



## International Covenant on Civil and Political Rights

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### Human Rights Committee

#### Decision adopted by the Committee under the Optional Protocol, concerning communication No. 2970/2017\*, \*\*

<i>Communication submitted by:</i>	L.M.A. (represented by counsel, Myriam Roy L'Ecuyer)
<i>Alleged victims:</i>	The author and her son C.C.
<i>State party:</i>	Canada
<i>Date of communication:</i>	28 March 2017 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 30 March 2017 (not issued in document form)
<i>Date of adoption of decision:</i>	23 July 2020
<i>Subject matter:</i>	Expulsion to Mauritania
<i>Procedural issues:</i>	Insufficient substantiation of claims; incompatibility <i>ratione materiae</i> with the provisions of the Covenant
<i>Substantive issues:</i>	Cruel, inhuman or degrading treatment or punishment; effective remedy
<i>Articles of the Covenant:</i>	2, 6 and 7
<i>Articles of the Optional Protocol:</i>	2, 3 and 5 (2) (b)

1.1 The author of the communication is L.M.A., a Mauritanian national born in 1986. She submitted the communication on her own behalf and on behalf of her minor son, C.C., a Canadian national born in 2014. The author has been denied asylum in Canada and was ordered to leave the country on 30 March 2017. She claims that being deported to Mauritania with her son would constitute a violation of their rights under articles 6 and 7 of the Covenant, as well as under article 2, read in conjunction with article 6. The author and her son are represented by counsel, Myriam Roy L'Ecuyer of the law firm Stewart Istvanffy.

1.2 On 30 March 2017, in application of rule 94 of its rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, decided

\* Adopted by the Committee at its 129th session (29 June–24 July 2020).

\*\* The following members of the Committee participated in the examination of the communication: Yadh Ben Achour, Arif Bulkan, Ahmed Amin Fathalla, Christof Heyns, Bamariam Koita, Duncan Laki Muhumuza, Photini Pazartzis, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja and Gentian Zyberi. In accordance with rule 108 of the Committee's rules of procedure, Marcia V.J. Kran did not participate in the examination of the communication.



to admit the request made by the author and thus asked the State party not to deport her to Mauritania while it considered the communication.

1.3 On 29 September 2017 and 3 January 2018, the State party asked the Committee to lift the request for interim measures that the Committee had made on the author's behalf. On 15 February 2019, the Committee, acting through the Special Rapporteur on new communications and interim measures, decided to grant the State party's request by lifting its request to stay the author's deportation.

#### **The facts as submitted by the author**

2.1 The author is a member of the Oulad Bessba tribe, a Moorish tribe of high status in Mauritanian society. In 2009, she met her future husband, A.C.C., a descendant of the Haratine, a tribe whose members were once slaves and who, although now legally emancipated, continue to experience racial and social discrimination. A.C.C. has been involved in fighting discrimination since 1998, and in 2008 he founded an association called SOS esclaves. Because of his activism, he has been subjected to arbitrary arrest, detention and acts of torture. The author points out that it is still dangerous, even today, for activists to speak out publicly about discrimination in Mauritania.<sup>1</sup> The author and A.C.C. met as a result of their shared interest in combating inequality and decided to see each other in secret.

2.2 In February 2011, with the author pregnant, the couple married without the consent of her family. When her family found out about their marriage, the author was kidnapped, beaten and forced to fast by her brothers, resulting in a miscarriage. Her husband was persecuted and forced to leave the country. He then took refuge in the United States of America.

2.3 In March 2013, the author travelled to the United States with her uncle for medical treatment. It was then that she found out her husband was there. After returning to Mauritania, she did everything she could to be able to join him there. In June 2013, she managed to return to the United States and move in with her husband. In August 2013, she was pregnant again but had a difficult pregnancy. Her husband, who worked long hours, could not give her the support she needed, so she decided to join her sisters in Canada. While she was in Canada, her husband obtained refugee status in the United States and filed a claim for his wife and son.

