 16). On this basis, the Committee found that they can be considered to fall within the protection of article 17. Owing to the pollution that has had a direct repercussion on the author's right to private and family life, the Committee found that the events disclosed a violation of article 17 of the Covenant.

Finally, the Committee turned to the issue of an effective remedy. In particular, the Committee noted that the agribusiness activity that resulted in violations was never subject to criminal investigations, and that the writ of *amparo* which was granted was never put into effect. On the basis of the multiple failings of the State party, the authors have not received any redress for eight years, revealing a violation of article 2(3) read in conjunction with articles 6 and 17 of the Covenant.

4. Recommendations

Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. The Committee requested that Paraguay make full reparation to individuals whose Covenant rights have been violated.

Accordingly, the State party is obligated, inter alia to:

- undertake an effective, thorough investigation into the events in question;
- impose criminal and administrative penalties on all the parties responsible for the events in the present case;
- make full reparation, including adequate compensation, to the authors for the harm they have suffered;
- take steps to ensure that similar violations do not occur in the future.

5. Implementation

The Committee requested that the State party provide an update outlining measures taken to give effect to the Committee's views within 180 days, or prior to 25 January 2020.

G.I. v. Greece

CCPR/C/126/D/2582/2015

Claim of a violation of the right to family life and ill-treatment due to demolition of temporary Roma housing, inadmissible as insufficiently substantiated

- The communication concerns an Albanian Roma living in Greece, who had his temporary housing demolished by Greek authorities. Following a domestic court dispute the authorities were acquitted of discrimination towards Roma on the basis that the housing was demolished while the author was absent, and further that authorities took steps to provide rental subsidies for displaced Roma in the municipality.
- **Outcome:** The Committee considered the communication insufficiently substantiated and therefore inadmissible.

1. Facts

The author is a national of Albania of Roma origin. At the time of the communication, the author resided in Greece. In August 2014, the author and other Albanian Roma were evicted from the Riganokampos settlement in Patras. Following this, he moved to another similar settlement in Makrygianni, where he lived in a shed without electricity, sewage, garbage disposal or running water. The author was later evicted from this settlement, and he and other Albanian Roma moved to another settlement in Athens, from which he was also evicted shortly afterwards. The mass evictions were bragged about by local authorities in local media, which following a request from the author's counsel triggered an urgent visit from the Council of Europe's Commissioner for Human Rights. The Commissioner wrote a letter to the Greek authorities requesting clarification on the steps taken to ensure that Roma families were relocated safely. The Greek authorities did not respond.

In December 2006 the author's counsel filed a criminal complaint with the prosecutor's office in Patras relating to the evictions, naming the Mayor and two Deputy Mayors as defendants, alleging they had publicly boasted about their "cleaning operation" in evicting the Roma. All defendants were acquitted of the charges, on the basis that the makeshift home was constructed illegally, and at the time, the author had been away from the area for months. The Court reasoned that the was no discrimination in the removing of the makeshift home, and further that the municipality had already provided numerous rent subsidies for Roma residents in attempts to secure adequate living conditions.

2. Complaint

The author claimed that by forcibly evicting him from his settlement in Patras, Greece, the state party had violated his rights under articles 7 and 17 (1) and (2); and 23 (1), 26 and 27, each read alone and in conjunction with articles 2 (1), (2) and (3), of the Covenant.

Regarding article 7, the author alleged that the destruction of the houses where the Roma resided constituted cruel, inhuman or degrading treatment.

The author further alleged that the eviction arbitrarily and unlawfully interfered with the author's family and home in violation of article 17. The author further alleged that as no remedies were available, and because only Roma suffer such problems, the state party violated his rights under article 23 (1) in conjunction with article 2(1), (2) and (3).

3. Admissibility

On the claim of a violation of article 27, the Committee further noted that the author does not specific why he considers that the state

violated his individual rights, considered in a collective dimension to enjoy his culture, profess his religion or use his language in a community group. On this basis, the Committee found this claim insufficiently substantiated and therefore inadmissible.

In assessing the authors claim under article 17, Committee recalled the concept of home within the meaning of the Covenant, **referring to the place where a person resides or carries out his or her usual** occupation. In this manner, the Committee recalled its jurisprudence noting that a "home" is factually dependent on whether there is a continuous, unchallenged occupation of the specific place in question – while "daily physical presence at the home is not required, an individual must demonstrate credible evidence of occupation of the home." (See: *I Elpida et al. Greece*, para 12.3).

On this, the Committee considered that the author firstly had not informed the authorities that he would be vacant from the address for a number of months, and further that he had provided the authorities a different address for his residence permit. The author had further failed to establish a legal interest over the property and did not claim that there were any material belongings which were removed or damaged. The Committee noted that while the author relies on the Committee's views in *Georgopoulos et al. v. Greece*, in that case the author had been born in the settlement from which they were evicted, had always lived there, and had immediately contacted municipal authorities to seek a remedy after learning of the eviction.

Finally, on the author's claim regarding a violation of article 7, the Committee noted that the author had not provided adequate information to suggest that the authorities had subjected him to cruel, inhuman or degrading treatment.

In light of the above, the Committee considered the communication insufficiently substantiated for the purpose of Article 2 of the Optional Protocol and therefore inadmissible.

Mario Staderini and Michele De Lucia v. Italy

CCPR/C/127/D/2656/2015

Arbitrary restrictions placed on referendum processes in Italy, state party requested to review legislation

- The communication concerned a claim of a violation of the right to take part in public affairs by organisers of a referendum, constitutional requirement to acquire 500,000 individually witnessed signatures by Italian citizens unduly unreasonable and creates an arbitrary limitation on rights guaranteed by article 25 of the Covenant.
- **Outcome:** The Committee found a violation as the public processes in place for the distribution of officials to witness the signatures was not fit for purpose, state party recommended to review its legislation in view of removing any unreasonable restrictions on modes of direct participation in public affairs.

1. Facts

The authors of the communication are two nationals of Italy, who claimed that the state party has violated their rights under article 25(a) and (b) of the Covenant. The authors are members of an Italian political non-violent movement, called the "Italian Radicals". In April and May 2013, the authors filed requests with the registry of the Court to hold six national referendums, aimed at repealing legislative provisions relating to immigration, narcotic drugs, divorce and public funding for political parties and for religious institutions. The authors however found procedural deficiencies in the public system meant that they struggled to find the staff needed to complete the referendum processes.

The central issue of the complaint relates to the requirement under Italian constitutional law for the initiation of a referendum to have at least 500,000 signatures of Italian citizens filed with the competent authorities, in order to have a referendum placed on the ballot. Each signature must be collected in person on specific forms, and must be dated, signed and stamped by public officials. All signatures or pages of such, must be authenticated by a public official, such as a notary, a justice of the peace, court registrar, or municipal secretary. The organisers must also collect a certificate for each signatory, issued by the municipality in which the voter is registered, verifying the signatory's registration. Such public officials must also be compensated for their time. In July 2013 the authors sent a letter to the Ministry of the Interior and the Ministry of Justice, detailing the obstacles they were facing and therefore their inability to authenticate the required number or signatures nor pay for the public officials required.

2. Complaint

The authors claimed that the laws and procedures put **in place to hold referendums in Italy are unduly restrictive**, arbitrary and unreasonable, on the basis that they are not justified by necessity, reason or accepted lawful principle. The authors stressed that domestic Italian laws should be interpreted in light of the Committee's guidance in general comment No. 25 (1996) on the participation of public affairs. The authors asserted that as they stand, they merely pay lip service to the constitutional right to initiate referendums, resulting in a violation of article 25(a) and (b) of the Covenant.

3. Merits

The Committee noted the authors claim that although States parties do not have the obligation to organise referendums, when they do provide for ways in which citizens can directly participate in public affairs, they have an obligation to ensure that citizens can participate effectively. On this basis, the authors argued that the laws and procedures for initiating referendums are unduly unreasonable, and further the state party's counter-argument that Italy is a parliamentary representative democracy, and the instrument for initiating a referendum is only one of the methods through which citizens may take part in public affairs. Further, that 71 referendums have been initiated since 1946.

The Committee noted that procedural obligations on state parties included the obligation not to impose unreasonable restrictions on the right to directly participate in public affairs by voting, as well as other forms available to citizens, however article 25(a) of the Covenant does not require State parties to adopt modalities of direct democracy, such as referendums. However, the Committee noted that due to article 75 of the state party's Constitution, **the right to organise a referendum is currently an available right – and therefore the state party must not place unreasonable restrictions on this right.**

The Committee then assessed each of the procedural aspects to ascertain whether they constitute lawful restrictions for the purposes of article 25 of the Covenant, in light of guidance in general comment No. 25 (1996) **providing that where a mode of direct participation by citizens is established, no distinction may be made between citizens and no unreasonable restrictions may be imposed.**

With respect to the **requirement to have a number of public officials witness and certify signatures to ensure the integrity of the process**, the Committee noted that while there are practical challenges, the process does pursue a legitimate aim. While recognising that the state party needs to manage the integrity of the process, in this case the Committee found that an imbalance exists between the requirements imposed on the authors, and the absence of any available avenue for them to conduct a proper process without access to state officials. In this case, the Committee found that the requirement to collect signatures **in the presence of state officials without adequate procedure** to **have them present and available**, **constituted an unreasonable restriction** on the author's rights under article 25(a) of the Covenant.

On the issue of public officials being compensated for their time, the Committee noted the claim by the authors that this creates

inherent discrimination, as the requirement to compensate public officials results in discrimination against their particular political opinion. However, the Committee also noted that other initiatives supported by the Italian Radicals, which were also endorsed by larger political parties, managed to collect multiple more signatures. On this basis, the Committee could not conclude that the distinction was on the basis of political opinion.

In sum, the Committee concluded that the requirement that public officials be compensated and reimbursement be made where the population supports the referendum is a **reasonable measure, as it preserves public resources and avoids excessive use,** and therefore in pursuit of a legitimate aim which was not in violation of the Covenant.

4. Recommendations

The Committee noted that the state party is under an obligation to provide the authors with an effective remedy, including making full reparation to individuals whose Covenant rights have been violated. This includes:

- Take all necessary steps to ensure similar violations do not occur in the future;
- Review its legislation with a view to ensuring that the legislative requirements do not impose unreasonable restrictions on any of the modes of direct participation by citizens provided for in the Constitution, including providing for avenues for promoters of referendum initiatives to have signatures authenticated.

5. Implementation

- The Committee requested the state party provide a follow up information on measures taken within 180 days (or before 06 May 2020).

Zinaida Mukhortova v. Kazakhstan

CCPR/C/127/D/2920/2016

Human rights defender and lawyer forcibly hospitalised in Kazakhstan, subjected to inhuman and degrading treatment

- A lawyer and human rights defender claimed the state party has violated her rights under the Covenant when it forcibly hospitalised her on five separate occasions. The author alleged that the hospitalisation was in retaliation of her speaking out against the President of Kazakhstan as part of her human rights advocacy and work.
- **Outcome:** The Committee found most of the claims inadmissible due to being insufficiently substantiated, however found violations on the procedural aspects of article 9 (detention was arbitrary), and further that the subjection to medical treatment against the authors will amounted to a violation of article 7 (inhuman and degrading treatment).

1. Facts

The author is a lawyer and **human rights defender based in Kazakhstan**, who claimed that the state party violated her rights during a series of forced hospitalisations and arrests of an arbitrary nature.

Following a lawsuit in 2009 in which the author made a claim, in defence of a client, that the other party was being protected by the deputy of the lower chamber of the parliament of Kazakhstan (Yerlan Nigmatulin), the author was charged with "knowing false denunciation" under the domestic criminal code in September 2009. As the result of this charge, the author was subject to a travel ban which was later replaced by an order for the authors arrest. The author was arrested

in February 2010 and the President of the Supreme Court refused to hear her appeal. The author was subject to five separate forced hospitalisations against her will, as follows:

The first following a court ordering that she undergoes a compulsory psychiatric examination. In April and July 2010 psychiatric experts concluded that the author suffered from "chronic delusional disorder" and later found her "mentally unfit" to stand trial, ordering her to forced hospitalisation and inpatient treatment. The author was kept in a closed psychiatric hospital in Aktas from January to September 2011.

The second followed a visit to a psychiatric centre in December 2011 where a medical commission decided to have the author forcible hospitalised. The author was kept in the facility for two weeks before being released. In early January 2012, the author lodged a complaint with domestic authorities against the deputy Chief Medical Officer, claiming that she had been forced to sign a form stating that her hospitalisation was voluntary.

Later in January 2012, the Supreme Court quashed the earlier decisions, finding that the author had not been a threat to others or had committed violent acts, and ordered a review of the case. However, from May to June 2012 the author was subject to another forced hospitalisation for compulsory psychiatric examination. The legality of which was debated on an off for months following her confinement.

In August 2013, the author was forcibly taken by two male nurses and two police officers to a clinic where she was subjected to medical treatment. During the 'arrest' the author was hit in the leg and head. The author lodged complaints with the Supreme Court that she was subjected to inhuman and degrading treatment, however these were declined. The author was released in early November 2013. The author submitted that following her release, an investigation conducted by a medical oversight board had concluded that she was not in need of forced psychiatric treatment.

The author was forcibly taken from her home again by 6 men in July 2014, who acted aggressively towards her and her grandchildren. When her family queried her detention, they were informed that the author had been hospitalised again at a medical facility in Balkhash city. The author was subjected to intensive treatment. Her family lodged another complaint alleging torture and ill-treatment, however the investigation showed no evidence of torture. The author did not appeal the finding due to fear of being hospitalised again.

She notes that in total, six medical opinions were conducted, including two which revealed that she was mentally fit and subject to torture and degrading treatment. These independent reports were ignored and all appeals to courts to consider these complaints were ignored for various reasons.

2. Complaint

The author claimed that the state party has violated her rights under articles 7, 9 and 14, read alone and in conjunction with article 2, and articles 18 and 19, of the Covenant.

She alleged that her forced internment in a psychiatric hospital on five occasions, including preventing her from submitting complaints, humiliating and degrading treatment, constituted a violation of article 7.

The author alleged that she could not appeal her arrest, was not informed of the reasons or brought before a judge, in violation of her rights under article 9 of the Covenant. The author further alleged that her due process guarantees and rights under article 14(1) were violated, in addition to her right to be presumed innocent under article 14(2), as well as proper access to counsel, in violation of article 14(3)(d).

The author further claimed that her rights under article 18 and 19 were violated, owing to her forcible internment in psychiatric facilities in order to silence her and prohibit her from defending her rights and those of other people.

3. Admissibility

The Committee noted that the authors claim under **article 7** of the Covenant, however considered that on the facts provided, these elements were **insufficiently substantiated** and therefore inadmissible. Similarly, the Committee considered that the author had **insufficiently substantiated** her claim regarding **article 9**, as it related to the authors arrest, and the impossibility of appealing the decision or the detention.

Further, the Committee considered that for the purposes of the **author's claim under article 14(1), the author had failed to demonstrate that the lack of access to appeal**, bias, or equality of arms amounted to the threshold for arbitrariness, or denial of justice, and found this portion of the claim inadmissible. Similarly, the Committee also found that there were **insufficient facts advanced to support a claim under article 14(3)(a), and article 14(3)(d),** and additionally that the claim **that forced hospitalisation does not fall within the scope of a claim under article 14(2)**. These two claims were also declared inadmissible.

Additionally, on the authors claims that her rights under articles 18 and 19 were violated in order to silence the author, the Committee noted that the author had insufficiently substantiated these claims, and they were similarly declared inadmissible. Finally, however, the Committee did consider that the author had sufficiently substantiated the remaining claims under article 7 and 9, as they relate to her involuntary apprehension, committal to a hospital and forced medical treatment.

4. Merits

The Committee noted that on the **evidence provided, the facts show the author was forcibly admitted to a psychiatric hospital several times** while she did not pose any real threat to herself or to others, and further after this fact was established by a court decision in July 2012, the author was involuntary committed again.

The Committee recalled that even though the right to liberty is not absolute, detention of an individual is such a serious measure that it can only be justified only where other, less severe **measures have been considered, implemented, and found to be insufficient to safeguard against public interest.** On this basis, the Committee found a violation of **article 9** with regards to the author's involuntary and arbitrary deprivation of liberty.

More specifically, any deprivation of liberty that results in forced hospitalisation, must be necessary, proportionate for the purposes of protecting the individual in question from serious harm or preventing injury to others. (See *T.V. and A.G. v. Uzbekistan*, para. 7.7). On this basis, the Committee considered that the author being subjected to involuntary apprehensions and hospitalisations for a total of more than 15 months, as well as medical treatment against their wish, in light of the fact that the author was of no risk of harm to herself or to others, amounted to inhuman and degrading treatment or punishment within the meaning of article 7 of the Covenant.

5. Recommendations

The Committee noted that the state party is under an obligation to provide the authors with an effective remedy, including making full reparation to individuals whose Covenant rights have been violated. This includes an obligation to take all necessary steps to ensure that similar violations do not occur in the future.

6. Implementation

The Committee requested the state party provide a follow up information on measures taken within 180 days (or before 28 April 2020).

Hadji Hamid Japalali v. The Philippines

CCPR/C/125/D/2536/2015

Extra-judicial killing in Philippines constitutes arbitrary deprivation of life, violation of the right to effective remedy

- The brother of a man killed in an extra-judicial killing in the Philippines claimed that the state party violated his brothers right to life under article 6 of the Covenant. The authors brother was executed by eight soldiers who opened fire on his house in the early hours of the morning while he was sleeping. The eight soldiers were charged with homicide however acquitted on the basis that they were executing a lawful order by a military superior.
- **Outcome:** The Committee found a violation of article 6 in respect of the victims (Bakar Japalali and Carmen Baloyo-Japalali) on the basis that the state party resorted to lethal force in the context of law enforcement without undertaking measures to determine necessity or proportionality. The Committee also found a violation of the right to effective remedy on the basis that the state party had taken no steps to conduct an independent or impartial investigation into the killings.

1. Facts

The author is a national of the Philippines who claimed on his own behalf and on behalf of his deceased brother and his brothers wife, that the state party violated their rights under article 6, and that he himself was a victim of a violation of article 2(3), read in conjunction with article 14 (1) of the Covenant.

On the morning of 8 September 2004, the author's deceased brother and his wife were repeatedly shot with rifles by eight members of the Philippine army while they were sleeping in their home. The "operation" lasted 10 minutes, whereby 32 soldiers conducted a strike on the house. As the victims were allegedly being carried to safety, the soldiers continued to shoot. The author's brother died in the attack, and his sister in law died shortly after.

The Office of the City Prosecutor later charged the eight soldiers with two counts of homicide. While the court found that those accused had caused the death of the author's brother, the court considered they had acted in compliance with a lawful order issue by a supervisor. The court found it mystifying why the soldiers would have continued to shoot at the victims as they were being tended to, however could not establish their guilt beyond reasonable doubt. The author claimed that there is no right of appeal under Philippine law, based on the prohibition of double jeopardy in the constitution.

2. Complaint

The author claimed that the victim's rights under article 6 were violated. Even if the orders were given by a superior, these orders were unlawful, and the resulting deaths still amounted to an arbitrary deprivation of life.

The author argued that throughout the process, he was left without an effective remedy which is required to be provided for a violation of the Covenant under article 2(3). The author further alleged that his right to a fair and public hearing by an independent and impartial tribunal as guaranteed by article 14(1) was violated.

3. Admissibility

The Committee noted the authors claim under article 14(1), however found that the author was not a party to the national criminal proceedings against those responsible for the death of his brother and sister and law. The Committee therefore found this part of the communication inadmissible.

4. Merits

The Committee recalled that the right to life **is the supreme right from which no derogation is permitted, even in situations of armed conflict and other public emergencies which threaten the life of the nation**. The Committee further recalled that the Covenant prohibits the arbitrary deprivation of life, that is, deprivation that is broadly speaking, inconsistent with international or national law. In this manner, the Committee reiterated the principles of the use of force in law enforcement, noting that arbitrary must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law as well as elements of reasonableness, necessity, and proportionality. **The use of potentially lethal force in law enforcement is an extreme measure, which should be resorted to only when strictly necessary to protect life or prevent serious injury from an imminent threat.**

In this manner, the Committee found that the killing was not strictly necessary for protecting life, and in this light the state party had violated the victims (Bakar Japalali and Carmen Baloyo-Japalali) of their lives in violation of article 6, paragraph 1, of the Covenant.

On the question of a violation of article 2(3), the Committee noted that the state party had not provided any indication that sufficient measures were undertaken to establish whether legal force used in an area of civilian residence, was absolutely necessary, nor had they established that an effective investigation was undertaken into the killings in order to determine their legality. In light of the above, the Committee found that the state party violated the author's rights to an effective remedy.

5. Recommendations

The Committee noted that the state party is under an obligation to provide the authors with an effective remedy, including making full reparation to individuals whose Covenant rights have been violated. This includes an obligation to:

- Conduct a thorough and effective investigation into the arbitrary deprivation of life of Bakar Japalali and Carmen Baloyo-Japalali by army soldiers;
- Prevent similar violations in the future.
- Provide the author and his family with detailed information about the results of this investigation; and
- provide adequate compensation to the author.

