

Study Guide

Human Rights Committee

Intersectional Discrimination

**Reparations & Justice
For Flint**

HRC

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Dear delegates,

I very much look forward to meeting and engaging with each of you during the course of CarMUN. I am particularly excited about the topic of intersectional discrimination that will be our focus. I have been working in the field of human rights since I graduated from law school in 2004 – I have worked in a range of human rights NGOs both in the United States and abroad, and I am now a senior lecturing fellow and supervising attorney with the International Human Rights Clinic at Duke Law School, where I had the pleasure of working closely with Daniel over the course of a semester.

In all of the work that I have done, addressing intersectional discrimination has been an essential element of my and my organization's advocacy. International human rights law requires that States address intersectional discrimination as a central element of their human rights obligations. In addition, as advocates, understanding and advocating for State accountability when violations with respect to intersectional discrimination occur is crucial, particularly given that individuals and communities do indeed experience discrimination in intersecting ways and understanding this ensures that we place the experiences of victims of human rights violations at the center of our advocacy.

Again, I look forward to a weekend of deep and critical thinking and analysis on this topic.

Best regards,

Aya Fujimura-Fanselow

Dear Delegates,

It is my pleasure to welcome you to the United Nations Human Rights Committee. My name is Daniel Andrés Huapaya Noriega. I studied Law at Universidad del Pacífico, where I discovered a passion for international law. This passion drove me to pursue an LL.M. degree at Duke Law School, where I decided to focus on human rights (I graduated from this program in early May this year). I am now beginning my career in this fantastic and always changing area of human rights, as I work for Amnesty International.

It was throughout my years in the university where my passion for international law drove me to know what MUN is. I have about 8 years doing MUN, first as an independent delegate and then joining to Peruvian Debate Society (PDS). Now I serve as advisor for Carmelitas. Although you might remember me as a crisis director (I was President Alan García during CarMUN 2017), I decided to switch my focus and return to the MUN basics, which is why I am chairing this committee. I am deeply honored to be co-directing it with my mentor, Professor Aya Fujimura-Fanselow, Clinical Professor of Law of the International Human Rights Clinic at Duke University School of Law, and with Luciana Pérez and Isabella Mogrovejo as Assistant Directors.

Prof. Fujimura-Fanselow and I chose a topic in which we have worked together during my clinical studies. We chose to focus on “Intersectional Discrimination” as we believe that it has become a central element of the human rights obligations of all countries, as individuals and communities experience discrimination in intersecting ways.

This committee will have a special procedure (apart from a “standard” GA procedure) which we will detail throughout the study guide. So, bear in mind that this requires some significant amount of research (it will be a major component of our evaluation as chairs). Furthermore, respecting your country’s (or should I say, character’s) policy will be highly regarded and considered. However, there is one thing that we will highly consider (even more than content and policy): have fun!

In short, be ready for an engaging weekend with lots of updates (and I mean it). Be ready to learn about a topic which Prof. Fujimura-Fanselow and I enjoy, and feel is a really pressing issue nowadays. But above all, be ready to have fun! We have decided to keep this study guide as short and simple as possible, so, if you should have any doubts, don’t hesitate to contact me by writing an email to danielhuapayanoriega@gmail.com.

See you soon.

Best regards,

Daniel Andrés Huapaya Noriega

HUMAN RIGHTS COMMITTEE

Intersectional Discrimination



Figure 1:
Retrieved from: Periféricas (Escuela de Feminismos Alternativos)

Esteemed delegates, thank you for accepting the challenge of debating in this new committee. You might be very confused, thinking that this was going to be a Human Rights Council (which has been simulated many times). Let us start by saying that it is not. There are some major differences between the average Human Rights Council and this brand-new Human Rights Committee. But do not worry, this Study Guide will walk you through.

The Human Rights Committee is a Treaty Monitoring Body (we will discuss this concept in Section II), an independent body of experts assembled to monitor compliance with the International Covenant on Civil and Political Rights (ICCPR) by its state parties. In other words, it is tasked to supervise the protection of the wide array of rights covered by the ICCPR. For this CarMUN, we will supervise the compliance with, perhaps, one of the most controversial human rights, the right to non-discrimination.

After this brief introduction, Section I will outline some general aspects of the Human Rights Committee (including a brief discussion on the ICCPR, and on human rights more generally), as well as the procedures that this committee will follow (a little heads up, you will not be making the traditional draft resolution). Section II will present the theoretical framework of what intersectionality actually means. Section III discusses some relevant international law that delegates might appeal to. Section IV presents the QARMAS that a General Comment should include. Finally, in Section V, you will find our final remarks and suggestions for further research.

I. ABOUT THE HUMAN RIGHTS COMMITTEE:

This section will present a brief history of human rights and the ICCPR. Then, it will introduce delegates to the Human Rights Committee and the procedures that this committee will have during CarMUN.

A. The International Covenant on Civil and Political Rights:

The development of human rights is fairly recent. Prior to World War II, human rights were considered as a local issue, something for states to determine, and fully covered under the umbrella of sovereignty. Thus, “human rights” were protected only in domestic constitutions or legislation, and through domestic remedies.

Following World War II and the creation of the United Nations (UN), states decided that human rights were an issue that deserved the attention and protection of the international community. This is why, on August 10, 1948, the UN General Assembly (UNGA) enacted Resolution No. 217, commonly known as the “Universal Declaration of Human Rights” (UDHR). This declaration contains a set of 30 articles, covering not only civil and political rights (CPR), but also economic, social and cultural rights (ESCR). It is important to keep in mind that, as stated by the US Supreme Court in *Sosa v. Alvarez-Machain*, the UDHR “[d]oes not of its own force impose obligations as a matter of international law”.¹

Since the UDHR is not binding, states sought to create additional agreements that were compulsory. Following several discussions, states saw that there was a differentiation between negative CPR (eg. States should refrain from torture) versus positive ESCR (eg. States have the obligation to provide adequate housing). Therefore, they decided to split those rights into two different conventions: the ICCPR, which included all negative obligations, and the International Covenant on Economic, Social and Cultural Rights, which included all positive obligations. Both drafts were submitted for consideration of the UNGA in 1954 and adopted in 1966 (the ICCPR was adopted on December 16). Finally, after a long process of accessions and ratifications, the ICCPR entered into force on March 23, 1976. As of 2017, it has 113 state parties, 11 signatories who have not ratified it, and 18 states who have not sign it nor ratified it (these include, for example, Saudi Arabia and Malaysia).²

It is also important to note that the ICCPR has two Optional Protocols. The first one grants the Human Rights Committee the power to review individual complaints, a mechanism we will explain in the next subsection. The second optional protocol (which will not be discussed in CarMUN 2019) deals with the abolition of death penalty. For purposes of this CarMUN 2019, you will not be required to read all the ICCPR or its First Optional Protocol (we will detail the articles that you must read in further sections), but we do recommend that you have a list of countries that have signed and ratified both documents.