2.4 On 21 November 2013, the author claimed asylum in Canada. In May 2014, her son was born in Canada and became a Canadian citizen. On 10 June 2014, the Refugee Protection Division of the Immigration and Refugee Board of Canada dismissed the author's application for asylum, finding it lacked credibility, including in respect of the alleged problems arising from her relationship with her husband. On 7 October 2014, the Federal Court refused to review the Board's decision.

2.5 In December 2014, the author applied for permanent resident status on humanitarian grounds. Her application was dismissed on 21 November 2016. The authorities of the State party found, in particular, that the best interests of the child and the situation in the author's country of origin did not warrant acceptance of her application. They noted that the child was still too young to have established significant ties in Canada and that what was in his interest was, first and foremost, to be with his parents. In addition, as the author was not from a disadvantaged background, the official responsible for assessing her application concluded that the child would not face the problems that she had raised, which were "mainly the lot of poor children". The author then applied for leave and judicial review of the decision not to grant her permanent resident status on humanitarian grounds, but this application was dismissed by the Federal Court on 23 May 2017.

2.6 In parallel with the other steps she took, on 19 June 2015 the author submitted an application for a pre-removal risk assessment. This was dismissed on 18 November 2016 on the grounds that she had not shown that she would be at risk of torture, persecution or cruel,

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<sup>1</sup> See Amnesty International, "Mauritania: Jailed presidential candidate and anti-slavery activists must be released", 15 January 2015; and Amnesty International, "Mauritania must stop targeting anti-slavery activists", press release, 12 November 2014.

inhuman or degrading treatment or punishment and her life would be in danger if she were returned to Mauritania. In particular, the Canadian authorities argued that she had not satisfactorily shown that her husband belonged to a slave caste or that she had problems with her family because she had married outside her caste. In March 2017, the author filed an application for leave and judicial review of the decision to deny her request for a pre-removal risk assessment. This application was dismissed by the Federal Court on 2 June 2017.

2.7 On 15 March 2017, a request to stay the deportation of the author was denied by the Canada Border Services Agency. The author argued that her son was at risk of persecution and discrimination because, under Mauritanian law, he would not be able to apply for Mauritanian citizenship until he was 17 years old. The Agency replied that “the option of leaving the child in Canada with his aunt, whom he has known his entire life, was perfectly feasible”. In addition, the Agency noted that, as a refugee in the United States, the author’s husband was in a position to sponsor them, meaning that “she would be separated from her son for a short period of time only”, which, according to the Agency, was “not ideal, but could be done”.

2.8 On 22 March 2017, the author submitted a request for a stay of deportation. She was heard in the Federal Court of Canada on 28 March, and her request was denied the following day.

2.9 The author asserts that she has exhausted all domestic remedies.

### **The complaint**

3.1 The author alleges a violation of article 2 of the Covenant, read in conjunction with article 6, because the State party did not conduct a serious assessment of the risk of death she would face if she were returned to Mauritania. In her view, all the evidence she submitted after the decision issued on 10 June 2014 by the Refugee Protection Division was rejected for no valid legal reason. The author argues that she did not submit this evidence earlier because it was not available. She maintains that there is therefore no effective remedy that would allow her to present new evidence for her case.

3.2 The author submits, moreover, that her rights under articles 6 and 7 of the Covenant would be violated if she were deported to Mauritania. She asserts that she is at substantial risk of death, sexual, psychological and physical abuse and persecution at the hands of members of her family, including her brothers, who are of the view that her marriage to a lower-caste man is a serious honour crime, and at the hands of Mauritanian society, which is highly critical of inter-caste marriage. The author maintains that her son is also at risk and that, as he is not a Mauritanian citizen, he would be considered an outcast in Mauritania. As the author has been disowned by her family, her son would not be allowed to live on Mauritanian soil. As a result, he would lack access to health services, even though he is asthmatic, and could be enslaved by a rich family. The author contends that there are no means of protection for her and her son in Mauritania. In addition, she argues that there are widespread and systematic rights violations in Mauritania,<sup>2</sup> particularly violations of women’s rights.