Notwithstanding the terms of article III, Section 21 of the Philippine Constitution, the State party should ensure that it does not restrict enjoyment of the right to an effective remedy for serious human rights violations such as extrajudicial executions.

6. Implementation

The Committee requested the state party provide a follow up information on measures taken within 180 days (of before 28 September 2019).

7. Separate Opinions

Individual opinion by Mr. Gentian Zyberi (concurring)

Mr. Gentian Zyberi concurred with the majority reasoning however felt he must express the rationale behind the fundamental principles of IHL that apply to the attack, namely precautions, distinction and proportionality.

Zyberi notes that the case at hand arises out of a military occupation in the context of a non-international armed conflict between the Philippine armed forces and the Moro National Liberation Front. IHL applies in this context, in parallel with international human rights law.

IHL further requires that in the conduct of military operations, constant care must be taken to spare civilians and civilian objects. **Further, any practices inconsistent with IHL, including the targeting of civilians, civilian objects and objects indispensable to the survival of the civilian population, indiscriminate attacks, failure to apply the principles of precaution and proportionality,**

and the use of human shields, would also violate article 6 of the Covenant.

If circumstances permit, advance warning must be given for military operations which affect the civilian population**. In this manner, such serious failures by an armed unit of the Philippine government engage the responsibility of that state under article 6.**

Fulmati Nyaya v. Nepal

CCPR/C/125/D/2556/2015

Arbitrary deprivation of liberty of 14 year old Nepalese author, Committee finds rape to be an interference with family life, dissenting member disagrees

- A 14-year-old Nepali national was arrested by the Royal Nepalese army and subjected to rape, sexual assault, and other torture owing to a suspected Maoist affiliation. She was subjected to years of detention, during which she was raped and subjected to torture and ill-treatment. She was released in 2002, however suffered from social exclusion ultimately leading to marital rejection.
- **Outcome:** The Committee found violations of numerous articles of the Covenant, including article 17 and 23(1) due to her unlawful and arbitrary interference with her privacy and sexual life as a woman and the disruption of her family life.

1. Facts

The author is a member of the indigenous Tharu community and a national of Nepal who claimed that the state party has violated her rights under articles 2, 3, 7, 8 (3) (a), 9, 10 (1), 17, 23 (1), 24 (1) and 26 of the Covenant.

The author was arrested when she was 14 years old by the Royal Nepalese Army. She was dragged into a truck where she was blindfolded, handcuffed and taken to an army barracks. During the arrest, the author was sexually assaulted by a group of six to seven soldiers. Later that day, she was taken to another barracks where she was detained incommunicado. During the first 9 days of her detention, she was held in inhuman and degrading conditions, with 80 to 90 other detainees. She was interviewed at regular intervals, with numerous interviews each day.

During her detention, she was raped and subjected to other forms of sexual violence, including forced nudity, insertion of objects in her vagina and other sexual assaults. She was also subjected to beatings, kicking, punching, prolonged blindfolding and handcuffing, threats, insulting and denigrating language, and coerced extraction of confessions. Following the sexual assault, she was unable to urinate and was bleeding profusely, which lasted for a week and she did not receive any medical attention. She was threatened not to inform anyone or she would be murdered.

The author was later moved to a different detention facility, where she was subjected to further sexual assault and forced to work in laborious conditions.

In June 2002, the author's father petitioned her release, and paid NPR 50,000 to secure the author's release. After a month and a half, the author's father found her and brought her back to the village. Upon her return, she was considered a social outcast owing to the cultural attitudes and stigma around women who have been raped, and was often referred to as "impure girl".

The author was married in 2009, however when her husband found out about her history in detention, her husband and in-laws rejected

her. The author was deeply humiliated, and returned to her family home.

The author claimed unsuccessfully to have her case heard in the Nepali courts, with the case still pending at the time of submission to the Human Rights Committee.

2. Complaint

The author claimed that the state party has articles 7, 8 (3) (a) and 10 (1), read alone and in conjunction with articles 2 (1, 2 and 3), 3, 24 (1) and 26 of the Covenant because of the rape, sexual abuse, torture, ill-treatment, inhumane conditions of detention and the forced labour that she was subjected to and the subsequent failure by the State party to provide an effective remedy and to carry out an *ex officio*, prompt, effective, independent, impartial and thorough investigation into her allegations, and to prosecute and sanction those responsible.

The author also alleged to be a victim of article 9 (1, 2 and 3), read alone and in conjunction with articles 2 (3) and 24 (1) of the Covenant because she was subjected to arbitrary arrest and detention.

The author also alleged a violation of articles 17 and 23(1), and article 26 of the Covenant, due to the arbitrary interference with her privacy and sexual life as a woman, the disruption of her family life and unlawful attacks on her honour and reputation.

3. Merits

The Committee considered that the rape and other acts of sexual violence inflicted by the Nepalese Army and the Police upon the author, a 14-years-old indigenous girl at the time of the events, violated the author's rights under articles 7 and 24 (1) of the Covenant. The Committee also noted that these allegations were uncontested by the state party. In light of the violence that the author was subjected to, the Committee also found that the State party had violated the author's right not to be subjected to gender discrimination under articles 2 (1) and 3, read alone in conjunction with articles 7, 24 (1) and 26 of the Covenant.

The Committee also found that the exercise of authority over a child in arbitrary detention, including in such a degrading and discriminatory context, falls within the scope of the proscriptions set out in article 8 of the Covenant and, therefore, constitutes a violation of article 8 (3), read alone and in conjunction with articles 7 and 24 (1) of the Covenant.

On the issue of the author being forcibly removed by a large police and military contingent, the Committee considered that the author's arrest and detention constituted a violation of article 9 of the Covenant.

On the author's complaint regarding article 17 of the Covenant, the Committee found that the rape of the author constituted an arbitrary interference with her privacy and sexual autonomy, in violation of article 17 of the Covenant. On this basis, and in view of the shame and stigma the author felt as a result of such a violation, **the Committee also found a violation of article 23(1) of the Covenant.**

4. Recommendations

In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the authors with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, inter alia, to:

- (a) conduct a thorough and effective investigation into the facts surrounding the arrest, detention and rape of Ms. Nyaya and the treatment she suffered in detention;
- (b) prosecute, try and punish those responsible for the violations committed;
- (c) provide the author with detailed information about the results of the investigation;
- (d) ensure that any necessary and adequate psychological rehabilitation and medical treatment is provided to the author free of charge; and

- (e) provide effective reparation, adequate compensation and appropriate measures of satisfaction to the author for the violations suffered, including arranging an official apology in a private ceremony.

The State party is also under an obligation to take steps to prevent the occurrence of similar violations in the future. In particular, the State party should ensure that its legislation

- (i) criminalize torture and provide for appropriate sanctions and remedies commensurate with the gravity of the crime,
- (ii) adapt the definition of rape and other forms of sexual violence in accordance with international standards,
- (iii) guarantee that cases of rape, other forms of sexual violence and torture give rise to a prompt, impartial and effective investigation;
- (iv) allow for criminal prosecution of those responsible for such crimes; and
- (v) remove obstacles that hinder the filing of complaints and effective access to justice and compensation for victims of rape and other forms of sexual violence against women and girls in the context of the Nepali armed conflict, as forms of torture, including a significant increase of the statute of limitations commensurate with the gravity of such crimes.

Bholi Pharaka v. Nepal

CCPR/C/125/D/2773/2016

Forced labour and torture of a minor in Nepal, violation of numerous covenant rights, including torture, inhuman and degrading treatment

- The communication concerns the torture, ill-treatment and forced labour of an indigenous Tharu child in Nepal. The author was sent to work in Kathmandu in 2007, however ended up serving for a Nepalese Army Officer, who forced him to work without salary. The author escaped in 2012, however the army officer's family charged the author with theft, and he was later reprimanded and tortured again in detention. The author was convicted and sentenced to 1-month imprisonment.
- **Outcome:** The Committee found violations on all substantive rights such as the freedom from torture and freedom from forced labour, as well as procedural deficiencies such as the failure to conduct an investigation.

5. Implementation

The Committee requested that the state party provide an update outlining measures taken to give effect to the Committee's views within 180 days, or prior to 18 September 2019.

6. Separate Opinions

Individual opinion of Committee Member Mr. José Santos Pais (partly concurring)

Committee Member Mr. José Santos Pais fully concurred with the Committee in all findings of violations except the holding of the state party for the disruptions of the author's marriage.

On this basis, Santos Pais concurred with the Committee's finding that the sexual violation constituted an arbitrary interference with the authors privacy and family life, **however could not agree that the flow-on effects on the author's life (namely stigma, social ostracization and shame) constituted a violation of article 17 and article 23(1) by the state.**

Santos Pais argued that holding the state party responsible opened up an avenue for state responsibility that has little boundaries, both in terms of the number of years to take into account after the events and as to the extent of such responsibility.

1. Facts

The author is a national of Nepal and a member of the indigenous Tharu community, who claimed that the state party had violated his rights under articles 2, 7, 8 (3) (a), 9, 10, 14 and 24 (1) of the Covenant.

The author was sent to work in Kathmandu as a domestic worker in 2007, where he served in houses for a modest salary. In 2010 he was moved to working for the family of a Nepalese Army officer, where he was not allowed to attend school. Being 14, the author was forced to work every day from 4am to 10pm and did not receive any salary. During this role, the author was subject to physical and psychological abuse. In 2012, he escaped to return to his home village as he could not tolerate the abuse, however the daughter of the officer filed a complaint against the author for theft. In order to force the author to return, the authorities abducted and tortured his maternal uncle.

The author presented himself at the Metropolitan Police Range in Kathmandu in August 2012, where he was arrested and placed in detention with adults. He was tortured, punched, and kicked all over his body, hit with pipes, and had his hair pulled. During his detention, he was subject to grossly inhumane conditions, tortured, and interrogated. His father filed a report alleging torture conditions however no response was ever provided. In September he was formally charged however as his parents were unable to pay the bail fee, he was sent to a juvenile detention centre where he was held until he was formally released in June 2013.

In June 2014, the Kathmandu District Court found the author guilty of stealing valuables and sentenced him to one-month imprisonment and a 4,000 Rupees (32 Euros) fine. Any appeals or complaints relating to his arrest, treatment in detention or torture were never responded to.

2. Complaint

The author claimed that the state party violated articles 7 and 10 with regard to the torture and ill-treatment he endured, in order to extract a confession about his alleged involvement in the theft of gold and valuables, and because of the inhumane conditions of his detention. Additionally, the author claimed a violation due to the state's inability to conduct a full an impartial investigation into his treatment, as well as the failure of the state to place the protections afforded by the Covenant into domestic legislation.

The author also claimed a violation of article 9, paragraphs 1, 2, 3 and 5 owing to his arbitrary arrest and detention, where he was not informed of the reasons for his arrest nor brought before a judge.

The author also claimed to be a victim of a violation of article 14, owing to procedural deficiencies in his trial process. The author also claimed to be a victim of a violation of article 8, owing to the state party's failure to adopt the adequate measures to prevent him from being subjected to child and forced labour and to conduct an investigation.

In addition, the author claimed that indigenous children have been historically marginalised and discriminated against in Nepal, aggravating his treatment during employment and at the hands of authorities. On this basis, the author also submitted he is a victim of a violation of article 24.

3. Merits

Regarding the author's claim under article 7 of the Covenant, the Committee noted that the State party denies that the author was tortured (...) and that the author provided a credible description of the torture he endured as well as copy of the forensic report in question. Therefore, the Committee concluded that the State party has violated article 7, read alone and in conjunction with article 24, paragraph 1, of the Covenant.

Further, it concludes that the failure of the State party to conduct any investigation on the author's torture allegations, especially as a child, and the fact that the statute of limitation for torture compensation claims

under Nepalese law in force at the time of the events prevented the author from accessing an effective remedy, violated, in both instances, his rights under article 7, read alone and in conjunction with article 2, paragraph 3 and article 24, paragraph 1 of the Covenant.

With regards to the alleged violation of article 9 of the Covenant, the Committee considered that the author presented a consistent and detailed description of the facts surrounding his arrest and deprivation of liberty, which have not been contested by the State party. Therefore, the Committee found that the State party violated the author's rights under article 9, read alone and in conjunction with article 24, paragraph 1, of the Covenant.

In reference to the author's claim of violation of article 8(3)(a), the Committee considered that the failure of the State party to protect the author, who was 14 years old at the time, from such abuses and its failure to conduct any investigation into his allegations, especially given his condition as a child, was in violation of his rights under article 8, paragraph 3, read in conjunction with article 2, paragraph 3 and article 24, paragraph 1, of the Covenant.

4. Recommendations

In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including:

- investigate the facts of the case and ensure that those found responsible are sanctioned with penalties commensurate to the gravity of the crimes and, if necessary, suspend or remove suspected police officers while the investigation is on-going;
- provide free of charge medical and psychological care if needed;
- provide effective reparation and appropriate measures of satisfaction to the author for the violations suffered, including the provision of educational support as appropriate;
- ensure that the author obtains prompt, fair and adequate compensation, proportional to the gravity of the violations suffered; and
- indicate the specific domestic authorities that are in charge of implementing each measure of reparation;
- publish the present views widely in the official languages of the state party.

5. Implementation

The Committee requested that the state party provide an update outlining measures taken to give effect to the Committee's views within 180 days, or prior to 15 January 2020.

6. Separate Opinions

Joint individual opinion of Committee members Tania María Abdo Rocholl, Arif Bulkan, Hernán Quezada and Hélène Trigroudja

Committee members Tania María Abdo Rocholl, Arif Bulkan, Hernán Quezada and Hélène Trigroudja offered a joint individual opinion in agreement with the merits of the case, however disagreeing on the recommendations provided to the state party.

The members disagreed on the basis that the majority did not recommend that the state party apologise to the author. They noted that only is there significant precedent for this, but in the case that no amount of money can compensate the author for the suffering endured or for the loss of his childhood, a formal apology is entirely suitable in the circumstances.

The members referred to the guidelines on measures of reparation under the Optional Protocol, which **provides that apologies are warranted in cases of grave or systemic violations where the injury cannot be fully redressed by restitution or compensation only,** and further noted that in this case the level of grave and systemic is met for three reasons:

- First, as the author was a child when he was tortured and ill-treated by state agents.
- The second factor relates to the failure of the state authorities to open any investigation into the violations of absolute human rights, including those protected by article 7 and 8.
- Finally, the statute of limitations in seeking redress for these crimes is contrary to the state's obligations to fight against impunity, especially in relation to such grave violations.

Ismet Ozçelik, Turgay Karaman and I.A. v. Turkey

CCPR/C/125/D/2980/2017

Extraordinary rendition from Malaysia to Turkey, violation of security and safety of person

- The authors are three **Turkish nationals** who claim the state party violated their rights under articles 6, 7, 9, 19 and 14 of the Covenant. The authors were **forcibly removed from Malaysia** to Turkey at the alleged request of Turkish authorities, as they were considered to be connected with the **Gülen movement**.
- The Committee considered most of the claims (6, 7, 10 and 14) as inadmissible as the authors had **not demonstrated due diligence in exhausting all domestic remedies**. The Committee did find a violation of article 9(1) and (2), and later of 9(3), on the basis that the delay in bringing the authors before a judicial officer was unreasonably and unnecessarily delayed.
- Committee member Gentian Zyberi issued a **dissenting opinion** noting that the author's counsel appealed their detention and alleged ill-treatment, however no process was followed, arguing that the Committee should have found such remedies as unreasonably prolonged, and as such, the Committee should have examined the remainder of the claims on their merits.

1. Facts

The authors are three Turkish nationals who claim the state party violated their rights under articles 6, 7, 9, 19 and 14 of the Covenant. In an initial complaint, family members of the authors claimed that they were being held incommunicado detention at an unknown location in Turkey and were at risk of being subject to torture. The Committee intervened with interim measures, requesting that the state party take all measures necessary to promptly bring the authors before a judge and give them access to a lawyer. The Committee later rejected the state party's request to lift interim measures. The authors were detained as they were considered to be connected with the Gülen movement by Turkish authorities.

In 2017, the authors were residing in Malaysia, however submit that they were unlawfully deprived of their liberty under Malaysian anti-terrorism legislation by individuals acting under the control or instructions of the Turkish authorities. Controlled-circuit TV revealed one of the authors being forced into a car by five unidentified persons in an underground parking garage.

It became clear to the author's family that the authors were detained in police headquarters in Kuala Lumpur, where they did not have access to a lawyer or to their case files.

In May 2017, the authors were removed to Turkey despite the fact that no extradition hearing had been conducted, and no judicial decision had been made. Upon arriving in Turkey, the authors

were held in incommunicado detention at an unknown location.

2. Complaint

At the time of the initial submission, the authors claimed that they were at imminent risk of being tortured and ill-treated, in violation of their rights under articles 6, 7, 9 and 10 of the Covenant.

The authors further claimed that their rights under article 14 of the Covenant had been violated as they were held in incommunicado detention in Turkey at an unknown location and were deprived of their right to a fair trial.

They argued that they had been arbitrarily and unlawfully deprived of their liberty in violation of their rights under article 9 of the Covenant. The authors also claimed that they had been subjected to ill-treatment in violation of their rights under article 7 of the Covenant. As a result, health problems of one of the authors has drastically worsened. The authors also submit that they have been threatened with solitary confinement.

The authors further claimed that their detention incommunicado constituted a violation of their rights to liberty and security of person under article 10 of the Covenant, on the basis that their families were not informed of their transfers, had no opportunity to communicate and were also kept in overcrowded cells.

Finally, the authors also complained that they had not been informed of the charges against them and had no access to legal justice, in violation of article 14 of the Covenant.

3. Admissibility

The Committee noted that author the authors did not have any knowledge of the Turkish criminal justice system, the Committee recalled that authors of communications must exercise due diligence in the pursuit of all available remedies.

In light of this, and in the absence of any further information as to due diligence undertaken by the authors, the Committee found that authors had failed to exhaust all domestic remedies with respect to the authors' claims under articles 6, 7, 10 and 14, and consequentially found these inadmissible pursuant to article 5 (2) (b) of the Optional Protocol.

Further, the information on file noted that the authors were detained by Malaysian authorities prior to their removal to Turkey. In the absence of any other information, the Committee could not conclude that the authors were removed to Turkey under the effective control of Turkish authorities as to engage the jurisdiction of Turkey. On this basis, the Committee found the portion of the complaint of a violation of article 9 as it related to the authors detention and removal in Malaysia inadmissible under article 1 of the Optional Protocol.

4. Merits

The Committee recalled that with respect to the authors claim of a violation of article 9, that the test for a violation if whether or not the detention was arbitrary – which must be interpreted broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality.

In this case, the Committee found that the state party had not established that the authors were promptly informed of the reasons for their arrest, nor substantiated that their detention was reasonable or necessary. On this basis, the Committee found a violation of article 9(1) and (2) of the Covenant. Further, the Committee considered that on the evidence provided, it took 11 days before the authors were brought before a judge, and consequently were not promptly brought before a judicial officer, as guaranteed by the Covenant. Additionally, and in light of the findings above regarding article 9(1) and (2), the Committee found that the lack of re-examination of the authors' continued detention could not be considered as strictly required by the exigencies of the situation,

and accordingly found a violation of the authors' rights under article 9 (3) of the Covenant.

5. Recommendations

Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated.

Accordingly, the State party is obligated, inter alia to:

- Release the authors and provide them with adequate compensation for the violations suffered.
- take all steps necessary to prevent similar violations from occurring in the future.

6. Implementation

The Committee requested that the state party provide an update outlining measures taken to give effect to the Committee's views within 180 days, or prior to 26 September 2019.

7. Separate Opinions

Individual opinion of Committee member Gentian Zyberi (partly concurring, partly dissenting)

Committee member Gentian Zyberi issued an individual opinion in full agreement with the finding that the case reveals a violation of article 9(1-3) of the Covenant, on the basis that Turkey could not establish that the authors were promptly informed of the charges against them, nor that the detention meets the requirements of necessity and reasonableness.

However, member Zyberi dissented on the finding of admissibility with respect to article 9 of the Covenant more generally. The member noted that the authors alleged they were victims of abduction, and were removed to Turkish intelligence officials without any judicial hearing or legal process. In this manner, Zyberi argued that Turkey should be found responsible for its complicity, direction and active role in placing the authors outside the protection of the law in their removal from Malaysia.

Member Zyberi also dissented on the finding of admissibility regarding articles 7, 10 and 14, pursuant to article 5 (2) (b) of the Optional Protocol. The member recalled the general legal system in Turkey being negatively affected because of the coup, and also that the author's counsel actively appealed their detention without success – including their allegations of ill-treatment. On this basis, member Zyberi considered that the Committee should have placed more emphasis on article 5(2)(b) of the Optional Protocol, which justifies the non-exhaustion of domestic remedies where their application is unreasonably prolonged.

