

INTERNALLY DISPLACED PERSONS

II. GENERAL COMMENTS AND RECOMMENDATIONS

- ICCPR General Comment 27 (Sixty-seventh session, 1999): Article 12: Freedom of Movement, A/55/40 vol. I (2000) 128 at para. 7.

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7. Subject to the provisions of article 12, paragraph 3, the right to reside in a place of one's choice within the territory includes protection against all forms of forced internal displacement. It also precludes preventing the entry or stay of persons in a defined part of the territory. Lawful detention, however, affects more specifically the right to personal liberty and is covered by article 9 of the Covenant. In some circumstances, articles 12 and 9 may come into play together. e/

Notes

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e/ See e.g. Communication No. 138/1983, *Mpandajila v. Zaire*, para. 10; Communication No. 157/1983, *Mpaka-Nsusu v. Zaire*, para. 10; Communication Nos. 241 and 242/1987, *Birhashhwirwa/Tshisekedi v. Zaire*, para. 13.

- ICCPR General Comment 29 (Seventy-second session, 2001): Derogations from provisions of the Covenant during a state of emergency, A/56/40 vol. I (2001) 202 at para. 13(d).

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13. In those provisions of the Covenant that are not listed in article 4, paragraph 2, there are elements that in the Committee's opinion cannot be made subject to lawful derogation under article 4. Below, some illustrative examples are presented.

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(d) As confirmed by the Statute of the International Criminal Court, deportation or forcible transfer of population without grounds permitted under international law, in the form of forced displacement by expulsion or other coercive means from the area in which the persons concerned are lawfully present, constitutes a crime against humanity.^{8/} The legitimate right to derogate from article 12 of the Covenant during a state of emergency can never be accepted as justifying such measures.

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8/ See articles 7 (1) (d) and 7 (2) (d) of the Statute of the International Criminal Court.

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- ICESCR General Comment 15 (Twenty-ninth session, 2002): The Right to Water (arts. 11 and 12 of the Covenant), E/2003/22 (2002) 120 at paras. 16(f) and 34.

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16. Whereas the right to water applies to everyone, States parties should give special attention to those individuals and groups who have traditionally faced difficulties in exercising this right, including women, children, minority groups, indigenous peoples, refugees, asylum seekers, internally displaced persons, migrant workers, prisoners and detainees. In particular, States parties should take steps to ensure that:

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(f) Refugees, asylum-seekers, internally displaced persons and returnees have access to adequate water whether they stay in camps or in urban and rural areas. Refugees and asylum-seekers should be granted the right to water on the same conditions as granted to nationals;

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34. Depending on the availability of resources, States should facilitate realization of the right to water in other countries, for example through provision of water resources, financial and technical assistance, and provide the necessary aid when required. In disaster relief and emergency assistance, including assistance to refugees and displaced persons, priority should be given to Covenant rights, including the provision of adequate water. International assistance should be provided in a manner that is consistent with the Covenant and other human rights standards, and sustainable and culturally appropriate. The economically developed States parties have a special responsibility and interest to assist the poorer developing States in this regard.

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- CEDAW General Recommendation 24 (Twentieth session, 1999): Article 2: Women and Health, A/54/38/Rev.1 part I (1999) 3 at para. 6.

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6. While biological differences between women and men may lead to differences in health status, there are societal factors which are determinative of the health status of women and men and which can vary among women themselves. For that reason, special attention should be given to the health needs and rights of women belonging to vulnerable and disadvantaged groups, such as migrant women, refugee and internally displaced women, the girl child and older women, women in prostitution, indigenous women and women with physical or mental disabilities.

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- CRC General Comment 3 (Thirty-second session, 2003): HIV/AIDS and the Rights of the Child, A/59/41 (2003) 89 at paras. 30 and 38.

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30. The vulnerability of children to HIV/AIDS resulting from political, economic, social, cultural and other factors determines the likelihood of their being left with insufficient support to cope with the impact of HIV/AIDS on their families and communities, exposed to the risk of infection, subjected to inappropriate research, or deprived of access to treatment, care and support if and when HIV infection sets in. Vulnerability to HIV/AIDS is most acute for children living in refugee and internally displaced persons camps, children in detention, children living in institutions, as well as children living in extreme poverty, children living in situations of armed conflict, child soldiers, economically and sexually exploited children, and disabled, migrant, minority, indigenous, and street children. However, all children can be rendered vulnerable by the particular circumstances of their lives. Even in times of severe resource constraints, the Committee wishes to note that the rights of vulnerable members of society must be protected and that many measures can be pursued with minimum resource implications. Reducing vulnerability to HIV/AIDS requires first and foremost that children, their families and communities be empowered to make informed choices about decisions, practices or policies affecting them in relation to HIV/AIDS.

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38. Programmes must be specifically adapted to the environment in which children live, to their ability to recognize and report abuses and to their individual capacity and autonomy. The Committee considers that the relationship between HIV/AIDS and the violence or abuse suffered by children in the context of war and armed conflict requires specific attention. Measures to prevent violence and abuse in these situations are critical, and States parties must ensure the incorporation of HIV/AIDS and child rights issues in addressing and supporting children - girls and boys - who were used by military or other uniformed personnel to provide domestic help or sexual services, or who are internally displaced or living in refugee camps. In keeping with States parties' obligations, including under articles 38 and 39 of the Convention, active information campaigns, combined with the counselling of children and mechanisms for the prevention and early detection of violence and abuse, must be put in place within conflict- and disaster-affected regions, and must form part of national and community responses to HIV/AIDS.

- CERD General Recommendation XXII (Forty-ninth session, 1996): Article 5 and Refugees and Displaced Persons, A/51/18 (1996) 126. For text of General Recommendation, see **EQUALITY AND DISCRIMINATION - RACIAL DISCRIMINATION**.

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- CERD General Recommendation XXVII (Fifty-seventh session, 2000): Discrimination Against Roma, A/55/18 (2000) 154 at para. 16. For text of General Recommendation, see **EQUALITY AND DISCRIMINATION - RACIAL DISCRIMINATION**.
- CERD General recommendation XXXI (Sixty-seventh session, 2005): The Prevention of Racial Discrimination in the Administration and Functioning of the Criminal Justice System, A/60/18 (2005) 98 at preamble and paras. 1, 4, 5, 10, 21, 22, 25, 26, 29, 30, 38, 39 and 41. For text of General Recommendation, see **EQUALITY AND DISCRIMINATION - RACIAL DISCRIMINATION**.
- ICESCR General Comment 4 (Sixth session, 1991): Article 11(1): The Right to Adequate Housing, E/1992/23 (1991) 114 at paras. 13 and 18. For text of General Comment, see **ADEQUATE OR DECENT STANDARD OF LIVING - FOOD, CLOTHING, SHELTER**.
- ICESCR General Comment 7 (Sixteenth session, 1997): The Right to Adequate Housing (art. 11(1) of the Covenant): Forced Evictions, E/1998/22 (1997) 113. For text of General Comment, see **ADEQUATE OR DECENT STANDARD OF LIVING - FOOD, CLOTHING, SHELTER**.
- ICESCR General Comment 14 (Twenty-second session, 2000): Article 12: The Right to the Highest Attainable Standard of Health, E/2001/22 (2000) 128 at paras. 27, 40 and 65. For text of General Comment, see **HEALTH - GENERAL**.