¹ *Sosa v. Alvarez-Machain*, 542 U.S. 692, 734 (2004).

² International Covenant on Civil and Political Rights [hereinafter *ICCPR*], Dec. 16, 1966, 999 U.N.T.S. 171.

B. The Human Rights Committee:

This subsection describes a brief history of the Human Rights Committee and details the procedure that this committee will follow for CarMUN 2019.

1. History:

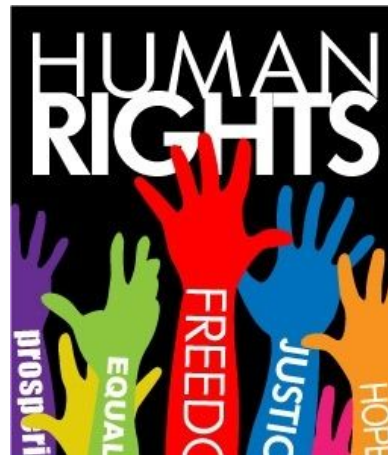


Figure 2:
Declaration on Human Rights. Retrieved from: Federación
Internacional de Servicios Sociales, 2017

The ICCPR protects rights such as, but not limited to, non-discrimination and equality before the law, right to life, prohibition of torture and slavery, and prohibition of arbitrary arrest. In this sense, it establishes the obligation of all states to respect, protect and fulfill said rights. The obligation to respect implies that “[S]tates must refrain from interfering with [. . .] the enjoyment of human rights”.³ The obligation to protect “[r]equires States to protect individuals and groups against human rights abuses”.⁴ Finally, the obligation to fulfill mandates states to “[t]ake positive action to facilitate the enjoyment of basic human rights”.⁵

However, to ensure that States fully comply with the human rights obligations of the ICCPR, article 28 created the Human Rights Committee as the corresponding treaty monitoring body. As mentioned in Section I, a treaty monitoring body is a group of independent experts (18 experts in the case of the Human Rights Committee) tasked to supervise the compliance of the rights protected by all State Parties to that treaty.⁶ This means that these 18 experts serve on their individual capacity, without any form of bias because of their country, to guarantee that all State Parties respect the ICCPR.

To do so, states are required to submit periodic reports to the Human Rights Committee, in which they detail the way in which rights are being implemented and protected. The Committee then analyzes the report and issues observations and

³ International Law, Ohchr.org (2019), <https://www.ohchr.org/en/professionalinterest/pages/internationallaw.aspx> (last visited Aug 7, 2019).

⁴ *Id.*

⁵ *Id.*

⁶ ICCPR, *supra* at note 3, art. 2. See also Treaty Bodies, Ohchr.org (2019), <https://www.ohchr.org/EN/HRBodies/Pages/TreatyBodies.aspx> (last visited Aug 7, 2019).

recommendations for the country to implement. This mechanism is called State Party Reporting.⁷

In addition to the reporting procedure, the Human Rights Committee also has the power to review individual complaints. Through this procedure, individuals may communicate that they have allegedly suffered a violation of a right covered by the ICCPR. When the Committee receives an individual communication, it must review the facts provided. It may also call the parties (the individual and the country) to hear them, and after examining all the available information, it issues a set of recommendations called “Views of the Committee”, which includes particular suggestions to remediate and compensate the violations committed, and general suggestions for policy changes to avoid those violations for happening again. Keep in mind that, although these recommendations are not binding, they are highly persuasive, and countries tend to follow them. However, it is also important to note that individual complaints can only be brought against countries who have signed the First Optional Protocol of the ICCPR.⁸

Finally, specialists have agreed that human rights law is an ever-changing area of studies, and, as such, the ICCPR should be regarded as a living instrument. Therefore, interpretation of its articles may vary from time to time.⁹ This is why the Human Rights Committee (and all the other TMBs) has the power to issue General Comments, which are detailed and comprehensive documents in which the Committee provides guidelines for interpretation and for state reporting. Once again, General Comments are not binding, but they are highly regarded by most countries, and used by domestic courts when reviewing cases of human rights violations.¹⁰ For CarMUN purposes, we strongly encourage you to read carefully General Comment No. 18: Non-discrimination.¹¹

2. Procedure for CarMUN 2019:

In CarMUN we will only simulate the last two procedures explained. Hence, this simulation will have as its main purpose to draft a General Comment (not a Draft Resolution) on the issue of intersectionality. In this sense, the committee will run as a regular GA committee. We will be expecting creative and forward-thinking speeches during moderated caucuses, as well as committed and passionate discussions during unmoderated caucuses. Additionally, we are also open to hear more creative motions as round robins or even Q&As to explain ideas (we will not accept Open Debates nor Consultation of the Hall, though). We also highly encourage the formation of blocs.

i) *Documents of the Committee:*

⁷ Introduction of the Committee [hereinafter *Introduction to ICCPR*], Ohchr.org (2019), <https://www.ohchr.org/EN/HRBodies/CCPR/Pages/CCPRIntro.aspx> (last visited Aug 7, 2019).

⁸ *See id.*

⁹ Human Rights Treaty Bodies - General Comments, Ohchr.org (2019), <https://www.ohchr.org/en/hrbodies/pages/tbgeneralcomments.aspx> (last visited Aug 7, 2019).

¹⁰ *Id.* *See also* Introduction to ICCPR, *supra* at note 8.

¹¹ You can find it on the annexes to this Study Guide, or in this link:

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fGEC%2f6622&Lang=en.

At the end of the debate, delegates are expected to draft two different documents: General Comments and “Views of the Committee”. Do not worry, both are somewhat short documents. They are essay-like documents, in which you must write full paragraphs (including punctuation signs where corresponding), but each paragraph must be numbered. Keep in mind that, since you will have to submit two documents during this simulation (the “Views of the Committee” and the General Comment), you will not be required to present working papers.