Committee on Economic, Social and Cultural Rights (CESCR)

Geographical and thematic trends

The Committee on the Economic, Social, and Cultural Rights adopted views on five individual communications in 2019. These communications were against Spain (60%), Italy (20%), and Luxembourg (20%). In their examination, the Committee found violations in only two of the cases. The remaining cases were declared inadmissible.

Eviction without occupation of legal title

Although none of the communications in relation to eviction without the occupation of a legal title proceeded to the consideration of admission or merits due to discontinuation, a notable 6 issues, or 30% of all communications when including discontinued cases, were raised before the Committee in these regards. All of these communications were against Spain.

Key cases of the Committee on Economic, Social and Cultural Rights

Rosario Gomez-Limon Pardo v. Spain

E/C.12/67/D/52/2018

Claim of a violation of the author's right to adequate housing owing to a State party failure to conduct a proportionality assessment in the eviction process in Spain

- The author was an elderly woman who was evicted from an apartment that she had rented for most of her life. The author was not entitled to social housing and claimed that she was not offered appropriate alternative accommodation by the State, meaning that she was forced to move into temporary accommodation where she lacked security of tenure. The author claimed that her eviction amounted to a violation of her right to

adequate housing, pursuant to article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), since she did not have the means to find alternative private rental accommodation and the government had failed to provide her with adequate housing alternatives.

- **Outcome:** The Committee found a violation of the author's right to adequate housing (article 11), on the basis that the Spanish Court had failed to consider the circumstances of the author in its proportionality assessment prior to ordering the eviction. The Committee also found a violation of the Optional Protocol (article 5), as the State had failed to comply with the interim measures ordered by the Committee.

1. Facts

The author of the Communication, Rosario Gómez Limón Pardo, was evicted from the rented accommodation where she had lived for at least 40 years. She claimed that her eviction amounted to a violation of her right to adequate housing, pursuant to article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), since she did not have the means to find alternative private rental accommodation and the government had failed to provide her with adequate housing alternatives.

In 2013, the landlord sought to terminate the lease in order to sell the property. Since the author refused to vacate, the landlord filed a complaint seeking an eviction order. The Court made the eviction order and the author appealed the decision arguing that her vulnerable economic situation precluded her from finding another adequate housing option. During the judicial process, the Spanish authorities offered the author a place in a shared residence where she could stay at night, but not during the day, or alternatively, a provisional place in a residence for older persons where she had a curfew after 8 pm. The author noted that due to her age (73 years old) and her health status (she was diagnosed with cancer and has a disability of 41%), these housing alternatives were not adequate.

The author was denied access to public housing on the grounds that she owned a property that the author had acquired with her ex-partner. The author alleged that she separated from her ex-partner due to domestic violence. Her ex-partner continued to live in the property. The author argued that she did not seek to legally divide or share the property with him as it would expose her to further abuse.

The local authorities dismissed her argument regarding domestic violence on the basis that, despite the "non-fluidity of the relationship" with her ex-partner, she could have taken steps to divide and make use of the property to have access to adequate housing. The author filed a petition to the Committee on 30 August 2018 and requested interim measures to prevent the eviction going ahead. The Committee issued interim measures requesting Spain to suspend the eviction of the author while the Communication was examined or, alternatively, to grant her adequate housing following a genuine consultation with her. The State informed all relevant authorities of the Communication and the interim measures, but the author was nevertheless evicted without any recourse to adequate housing alternatives

2. Complaint

The author submitted that the above eviction amounted to a violation of her right to adequate housing, pursuant to article 11, as she did not have the means to find alternative private rental accommodation, and the government had failed to provide her with adequate housing alternatives.

3. Admissibility

The Committee found that the case met the requirement of the exhaustion of domestic remedies set forth in article 3 (1)

of the Optional Protocol, as well as all other admissibility requirements set forth in articles 2 and 3 of the Optional Protocol.

4. Merits

The Committee found that the questions raised by the communication are as follows: (a) whether the eviction of the author constituted a violation of the right to adequate housing under article 11 (1) of the Covenant, and (b) whether there was a violation of article 5 of the Optional Protocol in this case, since the State evicted the author despite the Committee's request for interim measures.

The Committee first recalled that the human right to adequate housing is a fundamental right, inextricably linked to other human rights, that should be ensure to all persons irrespective of income or access to economic resources, and State parties are required to take whatever steps necessary to achieve the full realization of this right, and to the maximum of their available resources. It further recalled that forced evictions are prima facie incompatible with the Covenant and can only be justified in the most exceptional circumstances. It, herein, added that when there is risk that an eviction might affected the evicted person's right to housing, the relevant authorities must ensure compliance with the Covenant and the principle of proportionality between the legitimate objective of the evictions and its consequences for the evicted person.

In assessing whether the author's eviction was proportionate, the Committee found that there were legitimate reasons potentially justifying her eviction. It further noted that upon the rejection of the author's application for suspension of the eviction, the Court did not conduct an analysis of the proportionality of the consequences for the evicted person – despite the obligation to conduct such an exercise. It noted that this obligation derives from the State party's obligations under article 2 (1) of the Covenant, read in conjunction with article 11, and in accordance with the requirements of article 4.

The Committee noted that the author claimed that the eviction would constitute interference with her right to adequate housing. The Committee further noted that article 4 of the Covenant stipulates the conditions under which such limitations on the enjoyment of Covenant rights are permitted. Firstly, the limitation must be determined by law. Secondly, it must promote the general welfare in a democratic society. Thirdly, it must be suited to the legitimate purpose cited. Fourthly, the limitation must be necessary, in the sense that if there is more than one measure that could reasonably be expected to serve the purpose of the limitation, the least restrictive measure must be chosen. Lastly, the benefits of the limitation in promoting the general welfare must outweigh the impacts on the enjoyment of the right being limited. This proportionality analysis must be carried out by a judicial or other impartial and independent authority with the power to order the cessation of the violation and to provide an effective remedy. This authority must analyse whether the eviction is compatible with the Covenant, including all elements of the proportionality test as described above. On this basis, the Committee was of the view that the State party should develop a normative framework that is compatible with the Covenant.

The Committee further observed, in relation to the proportionality test, that analysing the interests at stake for the person or party with the right to seek eviction inevitably involves making a distinction between properties belonging to individuals, who need them as a home or to provide vital income, and properties belonging to financial institutions or other entities. It further stressed that finding eviction to be an unreasonable measure at a particular time does not necessarily mean that an eviction order cannot be issued – but that the principle of proportionality may require the suspension or postponement of an eviction order so as to avoid exposing the evicted persons to situations of destitution or violations of other Covenant rights.

In returning to the present case, the Committee noted that the fact remains

that no proportionality assessment was conducted before the decision to evict was taken. It stressed that the Committee is not called upon to make such a determination of proportionality. The Committee considered that the author did not have the opportunity to have the proportionality of her eviction assessed by a judicial, independent, or otherwise impartial authority with the power to order the cessation of the violation and to provide an effective remedy. In light of this, the failure to conduct a proportionality test was found to amount to a violation of article 11, read in conjunction with article 2 (1).

Article 5 of the Optional Protocol to the ICESCR provides that the Committee may request the State to implement "such interim measures as may be necessary in exceptional circumstances to avoid possible irreparable damage to the victim or victims of the alleged violations". In this case, the authorities evicted the author and failed to offer her appropriate alternative accommodation, despite the interim measures issued by the Committee. Since Spain did not offer an adequate explanation for its failure to comply, the Committee found a violation of article 5 of the Optional Protocol. **This is the first time the Committee has found a violation of the Optional Protocol for failure to comply with interim measures**

5. Recommendations

The Committee found that Spain had an obligation to provide the author with an effective remedy, in particular to: (a) undertake a genuine consultation with the author to assess her current situation and, if necessary, grant her adequate housing alternatives; and (b) to reimburse the author for the legal costs reasonably incurred in the processing of the Communication.

The State party also had an obligation to prevent similar violations in the future and in particular to:

- a) Ensure that the legal framework enables individuals subjected to eviction orders to appeal the decision before judicial authorities or before any other impartial and independent authority with the power to prevent a violation of a right and provide effective remedy, and to ensure that the proportionality of the measure is examined according to standards envisaged in the Covenant.
- b) Establish a protocol for compliance with the interim measures issued by the Committee and inform all relevant authorities about the need to comply with them in order to ensure the integrity of the procedure.
- c) Publish and distribute the Views of the Committee and submit to the Committee, within a period of six months, a written response, including information on measures taken in follow-up to the Views and recommendations of the Committee.

6. Implementation

The Committee requested the state party provide a follow up information on measures taken within 180 days.

López Albán et al. v Spain

E/C.12/66/D/37/2018

Violation of the right to adequate housing following from the State party's failure to provide alternative accommodation for a family in Spain

- The Maribel Viviana López Albán and her six children had been renting an apartment in Madrid from a person they believed in good faith was the legal owner. However, the apartment was in fact owned by a financial institution. The financial institution commenced legal proceedings to evict the family, on the grounds that they lacked a

legal tenancy agreement. Following these legal proceedings, Ms Albán was found guilty of the offense of 'usurpation' (illegal occupation), ordered to vacate the property and received a reduced fine in recognition that the illegal occupation was due to 'necessity'. As a result of the eviction, the family moved to a temporary and shared accommodation, where they were separated by sex in different rooms - including the 7-year-old boys being separated from their mother. The family did not have sufficient income to find private rental accommodation, and was not entitled to social housing because of the rules of the regional social housing programme that excluded individuals who had illegally occupied property

- **Outcome**: The Committee found that Spain violated the right to adequate housing in respect of the eviction of a mother and her children without offering them appropriate alternative accommodation.

1. Facts

Maribel Viviana López Albán and her six children had been renting an apartment in Madrid from a person they believed in good faith was the legal owner. However, the apartment was in fact owned by a financial institution. The financial institution commenced legal proceedings to evict the family, on the grounds that they lacked a legal agreement for living in the apartment. Following these legal proceedings, Ms Albán was found guilty of the offense of 'usurpation' (illegal occupation), ordered to vacate the property and received a reduced fine in recognition that the illegal occupation was due to 'necessity'.

As a result of the eviction, the family moved to a temporary and shared accommodation, where they were separated by sex in different rooms - including the 7-year-old boys being separated from their mother. The family did not have sufficient income to find private rental accommodation, and was not entitled to social housing because of the rules of the regional social housing programme that excluded individuals who had illegally occupied property.

2. Complaint

After exhausting domestic remedies to prevent the eviction, the author and her children filed a complaint before the CESCR alleging that their eviction constituted a breach of their right to adequate housing (article 11 ICESCR) since they were not offered appropriate alternative accommodation by the State, and they were prevented from applying for social housing. The authors also sought interim measures to halt the eviction and the CESCR granted those measures, requesting that Spain refrain from evicting the family while it examined the case. Spain did not comply with this request, in violation of its obligations.

3. Admissibility

Responding to the complaint, Spain argued that it was inadmissible as article 11 ICESCR does not protect illegal tenures, and therefore, the family eviction was not 'forced' in the sense of CESCR's General Comments 4 and 7. However, the Committee stressed that while lack of legal title can justify an eviction, the eviction must be carried out in accordance with the requirements of the Covenant and the petitioners allege that it was not. Accordingly, the communication was declared admissible according to article 2 and 3 of the Optional Protocol ICESCR.

4. Merits

On the merits, the Committee observed that whilst there was a justified cause to evict the family (illegal occupation), the Court had failed to undertake a proportionality assessment between the legitimate aim of the eviction and the negative consequences for the evicted people, as required by the ICESCR. According to the Committee, "the principles of reasonableness and proportionality may require that the eviction order be suspended or postponed to avoid exposing evicted persons to situations of destitution or violations of other rights contained in the

Covenant." It further emphasised that Courts must distinguish between the properties of individuals who require property as housing and the properties of financial entities.

Moreover, the Committee pointed out that excluding the petitioner from social housing on the grounds of illegal occupation, but without considering the petitioners' essential needs, is incompatible with the right to adequate housing and a violation of the Covenant: **"it placed her in an impasse, forcing her to live, together with her children, in a temporary and shared shelter, or live in poverty, before being able to apply for social housing**." The Committee noted that the rules on access to social housing should avoid perpetuating systemic discrimination and stigmatization against those who live in poverty and occupy properties, by necessity or in good faith, without having the legal title to do so. It added: 'to the extent that the lack of affordable housing available stems from the growing inequality and speculation in housing markets, States Parties have an obligation to address those structural causes through an adequate, timely and coordinated response, to the maximum of its available resources.'

The Committee also found a violation of article 5 of the Optional Protocol because the temporary and shared accommodation which was provided by the State to the family did not comply with the requirement of the ICESCR that the housing be 'adequate'. The Committee pointed to the fact that the housing provided was temporary, lacking security of tenure, and it involved children sleeping separately from their mother.

5. Recommendations

In respect of the authors of the communication, the Committee ordered that the petitioners be provided reparation, including: reassessing their need and priority on the social housing waiting list, in order to grant them public housing; financial compensation; and legal costs.

More generally, the Committee additionally recommended that the State party had an obligation to:

- Develop a legal framework to regulate evictions, incorporating a requirement that judicial authorities carry out a proportionality test between the purpose pursued by the measure and its consequences on the evicted persons, as well as the compatibility of such measures with the Covenant.
- Adopt measures so that all persons can access social housing on equal terms, removing any unreasonable condition that excludes any person at risk of indigence.
- Formulate and implement a comprehensive plan to guarantee the right to adequate housing for people with low incomes, in accordance with the ICESCR; and Establish a Protocol for compliance with requests for precautionary measures issued by the Committee

6. Implementation

The Committee requested the state party provide a follow up information on measures taken within 180 days.

S.S.R. v. Spain

E/C.12/66/D/51/2018

Claims of violations in an eviction process in Spain owing to a failure to hold genuine and effective consultations

- The author is a disabled Spanish national who had occupied an apartment owned by a bank with no legal title to do so. After several postponed eviction attempts, and despite the Committee's request for interim measures, S.S.R was evicted from the property. The

author has since been "without stable, decent housing." She submitted that officials did not hold genuine and effective consultations with her or take the essential steps, to the maximum of available resources, to ensure that she had alternative housing. She claimed that this amounts to a violation of her right to housing.

- **Outcome**: In determining the admissibility of the communication, the Committee acknowledged that while not all authors are represented by lawyers and there is a need to "refrain from imposing any unnecessary formalities", in this particular case the author had not explained her current circumstances in any detail, and had not indicated how her right to adequate housing had been violated by the eviction. As such, the communication was insufficiently substantiated and inadmissible pursuant to article 3 (2) (e) of the Optional Protocol.

1. Facts

The author is a national of Spain, who claimed that the State party violated her rights under article 11 (1) of the Covenant. The author is 66% disabled and received a non-contributory disability pension.

On an unspecified date in 2014, the author who could not afford a place to live on the private market, began to occupy an apartment that was owned by a bank, although she had no legal title to do so. The author submitted that the property had previously been abandoned.

Eviction proceedings were commenced on 1 February 2017. At this point the author applied for free legal aid, which she was granted. She maintains, however, that she was poorly represented because she was not informed of the trial date or the remedies to which she was entitled, and the Court was not asked to make a judgment of proportionality by weighing her serious health condition and socioeconomic situation against the plaintiff's application for an eviction order.

On 25 May 2017, the Court ruled in favour of the property owner's application in its entirety, authorizing the eviction of the author and all unidentified persons who were in the building on the grounds that they had no right to occupy it. The author's court-appointed lawyer appealed the ruling, arguing that the evidence had been misinterpreted, as the Court, in reaching its conclusion, had failed to consider the author's expression of willingness to sign a rental contract with the property owner. On 11 December 2017, the High Court of Guadalajara Province rejected the author's appeal, as it was of the view that, because the payment of rent depended not only on the author's willingness to pay rent but also on the property owner's willingness to enter into a contract for such payment, the evidence had not been misinterpreted.

On 8 May 2018, the author was ordered, by decree of execution of judgment of 25 May 2017, to vacate the apartment voluntarily within one month or be evicted by officers of the court. The author claimed that she then began calling various social service providers, none of which offered a solution for her housing emergency. The author's new lawyer applied for suspension of the eviction proceedings on the grounds that there was no alternative housing for the author. The eviction was temporarily postponed, but later set, and on 22 October 2018, the author was evicted.

2. Complaint

The author recalled that the right to adequate housing is enshrined in article 11 (1) of the Covenant, and that it is closely connected to the right not to be subjected to inhuman or degrading treatment, as well as the right to respect for private and family life and the home, enshrined in articles 3 and 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms,

respectively. The author also points out that, according to the Committee's jurisprudence, carrying out an eviction when no alternative housing is available may be a violation of the Covenant. In addition, the author further alleged that jurisprudence by the Committee establishes that States parties must pay particular attention to evictions involving persons with disabilities, as in the present case.

The author submitted that officials have not held genuine and effective consultations with her or taken the essential steps, to the maximum of available resources, to ensure that she has alternative housing, contrary to the Committee's recommendation in a previous case. She was therefore of the view that this inaction constitutes a violation of article 11 (1) of the Covenant.

3. Admissibility

The Committee first stated that the communication meets the requirement of referring to a possible violation of a right set forth in the Covenant on that basis that her complaint was that her eviction was not carried out in conformity with the provisions of the Covenant.

It therefore found that the author had failed to provide documentation showing that, as a result of the eviction, she has been deprived of her right to adequate housing – for example, by having been made homeless or finding herself in a dwelling that does not meet the minimum requirements for housing suited to her needs. In this case, the Committee noteed that while the author is represented by counsel, both in domestic proceedings and before the Committee, she had not explained or indicated how her right to adequate housing has been violated by the eviction and has not shown any interest in taking part in the consultations in which the State party sought to engage her after her communication was registered. Consequently, as it did not have sufficient evidence before it to determine that the author's right to adequate housing had been violated or that the right was actually threatened, the Committee found that, in respect of the claim of a violation of article 11 of the Covenant, the communication was insufficiently substantiated for the purposes of admissibility and therefore inadmissible pursuant to article 3 (2) (e) of the Optional Protocol.

4. Merits

Whilst Spain had asked the CESCR to withdraw its request for interim measures, the eviction of S.S.R. took place before the Committee had made a decision on this matter. The Committee found this to be a violation of article 5 of the Optional Protocol and reminded Spain that a request for interim measures "does not imply a determination on admissibility or on the merits of the communication".

4. Recommendations

As the Committee found no violation of the complainant's rights, the Committee simply made a general recommendation to the State party in a bid to prevent future violations of article 5 of the Optional Protocol. The Committee recommended that, to ensure the integrity of the procedure, the State party should develop a protocol for honouring the Committee's requests for interim measures and that it inform all relevant authorities of the need to honour such requests.

5. Implementation

The State party was requested to submit a written response to the Committee within six months that includes information on the measures it has taken in follow-up to the Committee's decision and recommendations.

S. C. and G. P. v Italy

E/C.12/66/D/37/2018

Prohibition on the revocation of consent in embryo transferals as a violation of the right to health

- The authors are a couple who were undergoing in vitro fertilization (IVF) treatment in 2009 at a private clinic in Italy. In the knowledge that one of the embryos she had produced had only a low chance of nesting, S.C. declined to have it transferred into her uterus. The clinic informed her that, according to their understanding of Italian Law 40/2004, it was not possible to revoke consent to the procedure and threatened legal action if she did not proceed. S.C. therefore agreed to the transfer of the embryo and subsequently suffered a miscarriage.
- **Outcome:** The Committee found that a prohibition on the revocation of consent to have an embryo transferred into a woman's uterus constituted a violation of the right to health.

1. Facts

The communication S.C. and G.P. was submitted by a couple undergoing in vitro fertilization (IVF) treatment in 2009 at a private clinic in Italy. In the knowledge that one of the embryos she had produced had only a low chance of nesting, S.C. declined to have it transferred into her uterus. The clinic informed her that, according to their understanding of Italian Law 40/2004, it was not possible to revoke consent to the procedure and threatened legal action if she did not proceed. S.C. therefore agreed to the transfer of the embryo and subsequently suffered a miscarriage.

S.C. also requested that the remaining nine embryos that she had produced be donated to scientific research. This request was refused by the clinic, which cited Law 40/2004 as prohibiting research on embryos.

2. Complaint

The authors of the communication made two claims: (1) that the prohibition on their donating embryos to scientific research violated their right to enjoy the benefits of scientific progress, their right to participate in scientific progress, and their freedom of research (article 15); and (2) that the compelled transfer of an embryo into S.C.'s uterus violated her right to health (article 12) and the uncertainty of the law on whether consent to the transfer of embryos can be withdrawn constituted a violation of the authors' right to health (article 12) and to the protection of their family (article 10).

