

PERSONHOOD

II. GENERAL COMMENTS AND RECOMMENDATIONS

· ICCPR General Comment 28 (Sixty-eighth session, 2000): Article 3: Equality of Rights Between Men and Women, A/55/40 vol. I (2000) 133 at para. 19.

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19. The right of everyone under article 16 to be recognized everywhere as a person before the law is particularly pertinent for women, who often see it curtailed by reason of sex or marital status. This right implies that the capacity of women to own property, to enter into a contract or to exercise other civil rights may not be restricted on the basis of marital status or any other discriminatory ground. It also implies that women may not be treated as objects to be given, together with the property of the deceased husband, to his family. States must provide information on laws or practices that prevent women from being treated or from functioning as full legal persons and the measures taken to eradicate laws or practices that allow such treatment.

· 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. 16.

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16. Safeguards related to derogation, as embodied in article 4 of the Covenant, are based on the principles of legality and the rule of law inherent in the Covenant as a whole. As certain elements of the right to a fair trial are explicitly guaranteed under international humanitarian law during armed conflict, the Committee finds no justification for derogation from these guarantees during other emergency situations. The Committee is of the opinion that the principles of legality and the rule of law require that fundamental requirements of fair trial must be respected during a state of emergency. Only a court of law may try and convict a person for a criminal offence. The presumption of innocence must be respected. In order to protect non-derogable rights, the right to take proceedings before a court to enable the court to decide without delay on the lawfulness of detention, must not be diminished by a State party's decision to derogate from the Covenant.^{9/}

Notes

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^{9/} See the Committee's Concluding Observations on Israel, 1998, para. 21: "... The Committee considers the present application of administrative detention to be incompatible with articles 7 and 16 of the Covenant, neither of which allows for derogation in times of public emergency. The Committee stresses, however, that a State party may not depart

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from the requirement of effective judicial review of detention.” See, also United Nations document A/49/40, Supplement No. 40, vol. I, annex XI, the response by the Committee to the Submission on Prevention of Discrimination and Protection of Minorities, concerning a draft third optional protocol to the Covenant: “The Committee is satisfied that States parties generally understand that the right to habeas corpus and amparo should not be limited in situations of emergency, Furthermore, the Committee is of the view that the remedies provided in article 9, paragraphs 3 and 4, read in conjunction with article 2 are inherent to the Covenant as a whole.”

CRC General Comment 3 (Thirty-second session, 2003): HIV/AIDS and the Rights of the Child, A/59/41 (2004) 89 at para. 32.

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32. The Committee wishes to emphasize the critical implications of proof of identity for children affected by HIV/AIDS, as it relates to securing recognition as a person before the law, safeguarding the protection of rights, in particular to inheritance, education, health and other social services, as well as to making children less vulnerable to abuse and exploitation, particularly if separated from their families due to illness or death. In this respect, birth registration is critical to ensuring the rights of the child and is also necessary to minimize the impact of HIV/AIDS on the lives of affected children. States parties are, therefore, reminded of their obligation under article 7 of the Convention to ensure that systems are in place for the registration of every child at or immediately after birth.