We are expecting maybe two or three Draft General Comments, so negotiation and blocs will be highly regarded. However, we will be expecting only one “Views of the Committee”, so for the special procedure we encourage consensus and team work (but do not panic, if you do not agree with the content of the “Views of the Committee”, you can always draft an Individual View).

The General Comment has no specific format to follow. Nonetheless, we strongly encourage to divide it into subsections which deal with specific subtopics (the ones you have discussed during the moderated caucuses), and each subsection should include a set of recommendations regarding interpretation and state reporting (your proposals). We encourage you to read some General Comments (for instance, General Comment No. 18 is a MUST) for you to familiarize with the ‘format’, but you will find it is much simpler than writing a Draft Resolution. Keep in mind that the Draft General Comments will be required around Sunday’s morning.

As for the “Views of the Committee”, it has the following structure, which will be discussed in detail in the next lines:

- Admissibility.
- Facts.
- Merits.
- Recommendations.
- Individual Views (if any).

We want to remind you that, for both documents, subtitles are extremely important, since they will help you organize not only your document, but principally your ideas. Finally, we also encourage you to use photographs, graphs, tables and whatever resource you might find helpful to craft your General Comment or “Views of the Committee”.

ii) *Individual Complaint Procedure:*

During Saturday’s morning session, we will review an individual complaint. On Friday night, delegates will receive the Complaint Documents (a letter submitted by the individual whose rights have been allegedly violated, and the response of the complained country), and they are expected to read them thoroughly for the special procedure session. On Saturday morning, Delegates are encouraged to present a motion to move to a special procedure, and after its approval, we will start reviewing the individual complaint. This special procedure will be similar to a trial, and will follow this procedure:

(1) Discussion on Admissibility:

Before discussing the substantive matters, delegates must discuss on whether the individual complaint is admissible, through a moderated caucus or a round robin. To do so, they must base the discussion on Articles 2 to 5 of the First Optional Protocol to the ICCPR.

Delegates are expected to discuss whether the State who is being complained has signed and ratified the optional protocol. Additionally, they are expected to discuss if violation has been addressed in domestic courts, and whether the all domestic remedies have been exhausted. Do not worry on the legalese and details, we will be sure to provide all the information you require for those speeches in the Complaint Documents.

(2) Admissibility Section of the “Views of the Committee”:

After discussing admissibility issues, delegates are expected to start drafting the admissibility section of the “Views of the Committee”. To do so, you will have around 20 to 30 minutes, but no more. Be sure to discuss whether the violation has been addressed in domestic courts and whether domestic remedies have been exhausted. We strongly recommend that you do not exceed two or three paragraphs on the discussion of admissibility.

After the drafting period, we will move to a voting procedure on whether the individual complaint is admissible or not.

If the committee decides that the individual complaint is inadmissible, then the special procedure will be exhausted, and we will move back to the standard GA debate format. If, however, the committee should decide that the individual complaint is admissible, then it must move to discuss the substantive issues.

(3) Corroboration of the Facts:

After deciding the complaint is admissible, delegates must use all available resources to validate the facts presented in the individual complaint. To do so, delegates must base, principally, but not exclusively, on the evidence presented by the individual. However, if required, delegates may require the presentation of additional evidence to be submitted. This evidence may be the following:

- Testimonies of the affected individuals, alleged perpetrators of the human rights’ violations, and/or representatives of the countries.
- Audiovisual evidence (videos or audios).
- Additional written evidence (statistics, legislation, etc.).

In this sense, delegates are expected to, first, discuss what facts can be assumed to be true and what, if any, additional pieces of evidence would they need to corroborate the facts presented in the individual complaint. After this, they must submit a small written list to the chair, including all the

additional evidence required. After this, the chair will procure them all the evidence.

Should delegates require testimonies, they must comply with the following procedure. First, the witness will make his/her oral account for the allocated time. Then, delegates can ask a maximum of five questions to the witness, which he/she will answer.

Should delegates require audiovisual or written evidence, it will be provided by the chairs and reviewed by the delegates, for a maximum of five minutes.

After the review of all evidentiary material is completed, delegates are expected to discuss whether the facts presented amount to a human rights' violation and apply the relevant legal framework (which specific articles of the ICCPR have been violated). Do not worry, the relevant legal framework will be provided in the Complaint Documents for your consideration.

(4) Facts and Merits Section of the "Views of the Committee":

During or after the discussion of the evidentiary materials, delegates are expected to start writing the Facts and the Merits sections of the "Views of the Committee" document.

In the Facts section, delegates must include all the facts that have been proved and mention how have they been proved. They can include photographs, statistics, legislation and additional evidence considered. We recommend that you do not exceed five paragraphs of proven facts.

In the Merits section, delegates must explain what articles of the ICCPR have been violated, by who and how. We strongly recommend that you do not cite the specific article, but rather explain what it means and how do you consider it has been violated. We recommend that you do not exceed five paragraphs of merits.

This is also the moment to write Individual Views. Individual Views are the opinions of single committee members who do not agree with the general view of the committee (either because they do not agree with the reasoning or with the result, or maybe both). The Individual Views should also include a fact analysis (which facts have been proven, how and why) and a merits analysis (which specific articles of the ICCPR have been violated, by who and how), which should be written in eight to ten paragraphs. Joint Individual Views are also allowed (a maximum of three committee members who disagree with the general views).

Overall, delegates will have around 45 minutes, after reviewing all the evidence and discussing it, to complete this task. Note that, unlike the admissibility section, these two sections will not be submitted to a voting procedure at this moment.

(5) Discussion of the Recommendations:

Once delegates have agreed on existence of human rights' violations, the committee will move to discuss the recommendations. Delegates must discuss specific and general recommendations.

Specific recommendations are those applicable to the situation provided by the individual complaint. Delegates are encouraged to think on what remedies and other forms of compensation could the State provide for those who have allegedly suffered human rights violations.

General recommendations are broader policy recommendations. Delegates must think on ways to ensure that human rights' violations similar to the one presented in the individual complaint do not occur again. We highly encourage you to think outside of the box.

(6) Recommendations Section of the "Views of the Committee":

After discussing possible recommendations, delegates are expected to draft them. This section is the easiest one, as it is only a list of specific and general recommendations. To accomplish this task, delegates will be granted 15 to 20 minutes.

(7) Compilation the "Views of the Committee":

Once the Recommendation section is completed, all sections (Admissibility, Facts, Merits, Recommendations and Individual Views, if any) will be compiled by the chairs into a single document. Once this is done, the full document will be read by the delegates, and then the committee must vote upon it. This vote concludes the special procedure.