3. Admissibility

The Committee declared the author's first claim regarding the prohibition against the donation of embryos inadmissible, rejecting each of the following arguments:

In relation to article 15, the Committee firstly found that the authors' argument that their right to enjoy the benefits of scientific progress had been violated was **insufficiently substantiated** as it was too speculative. Whilst the authors had asserted that the donation of embryos could aid research into an illness of which S.C. is an asymptomatic carrier, they had not provided sufficient evidence of "a probable, or at least a reasonable, link between the donation of these specific embryos and the development of better treatments for the disease".

The claim that their right to participate in scientific progress had been violated was also

insufficiently substantiated as they had not demonstrated that donation of an embryo is a form of participation in scientific research.

The authors' claim that freedom of research was infringed was also inadmissible. Since they were not conducting scientific research themselves, the Committee found that the authors **could not say that they are real or potential victims** of a restriction on scientific freedom.

The second claim regarding the right to health (article 12) and the protection of the family (article 10) was found to meet the admissibility requirements of the Optional Protocol and proceeded to the consideration of the merits.

4. Merits

The Committee considered the merits in four-fold. It observed that the communication raised two central questions: whether the transfer of an embryo into S.C's uterus without her consent was a violation of her right to health; and whether the uncertainty created by the law regarding whether consent to the transfer of embryos can be withdrawn after fertilization constitutes a violation of the author's rights to the highest attainable standard of health and to the protection of the family. It further found that these legal questions required consideration of two other issues: (a) the scope of the right to the highest attainable standard of health and its relationship with gender equality; and (b) what the permitted limitations to article 12 are.

Firstly, in examining the access to reproductive health and gender, the Committee recalled that the right to sexual and reproductive health is also indivisible from and interdependent with other human rights. It is intimately linked to civil and political rights underpinning the physical and mental integrity of individuals and their autonomy. It also recalled that the right to sexual and reproductive health entails a set of freedom and entitlements – including the right to make free and responsible decisions and choices, free of violence, coercion and discrimination, regarding matters concerning's one's body and sexual and reproductive health. Further, it also recalled that laws and policies that prescribe involuntary, coercive or forced medical interventions also violate the obligation to respect.

In moving on to consider the linkage between the scope of the right and its relationship with gender equality, the Committee recalled that the experiences of women of systemic discrimination and violence require comprehensive understanding of the concept of gender equality in the right to sexual and reproductive health. Herein, it stated that substantive equality requires that laws, policies, and practices do not maintain, but rather alleviate, the inherent disadvantage women experience in exercising their right to sexual and reproductive health.

Secondly, in considering permitted limitations to the right to the highest attainable standard of health, the Committee recalled that the Covenants limitation clause is primarily intended to protect the rights of individuals rather than permit the imposition of limitation by States. Consequently, the State party has the burden of justifying such serious measures in relation to each of the elements identified in article 4.

Thirdly, in moving on to consider the lack of consent and violation of the right to health, the Committee noted that the transfer of the embryo led to a miscarriage, which the author found traumatizing. **The Committee, herein, observed that forcing a woman to have an embryo transferred into her uterus clearly constitutes a forced medical intervention.** Thus, it found a violation of the author's right to health, as enshrined in article 12.

The Committee followingly noted that Law 40/2004, restricts the right of women undergoing the treatment to waive their consent, leading to the possibility of forced medical interventions or even pregnancies for all women undergoing IVF treatments. It further noted that this restriction on the right to withdraw consent places an extremely high burden on women, and that the possible

consequences on these women are extremely grave – in direct violation of women's right to health and physical integrity. On this basis, the Committee concluded that the transfer also violated S.C's right to the highest attainable standard of health and her right to gender equality in her enjoyment of her right to health, amounting to a violation of article 12 read alone and in conjunction with article 3 of the Covenant.

Lastly, the Committee examined the legal uncertainty regarding withdrawal of consent and violation of the right to health. It firstly considered that it follows that that Law 40/2004 imposes a restriction on the author's right to health – as it prevents their access to a health treatment that is otherwise available.

It recalled that such a restriction must be compatible with the nature of these rights. The Committee found that the prohibition on withdrawing one's consent to the transfer of an embryo constitutes a violation of the right to health, as it can lead to forced medical interventions or even forced pregnancies. Such a prohibition, or at least the ambiguity concerning the existence of this prohibition, was the origin of the author's inability to access IVF treatments. Consequently, it found that there was a violation of article 12 with respect to both authors.

Having found such a violation, the Committee did not consider it necessary to examine the authors' claims under article 12.

5. Recommendations

The Committee made four recommendations in respect of the authors:

- Establish appropriate conditions to enable the authors' right to access IVF treatments with trust that their right to withdraw consent to medical treatments will be respected;
- Ensure that S.C. is protected from any unwanted medical intervention and that her right to make free decisions regarding her own body is respected
- Award S.C. compensation for damages suffered
- Reimburse authors for legal costs incurred

It also made two general recommendations, namely that Italy adopt appropriate legislative and/or administrative measures to: Guarantee the right of all women to take free decisions regarding medical interventions affecting their bodies, in particular ensuring their right to withdraw their consent to the transfer of embryos into their uterus; Guarantee access to all reproductive treatments generally available and allow all persons to withdraw their consent to the transfer of embryos for procreation.

6. Implementation

The Committee requested the state party provide a follow up information on measures taken within 180 days.

Makinen Pankka and Fernández Pérez v. Spain

E/C.12/65/D/9/2015

Failure to substantiate in a case involving risk of seizure in Spain

- The authors are Ms Pankka and Mr Pérez, two nationals of Spain who are husband and wife. Without his wife's knowledge, Mr Pérez had agreed to purchase an apartment and paid a significant deposit to a private company that was constructing the apartment building. On realising that changes had been made to the façade of the property during its construction, Mr Pérez sought to annul the contract. The company filed suit against Mr Pérez for payment of the full purchase price, plus interest. The court found against the couple and ordered them to pay the full amount. The company sought to enforce

that order against the couple's properties, including the family apartment. The fact that Ms Pankka had not been involved in the purchase of the apartment and the risk that their family home may be auctioned off led the authors to claim that their rights under articles 2 and 11 of the Covenant had been violated.

- **Outcome:** The Committee found the claim inadmissible due to the authors failing to substantiate the "claim that their main home was at imminent risk of being seized, that they would be subject to forced eviction or that their right to housing might, therefore, be infringed" – in particular, given that the property cited in the attachment was not the authors main family home. Accordingly, the communication was not sufficiently founded for the purposes of admissibility (article 3 (2) (e) of the Optional Protocol).

1. Facts

The authors are two Spanish nationals, husband and wife, who claimed that the State party had violated their rights under articles 2 and 11 of the Covenant.

On 29 January 2007, Mr. Ferndadez Perez signed a private contract of sale with a private company for an apartment in a building under construction for his daughter, and without the knowledge or contribution of Ms. Makinen Panika.

During the construction, he noticed substantial changes to the front of the building, meaning that its final façade would be considerably different from the one in the brochure. As he disagreed with the changes, on 20 June 2008, he contacted the company through his real estate agent and requested the annulment of the contract, with reimbursement of the amounts paid. The authors contend that the company did not reply to the request and that, a year later, they were asked to sign the deed of conveyance.

On 26 April 2010, the company filed a suit against Mr. Fernández Pérez, requesting the fulfilment of the contract and the payment of the total amount of the sale plus 10 per cent per year in default interest. As part of these proceedings, Mr. Fernández Pérez filed a counterclaim against the company for failure to fulfil the initial contract.

On 22 December 2010, the counterclaim was dismissed and the Court ordered him to fulfil the contract of 29 January 2007. The Court stated that, while changes had been made to the building's façade, they were made for technical reasons related to security, building maintenance and energy efficiency. The changes should be considered as an improvement to the property and did not affect either the purchased apartment or its price. The Court gave Mr. Fernández Pérez two months to pay 255,776 euros plus 10 per cent in default interest. Following appeals by the author was unsuccessful, as the main claims related to an aesthetic rather than substantive nature.

Due to non-payment following appeals, an attachment was initiated in respect of the authors' properties, including the family apartment where they have lived since 1996. On 12 February 2014, Ms. Makinen Pankka filed a suit challenging the decision. She claimed that Mr. Fernández Pérez's debt towards the private entity should be declared an individual debt for which Mr. Fernández Pérez was solely liable and should not be considered a part of their acquired matrimonial assets. This suit, and following appeals, were dismissed. At the request of the Court, the company submitted documents regarding the registers and the price of property and requested to set a date for auction.

2. Complaint

The authors claimed that their rights under articles 2 and 11 of the Covenant had been violated. Despite Ms. Makinen Pankka, Mr. Fernández Pérez's wife, not having been involved in the purchase of the property concerned or being a party to the main proceedings regarding the validity of the contract, was later notified that the family

home was the subject of a judicial enforcement procedure and might be put to auction. The authors claim that there is a substantial risk that the family home will be auctioned off since the current value of the disputed property is now much lower than at the time Mr. Fernández Pérez signed the contract. An appeal against an auction order does not have a suspensive effect on an enforcement procedure. Therefore, the authors claim that the auction of their habitual residence is imminent and can be initiated at any time. By virtue of not providing for sufficient safeguards, the enforcement procedure is a violation of article 11 of the Covenant.

The authors referred to article 2 of the Covenant and to the Committee's general comments Nos. 4 and 7 and argue that the State party's legislation must contain safeguards against forced eviction. In practice, mortgage enforcement procedures do not respect the principle of equality of arms since appeals of orders that might result in forced eviction are precluded from referring to the presence of abusive clauses in mortgage contracts and do not have a suspensive effect. Ms. Makinen Pankka submitted that she been deprived of her right to due process given that she was not involved in the sale, was not mentioned in the deed of conveyance and was not a party to the subsequent declaratory procedure yet her home is subject to an enforcement procedure and she may be evicted from it. The authors consider that, in their case, consumers are being forced to pay an exorbitant price in addition to interest and fees to the developer which could lead to the loss of both their homes.

3. Admissibility

The Committee noted the authors' claims that their rights under articles 2 and 11 of the Covenant were violated by the fact that Ms. Makinen Pankka was not a party to the main procedure regarding the validity of the contract, and yet there was a substantial risk that the family home will be put to auction. In this regard, the Committee noted the State party's observations that the communication is manifestly unfounded because it relates to a real estate investment, not to the purchase of a main residence, and that the authors' home was never seized. The Committee also notes that the attachment was in respect of two of the authors' properties but that the seizure did not apply to their main home. It found that the authors had not substantiated their claim that their main home was at imminent risk of being seized, that they would be subject to forced eviction or that their right to housing might, therefore, be infringed. In this regard, it found that the authors have not adequately demonstrated that they will inevitably be evicted from their main residence should the judicial enforcement procedure continue or that it was ever seized.

Taking into account the fact that the judicial procedure referred to by the authors has not negatively impacted their home and that they have failed to prove that they have been deprived of their right to adequate housing or that this right is genuinely threatened, the Committee was of the view that the communication was not sufficiently founded for the purposes of admissibility and was therefore inadmissible under article 3 (2) (e) of the Optional Protocol.

MLB v. Luxembourg

E/C.12/66/D/20/2017

Failure to exhaust domestic remedies in a case involving a trade union delegate in Luxembourg

- The author is a citizen of France who worked for a company in Luxembourg. The author was a trade union delegate who had been dismissed from his job at a construction company for setting up a slush fund (for the benefit of a union members) using

proceeds from the resale of surplus company materials. The author contests his dismissal.

- **Outcome**: The Committee found the claim inadmissible on the grounds that the author had no exhausted domestic remedies. In doing so, it stressed that "mere doubts about the chances of success of a particular remedy do not excuse from exercising it."

1. Facts

The author is a French citizen, who was employed by a Luxembourg-based company. He claimed that the latter state party violated his rights under article 8 (1) (a) and (3) of the Covenant. From 15 July 2002, the author was employed as head of alternative energies, supervising sites both in Luxembourg and in France. He was elected as staff representative, and subsequently as a trade union delegate.

With the agreement of the company management, the author had set up a slush fund using the proceeds from the resale of surplus materials, in particular, copper, left over after projects had been completed. These resales, which were made on the author's orders by employees working under his direction, took place over the course of several years in both France and Luxembourg. Subsequently, the resales on the author's orders were made only in Luxembourg, after traceability measures had been strengthened in France to discourage the theft of materials from project sites. According to the author, this slush fund was used mostly to purchase items to improve employees' comfort on site (such as microwave ovens and coffee machines), to pay any traffic fines incurred by employees on work-related travel and to finance end-of-project celebratory meals and staff parties

On 3 December 2013, the company management and a bailiff entered the author's office, where they found a cash box containing around €3,000 in cash. Two days later, the company sent a letter to the author, by registered post, in which he was notified of his immediate dismissal for serious misconduct. The author contests his dismissal, stating that the company management was aware of the activity that he was accused of. Following appeals were unsuccessful.

2. Complaint

The author argued that the facts above revealed violations of both article 8 (1) (a) and (3) of the Covenant, in view of the State party courts' failure to recognize his status as a protected employee. Underscoring that the protected status of trade union delegates is one of the fundamental principles of the International Labour Organization, he considered that the domestic courts should have conducted a more thorough examination of the application for termination of his contract of employment and that due diligence requires the court not to consider, or to restrict the scope of, statements made by the employer against a worker who has been dismissed. The author maintained that in the State party, a trade union delegate is an employee with a protected status, since the courts in the State party that considered his dismissal "make no distinction between the serious misconduct of an ordinary worker and that of a protected union delegate" and "the misconduct of a delegate certainly cannot be more serious than that of an ordinary colleague; the opposite could at best be argued if it is acknowledged that a delegate should set an example to other staff members". The communication also noted that following the author's dismissal, other employees were also dismissed, although it does not provide any more detail.

3. Admissibility

The Committee took note of the State party's argument that the communication is inadmissible under article 3 (1) of the Optional Protocol, given that the author has not exhausted all domestic remedies, having not taken his case to the Court of Cassation, which he could have done if he considered that the Court of Appeal had misinterpreted the applicable law.

The Committee also took note of the author's argument that applying to the Court of Cassation would be ineffectual as the Court only deals with errors of law or legal procedure, whereas the issue in this case is one of interpretation of the facts. The Committee further noted that, according to the author, when an employee has lost a case before the Court of Appeal, he or she has no chance of being successful before the Court of Cassation, a position that the author backs up by stating the State party does not provide any jurisprudence to demonstrate that he would have any chance of winning a case before the Court of Cassation.

In light of this, the Committee recalled that, in line with international legal standards, mere doubts about the chances of success of a particular remedy do not excuse the author from exercising it. In this regard, it observed that the author has not substantiated his argument regarding the allegedly futile nature of the case he could have brought before the Court of Cassation. It would not seem, in any case, that the author has invoked before the domestic courts, even in substance, the rights he seeks to invoke in the present communication on the basis of articles 8 (1) (a) and (3) of the Covenant. The Committee therefore concluded that the communication is inadmissible under article 3 (1) of the Optional Protocol.

Committee on the Elimination of Racial Discrimination (CERD)

The Committee on the Elimination of Racial Discrimination did not adopt views on a single individual communication in 2019. The most recent view adopted by the Committee was in 2018.

During 2019, the Committee adopted three decisions in regard to its jurisdiction - and in all but one case admissibility - over the three intra-state complaints currently under examination. In the case of *Qatar v United Arab Emirates*, the Committee found that it had jurisdiction over the complaint relating to the enforcement of coercive measures taken by the Respondent State in 2017 and declared it admissible. In the case of *Qatar vs Saudi Arabia*, the Committee similarly found that it had jurisdiction over the complaint relating to the sanctions imposed, and likewise declared it admissible. Lastly, in *State of Palestine vs Israel,* the Committee in a majority decision of 10 to 3 votes found that it had jurisdiction over the submitted complaint relating to discriminatory policies and practices, aimed at the displacement and replacement of Palestinians. Several members of the Committee appended a dissenting opinion to this decision.

These three complaints are collectively the first inter-state communications considered by any UN treaty body. The Committee appointed two ad-hoc Conciliation Commissions in 2019 concerning the Qatar's complaints: Qatar v. United Arab Emirates: Sarah Cleveland (United States), Chiara Georgetti (Italy), Bernardo Sepulvuda-Amor (Mexico), Maya Shali-Fadel (Algeria) and Yeung Kam John Yeung Sik Yuen (Mauritius). Qatar v. Saudi Arabia: Marc Bossuyt (Belgium), Chinsung Chung (Republic of Korea), Makane Moise Mbengue (Senegal), Monica Pinto (Argentina) and Verene Albertha Shepherd (Jamaica).

Committee on the Elimination of Discrimination against Women (CEDAW)

Geographical and thematic issues

The Committee on the Elimination of Discrimination against Women adopted four views in 2019 concerning 5 Member States. The Member States related was the Russian Federation, Ukraine, Bulgaria, Denmark, and the Republic of Moldova.

Gender-based violence

Effective protection, assistance and support against gender-based violence was addressed in three out of the four cases in the time-period concerned in the cases relating to the Republic of Moldova, Bulgaria, and the Russian Federation respectively. In the case O.M. v. Ukraine, the Committee noted that the failure to act in offering such protection, assistance, and support illustrated the traditional discriminatory attitude towards domestic violence as a private issue and amounts to a human rights violation. In the case S.L. v Bulgaria, the Committee noted that the failure to investigate, prosecute or punish perpetrators and provide reparations to victims and survivors of such acts provided tacit permission or encouragement to perpetrate acts of gender-based violence – a failure that is detrimental to society, and in particular, to women and children.

Access to diplomatic protection

Access to public services was raised only in the O.M. v. Ukraine case – which is also available summarized below. The Committee observed that while consular protection per se does not fall under the Convention's framework, the State party, in the framework of its own prerogatives, in particular its constitutional prerogatives regarding its citizens, must exercise due diligence in the protection of its citizens facing violations of their fundamental rights, in particular when the State party is represented abroad. The Committee further considered that consulate support may be of particular importance in resolving child custody and gender-based violence disputes of nationals currently residing abroad, and

that in countries like Ukraine, a personal and subjective right to diplomatic protection is enshrined in national law and the Constitution. The Committee therefore found that citizens have the right to be protected effectively by their diplomatic missions abroad, in particular in gender-based or domestic violence cases and child custody disputes.

Key developments in jurisprudence

The following communications were identified as notable due to their subject matter, or movement in the jurisprudence of the Committee.

O.M. v. Ukraine

CEDAW/C/73/D/87/2015

Failure to offer meaningful diplomatic assistance as a violation of the author's right to protection, assistance, and support as a victim of gender-based violence in Ukraine.

- The author is a national of Ukraine, and the mother of two children, who was domestically abused by her husband while living in Jordan. The author made several attempts to seek assistance from the Ukrainian Embassy in Amman but was not provided with any lawyers or interpreters to assist her in her legal proceedings in a language she did not speak and under sharia law which she did not understand. Consequently, she lost the custody of one of her children and, as a last resort, had to leave Jordan for Ukraine. Although a Ukrainian court later granted her custody of the child concerned, she had been unable to have this decision enforced. In light of the above, the author submitted that the Embassy failed to provide her with adequate advice, assistance, and protection in breach of its obligations under articles 2, 5, and 16 of the Convention.
- **Outcome**: The Committee found that the State party breached the author's rights under articles 2 (a), (d) and (f), article 3 and article 5 of the Convention owing to the state party's omission in providing assistance and support to victims of gender-based violence.

1. Facts

The author is a national of Ukraine who claimed that the State party violated her rights under article 2 (a) – (d) and (f), article 5 (a) and (b) and article 16 (c) – (e) and (g) of the Convention.

The author married a Jordanian national in 2003 in Ukraine and shortly thereafter moved to Jordan. The author gave birth to their first daughter in May 2004. With the permission of the father, the baby was registered as a Ukrainian citizen with the embassy in Amman. Following a brief stay in Ukraine, in which the author's parents kept the baby, the author moved back to Jordan in 2004. In January 2006, the author gave birth to a second daughter, who was also registered with the Ukrainian Embassy in Amman.

The author submitted that their relationship was initially loving and free from violence. Then, after moving to Jordan, the author experienced psychological, physical and financial abuse from her husband. After the second child was born, the author alleged that her husband became violent against her.

In February 2006, the author managed to contact the Ukrainian Embassy in Amman by telephone. She asked for assistance that

would allow her to leave the country and return to Ukraine with her daughter. The Embassy informed that they were unable to solve family disputes. However, at the request of the author's parents, the Ukrainian authorities contacted the Embassy in Amman, which, as a result, filed a domestic violence complaint with Jordanian authorities. In March 2006, the case was decided under sharia law and ruled in favour of a three-month reconciliation period. At the husband's request, the court also determined that the eldest daughter should be returned to Jordan from Ukraine. The author was not provided with a copy of the decision, nor a lawyer or interpreter during the proceedings.

Following the proceedings, the author's husband refused to travel to Ukraine or to allow the author to travel with her youngest daughter. The violence against her also intensified, and she contracted the Embassy but was advised to leave the country alone, abandoning her youngest daughter in Jordan. The author refused and continued to suffer violence.