### **State party’s observations on the admissibility and the merits**

4.1 On 29 September 2017, the State party submitted its observations on the admissibility and the merits of the communication. On the same date, it asked the Committee to lift the request for interim measures it had made on the author’s behalf. The State party is of the view that the communication should be declared inadmissible for the following reasons: (a) the author’s claims concerning the violation of article 2 of the Covenant are insufficiently substantiated and are incompatible *ratione materiae* with the Covenant; (b) the author has not sufficiently substantiated her claims in relation to articles 6 and 7 of the Covenant, nor the assertion that her removal to Mauritania would cause irreparable harm; and (c) the author’s son, who is a Canadian citizen, is not subject to a deportation order.

<sup>2</sup> See, inter alia, Freedom House, *Freedom in the World 2014 – Mauritania*, Refworld, 21 August 2014, available at [www.refworld.org/docid/53fae99c8.html](http://www.refworld.org/docid/53fae99c8.html).

4.2 The State party confirms the facts as described by the author, and adds that, in her asylum application, she stated that she did not file a complaint against her family with the police “because the authorities do not side with anyone against his or her family” and that she was unable to seek refuge in another part of her country because her family would have found her there.

4.3 The State party emphasizes that the aim of the author’s arguments is essentially to persuade the Committee to review and overturn the decisions of the Canadian courts. It recalls in this regard that the Committee is not a court of appeal.<sup>3</sup> The State party emphasizes that all the claims made by the author in her communication have been subjected to rigorous scrutiny before multiple bodies and have been duly analysed by independent and impartial national bodies in accordance with Canadian law and the country’s international human rights obligations, with due regard for fairness. The State party describes how the author’s case proceeded through the national system of bodies set up to consider cases such as hers and points out that she was represented by counsel at every step of the way and able to lodge appeals in an attempt to substantiate her claims and the evidence she put forward. The State party submits that the author has not shown that the decisions of the Canadian authorities were flawed in such a way as to warrant an intervention by the Committee.

4.4 Referring to the claimed violation of article 2 of the Covenant, the State party recalls that article 2 does not confer an independent right to redress; it simply defines the scope of the legal obligations of States parties.<sup>4</sup> It must therefore be invoked in conjunction with an article of the Covenant conferring a right on the author of a communication.<sup>5</sup> Thus, claims relating to article 2 cannot of themselves form the basis of a claim in a communication submitted under the Optional Protocol. If, however, the Committee finds that the author’s claims can be examined in the light of article 2 of the Covenant taken in isolation, the State party submits that the author has failed to substantiate them, as there is no evidence that the risks she claims she would face have not been seriously assessed by the Canadian authorities. The State party explains that all the evidence was evaluated by experts, that each jurisdiction has its own rules and that if some evidence was rejected by the Canadian authorities, it was because it did not fall within the definition of new evidence under Canadian law.

4.5 The State party notes that the author did not explicitly claim that there had been a violation of article 24 (1) of the Covenant, which establishes the right of every child to be protected by his or her family, society and the State.<sup>6</sup> Even if she had done so, however, these aspects of the communication would be inadmissible under article 3 of the Optional Protocol and rule 99 (d) of the Committee’s rules of procedure, since the claims formulated are incompatible *ratione materiae* with article 24 of the Covenant. In addition, since the author’s son is not subject to a deportation order, if he left Canada, it would be because his mother decided to take him to Mauritania. Furthermore, even if the Committee were of the view that the author’s son was subject to a measure taken by the State party, article 24 does not impose a non-refoulement obligation on the expelling State and this issue should be duly considered under articles 6 and 7 of the Covenant. In this respect, the State party refers the Committee to its comments on these articles.

4.6 The State party submits that the author’s claims under articles 6 and 7 of the Covenant have not been substantiated sufficiently for the communication to be found admissible. The author’s claims are, in essence, the same as those that were examined and deemed unfounded by impartial and independent Canadian authorities. According to the State party, these claims contain a number of incongruities, such as the fact that the author travelled to the United States in March 2013 before returning to Mauritania, that she did not claim asylum in the United States, and that she has never sought protection in Mauritania or provided any evidence that she would not be protected if she were deported to Mauritania. Furthermore,

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<sup>3</sup> See, inter alia, *Tarlue v. Canada* (CCPR/C/95/D/1551/2007), para. 7.4; *Kaur v. Canada* (CCPR/C/94/D/1455/2006), para. 7.3; and *Tadman and Prentice v. Canada* (CCPR/C/93/D/1481/2006), para. 7.3.