Whether the document is finally accepted or denied, the results will be presented through an update for the delegates to discuss once the normal debate has been resumed.

II. INTERSECTIONAL DISCRIMINATION:

Discrimination is not a new phenomenon; it exists from ancient times. Perhaps the most common form has been racial. People's rights were violated all over the world just for the color of their skin. Black people tortured, slaughtered by white supremacists in the USA during the forties and fifties. Again, black people confined to inadequate, unhealthy Bantus in South Africa during the existence of the Apartheid regime.

However, this is not the only form of discrimination the world has seen. During World War II, Jews were confined to concentration camps just because of their religion. On the other hand, for years and years, women were deemed inferior just because of their sex and, because of that, were systematically denied the same rights as men. Not only this, but also poor people have always been marginalized from the society and

have less opportunities than people who have acquisitive power. And the list of examples of discrimination could go on forever.

Think about it for a moment. Nowadays, is it true that all women are denied the same rights as men? One could say that this is not the case, as women now have the same rights as men. This would, in principle be correct. But think again: do ALL women really have the same rights as men? What about indigenous women, or women of color? What about women in highly religious countries, such as Saudi Arabia or Iran? Do they have the same rights? Well, in theory they do, but in practice... In practice, that is a whole different story.

This is what intersectionality is all about. In its basis, it was the identification and study of how different aspects of social and political discrimination overlap with gender.¹² However, according to the UN Expert Group meeting on Gender and Racial Discrimination, it has evolved into a much broader concept:

The idea of "intersectionality" seeks to capture both the *structural and dynamic consequences of the interaction between two or more forms of discrimination* or systems of subordination. It specifically addresses the *manner in which racism, patriarchy, economic disadvantages and other discriminatory systems contribute to create layers of inequality that structures the relative positions of women and men, races and other groups*. Moreover, it addresses the way that specific acts and policies create burdens that flow along these intersecting axes contributing actively to create a dynamic of disempowerment.¹³

After this very brief introduction, this section will discuss the concepts of discrimination and intersectionality.

A. Discrimination:

The first statement prohibiting discrimination appeared on the UDHR, which specified that “[e]veryone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.¹⁴ However, as Jack Donnelly suggests, this article is clearly overstated. It is impossible to conceive a society in which everyone is entitled to *all* human rights without distinction of *any* kind. In this sense, Donnelly states, people are protected (at most) against discrimination intended to cause unjustified harm.¹⁵



Figure 3:
Intersectionality. Retrieved from: Democracia Socialista, 2017

¹² Doyin Atewologun, *Intersectionality Theory and Practice* 1, 2 (2019) [hereinafter *Atewologun, Intersectionality*], <https://oxfordre.com/business/view/10.1093/acrefore/9780190224851.001.0001/acrefore-9780190224851-e-48?print=pdf> (last visited Aug 8, 2019).

¹³ Expert Group Meeting, *Gender and racial discrimination: Report of the Expert Group Meeting* (2000), <https://www.un.org/womenwatch/daw/csw/genrac/report.htm> (last visited Aug. 8, 2019) (Emphasis added).

¹⁴ Universal Declaration of Human Rights article 2, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948).

¹⁵ Jack Donnelly, *Universal human rights in theory and practice* 274 (2013).

The ICCPR gave a rather similar view to what should be construed as discrimination, in article 2(1):

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.¹⁶

First, it mentioned subjects covered in the scope of this article. Whilst the UDHR mentioned that everyone is entitled to rights without discrimination, the ICCPR was explicit when saying that all individuals within the territory of a said State were entitled to all rights without discrimination. On the other hand, it repeated the basis of the discrimination, and the “other status”, which provided some margin for other conducts which could have the effect of nullifying or impairing the enjoyment of human rights.

However, the ICCPR also added an additional level of protection on non-discrimination, on article 26:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

While article 2(1) laid a fundamental protection against discrimination, article 26 went further by establishing equality before the law, and all people are equal before the law, and the law not only should prohibit discrimination, but should provide legal protection and remedies when discrimination occurs.¹⁷ Furthermore, it is possible to say that article 2(1) implies an obligation to respect and protect, while article 26 establishes an obligation to fulfil.

However, the ICCPR is limited in the sense that it does not define what actions constitute discrimination. This is why, when the Human Rights Committee issued General Comment No. 18, it stated that discrimination should be understood in the following way:

[Any] distinction, exclusion, restriction or preference which is based on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.¹⁸

¹⁶ ICCPR, *supra* at note 3, article 2(1).

¹⁷ Human Rights Committee, General Comment No. 18: Non-discrimination (1989), available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fICCPR%2fGEC%2f6622&Lang=en.

¹⁸ *Id.*

Although it provides some framework on what constitutes discrimination, it limits to mentions that situations of distinction, exclusion, restriction or preference on the basis of prohibited grounds, which have the purpose of limiting the access or enjoyment of human rights will constitute acts of discrimination. However, it does not provide a specific list of conducts.

Nonetheless, through that definition, it is possible to classify two different forms of discrimination. Direct discrimination implies that the distinction, exclusion or restriction has the purpose of nullifying or impairing the recognition or enjoyment of rights. On the other hand, indirect discrimination is when the distinction, exclusion or restriction is *prima facie* neutral, but it has the effect of nullifying or impairing the recognition or enjoyment of rights.¹⁹

Delegates will have to review the definition of discrimination, and determine whether it is necessary to update it, or whether it should remain as it is. They should focus specifically in which acts should be deemed as discrimination. Moreover, they must consider how should the “other status” should be interpreted as to provide prohibited grounds on discrimination. Additionally, they will have to determine what discrimination, if any, should be permissible and under what basis. Finally, they will have to address the existence of direct and indirect discrimination and present guidelines for states on how to report both forms of discrimination and measures on how to ensure equality.

B. Intersectionality:

“We will never address the problem of discrimination completely, or ferret it out in all its forms, if we continue to focus on abstract categories and generalizations rather than specific effects. By looking at the grounds for the distinction instead of at the impact of the distinction...we risk undertaking an analysis that is distanced and desensitized from real people’s real experiences.... More often than not, disadvantage arises from the way in which society treats particular individuals, rather than from any characteristic inherent in those individuals.”

- Egan v. Canada (1995)

¹⁹ Interights, *Non-discrimination in international law* (2011).