After a serious incident of physical abuse, the author once again contacted the Embassy and was advised to file a report. The court then determined that both parents were responsible for the situation and that the husband should take care of the author and their daughter, and rent accommodations outside of the family house for them and give permission for the author to obtain a residence and to work in Jordan. The husband never compiled with these requirements.

In 2009, child custody proceedings were held at the request of the husband. The author was only informed of these two days prior and requested assistance from the Ukrainian Embassy which was denied. After 30 days, the court delivered its judgement that the younger daughter should be placed in the custody of the mother, and the eldest in the custody of the father. The author submitted that she was unable to defend herself without no assistance or interpreter. The author's husband did not give her consent to travel to Ukraine with their youngest daughter, so she remained in Jordan.

The author attempted to appeal the judgement, but was informed that the time frame for doing so had elapsed. One week after the judgement, the author was informed that she had 10 days to travel to Ukraine and return to Jordan with her eldest daughter. During that period, her husband beat her repeatedly. She decided to stay in Jordan, so as not leave her second daughter alone.

Once the 10 days had elapsed, the author's husband presented her to law enforcement officials and reported that she had not compiled with the judgement. The author was subsequently placed in detention for 24 hours. She was then taken to court, where she was asked to sign a declaration to the effect that she was legally bound to bring her eldest daughter to Jordan.

Upon her return home, the author was badly beaten by her husband and relatives. She called the Embassy, and was provided with an interpreter and Jordanian lawyer to assist her in going to the Family Reconciliation Centre. The husband allowed the author to have one telephone conversation with her daughter, and he once brought to the Centre for an hour. After that visit, the husband refused her any contact with her daughter. The Centre asked the husband to pay for the author to travel to Ukraine. On 10 February 2010, under pressure by the Centre and the Ukranian Embassy, the author flew to Ukraine. In March and April 2010, the author was admitted to the hospital because of cerebral injuries she had sustained as a result of the repeated beatings. In December of the same year, the domestic violence case against her husband was closed because of her absence from Jordan. The author was advised not to travel to Jordan as she had not implemented the decision of the sharia court.

Simultaneously, a Ukrainian court granted custody of the eldest to the author, and that of the youngest to the father. On appeal, the court granted full custody of both to the author. Since this ruling, the author has been unable to have the Ukrainian courts' judgement enforced in Jordan despite several attempts.

The author submitted that all of the efforts by the Ukrainian authorities relating to the enforcement of the courts' decision and her protection against domestic violence were ineffective. Her youngest daughter lives with her father, and she had no contact with her at all.

2. Complaint

The author claimed that she was a victim of gender-based discrimination, in violation of article 2 (a), (c)-(d) and (f), article 5 (a) and (b) and article 16 (c)-(d). The author submitted that Ukraine must ensure the effective protection of women against any act of discrimination through the practical implementation of legal non-discrimination provisions, the protection of victim's rights in the enforcement of court decisions and the provisions of access to competent national tribunals or other institutions. The author further submitted that Ukraine has failed to comply with the provisions through the non-implementation of court-decisions that awarded custody of her daughters to her.

In particular, the author submitted that she was exposed to an unnecessarily prolonged, unsustainably costly and ineffective process. As a survivor of violence seeking justice and safety for her child, the lack of appropriate remedy of information and the dismissiveness and disregard for her rights only revictimized her.

The author further submitted that Ukraine, despite being aware of the discriminatory situation of Christian women who dispute family issues in sharia courts, did not take the steps necessary to build a dialogue with its Jordanian counterparts in the present case, and did not sign any agreement with Jordan to promote the protection of victims of domestic violence or facilitate the implementation of court decision in the two countries.

The author also claimed that, under article 2 (d)-(e) and article 5 (a), Ukraine is under an obligation to identify domestic violence as a human rights violation and ensure that public authorities refrain from discriminatory acts and take all appropriate measures to eliminate discrimination against women. In the present case, the response and the actions of the authorities were inappropriate and ineffective - the Embassy refused to assist her, claiming that it was a family matter. It further advised the author to travel back to Ukraine and stated that it would have the younger daughter taken back at a later point which it failed to do.

Lastly, the author claimed that she is a victim of gender-based discrimination, in violation of articles 1, 2(a) and 5(a), as she received no information from the authorities about the possible risks of discrimination before moving to Jordan despite the fact that Ukraine was aware of systemic discriminatory practices and actions of violence against Ukrainian women and children in Jordan.

3. Merits

The Committee stressed that it limited its scrutiny to alleged violations by the authorities of the State party, and not by Jordanian authorities.

The Committee followingly considered that the absence of bilateral treaties with the country in which its citizen is found did not relieve the State party of this obligation, in particular in cases of violations of international fundamental rights. It further noted that consular protection may be of particular importance in gender-based or domestic violence cases and child custody disputes, and that citizens have the right to be protected effectively by their diplomatic missions abroad.

In considering the present case, the Committee was of the opinion that the author did not receive timely and adequate assistance form the Ukrainian Embassy in Amman over a long period, during which she suffered domestic violence and during which the child custody dispute in the sharia court was ongoing. It further added that it remains unclear why the authorities did not guide the author to a relevant legal counsel in Jordan

or did not hire a lawyer to represent her. The author was neither offered the services of an interpreter, despite the fact that proceedings were in Arabic.

The Committee followingly noted that the author was in a vulnerable situation and a mother of Christian faith in a State governed by sharia law, without sufficient knowledge of the language or sharia law. Consequently, the author was left alone to face, without sufficient knowledge of the language of sharia law, both the court and the relatives of her former husband. As a result, she lost custody of one of her daughters and had to leave Jordan, an act that ended the judicial proceedings. It concluded that such an omission resulted in the breach of the author's rights under articles 3 and 5 of the Convention, to be given protection, assistance and support as a victim of gender-based violence. Thus, it found a violation under article 2 (a), (d), and (f), article 3 and article 5 of the Convention, and as a result did not examine the author's remaining claims.

4. Recommendations

The Committee made the following recommendations to the State party:

- Provide reparations, including recognition of moral damages that the author suffered as a consequence of the inadequate and untimely assistance received from the Ukrainian Consulate services in Jordan.
- More generally, ensure that consulate protection is effectively provided to Ukrainian women in vulnerable situations abroad, provide legal support in gaining access to justice and to all legal guarantees of protection, including against gender-based discrimination and in child custody dispute, to its female nationals abroad who claim to be victims in need of assistance, and to ensure that consular staff are fully trained on matters pertaining to the conventions it had ratified or acceded to.
- Take further measures to reach an agreement with Jordan on legal aid and child custody matters.

5. Implementation

The Committee requested the state party provide a follow up information on measures taken within 180 days.

Natalia Ciobanu v. Republic of Moldova

CEDAW/C/74/D/104/2016

The exclusion of permanent caregivers from social security contributions in Moldova

- The author of the communication is a Moldovan national who was the permanent caregiver for her child born with a first-degree disability from 1993 until the daughter's death in 2012. According to the national legislation, women who provided permanent care for children with severe disabilities after the Act on Public Social Insurance Pensions entered into force, were excluded from the contribution period to the social security pension until the "personal assistants" was established. The author argued that the exclusion of this time from her social security contribution is in violation of her rights under article 3 and 11 (2) (c) of the Convention.
- **Outcome**: The Committee found that the State party had denied the author equality in respect of the right to social security in cases of retirement and old age, and had failed to provide her with any other means of economic security or any form of adequate redress, thereby in violation of its obligations under article 3 and 11 (1) (e) of the Convention. It also found that the failure to take all appropriate measures, including through legislation, to ensure the full development and advancement of women providing care for their children with disabilities constituted indirect gender-based discrimination, and a violation of the obligation of the State party, under article 11 (2) (c) of the Convention to guarantee women the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

1. Facts

The author of the communication is Natalia Ciobanu, a Moldovan national, who claimed that the State Party violated their rights under article 3 and article 11 (2) (c) of the Convention.

The author had been gainfully employed since 1973. On 9 January 1992, she gave birth to a daughter who was diagnosed with a first-degree disability with required permanent assistance and care. Although the doctors urged the author to place her daughter in a residential institution, the author decided to personally provide care for her. Shortly, thereafter, the author resigned from her job. During the period when she cared for her daughter, the State party provided no alternatives to institutionalization for children with disabilities.

The author's daughter passed away on 22 February 2012, shortly before the social service of "personal assistant" was introduced in the Republic of Moldova. On 18 June 2013, the author submitted documents to the branch of National Social Insurance Office confirming her contributions to the social insurance fund and requesting to be paid her retirement (old age) pension. Her monthly person was calculated to amount only to 590.22 lei (€27) well below calculated minimums for subsistence. In response to the author's query why her pension was so low, she was informed via a letter from the branch that her contribution period did not include the period of care for her child, starting from 1 January 1999, when act No. 156-XIV on Public Social Insurance Pensions entered into force. In the author's case, only the period from 5 November 1993 to 31 December was considered.

On 25 November 2013, the author and two other women, who also provided care for their children with severe disabilities complained to the Equality Council and asked for the Act to be amended. On 15 February 2014, the Equality Council recommended the taking of appropriate provisions to achieve positive transitional measures for persons who provided care for persons with severe disabilities from 1 January to the introduction of the social service of the "personal assistant" so that the period starting from 1 January 1999 would be included in the calculation of the social insurance pension contribution period. The Ministry has taken no measures to implement the Council's recommendation, and the author submitted she has now exhausted all available and effective domestic remedies.

2. Complaint

The author claimed that her rights under article 3 of the Convention have been violated, since the social security system currently in place in the Republic of Moldova discriminates against women who provide care for children with severe disabilities. Thus, according to the national legislation, persons who have provided care for children or other family members with severe disabilities since 1 January 1999 when the Act on Public Social Insurance Pensions entered into force, receive no social insurance pension for the respective period. Given that, in Moldovan society, women are perceived as the main caregiver for a child with disabilities, it is usually women who are excluded from the social security system. Accordingly, the author argues that the State party did not ensure the existence of a legal framework that would contribute to the social and economic development of women who have children with severe disabilities in their care. The author also claimed that her rights under article 11 (2) (c) of the Convention have been violated, since the State party has failed to provide social support services for women who have children with severe disabilities, so that they could have the opportunity to work and to accumulate a sufficient social insurance pension to live a decent life. The author contended that, by not including her caregiving period in the calculation of the contribution period, the State party has refused to recognize the importance of domestic work and childcare.

3. Merits

The Committee noted the author's assertion that she had a reasonable expectation that, in her old age, she would receive a sufficient social insurance pension after 20 years of providing care in the home setting for her daughter instead of placing her in the residential institution. It also noted that the author was not aware of the aforementioned change in legislation that affected the way in which the contribution period was calculated, thereby negatively affecting the amount of her monthly pension. The Committee observed that the right to social security, including in cases of social insurance, is of central importance in guaranteeing human dignity. It recalled that States should provide non-contributory old-age benefits, social services, and other assistance for all older persons who, when reaching the retirement age prescribed in national legislation, have not completed a qualifying period of contributions or are not otherwise entitled to an old-age insurance-based pension or other social security benefit or assistance and who have no other source of income.

The Committee further observed that, although everyone has the right to social security, States should give special attention to those individuals and groups who traditionally face difficulties in exercising that right, such as women. The Committee thus considered that States must therefore take effective measures, and periodically review them when necessary to fully realize the right of all persons without any discrimination to social security, including the social insurance pension. They must also take steps to ensure that, in practice, men and women enjoy their rights on a basis of equality; consequently, their public policies and legislation must take account of the economic, social and cultural inequalities experienced by women. States must therefore at times take measures in favour of women in order to attenuate or suppress conditions that perpetuate discrimination.

The Committee reaffirmed that States must review restrictions on access to social security schemes to ensure that they do not discriminate against women in law or in practice and that States must take steps to eliminate factors that prevent women from making equal contributions to social security schemes that link benefits with contributions or ensure that such schemes take account of such factors in the design of benefit formulas, for example, by considering periods spent, especially by women, taking care of their children, both with and without disabilities and adult dependants.

The Committee considered that the State party had failed to demonstrate that the exclusion in the author's case did not constitute indirect discrimination against women, given that they, were primary caregivers for their children with disabilities and had no supporting social services to enable them to combine childcare obligations with work responsibilities. The Committee was further of the view that her exclusion from the social insurance pension for the caregiving period had restricted her economic autonomy and prevented her from enjoying timely equal economic opportunities. Accordingly, it concluded that the State party denied the author equality in respect of the right to social security in cases of retirement and old age and had failed to provide her with any other means of economic security or any form of adequate redress, thereby failing to discharge its obligations under article 3 and 11 (1) (e) of the Convention.

The Committee considered that the State party's failure to take all appropriate measures, including through legislation, to ensure the full development and advancement of women providing care for their children with disabilities in a society that traditionally attributes caregiving responsibilities to women, affected the author adversely, and therefore constituted indirect gender-based discrimination against her and a violation of the obligation of the State party, under article 11 (2) (c).

4. Recommendations

The Committee noted that the state party is under an obligation to provide the authors

with an effective remedy, including making full reparation to individuals whose Covenant rights have been violated. This includes an obligation to:

- Provide appropriate remedies, including monetary compensation and psychological rehabilitation, commensurate with the gravity of the violations of their rights.
- Ensure timely gender-sensitive training for police and investigative authorities on the Convention, the Optional Protocol thereto and the Committee's general recommendations, in particular general recommendations No. 19, No. 28, No. 33 and No. 35, in order that crimes with homophobic undertones committed against lesbian women be understood as gender-based violence or hate crimes requiring active State intervention.
- Comply with its due diligence obligations to respect, protect and fulfil the human rights of women, including lesbians, and the right to be free from all forms of gender-based violence.
- Investigate promptly, thoroughly, impartially and seriously all allegations of gender-based violence against women for which there are grounds to believe that such violence was motivated by hatred towards lesbians, fully taking into account the specific context of the offence, ensure that criminal proceedings are initiated in all such cases, bring the alleged perpetrators to trial in a fair, impartial, timely and expeditious manner and impose appropriate penalties.
- Provide lesbians, who are victims of violence with safe and prompt access to justice, including free legal aid where necessary, in order to ensure that they have access to available, effective and sufficient remedies and rehabilitation in line with the guidance provided in the Committee's general recommendation No. 33.

5. Implementation

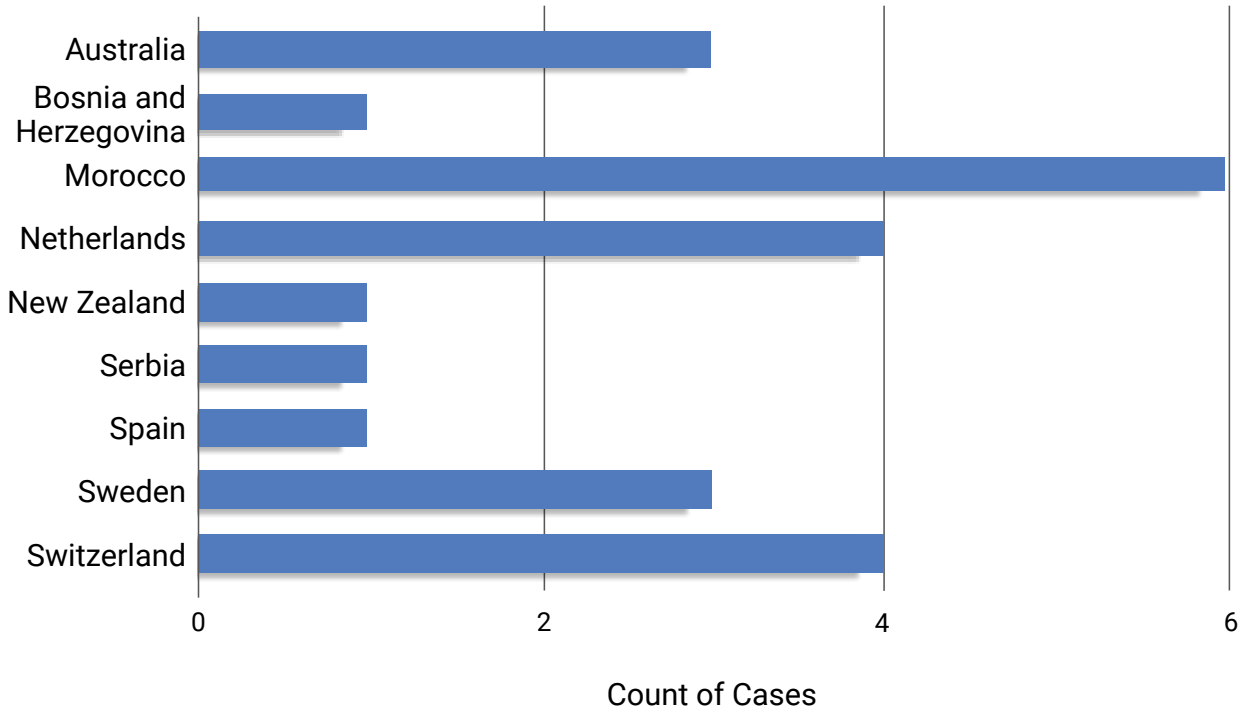
The Committee requested the state party provide a follow up information on measures taken within 180 days.

Committee Against Torture (CAT)

Geographic and thematic trends

During 2019, the Committee against Torture adopted views on 31 individual communications. The Committee on Torture also discontinued 9 cases during this time frame. In terms of geographical distribution of the individual communications, the majority of submitted complaints emanated from European states (at 54.3%). Herein, Switzerland and Netherlands had the most cases within the continent with four cases each. The remainders of non-European concerns addressed only three States: Australia (12.5%), Morocco (25%), and New Zealand (4.2%).

Geographical Distribution of CAT cases



The most dominant theme in the individual communications examined in 2019 was non-refoulement. Beyond this, the Committee also addressed (albeit sparsely) allegations of torture and ill-treatment in prison facilities, lack of investigation, and the right to redress.

Non-refoulement

The principle of non-refoulement accounted for the vast majority of concerns raised –approximately 81% of all individual communications examined by the Committee against Torture in 2019. Out of these 25 communications, 4 were declared inadmissible and 12 were found to contain no violation by the Committee. The remaining 9 cases contained violations of the author's rights under article 3 of the Convention.

Key developments in jurisprudence

The following communications were identified as notable due to their subject matter, or movement in the jurisprudence of the Committee.

A v. Bosnia and Herzegovina

CAT/C/67/D/854/2017

Right to remedy and compensation in Bosnia and Herzegovina

- The communication involves a national of Bosnia and Herzegovina who claim that the State party has violated her right to fair and adequate compensation under article 14 (1) in conjunction with article 1 (1) of the Convention against torture. The author submitted that she was a victim of rape committed during the non-international armed conflict in Bosnia and Herzegovina as a result of which she suffered severe and permanent psychological damage. Following a verdict against the perpetrator, the perpetrator was ordered to pay her 30,000 BAM (approximately 15,340 €) for non-pecuniary damages. She later followed an enforcement motion due to the lack of payment, which she was later compelled to withdraw due to information indicating that the perpetrator had no assets. She alleged that this is in violation of her right to fair and adequate compensation.
- **Outcome**: **The Committee found that there was a violation of article 14 (1) in conjunction with 1 (1)** given the severity of the act of torture, the complainant's right to obtain compensation, and the complainant's lack of possibility to enforce that right as fully as possible.

1. Facts

The author is a national of Bosnia and Herzegovina who claimed that the State party has violated her right to fair and adequate compensation under article 14 (1) in conjunction with article 1 (1) of the Convention against Torture.

In 1992, the complainant with her 10-year-old daughter lived within the Vogosca Municipality which was under control by the forced of the Army of Republika Srpska during the non-international armed conflict.

On an unknown date between May and June 1993, Slako Savic, a member of the VRS, invaded the complainant's house armed with a gun. He followingly forced her into his car and raped her twice. The complainant became pregnant and had to terminate her

pregnancy. These events severely affected her, leaving serious permanent psychological damage.

The complainant did not report the events immediately because she was afraid to do so while living in a locality controlled by VRS. Even after the conflict, she felt uncomfortable speaking about her experience. However, after witnessing other women speaking out, she filed an indictment against Slako Savic for war crimes against the civilian population on 5 November 2005

On 29 June 2015, Slako Savic was found guilty of war crimes against civilians for the rapes perpetrated against the complainant and sentenced him to eight years of imprisonment and required him to pay the complainant 30,000 BAM (approximately 15,340 €) for non-pecuniary damages within 90 days.

On 10 June 2016, the complainant filed an enforcement motion with a view to ensuring the payment of the non-pecuniary damages. On 8 August 2016 and 27 March 2017 the complainant was informed that Mr Savic had no assets; the complainant was therefore compelled to withdraw the enforcement motion on 7 April 2017.

2. Complaint

The author submitted that there is an ongoing violation of article 14 (1) in conjunction with article 1 (1) because the State party has not ensured in its legal system or practice that she can obtain redress and has an enforceable right to a fair and adequate compensation, including the means for as full rehabilitation as possible. The author called on the Committee, according to its well-established practice, to urge the State party to adopt adequate measures of reparation in her favour. The author further submitted that these must not be limited to pecuniary compensation, but must also cover rehabilitation, satisfaction, and guarantees of non-repetition.