<sup>4</sup> Human Rights Committee, general comment No. 31 [2004]. Para. 3.

<sup>5</sup> See, inter alia, *M.M. de Vos v. the Netherlands* (CCPR/C/84/D/1192/2003), para. 6.3; and *P.K. v. Canada* (CCPR/C/89/D/1234/2003), para. 7.6.

<sup>6</sup> Human Rights Committee, general comment No. 17 (1989), para. 1.

on 18 March 2017, at the Federal Court hearing, the author was questioned about the applications for visas to the United States that had been made on her behalf in September 2010 and August 2011. She claimed that she was unaware of them, explaining that she could read only Arabic. The State party is thus puzzled by her ability to organize her trip to the United States to join her husband there in June 2013. The Canadian authorities were also not persuaded of the author's husband's slave lineage, since, by her account, he was able to attend university and work in a government post in Mauritania, an unusual outcome for a descendant of slaves in that country.

4.7 The State party points out that the letters forming the basis of the author's communication, with the exception of the letter from her husband, were studied by its authorities, who did not give much weight to them, as there was nothing to confirm the identity of the authors or to verify the veracity or origin of the letters and some information was incompatible with the author's testimony. The State party recalls that it is not for the Committee to reassess the facts unless the evaluation of the facts and the evidence made by the domestic courts was clearly arbitrary or constituted a denial of justice.<sup>7</sup> In the present case, the author's claims have been analysed fairly and in accordance with the law by the Canadian authorities, and her communication does not establish in any way that their decisions were in some way flawed.

4.8 Referring to the Committee's jurisprudence, the State party submits that the author's claims and evidence are too general to demonstrate that she would face a foreseeable, real and personal risk to her life or of being subjected to torture or other irreparable harm<sup>8</sup> if she were returned to Mauritania. Although reports confirm that there is cultural resistance to inter-caste marriage in Mauritania,<sup>9</sup> Canada maintains that the author's claims of potential violations of articles 6 and 7 of the Covenant are not sufficient to oblige it to respect the principle of non-refoulement in her case.

4.9 The State party submits that the situation of the author's son has already been examined by its authorities. In addition to the arguments made above, the State party notes that, if Mauritania does not recognize dual citizenship, the author could renounce her son's Canadian citizenship. Furthermore, the State party affirms that the author chose to settle in Canada of her own accord, knowing that she might have to leave with a child born in the country. The State party notes that, according to the author, the father of the child has been recognized as a refugee in the United States and that his application for asylum there included his wife and son. The State party, without taking a position on the immigration rules of the United States, also notes that the author has not submitted any evidence that the child could not live with his father. As for the author's arguments that her son needs regular medical care, the State party points out that the deportation of a person to a country that cannot provide health care of equivalent quality to that in Canada does not entail an obligation of non-refoulement unless the circumstances are exceptional, which is not the case here.

4.10 The State party requests the Committee, on a secondary basis, if it does find the communication admissible, to rule that it is without merit for the reasons set out above.

#### **Author's comments on the State party's observations**

5.1 On 8 March 2019, the author commented on the State party's observations. She reiterates her version of the facts and adds that she can no longer count on the possibility of resident or other status in the United States, since she and her husband divorced on 24 March 2018. She also adds that, on 14 May 2018, she filed a new application for permanent residence on humanitarian grounds. This application was refused, and the author was notified of the decision in December 2018. The author again applied for judicial review, and a review is currently under way, but the review does not entail a stay of the deportation order. The

<sup>7</sup> *Kibale v. Canada* (CCPR/C/93/D/1562/2007), para. 6.4; *Pham v. Canada* (CCPR/C/93/D/1534/2006), para. 7.4; *Tadman and Prentice v. Canada*, para. 7.3; *P.K. v. Canada*, para. 7.3; *Simms v. Jamaica* (CCPR/C/53/D/541/1993), para. 6.2; and *G.A. Van Meurs v. the Netherlands* (CCPR/C/39/D/215/1986), para. 7.1.