INTERSECTIONALITY

a fun guide



this is Bob.



Bob is a stripey blue triangle.

AND SHOULD BE PROUD.



SADLY SOME PEOPLE DO NOT LIKE Bob. Bob
FACES OPPRESSION FOR BEING A TRIANGLE, &
FOR HAVING STRIPES.



LUCKILY, THERE ARE LIBERATION GROUPS!
BUT THEY AREN'T INTERSECTIONAL.

SO THEY
LOOK LIKE
THIS



THEY DON'T TALK TO EACH OTHER.
IN FACT, THEY COMPETE.

BOB CAN'T WORK
OUT WHERE TO
GO.



AM I MORE
STRIPE OR
TRIANGLE?



BOB WISHES THAT THE
TRIANGLES AND STRIPES
COULD WORK TOGETHER.



NO LIBERATION
WITHOUT EQUAL
REPRESENTATION!

INTERSECTIONALITY IS
THE BELIEF THAT
OPPRESSIONS ARE
INTERLINKED AND
CANNOT BE SOLVED
ALONE.

OPPRESSIONS ARE NOT ISOLATED.
INTERSECTIONALITY NOW!

Figure 4:

Fun guide about intersectionality. Retrieved from: Dobson,
2013.

At its dawn, intersectionality was conceived as a tool for feminist analysis. Throughout the 20th century, the feminist movement made the international community rethink issues such as gender diversity, not only in education but also other areas, and sexual and reproductive rights. However, the feminist movement was also based on the experiences of mid-class white women. Hence, it lacked the diversity to address issues such as race, class and sexuality. By the start of the 1970s, the feminist movement began to develop new theoretical frameworks that sought to broaden feminism's definition and scope.²⁰

It was in 1991, with the publication of the article "Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color", that scholar Kimberlé Crenshaw coined the term "intersectionality" to explain how people who are "both women and people of color"²¹ are marginalized by "discourses that are shaped to respond to one [identity] or the other,"²² rather than both. In other words, intersectionality sought to explain that discrimination occurs at multiple levels, in the intersection of two or more social categories of power, dominance or oppression.

It is important to note that intersectionality is more than just a concept, it is a way of studying the unique forms of discrimination that occur in the intersection, the crossing of two or more prohibited categories of discrimination.

Several scholars began to theorize upon this conception and concluded that intersectionality is based upon three premises. The first premise is the recognition that people are characterized simultaneously by their membership in multiple social categories (such as gender, ethnicity, religion and sexual orientation, among others) and by awareness that these categories are intertwined such that the experience of one social category is linked to their membership of other categories. The second premise is that, embedded within each socially constructed category, is a dynamic related to power and power interrelations. Finally, all social categories have individual and contextual facets to them. That is, social categories are intrinsically linked to personal identities, as well as to wider institutional processes/practices and structural systems. The entwined personal and structural implications of intersectional thinking thus render the meaning and experiences relating to social categories fluid and dynamic.²³

Based on those three premises, it is possible to conclude that intersectionality studies those situations that result in discrimination on the basis of various grounds that cannot be separated from each other and which, because they are interconnected, create unique forms of disadvantage.²⁴ However, it is important to acknowledge that intersectionality is not simply the sum of a number of prohibited grounds, but a complex

²⁰ Arica L. Coleman, *What's Intersectionality? Let These Scholars Explain the Theory and Its History*, Time (2019), <https://time.com/5560575/intersectionality-theory/> (last visited Aug 11, 2019).

²¹ Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color*, 43 Stan. L. Rev. 1241 (1991).

²² *Id.*

²³ Atewologun, Intersectionality, *supra* at note 12. See also Nicole M. Else-Quest and Janet Shibley Hyde, *Intersectionality in Quantitative Psychological Research: II. Methods and Techniques*, 40 Psychology of Women Quarterly 319 (2016).

²⁴ Gauthier de Beco, *Protecting the Invisible: An Intersectional Approach to International Human Rights Law*, 17 Human Rights L. Rev.

analysis of the different causes and forms of discrimination that occur in the intersection of those prohibited grounds.

In this sense, an intersectional approach to discrimination seeks to identify the specific forms of discrimination that occur within the overlapping of prohibited categories stated in the human rights treaties (for this committee, the ICCPR). Furthermore, an intersectional approach seeks to provide specific measures and remedies that are forward thinking, that go beyond the traditional measures applied in a case of discrimination on the basis of a single ground.²⁵

Delegates will have to apply this intersectional analysis and determine, first, which are the prohibited grounds that are more likely to overlap. Then, they will have to consider which forms of discrimination are unique to each prohibited ground and what effects do they have. Finally, delegates will have to think on measures to remedy those effects of those forms of discrimination.

III. APPLICABLE INTERNATIONAL LAW:

Although this committee is focused entirely on the ICCPR, we highly recommend delegates to review how have other treaty monitoring bodies have interpreted discrimination. For instance, we recommend delegates to review article 2 of the International Covenant on Economic, Social and Cultural Rights, as well as the General Comment No. 20 from the Committee on Economic, Social and Cultural Rights.

Likewise, we also invite delegates to review the General Recommendations issued by the Committee on the Elimination of Discrimination Against Women (CEDAW Committee). We encourage delegates to review specifically General Recommendations No. 19 and 35, which conceptualize violence as a form of discrimination.

Finally, delegates would also benefit if they review doctrinal approaches on what constitutes discrimination and how should an intersectional analysis be applied.

IV. QARMAs:

For a draft General Comment to be approved, it should, at its minimum, answer the following questions:

1. Regarding discrimination:
 - a. How should discrimination be defined? What actions constitute discrimination?
 - b. What basis of discrimination should be prohibited? What, if any, should be permitted?
 - c. What analysis should countries follow to determine whether a specific action is permitted or forbidden?

²⁵ Ivona Truscan and Joanna Bourke-Martignoni, *International Human Rights Law and Intersectional Discrimination*, 16 *The Equal Rights Rev.* 103, 105 (2016).

- d. How should states address the existence of direct and indirect discrimination, in order to ensure equality before the law?
- 2. Regarding intersectionality:
 - a. What forms of discrimination are more likely to overlap?
 - b. What specific forms of discrimination occur within the overlapping categories? What are their effects?
 - c. What remedies can states apply when noticing the existence of overlapping forms of discrimination?

V. FINAL REMARKS:

Thank you very much for reading this Study Guide. We are very excited, and we hope you are too!