3. Merits

On the basis of the detailed and consistent description of rape, further corroborated by the verdict of 28 June 2015, and the general pattern of sexual violence committed during the internal armed conflict, the Committee noted that due weight must be given to the complainant's allegations and therefore concluded that the facts as submitted constitute torture within the meaning of article 1 of the Convention. Pursuant to article 14 (1) of the Convention, the State party is therein under an obligation to, among other things, provide her adequate compensation and integral redress.

The Committee followingly noted the complainants claim that the State party has deprived her of the right to fair and adequate compensation by failing to adopt adequate legislation and develop law enforcement practice which would ensure that victims of torture obtain redress and enforce their right to compensation. It herein recalled that the obligation to provide redress is both procedural and substantive.

It further recalled that, on account of the continuous nature of the effects of torture, state of limitations should not be applicable as they deprive victims of redress, compensation and rehabilitation due them. In this regards, the Committee observed that there was no possibility to receive the granted compensation in practice given the perpetrators financial destitution, and furthermore, it noted that domestic legislation included a statute of limitations for cases such as this.

Moreover, the Committee considered that such redress should cover all the harm suffered by the victim and measures to guarantee that there is no recurrence of the violation, while always bearing in mind the circumstances of each case.

On this basis, and given the severity of the act of torture and the complainant's right to obtain compensation and the complainants lack of possibility to enforce her right as fully as possible, the Committee concluded that the State party had breached its obligations under article 14, in conjunction with article 1 (1) of the Convention.

4. Recommendations

The Committee noted that the state party is under an obligation to provide the authors with an effective remedy, including making full reparation to individuals whose Covenant rights have been violated. This includes an obligation to:

- Ensure that the complainant obtains prompt, fair and adequate compensation;
- Ensure that the complainant receives medical and psychological care immediately and free of charge;
- Offer public official apologies to the complainant;
- Comply with concluding observations with respect to establishing an effective reparation scheme at the national level to provide all forms of redress to victims of war crimes, including sexual violence, and to develop and adopt a framework law that clearly defines the criteria for obtaining the status of victim.

5. Implementation

The Committee requested the state party provide a follow up information on measures taken within 90 days, or on the 31st of October 2019.

Flor Agustina Calfunao Paillalef v. Switzerland

CAT/C/68/D/882/2018

Non-refoulement concerning an activist for the Mapuche indigenous people in Chile

- The communication involves a national of the Chile and a member of the Mapuche indigenous people, who claimed asylum in Switzerland owing to a consistent pattern of political persecution and human rights violations that her people have endured. After having her claim rejected through numerous processes, the author faces deportation to Chile.
- The author claimed that her deportation to Chile would be in violation of her rights under article 3 of the Convention, as due to her commitment to defending the fundamental rights of the indigenous people to which she belongs, she would be at real risk of torture and other cruel, inhuman or degrading treatment or punishment both by Chilean authorities and by private individuals.
- **Outcome: The Committee found that deportation of the author would constitute a violation of article 3 of the Convention.** The Committee was of the view that the complainant's ethnic background, the persecution of Mapuche leaders in Araucania, the acts of persecution and torture suffered by several members of her family, and her protest activities at the international level are sufficient, taken together, to establish that she would run a foreseeable and real risk of being subjected to torture or other cruel, inhuman or degrading treatment or punishment if she were to be deported.

1. Facts

The author is a national of Chile and a member of the Mapuche indigenous people. She is subject to an order of deportation to Chile and alleged that her deportation would constitute a violation by Switzerland of article 3 of the Convention.

The author applied for asylum on 19 November 2008. In her application, she submitted material documenting the political persecution her family has endured as a result of its

claims to the ancestral lands of the Mapuche people. On 18 August 2010, the Federal office for Migration rejected the complaint's application for asylum and issued an order for her deportation by 30 September 2010. The rejection referenced that the complaint had been living in Switzerland since 1996, and could therefore have applied for asylum much earlier had she really needed protection from the country, and that there was no concrete evidence that the complainant might suffer the same fate as other tortured Mapuche persons and that there is therefore no well-founded fear of persecution.

On 20 September 2010, the complainant appealed the decision. She later informed the Swiss authorities that her activities as Ambassador of the Mapuche Permanent Mission to the United Nations, in the context of which she works to expose the conduct of the Chilean state, could put her at risk in event of deportation. On 11 June 2013, the Federal Administrative Court dismissed the appeal, noting that there was no systematic repression and that the complainant had not alleged any personal threat.

On 7 October 2014, the complainant submitted a request for reconsideration to the Federal Office for Migration on the grounds of worsening repression in Araucania. She attached numerous supporting documents documenting the general situation by human rights organisations. The complainant also informed the State Secretariat of numerous episodes of violence and ill-treatment suffered by members of her family in retaliation for having asserted their fundamental rights.

On 15 May 2017, the State Secretariat for Migration rejected the complaint's request for reconsideration and set her departure for 19 June 2017. A following appeal was dismissed, and the State Secretariat gave the complainant a deadline of 16 August 2018 to leave Switzerland.

2. Complaint

The author submitted that her deportation to Chile would be a violation of her rights under article 3 of the Convention, as she would be at risk of torture and other cruel, inhuman or degrading treatment owing to her commitment to defending the fundamental rights of the indigenous people to which she belongs. The author claimed that there is both a consistent pattern of gross, flagrant and mass violations of the human rights of Mapuche human rights defenders and a situation of personal risk.

3. Merits

The Committee recalled general its Comment No.4 (2017) according to which the prohibition of non-refoulment exists whenever there are substantial grounds for believing that the person concerned would be in danger of being subjected to torture in a State to which he or she is facing deportation, either as an individual or as a member of a group that may be at risk of being tortured in the State of destination. It further noted that the Committee's practice in such circumstances has been to determine that substantial grounds exist whenever the risk of torture or ill-treatment is "foreseeable, personal, present, and real".

The Committee noted that on account of the author's actions in defence of their fundamental rights, both the author's sister and her nephew were tortured and assaulted on several occasions. The Committee also noted that the Inter-American Commission on Human Rights had requested precautionary measures in respect of various members of the complainant's family. It also observed that her politically sensitive activities in Switzerland, which involve the systematic reporting of human rights violations to international bodies, would likely result in her suffering the same fate as the members of her family and community who defend the rights of the Mapuche people are the targets of disproportionate, brutal, and repeated attacks by the Chilean State and private armed militias.

In lights of these circumstances, the Committee was of the view that the author's ethnic background, the persecution of Mapuche leaders in Araucania – a fact acknowledge by the State party itself – the acts

of persecution and torture suffered by several members of her family and her conspicuous protest activities at the international level are sufficient, taken together, to establish that she would personally run a foreseeable and real risk of being subjected to torture or other cruel, inhuman or degrading treatment or punishment if she were deported.

The Committee noted that the principle of the benefit of the doubt, as a preventative measure against irreparable harm, must also be considered in adopting decisions on individual communications, given that the spirit of the Convention is to prevent torture, not to redress once it has occurred.

In light of the State party's suggestion that the author could be deported to another safer area of the State, the Committee re-iterated that the deportation of a person or a victim of a torture to an area of a State where the person would not be exposed to torture, unlike in other areas of the same State, is not reliable or effective and that such a measure makes even less sense in the case of an indigenous victim who is attached to his or her community and land.

On this basis, the Committee found that deportation of the author would constitute a breach of article 3 of the Convention by the State party.

4. Recommendations

The Committee noted that the state party is under an obligation to provide the authors with an effective remedy, this includes an obligation to: Reconsider the complainant's asylum application, and refrain from deporting the complainant while her application for asylum.

5. Implementation

The Committee invited the State party to provide a follow up information on measures taken within 90 days.

Zentveld v. New Zealand

CAT/C/68/D/852/2017

Lack of prompt and impartial investigation into the abuse of children at a psychiatric hospital in New Zealand

- The communication involves a national of New Zealand who claimed that the State Party violated his rights under articles 2, 10, 11, 12 and 13 of the Convention. The complainant submitted that he was a victim of ill-treatment and torture in the Child and Adolescent unit of Lake Alice Hospital. He also complained that the State party had not ensured accountability for the staff at the hospital who abused and ill-treated children in their care. He further submitted that in failing to do so, it also did not conduct a prompt and impartial investigation, and that it did not provide with him with the necessary remedy and redress.
- **Outcome**: The Committee found that the State party's failure to conduct an effective investigation into the circumstances surrounding the acts of torture and ill-treatment suffered by the complainant is **in violation of the State party's obligations under articles 12, 13, and 14 of the Convention**.

1. Facts

The complainant is a national of New Zealand who claimed that the State party violated his rights under articles 2, 10, 11, 12, and 13 of the Convention. The complainant was admitted to the Child and Adolescent unit at Lake Alice Hospital – a facility within the government

department of Health – for a total period of two years and 10 months. He submitted that during his time he was diagnosed with a behavioural disorder and subsequently treated with the administration of electric shocks, unmodified electroconvulsive therapy, drugs, and solitary confinement on the grounds of bad behaviour and a threating attitude. The facility was run by psychiatrist Dr. Selwyn Leeks.

Between 1976 and 1977 a number of complaints were made to the Government and medical organizations about the treatment using an electric shock machine on children and administering drugs delivered as a punishment and not for therapeutic purposes. None of these complaints resulted in any prosecutions and the psychiatrist running the unit left New Zealand to work in Melbourne, Australia.

Much later, in 1997, the treatment of the children at Lake Alice started receiving significant media attention. As a result, patients started coming forward. In 1999, this culminated in the filing of a civil claim on behalf of 56 former patients. Following more victims coming forward, the Government eventually paid out a total of $NZ 12.8 million to 195 victims.

In 2003, following the invitation of the Government of New Zealand to former Lake Alice victims to make a criminal complaint to the police, several such complaints were submitted. In 2006, the complainant submitted his case to the police, alleging criminal conduct by former staff including Dr. Leeks. The police closed the investigation on the grounds that they could not mount a criminal prosecution, given the passage of time since the events had taken place, the unavailability of witnesses, and the likelihood of a defence that the time limit had exceeded and that there had already been an investigation. To date, no one has been held criminally responsible for the acts committed at Lake Alice.

2. Complaint

The complainant submitted that he was a victim of ill-treatment and torture in the Child and Adolescent unit of Lake Alice Hospital. He complains that the State party has not ensured accountability for the staff at the hospital who abused and ill-treated children in their care. Without any investigation, the alleged perpetrators received no disciplinary punishment and no statement barring such practices have been released. The complainant also submitted that the State party did not consider that there were other avenues of formal investigation available, such as a ministerial inquiry or to require the medical authorities to investigate a former practitioner, even if that person had resigned. On this basis, the complainant argues that his rights under articles 2, 10, 11, 12, 13, and 14 have been violated.

3. Merits

The Committee noted that the main issues before it was in determining whether the complainant's allegations of abuse by staff had been promptly and impartially examined by the competent authorities, in accordance with articles 12 and 13 of the Convention. It also recalled that this is not an obligation of result, but one of means. As such, it proceeded to assess whether the authorities had taken reasonable steps to conduct an investigation that is capable not only of establishing facts, but also identifying and punishing those responsible.

It firstly noted that the State party did not contest that the events took place, that the complainant was a victim of those events, or that such treatment may meet the threshold of torture as defined by article 1 of the Convention, or at least of ill-treatment, as defined in article 16 of the Convention.

It also noted that in his complaint to the police, the complainant referred to instances at a time when he was still a child in State care. It further noted that the report produced on the basis of the police investigation did not clarify whether the alleged treatment was indeed applied as punishment despite findings by a retired High Court judge indicated that electroconvulsive therapy was constantly used on the children as a punishment. It also noted that the report outlines an intense and ongoing media interest in the case.

In light of the above circumstances, the Committee expressed concern that despite repeated investigations into the same matter, police acknowledgement of evidence of application, and the State party's acknowledgement before the Committee of the seriousness of historic complaints of torture, the authorities of the State party made no consistent efforts to establish the facts of such a sensitive historical issue involving the abuse of children in State care. In particular, it noted that the resulting report did not clarify whether the alleged treatment was indeed applied as a punishment. It also referred to the timeframe of the complaint at the national level, wherein the Police Complaints Authority may technically decide not to investigate if the complainant has had knowledge for more than 12 months prior to the complaint, but given the seriousness of the allegation, would likely investigate such historic complaints of torture.

The Committee noted the State party's claim that the decision not to prosecute Dr. Leeks was informed by a lack of evidence, the six-month time limit on commencing proceedings from the date of the cessation of the injury or damage, and a determination that there was no other countervailing public interest in proceeding with a prosecution. However, it also noted that the State party had not demonstrated that it made sufficient efforts to clarify the facts. In addition, it expressed concern that the authorities have not tried to find out if anybody else could be held responsible for the alleged violations – therein ignoring the systemic character of the issue at stake and all the surrounding circumstances - or if the complainant, who was a child when he suffered the abuse, could have effectively complained within the six-month time period after he was released from the Lake Alice hospital.

It further noted that despite the express invitation to make a criminal complaint, the police have still not clarified the facts surrounding the events in question, and that when confronted with several of these complaints, the investigative authorities only chose a representative complaint for analysis.

In light of the above, the Committee found that the State party's failure to conduct an effective investigation into the circumstances surrounding the acts of torture and ill-treatment suffered by the complainant is in violation of the State party's obligations under articles 12, 13, and 14 of the Convention.

4. Recommendations

The Committee noted that the state party is under an obligation to provide the authors with an effective remedy, including making full reparation to individuals whose Covenant rights have been violated. This includes an obligation to:

Conduct a prompt, impartial and independent investigation into all allegations of torture and ill-treatment made by the complainant including, where appropriate, the filing of specific torture and/or ill-treatment charges against the perpetrators and the application of the corresponding penalties under domestic law;

Provide the complainant with access to appropriate redress, including fair compensation and access to the truth, in line with the outcome of the investigation;

Make public the present decision and disseminate its content widely, with a view to preventing similar violations of the Convention in the future.

5. Implementation

The Committee requested the state party provide a follow up information on measures taken within 90 days.

Committee on the Rights of the Child (CRC)

Geographic and thematic trends

The Committee on the Rights of the Child adopted five views on individual communications in 2019 all relating to one Member State – Spain. The Committee also discontinued one case related to Switzerland.

Key developments in jurisprudence

R.K. v Spain

CRC/C/82/D/27/2017

Failing to examine the probative value of birth certificates as violating the right to identity

- The author is a national of Guinea who at the time was facing deportation in Spain. The author claimed to be a victim of violations of articles 3, 8 12, 18 (2), 20, 22, and 27 of the Convention.
- The author submitted that because of the type of medical test used to assess his age and the failure to provide him with a guardian or representative during the age assessment and asylum application procedure, the best interests of the child were not taken into consideration by the State party – even though he was an asylum-seeking unaccompanied minor and had documents stating this to be the case.
- **Outcome**: The Committee found that the case before it revealed violations of article 3, 8, 12, 20 (1), and 22 of the Convention. This was due to the fact that he was deprived of the special protection that is to be afforded to unaccompanied asylum-seeking minors, namely the best interests of the child, and the necessary safeguards were more generally not ensured in the age assessment procedure – including in failing to assign a representative or guardian and in dismissing the probative value of the identity documents without attempting to assess their authenticity. Lastly, the Committee found that the failure to apply the requested interim measure constituted a violation of article 6 of the Optional Protocol.

1. Facts

The author is a national of Guinea who claimed to be a victim of violations of articles 3, 8, 12, 18 (2), 20, 22, 27, and 29 of the Convention. On 3 June 2017, the author travelled to Spain, however his boat was rescued by the Red Cross before reaching the Spanish coast. The author had previously resided in Guinea with his Christian family, however his parents were murdered during clashes between his famly and the predominantly Muslim population. At the time, the author managed to flee his home but was caught, tied up, and had his arms and chest cut with a razor blade. He managed to escape again and shortly after found that his house had been razed and burned to the ground. The author then decided to travel alone.

Upon his arrival in Spain, the author was transferred to the Almeria police station and taken straight to a cell, where he spent three days alongside adults. Even though the author maintained that he was 17 years of age throughout the process, his date of birth was recorded as 1 January 1996, thereby reflecting 21 years of age to officials.

On 5 June 2017, a deportation order was issued against the author, ordering his detention in the holding centre for foreign nationals. The author explained that he informed the Court that he was a minor, that he was not assisted by an interpreter, and that he does not know whether a lawyer was assigned to him, since he was unable to speak to him or her. On 17 July, an organization also wrote on his behalf to the Ombudsman and the supervisory judge responsible that he was being held there as a minor.

On 18 July 2017, the author underwent an interview to apply for asylum. He explains that he was not allowed to formalize his application for international protection in his capacity as a minor, as he did not have a guardian. He was soon after requested to undergo age assessment tests. A few days later, the author received a copy of an extract of his birth certificate which he sent to the Prosecutor's office.

On 28 July 2017, the author was released, after having spent 52 days in the holding centre. He was transferred to an accommodation for adults without having been assigned a guardian or having received the treatment and protection to which he was entitled as a minor.

2. Complaint

The author submitted that even though he was an asylum-seeking foreign unaccompanied minor, the State party failed to take into account the principle of the best interests of the child enshrined in article 3 of the Convention.

He submitted that the State party violated this principle by failing to respect his right to be presumed to be a minor in the event of any doubt or uncertainty, especially when there is a real risk that he could suffer irreparable harm. The author also claimed to be in violation of article 3, read in conjunction with article 18 (2) and 20 (1) of the Convention as the State party failed to assign him a guardian or representative, a practice that is a key procedural guarantee of respect for the best interests of the unaccompanied child. The author further maintained that the State party has violated his right to an identity under article 8 of the Convention, as age is a fundamental aspect of identity and the State party has an obligation to not interfere in this regard and to preserve and recover the data constituting it.

He further alleged that he is a victim of a violation of article 12 and 20 of the Convention, as the State party did not provide him with the opportunity to be heard and failed to grant him the protection that he was owed as a child deprived of his family environment. The author also claimed to be the victim of a violation of article 22 of the Convention as, when he attempted to apply for asylum, he was prevented from formalizing his application as he was a minor. Lastly, the author claimed that he is the victim of a violation of his rights under articles 27 and 29 of the Convention, as the State party's failure to take his best interests into account impeded his proper all-

round development, and the failure to assign a guardian likewise prevented him from developing in an age-appropriate manner.

3. Merits

The Committee recalled that the assessment of the age of a young person who claimed to be a minor is of fundamental importance, as the outcome determines whether that person will be entitled to or excluded from national protection as a child. The Committee further strongly emphasised that the enjoyment of rights set out in the Convention flows from that determination. Thus, it is imperative that there be due process to assess a person's age, as well as the opportunity to challenge the outcome through an appeals process.

In second, it recalled that in the absence of identity documents or other appropriate evidence, to make an informed estimate of age, States should undertake a comprehensive assessment of the child's physical and psychological development. Documents available should be considered genuine unless there is proof to the contrary, and statements of children must be considered. States should also refrain from using medical methods based on, inter alia, bone and dental exam analysis, which may be inaccurate, with wide margins of error, and can also lead to traumatic and unnecessary legal processes.

In the present case, the Committee considered that the age assessment procedure undergone by the author, who claimed to be a child and who later provided evidence to support this claim, lacked the safeguards necessary to protect his rights under the Convention. It particularly noted that this was a result of the test used, the failure to appoint a representative to assist him during this process and the almost automatic dismissal of the probative value of the birth certificate provided by the author, without the State party even having formally assessed the information that it contained, and in the event of uncertainty, having confirmed that information with consular authorities in Guinea.

In light of these circumstances, the Committee was of the view that the best interests of the child were not a primary consideration in the age assessment procedure undergone by the author, which constitutes a violation of articles 3 and 12 of the Convention. It also found that the above actions in dismissing the probative value of the birth certificate amounted to failing to respect the author's identity in violation of article 8 of the Convention.

In relation to the authors claim that the fact that he was unable to apply for asylum in his capacity as a minor violated his rights under the Convention, the Committee noted that the failure to assign a guardian so he could apply for asylum in his capacity as a minor, even though he possessed documentation confirming that to be the case, led him to being deprived of the special protection afforded to unaccompanied asylum-seeking minors and exposed him to a risk of irreparable harm in the event of his deportation to his country of origin, which constitutes a violation of articles 20 (1) and 22 of the Convention.

Lastly, the Committee noted the State party argument seeking to justify the failure to impose interim measures as the author's transfer to a child protection centre would have posed a serious risk to the children in those centres. It further noted that this argument is based on the premise that the author is an adult, and that the greater risk would be to send someone who is a child to a centre reserved for individuals recognized as adults. Consequently, it found that the failure to apply the requested interim measure constitutes a violation of article 6 of the Optional Protocol.