<sup>8</sup> *Wilfred v. Canada* (CCPR/C/94/D/1638/2007), para. 4.3; and *S.V. v. Canada* (CCPR/C/105/D/1827/2008), para. 8.8.

<sup>9</sup> United States Department of State, *Mauritania 2016 Human Rights Report*, p. 21.

author also notes that she has been summoned to appear at the offices of the Canada Border Services Agency on 14 March 2019 and fears that she will be deported on this date.

5.2 The author argues that the various appeals she has lodged were not handled in a manner compatible with either the Canadian Charter of Rights and Freedoms, in particular articles 7 and 12, or the Covenant, as they did not allow an objective and impartial assessment of her case. She stresses that the pre-removal risk assessment is not in conformity with the Covenant, since, in practice, it gives no reasonable chance of having a risk recognized when an application has been dismissed by the Refugee Protection Division. She affirms that the officials responsible for assessing pre-removal risks do not review cases independently and that the decisions against her were, in her case, the result of technicalities. The author is also of the view that she meets the majority of the criteria for an application for permanent resident status on humanitarian grounds and that her application was handled unreasonably, in piecemeal fashion, not, as is standard under Canadian law, as a whole.<sup>10</sup> According to the author, the State party does not provide an effective remedy in cases where the initial decision handed down is not in the applicant's favour.

5.3 The author points out that articles 2 (3) and 7 of the Covenant entail an obligation of result and that the State party, by taking unreasonable decisions in violation of her fundamental rights, is failing to fulfil this obligation.<sup>11</sup> She also recalls that the standards set out in the Handbook on Procedures and Criteria for Determining Refugee Status of the Office of the United Nations High Commissioner for Refugees (UNHCR)<sup>12</sup> must be applied in domestic proceedings, particularly with respect to the burden of proof, since it is often the case that an "applicant may not be able to support his statements by documentary or other proof".<sup>13</sup> If there are statements that are not susceptible of proof, the applicant should, "unless there are good reasons to the contrary, be given the benefit of the doubt".<sup>14</sup> The author believes that she has submitted substantial evidence and that the burden of proof that she has been asked to bear is excessive. The author thus requests the Committee to reject the State party's arguments for their lack of a legal basis and for the State party's factual misjudgment of the evidence in the case file. According to the author, the reasons given for doubting her credibility are insufficient, and the subsequent failures of her applications for review are the result of the unwillingness of the State party's authorities to correct their errors.

5.4 As for her son's situation, the author argues that, as mentioned by the State party, it is in the best interests of the child for him to be with his or her parent. In the author's view, the best interests of the child were not a consideration in the examination of her application for permanent residence on humanitarian grounds. There was no reasonable assessment of what was in his interest or of the living conditions he will have to endure if his mother is sent back to Mauritania, and the official concerned drew erroneous conclusions about his status in Mauritania. The fact that he will be unable to receive treatment for his asthma or to attend school in Mauritania, and that he will be unable to obtain a guarantee of extended stay, was not taken into account.

5.5 The author also asked the Committee to reiterate its request for interim measures, so that she will not be deported to Mauritania.

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<sup>10</sup> Federal Court of Canada, *Webb v. Canada (Citizenship and Immigration)*, 2012 FC 1060, judgment of 7 September 2012, para. 19.

<sup>11</sup> See *Shakeel v. Canada* (CCPR/C/108/D/1881/2009); and *Choudhary v. Canada* (CCPR/C/109/D/1898/2009).

<sup>12</sup> UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, document with symbol HCR/1P/4/FRE/REV.3.

<sup>13</sup> *Ibid.*, para. 196.

<sup>14</sup> *Ibid.*

## Issues and proceedings before the Committee

### *Consideration of admissibility*

6.1 Before considering any claim contained in a communication, the Human Rights Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication 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 another procedure of international investigation or settlement.