We know this is a brand-new committee, so you might have some doubts regarding substantial or procedural issues. Feel free to contact us at any point, and we will try to clarify all your doubts.

Keep in mind that we will be evaluating your performance during the speeches and negotiation, not only during the normal debate but especially during the Special Procedure (Individual Complaint). Thus, we strongly recommend you follow all the small tips we have been mentioning throughout the Study Guide. Additionally, for your consideration, we are including as annexes some examples of a General Comment and a “Views of the Committee” (or at least a summary of it, because a real one is much, much longer).

We also encourage for you to research your character. Look into their views of the law, their interpretations. To do so, you might want to review some “Views of the Committee” in which your character has issued individual views. You might also want to read some articles or short reads your character has written. Finally, you could review whether your character has given interviews or appeared in some news piece. All of those sources will definitely help you to build a better picture of who your character is and what his/her policy is.

Finally, we want to encourage you to think critically. Think outside the box, and always do your best. Be critical of each discussion, analyze each news piece we present, and don’t hesitate to speak your mind. But above all, don’t forget to have fun!

A. Position Paper:

Each delegate must turn in a position paper before the start of conference. The purpose of a position paper is to give each delegate the chance to summarize their understanding of the issue at hand, to delineate your stance on the issue, and to propose possible solutions that could be debated in committee.

When writing your position papers, there is a simple format that you should follow; it will make it easier for you to write and for us to read. The first paragraph of your position paper should describe what you understand as discrimination and what forms of intersectionality you consider as important (examples can be very useful in this

part), as well as the stance of your character. The second paragraph should be used to describe what has the international community done on the issue of non-discrimination, and whether your character considers this is sufficient. Finally, your third and last paragraph should contain your ideas for reconceptualization of the definition of discrimination and what forms of intersectionality should be considered. When writing, since you are representing a character, you can use the first person; you should be saying “I believe. . .” or “I think. . .”.

Each delegate is required to submit one position paper. This should be written in Times New Roman 12-point font, single-spaced, and between one and two pages in length. Please remember to cite ALL sources you use when preparing your position paper (not only direct citation, but also ideas and even paraphrasing). We will not tolerate plagiarism, and we consider it is a cause for immediate disqualification.

Once your Position Paper is ready, it must be emailed to danielhuapayanoriega@gmail.com before the deadline established in order for the delegate to be eligible for an award.

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ANNEX I: Example of General Comment

Thirty-seventh session (1989) General comment No. 18: Non-discrimination

1. Non-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitute a basic and general principle relating to the protection of human rights. Thus, article 2, paragraph 1, of the International Covenant on Civil and Political Rights obligates each State party to respect and ensure to all persons within its territory and subject to its jurisdiction the rights recognized in the Covenant without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Article 26 not only entitles all persons to equality before the law as well as equal protection of the law but also prohibits any discrimination under the law and guarantees to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
2. Indeed, the principle of non-discrimination is so basic that article 3 obligates each State party to ensure the equal right of men and women to the enjoyment of the rights set forth in the Covenant. While article 4, paragraph 1, allows States parties to take measures derogating from certain obligations under the Covenant in time of public emergency, the same article requires, inter alia, that those measures should not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin. Furthermore, article 20, paragraph 2, obligates States parties to prohibit, by law, any advocacy of national, racial or religious hatred which constitutes incitement to discrimination.
3. Because of their basic and general character, the principle of non-discrimination as well as that of equality before the law and equal protection of the law are sometimes expressly referred to in articles relating to particular categories of human rights. Article 14, paragraph 1, provides that all persons shall be equal before the courts and tribunals, and paragraph 3 of the same article provides that, in the determination of any criminal charge against him, everyone shall be entitled, in full equality, to the minimum guarantees enumerated in subparagraphs (a) to (g) of paragraph 3. Similarly, article 25 provides for the equal participation in public life of all citizens, without any of the distinctions mentioned in article 2.
4. It is for the States parties to determine appropriate measures to implement the relevant provisions. However, the Committee is to be informed about the nature of such measures and their conformity with the principles of non-discrimination and equality before the law and equal protection of the law.
5. The Committee wishes to draw the attention of States parties to the fact that the Covenant sometimes expressly requires them to take measures to guarantee the equality of rights of the persons concerned. For example, article 23, paragraph 4, stipulates that States parties shall take appropriate steps to ensure equality of rights as well as responsibilities of spouses as to marriage, during marriage and at its dissolution. Such steps may take the form of legislative, administrative or other measures, but it is a positive duty of States parties to make certain that spouses have equal rights as required by the Covenant. In relation to children, article 24 provides that all children, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, have the right to such measures of protection as are required by their status as minors, on the part of their family, society and the State.
6. The Committee notes that the Covenant neither defines the term “discrimination” nor indicates what constitutes discrimination. However, article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination provides that the term “racial discrimination” shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life. Similarly, article 1 of the Convention on the Elimination of All Forms of Discrimination against Women provides that “discrimination against women” shall mean any

distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

7. While these conventions deal only with cases of discrimination on specific grounds, the Committee believes that the term “discrimination” as used in the Covenant should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.

8. The enjoyment of rights and freedoms on an equal footing, however, does not mean identical treatment in every instance. In this connection, the provisions of the Covenant are explicit. For example, article 6, paragraph 5, prohibits the death sentence from being imposed on persons below 18 years of age. The same paragraph prohibits that sentence from being carried out on pregnant women. Similarly, article 10, paragraph 3, requires the segregation of juvenile offenders from adults. Furthermore, article 25 guarantees certain political rights, differentiating on grounds of citizenship.

9. Reports of many States parties contain information regarding legislative as well as administrative measures and court decisions which relate to protection against discrimination in law, but they very often lack information which would reveal discrimination in fact. When reporting on articles 2 (1), 3 and 26 of the Covenant, States parties usually cite provisions of their constitution or equal opportunity laws with respect to equality of persons. While such information is of course useful, the Committee wishes to know if there remain any problems of discrimination in fact, which may be practised either by public authorities, by the community, or by private persons or bodies. The Committee wishes to be informed about legal provisions and administrative measures directed at diminishing or eliminating such discrimination.

10. The Committee also wishes to point out that the principle of equality sometimes requires States parties to take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the Covenant. For example, in a State where the general conditions of a certain part of the population prevent or impair their enjoyment of human rights, the State should take specific action to correct those conditions. Such action may involve granting for a time to the part of the population concerned certain preferential treatment in specific matters as compared with the rest of the population. However, as long as such action is needed to correct discrimination in fact, it is a case of legitimate differentiation under the Covenant.