4. Recommendations

The Committee noted that the state party is under an obligation to provide the authors with an effective remedy, including making full reparation to individuals whose Covenant rights have been violated. This includes an obligation to:

- Providing him with the opportunity to regularize his administrative status in its territory, taking due account of the fact that he was an unaccompanied minor when he first applied for asylum, and correcting the

date of birth on his asylum seeker card;

- Prevent similar violations in the future;
- Ensure that all processes for assessing the age of young people claiming to be children are carried out in a manner consistent with the Convention and, in particular, that, in the course of such procedures: (i) the documents submitted by these young people are taken into consideration and, where the documents have been issued or verified by the issuing States or by the embassies thereof, they are accepted as genuine; and that (ii) the young people concerned are assigned a qualified legal representative or other representatives without delay and free of charge, that any private lawyers chosen to represent them are recognized and that all legal and other representatives are allowed to assist them during the age assessment procedure;
- Ensure that unaccompanied asylum-seeking young people claiming to be under 18 years of age are assigned a competent guardian as soon as possible so that they can apply for asylum as minors, even if the age assessment procedure is still pending;
- Develop an effective and accessible redress mechanism that allows young unaccompanied migrants claiming to be under 18 years of age to apply for a review of any decrees declaring them to be adults issued by the authorities in cases where the age assessment procedure was conducted in the absence of the safeguards necessary to protect the best interests of the child and the right of the child to be heard;
- Provide training to immigration officers, police officers, members of the Public Prosecution Service, judges and other relevant professionals on the rights of asylum-seeking minors and other migrant children and, in particular, on the Committee's general comments Nos. 6, 22 and 23.

5. Implementation

The Committee requested the state party provide a follow up information on measures taken within 180 days.

D.D. v. Spain

CRC/C/80/D/4/2016

Summary Deportation of Unaccompanied Children from Spain to Morocco

- The author is a national of Mali. He claimed to be a victim of violations of articles 3, 20 and 37 of the Convention. The author submitted that by summarily deporting him to Morocco on 2 December 2014 without performing any form of identity check or assessment of his situation, the State party: (a) failed to provide the author with the special protection and assistance to which he was entitled as an unaccompanied minor (art. 20); (b) failed to respect the principle of non-refoulement and exposed the author to the risk of violence and cruel, inhuman and degrading treatment in Morocco (art. 37) and (c) failed to consider the best interests of the child (art. 3).
- **Outcome**: The Committee found that the State party had violated the author's rights under articles 3, 20, and 37 of the Convention owing to the failure to assess the risk of irreparable harm to the author prior to his deportation, the failure to undertake an identity check, the failure to give him an opportunity to challenge his potential deportation, and the manner in which the author was deported.

1. Facts

The author is a national of Mali. He claimed to a victim of violations of articles 3, 20, and 37 of the Convention.

In 2011, the author left his village in Mali because of armed conflict. He arrived in Morocco in February 2014 and spent nearly a year living in the informal migrant camps on Mount Gurugu surrounding the Spanish enclave of Melilla. The

author attempted to scale the border fences' separating Melilla from Moroccan territory on several occasions. On 18 March 2014, the author was caught and repeatedly beaten by a stick by Moroccan security forces while attempting to gain access to the first fence. He lost his front teeth as a result of this incident.

On 2 December 2014, the author and a group of people of sub-Saharan origin left Mount Gurugu with the intention of entering Melilla. The author reached the top of the third fence as saw that other people climbing down the fence on the other side were being summarily pushed back by the Spanish Civil Guard and handed over to Moroccan forces. Then, for fear of being deported and subjected to possible ill-treatment and violence by Moroccan forces, the author waited for several hours at the top of the fence. During this period, he was not offered any form of assistance, or access to water or food. He was also unable to communicate with the Civil Guard since he did not speak Spanish and there were no interpreters present. Finally, he climbed down the fence with the help of a ladder provided by the Civil Guard. As soon as he set foot on ground, he was arrested and handcuffed by the Civil Guard, handed over to the Moroccan forces and summarily deported to Morocco. At no time was his identity checked. He was also denied the opportunity to explain his personal circumstances, given his age, challenge his imminent deportation or claim protection as an unaccompanied child. He was not assisted by lawyers, interpreters or doctors. After being released by the Moroccan security forces the author returned to Mount Gurugu where he continued to live in precarious conditions.

On or about 30 December 2014, the author entered Spain through Melilla and went to stay in the temporary reception centre for migrants. The author eventually obtained protection as an unaccompanied child and was placed in a residential centre for minors under the care of Spanish authorities.

2. Complaint

The author alleged that the State party violated his rights under article 20 (1) of the Convention as he was not afforded the protection he was entitled to receive from the State party as an unaccompanied child deprived of his family environment. He maintained that no officers even attempted to find out his name and age, or ascertain whether he was in a vulnerable situation before returning him to Morocco.

The author also maintains that, in accordance with the principle of non-refoulement, the State party should have ascertained whether there were substantial grounds for believing that there is a real risk of irreparable harm to the author in Morocco. Additionally, the State party should have considered his age and vulnerable situation and the particularly serious consequences that inadequate food and health services might cause in his case.

Lastly, the author further asserts that the Spanish Civil Guard did not take the author's personal circumstances into account, but instead arrested him, handcuffed him and summarily deported him to Morocco without considering any other alternative that would be in his best interests.

3. Merits

The Committee firstly expressed that it was of the view that the State's obligation to provide special protection and assistance to unaccompanied children, in accordance with article 20 of the Convention, apply even to the children that come under the State's jurisdiction when attempting to enter the country's territory. Similarly, it considered that the positive aspects of these protection obligations also extend to requiring States to take all necessary measures to identify children as being unaccompanied or separated at the earliest possible stage, including at the border. Accordingly, it deemed it imperative and necessary, in order to comply with the obligations under article 20, and to respect the best interests of the child, for the State to conduct an initial assessment, prior to any removal or return that includes the following stages: (a) assessment, as a matter of priority, of whether the person concerned is an unaccompanied minor; (b) verification of the child's identity by means of an initial interview; and (c) assessment of the child's specific situation and particular vulnerabilities, if any.

The Committee considered that, in the light of the circumstances of the case, the fact that the author did not undergo an identity check and assessment of his situation prior to his deportation, and was not given an opportunity to challenge his potential deportation, revealed a violation of his rights under articles 3 and 20 of the Convention.

It further considered the violence faced by migrants in the Moroccan border area and the ill-treatment to which the author was subjected, the failure to assess the risk of irreparable harm to the author prior to his deportation or to take into account his best interests to be in violation of articles 3 and 37 of the Convention.

The Committee further concluded that the manner in which the author was deported, as an unaccompanied child deprived of his family environment and in a context of international migration, after having been detained and handcuffed and without having been heard, without receiving the assistance of a lawyer or interpreter and without regard to his needs, constituted treatment prohibited under article 37 of the Convention.

4. Recommendations

The Committee noted that the state party is under an obligation to provide the authors with an effective remedy, including making full reparation to individuals whose Covenant rights have been violated. This includes an obligation to:

- Prevent similar violations from occurring in the future;
- Providing the authors with an effective remedy;
- Revising Organic Act No. 4/2015 on safeguarding the security of citizens, which was adopted on 1 April 2015;
- Revising the tenth additional provision of that law, on the special regime applicable in Ceuta and Melilla, which would authorize its practice of indiscriminate automatic deportations at the border.

5. Implementation

The Committee requested the state party provide a follow up information on measures taken within 180 days.

Committee on the Rights of Persons with Disabilities

Geographic and thematic trends

The Committee on the Rights of Persons with Disabilities adopted views on 8 individual communications and in relation to 7 member states. Only one member state, Australia, was considered twice in the individual communications procedure. The Committee also discontinued an additional communication against Australia.

Key developments in jurisprudence

Manuway Doolan v. Australia

CRPD/C/22/D/18/2013

The exercise of legal capacity and indefinite terms of supervision orders for persons with disabilities in Australia

- The author is an Aboriginal national of Australia with intellectual and psychosocial disabilities. The author had experienced a psychotic episode in which he threatened a support worker with glass, and although not harming said worker, the author damaged windows, furniture, and a vehicle of the support service. The author was deemed unfit to stand for trial on the basis of his mental impairment and was soon after placed under a Custodial Supervision Order and committed to custody in prison. He followingly spent a total of four years and nine-months custody and was provided with little access to mental health services or rehabilitation programs. The author spent almost five times the period of custody he would have been required to serve in prison had he been convicted of the offences with which he was charged, and his social and mental functioning deteriorated as a result.

- **Outcome**: The Committee noted that the author was not given any possibility to plead not guilty and to respond to the charged against him, and no measures were provided to support the author in the exercise of his legal capacity. The Committee also drew the State party's attention to the obligation to eliminate barriers to gaining access to

all protections of the law and considered that it amounted to discriminatory treatment. It also found that confining the author to live in a special institution on account of his disability violated his rights under article 5. It also found that the State did not provide relevant measures and sufficient reasonable accommodation for the author.

1. Facts

The author of the communication is an Aboriginal national of Australia with intellectual and psychosocial disability who claimed that his rights under articles 5, 12, 13, 14, 15, 19, 25, 26, and 28 were violated by the State party. On 14 August 2008, Mr Doolan experienced a psychotic episode and he threatened with a shard of glass a support worker. He did not harm him, but he damaged windows, furniture and a vehicle of the support service. He was subsequently arrested and charged with common assault in a circumstance of aggravation, and with damage to property in circumstance of aggravation.

On 21 May 2009, the Supreme Court determined that the author was unfit to stand trial on the basis of his mental impairment. Consequently, the Court declared him to be liable to supervision and remanded him in custody in the high security section of Alice Springs Centre.

On 29 October 2009, the Court placed him under a Custodial Supervision Order and committed him to custody in prison for a total period of 12 months. The author returned to a high security unit at Alice Springs Correctional Centre and remained there up to April 2013: he spent a total of four years and nine months in custody, which is almost five times the period of custody he would have been required to serve in prison had he been convicted of the offences with which he was charged. During this period, the author was held in maximum security, being confined in isolation for long periods and provided with very limited access to mental health services and no rehabilitation programme. As a result, his mental health and social functioning deteriorated.

On 15 June 2010, the Court ordered that the author remain in custody, even if he had already served 22 months. A review was commenced in March 2012, but it remained incomplete. In April 2013, the author was transferred to Kwiyernpe House, a custodial facility, where he stayed until 9 February 2017, when he was relocated to a community residence.

2. Complaint

The author claimed violations of his rights under 5, 12, 13, 14, 15, 19, 25, 26, and 28 of the Convention.

The author claimed that his rights under article 5, (in conjunction with 14 and 15) have been violated because up to 2013 he has been committed to indefinite custody without having been convicted of an offence.

The author also submitted that his rights under articles 12 and 13 (5, 14, 15 and 19) have been violated as he was held in custody in prison for a duration of five time longer than the period during which a person without disability would have been committed to custody in equivalent circumstances. Furthermore, to support his claims under articles 12 and 13, the author also claimed that the Court determined that Mr Doolan was unfit to be tried on the grounds of not having legal capacity. He was subjected to a regime of custody and did not receive any disability-related support and adjustments in order to exercise his legal capacity and answer charges.

With further reference to article 14 (and article 5) the author additionally claimed that his right to liberty and security has been violated because his deprivation of liberty was arbitrarily based on his disability, disproportionate to the justifying factor, and was also based upon his Aboriginal origins.

With regard to Articles 19 and 28 (and 15), the author claimed that for the whole period of custody at Alice Springs Correctional Centre, the author was held with convicted persons. He has not been provided with adequate housing in the community, as an alternative to custody in prison or at Kwiyernpe House. His

right under article 28 of the Convention had also been violated.

With regard to Articles 15, 19 and 26, the author claimed that his rights have been violated because the conditions of his deprivation of liberty were harsh and unreasonable and for the majority of this period of custody, he was detained in maximum security isolation. He is subject to involuntary treatment, which does not support his inclusion and participation in the community.

With regard to Article 26, the author claimed that its violation as during his deprivation of liberty he was not provided with adequate social skills, daily living skills, communication skills or any rehabilitation programs.

With regard to Article 25, the author claimed that he was deprived of adequate mental health services necessary for his effective treatment and support.

3. Merits

The Committee recalled that State parties must ensure that all persons are equal before and under the law and are entitled to the equal protection and benefit of the law without discrimination. It also noted that discrimination can result from the discriminatory effect of a rule of measures that is not intended to discriminate, as the case of the specific provisions of the NT Criminal Code, related to the unlimited period of custody for person unfit to stand trial and found guilty.

The Committee further observed that in the present case, the whole judicial procedure focused on his mental capacity to stand trial and the state did not give any possibility to plead not guilty, nor to respond to the charges against him. The Committee recalled that State parties must eliminate barriers to gaining access to all protections of the law and the benefits of equal access to law.

In light of the above, the Committee found that the NT Criminal Code resulted in discriminatory treatment of the author's case in violation of article 5 (1) and (2) of the Convention.

The Committee followingly noted the author's claims under article 5, and recalled that the Convention recognizes the right not to be obliged to live in a particular living arrangement on account of one's disability. The Committee further noted that institutionalization of persons with disabilities as a condition to receive public sector mental health services constitutes differential treatment on the basis of disability and, as such, is discriminatory. On this basis, it found that confining the author to live in a special institution on account of his disability amounted to a violation of article 5 of the Convention.

In relation to the author's submission that the decision that he was unfit to stand trial deprived him of the possibility to exercise his legal capacity to answer the charges brought against him, the Committee recalled that a person's status as a person with disability must never be grounds for denying legal capacity. It considered that no adequate measures had been taken to enable the author to exercise his legal capacity, therefore violating the author's rights under articles 12(2) and 13(1) of the Convention.

The Committee also considered that the author's detention also amounted to a violation of article 14(1)(b) of the Convention according to which "the existence of a disability shall in no case justify a deprivation of liberty".

The Committee further recalled that the failure to adopt relevant measures and to provide sufficient reasonable accommodation when they are required by persons with disabilities deprived of their liberty, may constitute a breach of article 15(2) of the Convention. In the present case, the State party admits that the author was not separated at all times from convicted offenders, temporarily held in isolation and that sometimes subject to involuntary treatment. Additionally, the Committee noted that the author was committed to custody for more than seven

years, and his custody was deemed indefinite in so far as, in compliance with the NT Criminal Code. Considering the irreparable psychological effects that indefinite detention may have on the detained person, the Committee considers that the indefinite custody to which he was subjected amounts to inhuman and degrading treatment. The indefinite character of his custody, his detention in a correctional centre without being convicted of a criminal offence, his periodic isolation, his involuntary treatment and his detention together with convicted offenders amounted to a violation of article 15 of the Convention.

The Committee, acting under article 5 of the Optional Protocol, was of the view that the State party has failed to fulfil its obligations under articles 5, 12, 13, 1 4 and 15 of the Convention

4. Recommendations

The Committee noted that the state party is under an obligation to provide the authors with an effective remedy, including making full reparation to individuals whose Covenant rights have been violated. This included an obligation to:

Concerning the author, the State party is under an obligation to:

(i) Provide him with an effective remedy, including reimbursement of any legal costs incurred by him and compensation;

(ii) Publish the present Views and circulate them widely in accessible formats so that they are available to all sectors of the population;

(b) In general, the State party is under an obligation to take measures to prevent similar violations in the future.

In that regard, and considering the far-ranging impact of the violations found in the present case, the Committee recalls in particular the recommendations on liberty and security of the person contained in its concluding observations on the initial report of Australia and requests the State party to:

- Amend part II.A of the Northern Territory Criminal Code and all equivalent or related federal and State legislation, in close consultation with persons with disabilities and their representative organizations, in such a way as to comply with the principles of the Convention and with the Committee's guidelines on the right to liberty and security of persons with disabilities;
- Ensure without delay that adequate support and accommodation measures are provided to persons with intellectual and psychosocial disabilities to enable them to exercise their legal capacity before the courts whenever necessary;
- Protect the right to live independently and be included in the community by taking steps, to the maximum of its available resources, to create community residences in order to replace any institutionalized settings with independent living support services;
- Ensure that appropriate and regular training on the scope of the Convention and its Optional Protocol, including on the exercise of legal capacity and access to justice, is provided to staff working with persons with intellectual and psychosocial disabilities, members of the Law Reform Commission and Parliament, judicial officers and staff involved in facilitating the work of the judiciary, and avoid using high-security institutions for the confinement of, persons with intellectual and psychosocial disabilities.

5. Implementation

The Committee requested the state party provide a follow up information on measures taken within 180 days.

Arturo Medina Velo v. Mexico

CRPD/C/22/D/32/2015

The application of the special procedure for those exempts from criminal liability as denying the exercise of legal capacity in Mexico

- The author is a national of Mexico who claimed that the State party has violated his rights under articles 5, 9, 12, 13, 14 and 19 read in conjunction with article 4 of the Convention. At the time of submission of the communication, the author was deprived of his liberty at the men's psychosocial rehabilitation centre in Mexico City.
- The author was initially arrested on suspicion of having stolen a vehicle. In the following criminal proceedings, the author was subjected to the special procedure of persons exempt from criminal liability to the author and ordered additional psychiatric evaluations. He was eventually convicted of theft and had a security measure of four years imprisonment in in a psychosocial rehabilitation institution imposed on him. The author submitted that during this process, he was entirely excluded from the criminal proceedings – and further that he was not notified of the decision or the final judgement and the consequently he was unable to appeal the decision or petition for direct amparo.
- **Outcome**: The Committee found that the State party violated its obligations under articles 5,9, 12, 13, 14 and 19, read in conjunction with article 4 of the Convention.

1. Facts

The author is a national of Mexico who has an intellectual and psychosocial disability that does not require constant medical treatment. The author has always lived with his mother and sister.

On 14 September 2011, the author was arrested by the police on suspicion of having stolen a vehicle. Upon being notified about her son's apprehension, the mother of the author notified the prosecutor that the author did not know how to drive, and he had never done it before due to his disability. She also submitted a request for the dismissal of the court-appointed lawyer in order to appoint designated private lawyers. This request was rejected.

Between 15 and 16 September, the author underwent a psychiatric evaluation, at the request of the public prosecutor and was diagnosed with personality disorder and probably mental retardation. On 16 September, criminal proceedings against the author began, and his detention was ordered at the men's psychosocial rehabilitation centre. On 22 September, the Ninth Criminal Court decided to apply the special procedure of persons exempt from criminal liability to the author and ordered additional psychiatric evaluations. These showed that the author had a permanent mental disability that prevented him from understanding the unlawfulness of his actions and from testifying before the judicial authorities.

The author herein submitted that he was not permitted to testify and that he was not informed of what was happing in the proceedings, or that he was being tried under the special procedure.

On 13 October 2011, the author's mother applied for the author's release before the Criminal court, saying that she would take responsibility for his care, treatment, and supervision. On 17 October 2011, the judge rejected the application.

On 5 December 2011, the Criminal Court convicted the author of theft and imposed a security measure on him: four years in a psychosocial rehabilitation institution or facility run by the penitentiary system. In addition, the Court decided that, once he had served his sentence, the author would be placed in the custody of his family or, in the absence thereof, in the custody of the health authorities or a care institution. The judgment was transmitted only to the court-appointed defence lawyer and not to the author.

On 13 December 2011, the judgement became enforceable, as no appeal had been filed. The author was also not informed of the decision declaring the judgement enforceable. The author's mother was informed of the judgement only in January 2012. She followingly filed two incidental motions to obtain a non-custodial placement for the author. Both were rejected.

In 2014, lawyers operating at the request of the author's mother filed a direct amparo petition against the conviction of 5 December 2011. In the petition, the author claimed that due process guarantees had not been respected, as he had not been heard during the trial, that he had not been permitted to designate a defence lawyer of his choosing or to present evidence in his own defence, and that the presumption of innocence, among other things, was infringed when he was declared exempt from criminal liability.

In 2014, the court declared that it did not have jurisdiction because the impugned judgement was not final and direct amparo applied only to final judgements. In order to "not leave the author without a proper remedy" it decided to transfer the petition to a district court with a view to reaching a resolution through indirect amparo proceedings.

On 1 December 2014, the author filed a procedural complaint against the decision, noting that the indirect amparo proceedings could not address all the claims and violations raised by the case, and that the impugned judgement was final as it had been declared enforceable and not subject to ordinary appeal. On 22 January 2015, the court ruled on the procedural complaint against its own declaration that it did not have jurisdiction. The court maintained its position on the grounds that the impugned judgement was not final, and that the District Court to which it referred the case had declared itself competent to hear the case. The author attempted to appeal this decision, but it was not successful.

On 29 June 2015, the District Court ruled on the indirect amparo petition, finding that the Criminal Court had violated the author's rights by not notifying his legal representative of the judgement. In addition, it ordered the Criminal Court to annul the decision declaring the final judgement enforceable and notify the author's legal representative of this fact.