6.3 The Committee notes the author's claim that she has exhausted all domestic remedies available to her. In the absence of any objection by the State party in this connection, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

6.4 The Committee takes note of the author's claims that, because of her prohibited marriage, contracted without her family's consent, to a person of a caste lower than her own, she would risk death, torture or cruel, inhuman or degrading treatment or punishment at the hands of members of her family or Mauritanian society if she were deported to Mauritania. The Committee also takes note of the author's assertion that her son would be unable to obtain a permanent visa in Mauritania and would be subjected to discrimination and persecution. In addition, the Committee notes the author's claim that she and her son would be unable to turn to the Mauritanian authorities for protection.

6.5 The Committee recalls paragraph 12 of its general comment No. 31 (2004), in which it refers to the obligation of States parties not to extradite, deport, expel or otherwise remove a person from their territory when there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant.<sup>15</sup> The Committee has also indicated that the risk must be personal and that there is a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists.<sup>16</sup> Thus, all relevant facts and circumstances must be considered, including the general human rights situation in the author's country of origin.<sup>17</sup> The Committee stresses that it is generally for the organs of States parties to examine the facts and evidence of the case in order to determine whether such a risk exists, unless it can be established that the assessment was arbitrary or amounted to a manifest error or denial of justice.<sup>18</sup>

6.6 The Committee notes the author's claim that the risk of irreparable harm was not assessed in an objective and impartial manner by the authorities of the State party. It also notes the author's assertions that the State party's asylum procedures do not provide for an effective remedy in the event of an unfavourable initial decision. In addition, the Committee notes the author's claim that her son's best interests were not properly taken into account by the official responsible for examining her application for permanent resident status on humanitarian grounds. The Committee also acknowledges the State party's comments to the effect that the decisions of the official responsible for processing the application for permanent residence on humanitarian grounds, the official responsible for the pre-removal risk assessment and the Canada Border Services Agency, who reached the conclusion that the author and her son were not facing a serious risk of prejudicial treatment upon their return to Mauritania, were the result of rigorous analyses and that all these agencies concluded that the author's claims lacked credibility. In addition, the Committee notes the State party's view that the author's claims and the evidence she submitted contain contradictions. The Committee notes, too, that the State party has made clear that the author's son has not been ordered to be deported to Mauritania, and has also stated that, if the author were to decide not to take her son with her to Mauritania, alternative care was available for him either with

<sup>15</sup> *A v. Denmark* (CCPR/C/116/D/2357/2014), para. 7.4.

<sup>16</sup> See, inter alia, *A and B v. Denmark* (CCPR/C/117/D/2291/2013), para. 8.3.

<sup>17</sup> See, inter alia, *A and B v. Denmark*, para. 8.3; *X v. Norway* (CCPR/C/115/D/2474/2014), para. 7.3; and *X v. Canada* (CCPR/C/115/D/2366/2014), para. 9.3.

<sup>18</sup> See, inter alia, *I.M.Y. v. Denmark* (CCPR/C/117/D/2559/2015), para. 7.6; and *K v. Denmark*, (CCPR/C/114/D/2393/2014), para. 7.4.

his aunt in Canada or with his father in the United States. The Committee is of the view that the author has not sufficiently demonstrated that the examination of her application for asylum by the Canadian authorities was manifestly arbitrary or amounted to a manifest error or denial of justice.<sup>19</sup> The Committee considers that, despite the author's objections to the factual findings of the State party's authorities, the information before it does not prove that those findings are manifestly unreasonable.<sup>20</sup> Without prejudice to the continuing responsibility of the State party to take into account the current situation in the country to which the author would be deported, and without underestimating legitimate concerns about the general human rights situation in Mauritania,<sup>21</sup> the Committee therefore finds that the author's claims under articles 2, 6 and 7 of the Covenant are insufficiently substantiated and are, as a result, inadmissible under article 2 of the Optional Protocol.

7. The Human Rights Committee therefore decides:

- (a) That the communication is inadmissible under article 2 of the Optional Protocol;
  - (b) That this decision shall be communicated to the State party and to the author.
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<sup>19</sup> See, *inter alia*, *A v. Denmark*, para. 7.4.

<sup>20</sup> *R.G. et al. v. Denmark* (CCPR/C/115/D/2351/2014), para. 7.7.

<sup>21</sup> See, for example, CCPR/C/MRT/CO/2, and A/HRC/34/54/Add.1.