11. Both article 2, paragraph 1, and article 26 enumerate grounds of discrimination such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The Committee has observed that in a number of constitutions and laws not all the grounds on which discrimination is prohibited, as cited in article 2, paragraph 1, are enumerated. The Committee would therefore like to receive information from States parties as to the significance of such omissions.

12. While article 2 limits the scope of the rights to be protected against discrimination to those provided for in the Covenant, article 26 does not specify such limitations. That is to say, article 26 provides that all persons are equal before the law and are entitled to equal protection of the law without discrimination, and that the law shall guarantee to all persons equal and effective protection against discrimination on any of the enumerated grounds. In the view of the Committee, article 26 does not merely duplicate the guarantee already provided for in article 2 but provides in itself an autonomous right. It prohibits discrimination in law or in fact in any field regulated and protected by public authorities. Article 26 is therefore concerned with the obligations imposed on States parties in regard to their legislation and the application thereof. Thus, when legislation is adopted by a State party, it must comply with the requirement of article 26 that its content should not be discriminatory. In other words, the application of the principle of non-discrimination contained in article 26 is not limited to those rights which are provided for in the Covenant.

13. Finally, the Committee observes that not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant.

ANNEX II: Example of “Views of the Committee”

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2556/2015^{26*} 27**> 28***

- 1.1 The author of the communication is Fulmati Nyaya,²⁹ a national of Nepal, born in 1987, and a member of the indigenous Tharu community. She claims 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 Optional Protocol entered into force for the State on 14 August 1991.
- 1.2 On 27 January 2015, pursuant to rule 97 of its rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, decided to examine the admissibility of the communication together with the merits.

The facts as presented by the author

- 2.1 The author notes that the facts of the present communication must be read in the context of the decade-long armed conflict in Nepal (1996 to 2006).
- 2.2 The author was born in the Kailali District in far-western Nepal. On 2 April 2002, when the author was 14 years old,³⁰ 300 members of the Royal Nepalese Army and the Armed Police Force³¹ entered her village allegedly looking for Maoists. Soldiers mistook the author for her elder sister – Ms. Kantimati,³² who had joined the Maoist party the previous year – and arrested her. She was dragged into a truck, blindfolded, handcuffed and taken to the Bakimalika Battalion of the Armed Police Force in Banbehda, Kailali District. In the truck, the author was sexually assaulted by a group of six to seven soldiers, who touched various parts of her body, including her breast, thighs and bottom. [. . .]
- 2.3 Later that day, the author and other detainees were taken to the army barracks in Teghari. The author was detained incommunicado. During the first nine days of her detention, she was held in a large hall with 80 to 90 other detainees, both men and women, in very poor hygienic conditions. She hardly had anything to eat. A major asked the soldiers to bring the detainees to his office one by one for interviews. For four days, she was regularly taken from the hall for such interviews. The interrogations took place two or three times a day, generally in the evenings, and she was blindfolded most of the time.
- 2.4 During her detention, the author was raped and subjected to other forms of sexual violence [. . .]. She was also subjected to beatings, kicking, punching, prolonged blindfolding and handcuffing, threats, insulting and denigrating language and coerced extraction of confessions. [. . .].
- 2.5 The author was detained at the army barracks in Teghari from 2 to 11 April 2002. Then she was transferred back to the Bakimalika Battalion of the Armed Police Force in Banbehda [. . .]. They were detained in a very small dark room without windows, mattresses, blankets or beds. During that period, she was again raped and subjected to other forms of sexual violence. The Superintendent of the Police always called her for interrogation during the day; after three or four days, he asked for the removal of

²⁶ * Adopted by the Committee at its 125th session (4–29 March 2019).

²⁷ ** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Christopher Arif Bulkan, Ahmed Amin Fathalla, Shuichi Furuya, Christof Heyns, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja, Andreas Zimmermann and Gentian Zyberi.

²⁸ *** An individual opinion by Committee member José Manuel Santos Pais (partially concurring) is annexed to the present Views.

²⁹ The author is using a pseudonym for the communication.

³⁰ At that time, the author was attending school (eighth grade).

³¹ The Armed Police Force was a paramilitary police force established by the Government by way of ordinance, under the operational control of the Royal Nepalese Army.

³² Pseudonym.

her blindfold. Moreover, the female detainees, including the author, were verbally abused and forced to do work in the barracks, such as carrying bricks and sand, making cement for the construction of a temple and watering the garden.

- 2.6 Over a month and a half after her detention, the author's father, Hira Bahadur,³³ went to the barracks of the Armed Police Force and finally found the author after having searched for her in many places of detention. He had to deposit Nr 50,000 (approximately €500) to secure her release. [. . .]
- 2.17 The author claims that she tried, unsuccessfully, to have a first information report registered and to submit a complaint for compensation [in domestic Nepalese courts] pursuant to the torture compensation act of 1996. She contends that she had no effective remedies available and cites the Committee's jurisprudence, according to which the exhaustion of local remedies can only be required insofar as such remedies appear to be effective in the given case and are de facto available to the author;³⁴ and that domestic remedies do not need to be exhausted where the author has objectively no prospect of success.³⁵ [. . .]

The complaint

- 3.1 The author claims that the State party has violated articles 7, 8 (3) (a) and 10 (1) of the Covenant, read alone and in conjunction with articles 2 (1)–(3), 3, 24 (1) and 26 of the Covenant, given the rape, sexual abuse, torture, ill-treatment, inhumane conditions of detention and 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. [. . .]

Issues and proceedings before the Committee

Consideration of admissibility

- 6.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether it is admissible under the Optional Protocol.
- 6.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under any other procedure of international investigation or settlement.
- 6.3 The Committee notes the State party's claim that domestic remedies have not been exhausted because, on the one hand, the author's writ of mandamus is still pending before the Supreme Court of Nepal and, on the other hand, she still has the possibility to file a complaint before the Truth and Reconciliation Commission.
- 6.4 [. . .] The Committee notes the author's uncontested allegations that she was unable to file a first information report within the legally established 35-day period, given that, during that time, she was still being arbitrarily detained with no access to legal assistance. The author has also argued that, even after her release, she was precluded from seeking support in her community and family due to the social stigma attached to victims of sexual violence. The Committee considers that the proceedings before the Supreme Court regarding the author's writ of mandamus filed in April 2014 are unduly prolonged, particularly considering the gravity of the crimes alleged. It further notes the author's statement that such proceedings are unlikely to bring relief given the long-standing jurisprudence of the Supreme Court on this issue. Therefore, in view of the legal and practical limitations on filing a complaint for rape in the State party, and the unduly prolonged proceedings before the Supreme Court and the unlikelihood of a

³³ Pseudonym.