In a separate procedure, the author applied to an early release on the basis of the work he had done at the men's psychosocial rehabilitation centre. The judge asked the author to provide further details, because the application did not meet the requirements under the law. The author inferred from this that any dispute regarding his eligibility would not be resolved before he had served the entirety of his sentence. Therefore, he decided to request a non-custodial placement for persons with psychosocial disabilities, as provided on the Sentence Enforcement Act. However, on the basis of the medical reports by the board of the men's psychosocial rehabilitation centre, the judge denied the author's request on the grounds that the prospects for his rehabilitation were slim.

2. Complaint

The author submitted that his rights under articles 5, 9, 12, 13, 14, and 19, read in conjunction with article 4, of the Convention were violated.

In relation to his claim under article 5, read alone and in conjunction with article 4, the author alleged that in being declared exempt from criminal liability and subject to a special procedure, he was a victim of discrimination on grounds of disability. In being subject to the special procedure, he was excluded from proceedings and was not given the opportunity

to be heard by a court, to attend his own trial, to present evidence in his defence, or to access the ordinary remedies provided for under criminal law – in particular, the appeal.

In relation to his claim under article 9, read alone and in conjunction with article 4, the author argued that the State party failed to meet its obligation to ensure access to information during judicial procedures. He maintained that no information is accessible for persons with disabilities regarding the course of judicial proceedings or the content of criminal laws.

In relation to his claim under article 12, read in conjunction with article 4, the author noted that his legal capacity was not recognized and that procedural safeguards were violated because he was declared exempt from criminal liability and unfit to testify.

In relation to his claim under article 13, read in conjunction with article 4, the author argued that in his exclusion from his own judicial proceedings, his right to access justice was violated.

In relation to his claim under article 14, read in conjunction with article 4, the author claimed that the imposition of the security measures consisting of temporary committal, from the time of his arrest, for the purposes of medical treatment, as well as the security measures consisting of committal once he was found guilty of the offence of theft, constitute a violation.

In relation to his claim under article 19, read in conjunction with article 4, the author submitted that the current criminal legislation is in violation of the Convention in establishing that persons exempt from criminal liability must be handed over to the persons who, by law, must take responsibility for them. Thus, when the author completes his sentence, his mother will have to come to the men's psychosocial rehabilitation centre for him to released – otherwise he will not be released. He further submitted that in denying him early release, the State party has preventing him from accessing community services that would promote his development and inclusion, in breach of article 19.

3. Merits

The Committee noted that the matter before it, in relation to the author's claims under article 5, was to determine whether the differential treatment under the special procedure applied to the author was discriminatory. It noted that, in the present case, the author, owing to this disability, was subject to a special procedure which prevented him from participating directly and seeking remedies, thereby undermining his rights to due process. In light of this, the Committee was of the view that the application of the special procedure of persons exempt from criminal liability led to discriminatory treatment of the author, in violation of article 5, read in conjunction with article 4 of the Convention.

In turning to the author's claims under article 9, read in conjunction with article 4, the Committee observed that the State party omitted to describe how it provided information on the author's trial in an accessible format. It recalled that State parties must take appropriate measures to ensure that persons with disabilities, on an equal basis with others, have access to information and must promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information. Consequently, on the basis of the author's lack of participation in the proceedings and the refusal to draft a simplified version of the decision in the amparo proceedings constitute a violation of article 9.

Concerning the author's claims under article 12, the Committee firstly noted the author's argument that because he was considered exempt from criminal liability, his legal capacity to stand trial on an equal basis with others were denied. It recalled that under article 12 of the Covenant, State parties are obliged to recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life. They are also obliged to provide access by persons with disabilities to the support they may require in exercising their

legal capacity. Herein, the Committee found that the author was denied the possibility of exercising his legal capacity, to plead not guilty, challenge the evidence against him, designate a defence lawyer of his choosing and challenge any decisions not in his favour. On this basis, the Committee found a violation of article 12, read in conjunction with article 4, of the Convention.

In addressing the author's claims under article 13, read in conjunction with article 4, the Committee noted the arguments of the author stating that he was excluded from the criminal proceedings against him. It also observed that the information did not suggest that the court-appointed lawyer enabled the author to effectively participate in the proceedings. It noted that, in the present, case the judicial authorities repeatedly denied the author the possibility of exercising his rights. Therefore, the Committee was of the view that the State Party violated his rights under article 13, read in conjunction with article 14 of the Convention.

Regarding the author's claims under article 14, the Committee acknowledged the author's allegation about his detention and reaffirmed that liberty and security of the person is one of the most precious rights to which everyone is entitled. According to the information provided, the main argument used to justify the committal of the author was that he had a disability that required medical treatment. It further noted that the request for early release submitted by the author and his mother was dismissed by the judge because it had not been determined how the treatment the author needed would be provided. Thus, the Committee found that the author's disability became the chief reason for his deprivation of liberty, resulting in a violation of article 14 (1) (b) of the Convention

4. Recommendations

The Committee noted that the state party is under an obligation to provide the authors with an effective remedy, including making full reparation to individuals whose Covenant rights have been violated. This includes an obligation to:

- Provide the author with an effective remedy, including reimbursement of any legal costs incurred by him, together with compensation;
- Make a public acknowledgement of the violation of the author's rights in accordance with the present Views and adopt any other appropriate measure of satisfaction;
- Publish the present Views and circulate them widely in accessible formats so that they are available to all sectors of the population.
- Take measures to prevent similar violations in the future. In this regard, the Committee refers to the recommendations contained in its concluding observations (CRPD/C/MEX/CO/1, paras. 28 and 30).

5. Implementation

The Committee requested the state party provide a follow up information on measures taken within 180 days.

VFC v. Spain

CRPD/C/21/D/34/2015

The denial of modified duty for those administratively assessed to be of permanent total disability status in Spain

- The author is a national of Spain who claimed that the State party violated his rights under article 3, 4, 5, and 13 of the Convention. The author suffered a traffic accident in 2009 that left him with a permanent motor disability. The Ministry of Labour later declared that the author's status was one of permanent disability for the performance of his occupation, and he was consequently required to take mandatory retirement and was expelled from

the police force. In the same month, he requested reassignment to modified duty but was rejected on the grounds of his administrative categorization as "permanent total disability for usual occupation". The author claimed that the State party discriminated against him by forcing him to retire from his position as a local police officer and refusing to assign him modified duty on the basis of an administrative decision rather than a medical examination of his ability to perform alternative functions.

- **Outcome**: The Committee found that the rules under which the author was denied a modified-duty assignment contravene articles 5 and 27 of the Convention. It also found that since those modified-duty regulations render all those with "permanent total disability" status ineligibly for modified duties, the author was discriminated against on the grounds of his disability with respect to "continuance" of his public employment, in violation of articles 5 and 27 of the CRPD.

1. Facts

The author is a national of Spain who claimed that the State party violated their rights under article 3, 4, 5, and 13 of Convention.

In May 2009, the author suffered a traffic accident that left him with a permanent motor disability. On 20 July 2010, the Ministry of Labour and Immigration declared that the author's status was one of permanent disability for the performance of his occupation. As a result, he was required to take mandatory retirement and was expelled from the police force.

In the same month, the author requested the Barcelona city council to reassign him to a modified duty and identified a post suited to his disability. On 15 September 2010, his request was denied. The author followingly filed an appeal claiming that the regulations referred to were null and void on the grounds that under the Constitution, it violated the fundamental rights to work and to vocational rehabilitation, the inclusion of persons with disabilities, access to and retention of public employment and respect for human dignity. Although the author's appeal was partially upheld by the Administrative Court owing to the impugned ordinance violating fundamental rights, this was eventually overturned by the High Court of Catalonia which took the view that, as the author was on full mandatory retirement as a result of the provision, the act did not apply to him because he was no longer a police officer

2. Complaint

The author claimed that the State party discriminated against him by forcing him to retire from his position as a local police officer and refusing to assign him to modified duty, on the grounds of "permanent total disability for usual occupation". He submitted that the modified-duty regulations are discriminatory because there is a differential treatment of persons in different administrative categories of disability, even though placement in such categories is not determined on the basis of a medical examination for evaluating the possibility of assignment to tasks or duties that represent alternatives to the traditional or usual tasks and duties of the positions (regular duty). Therefore, the policy provides for the application of different solutions to the same factual situation and fails to promote the employment of persons with disabilities in the public sector, as it does not allow them to remain employed.

The author further claimed that the State party has not derogated from national provisions that discriminate against persons with disabilities whose status has been defined as "permanent total disability for work" and are incompatible with the Convention. Furthermore, the State has failed to eliminate discriminatory practices such as the present policy. On this basis, the author argues that article (4)(1) (a), (b) and (5), read together with article 27 have been violated.

The author also asserted that he was discriminated against as he was denied access to modified duty because his disability was administratively categorized as "permanent

total disability for work", whereas persons in other categories of disability are allowed such access. This discrimination is due to the fact that his disability was categorized in absence of a medical examination for evaluating his ability to undertake a modified-duty assignment. On this basis, the author alleged that the State party violated article 5 (1), (2), and (3) read in conjunction with article 27.

The author also claimed that the Spanish judiciary had not received appropriate training with respect to the CRPD. Thus, in the administrative and judicial proceedings, the applied legal provisions were not interpreted according to Spain's international obligations under the CRPD.

3. Merits

The Committee recalled that State parties have a general obligation to adopt all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the Convention, including those related to work and employment. It also recalled the right of persons with disabilities to retain their employment, on equal basis with others, and the obligation to take all appropriate steps to prohibit discrimination on the basis of disability with regard to the continuance of employment, and to ensure that reasonable accommodation is provided to persons who acquire a disability during the course of employment.

The Committee further recalled the recognition of the diversity of persons with disabilities, and particularly that this means that the institutional mechanisms for dialog in relation to reasonable accommodation must take each person's specific situation into account.

In the present case, the Committee observed that the possibility of holding a dialogue for the purpose of evaluating and building the author's capacities within the police force was completely ruled-out because he was deprived of his status as a public servant upon his mandatory retirement and he had no opportunity to request reasonable accommodation that would have enabled him to perform modified duties. The Committee thus holds that the State party failed to prove that other types of duties that the author might have been able to perform were not available within the police force in which he was employed. It, herein, observed that the author's ability to perform the usual duties of police work had been reduced, but this has no bearing on his potential ability to perform modified duties or other complementary activities within the same police force.

In light of the above, the Committee found that the rules under which the author was denied a modified-duty assignment contravene articles 5 and 27 of the Convention. It also found that since those modified-duty regulations render all those with "permanent total disability" status ineligibly for modified duties, the author was discriminated against on the grounds of his disability with respect to "continuance" of his public employment, in violation of articles 5 and 27 of the CRPD.

In relation to the author's claims under article 4, the Committee noted that the State must comply with modifying and harmonizing all local, autonomous-community and national provisions that prevents individuals from being assigned to modified duties without an assessment of the challenges and opportunities that persons with disabilities may have, and that thereby violate the right to work.

4. Recommendations

The Committee noted that the state party is under an obligation to provide the authors with an effective remedy, including making full reparation to individuals whose Covenant rights have been violated. This includes an obligation to:

Concerning the author, the State party is under an obligation to:

i. Afford him the right to compensation for any legal costs incurred in filing the present communication;

ii. Take appropriate measures to ensure that the author is given the opportunity to undergo

an assessment of fitness for alternative duties for the purpose of evaluating his potential to undertake modified duties or other complementary activities, including any reasonable accommodation that may be required.

In general, the State party is under an obligation to take measures to prevent similar violations in the future, including by:

i. Taking all necessary measures to align the modified-duty regulations of the Barcelona municipal police (ordinance) and their application with the principles enshrined in the Convention and the recommendations contained in the present Views to ensure that assignment to modified duty is not restricted only to persons with a partial disability;

ii. Similarly harmonizing the variety of local and regional regulations governing the assignment of public servants to modified duty in accordance with the principles enshrined in the Convention and the recommendations contained in the present Views.

5. Implementation

The Committee requested the state party provide a follow up information on measures taken within 180 days.

Ms. Z v. Tanzania

CRPD/C/22/D/24/2014

Failing to investigate, prevent and prosecute acts of persecution against persons with albinism in Tanzania; clarification of albinism as disability

- The author is a Tanzanian national with albinism. Until 2008, the author was self-sufficient as a farmer. In 2008, the author was attacked by two men who cut of her arms with machetes. During the attack, she managed to identify one of the men as her neighbour. The men escaped with one of her arms and the remaining arm was later amputated in the hospital. The author was also pregnant at the time of the attack, and as a result, miscarried. After the attack she was unable to do any activity or any of her personal routines – such as bathing or feeding herself. In 2011, the attackers were arrested but ultimately acquitted due to a lack of evidence. The author continues to face harassment and persecution and stigma without her arms. The author maintains that she has been discriminated against on the basis of her disability, and that the State party has failed to take measures of protection, enable justice to be done, and prevent acts of persecution against persons with albinism, and women with albinism in particular.
- **Outcome**: In light of the above facts, the Committee was of the view that the State party failed to fulfil its obligations under articles 5, 15 (1), 16 and 17 of the Convention, read alone and in conjunction with articles 6 and 8.

1. Facts

The author of the communication is Ms. Z a Tanzanian national with albinism. The author claimed to be a victim of a violation by the State party of her rights under articles 5, 6, 8, 10, 14, 15 (1), 16 and 17 of the Convention. Until 2008, she was self-sufficient as a farmer.

On 17 October 2008, while she was sleeping with her two-year old son, the author was attacked by two men who cut off her arms with machetes. She managed to see the men, one of them being her neighbour, however did not know the other. She screamed for help, but no one came to her rescue and the men managed to escape with one of her arms. The other remaining arms was later amputated in the hospital. The author was pregnant at the time of the attack and as a result, she miscarried.

On an unspecified date in 2011, the attackers were arrested and tried. Her testimony on the identity of one of the attackers was given little weight because the Court considered that as a person with visual impairment, she could not see well, and could therefore not identify correctly the attackers. Additionally, her father was allowed to testify without any power of attorney and while he was intoxicated. His testimony contradicted the author's. The attackers were therefore acquitted for lack of evidence.

After the incident the author was unable to do any activity. She also continued to face harassment, discrimination and stigma without her arms, and she was unable to carry out her personal routines such as bathing and feeding herself.

The author submitted that persons with albinism have been suffering from different forms of persecution and discrimination in Tanzania, many of which are grounded on myths. The author refers to the belief that they are considered a "curse from God", and that body parts of person with albinism is considered to bring wealth and prosperity. Consequently, persons with albinism are frequently victims of witchcraft. The author argued that these practices are aimed at getting rid of persons with disabilities, because it is considered that looking after them is an unnecessary burden for the community.

The author submitted that no effective remedies are available in the State party. The authors failed to prosecute with due diligence and commitment to enable that justice be done in the author's case: the authorities handled the case negligently and failed to father significant evidence. She further argues that her right to a fair trial was violated as the harm she suffered was not repaired, and her cause was not considered thoroughly by the competent national authorities.

2. Complaint

The author claimed that she has been a victim of violation of her rights under articles 5,6, 8, 10, 14, 15 (1), 16, and 17 of the Convention. In relation to her claim under article 5, the author alleged that she has been discriminated against on the basis of her disability due to the State party's failure to take care of persons with albinism. She submitted that the attack she had been a victim of is an illustration of a systemic practice against persons with albinism. The author further argued that the State party has failed to take measures to guarantee the rights and empowerment of women with disabilities and to protect them, as required by article 6 of the Convention.

Regarding her claim under article 8 of the Convention, the author noted that the State party does not carry out public awareness to ensure that the public understands the rights of persons with albinism. She submitted that albinism, as a disability, seems to have been intentionally ignored by the authorities. The author further claimed that the State party failed to take measures of protection for persons of albinism, in violation of her rights under article 10 of the Convention. Furthermore, the State party failed to provide the necessary security to enable the persons with albinism to enjoy life, in violation of article 14 of the Convention. In addition, she argued that the State party has failed to protect her from violence and torture – and a result she has suffered double jeopardy, first as a woman and then as a person with albinism. She submitted that cutting her arms clearly amounts to torture and degrading treatment in violation of her rights under article 15 (1) of the Convention.

3. Merits

Although the State party did not challenge the competence *ratione materiae* of the Committee to address the author's complaint, the Committee considered it necessary to clarify that albinism falls within the definition of disability as enshrined in article 1 of the Convention. In making this clarification, it specifically noted the significant visual impairment suffered as a result of the lack of melanin in the eyes, the lack of ability to completely correct such vision impairment, and the high vulnerability to skin cancer.

Concerning the author's claim under article 5, the Committee noted that the author was

a victim of a violent crime corresponding to the characteristics of a practice that affects persons with albinism exclusively. It also considered the State party's failure to prevent and punish such acts has resulted in putting the author, as a person with albinism, in a situation of particular vulnerability and preventing them from living in a society on an equal basis with others. In light of this, the Committee concluded that the author has been victim of direct discrimination based on her disability.

In turning to the author's claim under article 15, the Committee acknowledged that the violent acts suffered by the author were perpetrated by private individuals, and that, as such, they cannot be seen as constituting acts of torture. However, it also noted that the suffering experienced by the author, owing to a lack of action taken by the State party to allow effective prosecution of the suspected perpetrators of the crime, has become a cause of re-victimization, and as such amounts of psychological torture and/or ill-treatment. Consequently, the Committee concluded that the State party had violated its duties under article 15 (1) of the Convention.

It observed that the competent authorities have not taken any measures to provide the author with assistance for rehabilitation and reintegration. For these reasons, the Committee found that the State party violated the author's rights under article 16 of the Convention.

It followingly considered that the violent acts suffered by the author clearly fall within the category of acts that result in a violation of physical and mental integrity – and recalled that the right to integrity of the persons is based on what it means to be a person. It noted that in the present case, the State party has not taken sufficient measures to prevent and punish the acts suffered by the author and to support her so that she can live independently again after the loss of her arms. In light of this, the Committee found that the failure to effectively investigate and punish the perpetrators of these acts in the author's case amounts to a violation of the author's rights under article 17 of the Convention.

Having found a violation of articles 5, 15 (1), 16 and 17, the Committee considered it relevant to examine the author's claims under articles 6 and 8, read together with these articles. In addressing the former, the Committee noted that at the time of the attack, the author was the single mother of a small child and was pregnant. And that, as a direct consequence of the attack, the author suffered a miscarriage. It, herein, emphasized that these elements were intrinsically linked to the author's status as a woman with albinism, and resulted in the isolation of the author from her community, and amounted to gender and disability-based discrimination. None of these elements were, in addition, taking into account in the course of procedures. It noted such an invisibilisation of the specific impacts of the attack suffered by the author as a woman is in violation of the author's rights under article 6, read together with articles 5, 15 (1), 16 and 17 of the Convention.

In addressing the latter, article 8, the Committee concluded that the State party's lack of adequate response amounted to an implicit acceptance of the perpetuation of heinous crimes committed in its jurisdiction against persons with albinism and considered that it amounted to a violation of article 8, read together with articles 5, 15 (1), 16, and 17.

4. Recommendations

The Committee noted that the state party is under an obligation to provide the authors with an effective remedy, including making full reparation to individuals whose Covenant rights have been violated. This includes an obligation to:

a. To provide her with an effective remedy, including compensation, proper medical treatment, redress for the abuses suffered, provision of life support devices as functional prostheses, rehabilitation and the support that is necessary to enable her to live independently again;

b. To conduct an impartial, prompt and effective investigation into the attack suffered by the author, and to prosecute and sanction those responsible;

c. Take measures to prevent similar violations in the future.

In this regard, the Committee refers to the recommendations of the Independent Expert on the enjoyment of human rights by persons with albinism as contained in her report to the Human Rights Council[i] and requires the State party:

i. To review and adapt legal frameworks as needed to ensure that they encompass all aspects of attacks against persons with albinism, including with regard to trafficking of body parts;

ii. To ensure prompt investigation and prosecution of cases of attacks against persons with albinism as well as trafficking of body parts and the punishment of those responsible;

iii. To ensure that the practice of using body parts for witchcraft-related practices is adequately and unambiguously criminalized in domestic legislation;

iv. To develop and implement long-lasting awareness-raising campaigns that are based on the human rights model of disability and are in compliance with State party's obligations under article 8 of the Convention, and training to address harmful practices and rampant myths affecting the enjoyment of human rights by persons with albinism, among the general population, and in particular among the judicial officials, the police, and all workers in the areas of education, health, justice, and also cover the scope of the Convention and its Optional Protocol;

To publish the Committee's Views and circulate them widely in accessible formats so that they are available to all sectors of the population, and to pursue rehabilitation measures for survivors and victims of mutilations and killings.

5. Implementation

The Committee requested the state party provide a follow up information on measures taken within 180 days.

Committee for the Protection of All Persons from Enforced Disappearance (CED)

The Committee on Enforced Disappearances **did not adopt any decisions in 2019**. The most recent decision of the Committee date to 2016. In the period of 2010-2020, this is the only individual communication that has been examined.

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