³⁴ The author refers to, inter alia, *Ondracka and Ondracka v. Czech Republic* (CCPR/C/91/D/1533/2006), para. 6.3 and *Baboeram-Adhin et al. v. Suriname*, communication No. 146/1983 and Nos. 148–154/1983, para. 9.2.

³⁵ The author refers to *Länsman et al. v. Finland* (CCPR/C/52/D/511/1992), para. 6.2 and *Pratt and Morgan v. Jamaica*, communications No. 210/1986 and No. 225/1987, para. 12.3.

successful outcome, the Committee considers that the remedies in the criminal justice system were both ineffective and unavailable to the author.³⁶ [. . .]

- 6.7 As all other admissibility criteria have been met, the Committee declares the communication admissible and proceeds with its consideration of the merits.

Consideration of the merits

- 7.1 The Committee has considered the communication in the light of all the information made available to it by the parties, as required under article 5 (1) of the Optional Protocol.

- 7.2 The Committee notes the author's uncontested allegations that, since 2 April 2002 and, for a period of over a month and a half, she was subjected to rape and other forms of sexual violence and torture by members of the Royal Nepalese Army and of the Armed Police Force, in order to extract information about her alleged support for the Maoists. The Committee considers that the rape and other acts of sexual violence inflicted by the Royal Nepalese Army and the Armed Police Force upon the author, who is indigenous and who was a 14-year-old girl at the time of the events, violated the author's rights under articles 7 and 24 (1) of the Covenant.

- 7.3 The Committee also notes the author's uncontested argument that the rape and other acts of sexual violence to which she was subjected to had a discriminatory effect, as demonstrated by the fashion in which she was treated, and also notes the generalized use of rape against girls and women during the conflict, owing to the particularly serious discriminatory consequences for girls and women victims of rape in the Nepalese society. The Committee recalls that women are particularly vulnerable in times of internal or international armed conflict and considers that this applies equally to girls. States must take all measures to protect girls and women from rape, abduction and other forms of gender-based violence.³⁷ In light of the context surrounding the rape and other forms of sexual violence to which the author was subjected to (see paras. 2.2–2.5 above),³⁸ as well as the State party's general failure to investigate and establish accountability for such crimes, the Committee considers that the State party has violated the author's right not to be subjected to gender discrimination under articles 2 (1) and 3 of the Covenant, read alone in conjunction with articles 7, 24 (1) and 26 of the Covenant.

- 7.4 The Committee notes the author's allegations that, while in detention, Armed Police Force officers forced her to work in the barracks, carrying bricks and sand, making cement for the construction of a temple and watering the garden, while also verbally abusing her. The State party has not contested these allegations. Therefore, considering the author's description and the fact that forced labour has been found as a factor in the cruel treatment of detainees during the internal conflict in Nepal,³⁹ due weight must be given to the author's allegations in this regard.

- 7.5 The Committee has considered that for labour not to be forced or compulsory, it must, at a minimum, not be an exceptional measure; it must not possess a punitive purpose or effect; and it must be provided for by law in order to serve a legitimate purpose under the Covenant.⁴⁰ In light of these considerations, the Committee is of the view that forcing the author to work, while exercising authority over her as a child in arbitrary detention, includes a degrading and discriminatory purpose in that specific 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. [. . .]

[Remedies]

8. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose violations by the State party of articles 7 and 24 (1); articles 2 (1) and 3, read alone and in conjunction with articles 7, 24 (1) and 26; article 8 (3), read alone and in conjunction with articles 7 and

³⁶ *Maya v. Nepal* (CCPR/C/119/D/2245/2013), para. 11.5.

³⁷ See general comment No. 28, para. 8.

³⁸ *L.N.P. v. Argentina*, para. 13.3; *M.T. v. Uzbekistan*, para. 7.6; and *Maya v. Nepal*, para. 12.4.

³⁹ See Office of the United Nations High Commissioner for Human Rights (OHCHR), *Nepal Conflict Report* (2012), p. 131.

⁴⁰ *Faure v. Australia*, para. 7.5.

24 (1); article 9, read alone and in conjunction with articles 2 (3) and 24 (1); articles 17 and 23 (1); and article 2 (3), read alone and in conjunction with articles 3, 7, 9, 24 and 26.

9. 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: (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: (a) criminalize torture and provide for appropriate sanctions and remedies commensurate with the gravity of the crime; (b) adapt the definition of rape and other forms of sexual violence in accordance with international standards; (c) guarantee that cases of rape, other forms of sexual violence and torture give rise to a prompt, impartial and effective investigation; (d) allow for criminal prosecution of those responsible for such crimes; and (e) 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 by significantly increasing the statute of limitations commensurate with the gravity of such crimes.⁴¹
10. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure for all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when a violation has been established, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and disseminate them widely in the official languages of the State party.

Individual opinion of Committee member José Manuel Santos Pais (partly concurring)

1. I fully concur with the Committee that the State party violated several articles of the Covenant, although not with the conclusion that Nepal is responsible for a disruption in the author's family life and marriage (see paras. 7.8 and 8 of the Views above). [. . .]
8. The author alleges a violation of articles 17 and 23 (1) of the Covenant, due to the arbitrary interference with her privacy and her sexual life as a woman, the disruption of her family life, and the unlawful attacks on her honour and reputation (para. 3.3).
9. In this regard, due account should be given to the author's uncontested allegations that, since 2 April 2002 and, for a period of over a month and a half, she was subjected to rape and other forms of sexual violence by members of the Royal Nepalese Army and of the Armed Police Force. I therefore concur with the Committee that these crimes, inflicted upon the author, an indigenous woman who was a 14-year-old girl at the time of the events, violated the author's rights under articles 7 and 24 (1) of the Covenant (para. 7.2).

⁴¹ See CCPR/C/NPL/CO/2, para. 13. See also International Criminal Tribunal for the former Yugoslavia, *Prosecutor v. Furundzija*, case No. IT-95-17/1-T judgment of 10 December 1998, para. 155.