

3. PERSONAL INTEGRITY AND DETENTION

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3.1. Right to Life

3.1.1. Death Penalty

The HR Committee expressed concern over the application of death penalty in **Pakistan**, **Jordan** and **Bangladesh** in a manner inconsistent with the Covenant.

The case of **Pakistan** was concerning, given that the death penalty is being applied to juveniles and persons with psychosocial and intellectual disabilities; death penalty is used for crimes which are not the most serious such as 'blasphemy' and 'drug trafficking'; there were reports of executions performed in a cruel, inhuman and degrading fashion that may constitute torture. The HR Committee further expressed concern over **Pakistan** becoming one of the States with the highest rates of executions after lifting the moratorium on death penalty in December 2014 and its 'policy of blanket refusal of clemency applications'.¹⁷⁸

In respect of **Bangladesh** and **Jordan**, the HR Committee's noted the death penalty being applied in crimes which are not the most serious.¹⁷⁹ For instance, smuggling, food adulteration, the production and consumption of 'intoxicant materials' and financing terrorism are capital crimes in **Bangladesh**.¹⁸⁰ It also expressed concern over **Jordan** ending the *de facto* death penalty moratorium since 2007, by carrying out executions in 2014 and 2017.¹⁸¹

While acknowledging the *de jure* moratorium in **DRC** since 2003, and *de facto* moratoriums in **Cameroon** and **Thailand**, the HR Committee expressed concern about death penalty sentences still being pronounced and the high rate of detainees waiting for execution in **DRC**;¹⁸² the significant number of civilians condemned to death penalty by military tribunals as a result of the fight against terrorism in **Cameroon**;¹⁸³ and the punishment of crimes related to corruption, bribery and drugs with death penalty in **Thailand**.¹⁸⁴

The HR Committee consistently recommended that States consider the abolition of death penalty, the accession to the Second Optional Protocol and/or reinstalling lifted moratoriums; that they ensure that the death penalty is applied only after a procedure in compliance with fair trial standards, especially when military tribunals try civilians; and that States ensure that death penalty is applied only in the most serious cases. It recommended that **Pakistan** ensure that commutation is available in all cases, that the death penalty is not applied to persons below 18 years old, or with intellectual or psychological disabilities; that effective and independent age determination and review proceedings for identifying persons with disabilities are conducted; and that execution protocols respect international human rights standards.¹⁸⁵

¹⁷⁸ Pakistan, § 17

¹⁷⁹ Bangladesh, § 23; Jordan, §§ 14-15

¹⁸⁰ Bangladesh, § 23

¹⁸¹ Jordan, §§ 14-15

¹⁸² DRC, §§ 23-24

¹⁸³ Cameroon, §§ 23-24

¹⁸⁴ Thailand, §§ 17-18

¹⁸⁵ Pakistan, §§ 17-18

It also recommended that **DRC** consider implementing a political and legislative procedure aiming to abolish death penalty, implement measures to sensitize public opinion and promote its abolition, and commute the penalties of current detainees.¹⁸⁶

Cameroon was also recommended to commute death sentences.¹⁸⁷

3.1.2. Extrajudicial, Summary and Arbitrary Killings

The persistence of extrajudicial killings as a result of excessive use of force by governmental security forces, mob justice practices, and extrajudicial killings in the context of ongoing armed conflicts and counter-terrorism activities were common issues of concern with regard to **DRC**, **Cameroon**, **Swaziland**, **Bangladesh**, **Pakistan**, **Madagascar**, **Honduras**, **Thailand** and **Dominican Republic**.

With regard to **DRC**, the HR Committee expressed concern about reports of continuous extrajudicial executions by both armed groups and the State security forces, and excessive use of force by the latter. Instances of concern were the death and injury of several people following the public demonstrations of 19-21 September 2016 and 19-20 December 2016, Operation Likofi of 5 November 2013, a common grave found in Kinshasa in March 2015, and the situation in Kasai.¹⁸⁹ The HR Committee also referred to reports on extrajudicial killings being a constant practice in **Cameroon**. It highlighted reports on violent searches and detention by State officers that often resulted in extrajudicial killings as part of the measures to fight terrorism. It recalled two interventions by the 'Quick intervention Brigade' in Bornon, and Magdémé and Doublé in 2014, resulting in 200 arrests, 130 disappearances and 25 deaths.¹⁹⁰

In relation to **Swaziland**, the HR Committee expressed concern over reports of excessive use of lethal force and arbitrary killings by law enforcement officers; the law's permissive conditions which granted discretion to police officers for deciding when use of force is necessary; and prosecution immunity to game rangers for using force against poachers.¹⁹¹ It also noted reports of extrajudicial executions by security forces in **Madagascar**, particularly where Dahalo cattle raiders operate; allegations of indiscriminate attacks on presumed groups of cattle raiders; Operation Tandroka in 2012 which resulted in a large number of people being killed; and reprisals against mob justice.¹⁹² The HR Committee also expressed concern over the high rates of extrajudicial killings in **Bangladesh** and **Pakistan**, allegedly committed by the government security forces; the excessive use of security forces in **Bangladesh**; and the lack of investigation and redress for family members in both countries.¹⁹³

The CAT expressed concern over the cordon and search operations conducted by the defence forces in **Cameroon**. The Committee also noted that members of **Pakistan**'s military forces, intelligence forces, and paramilitary forces have been implicated in a significant number of cases of extrajudicial executions involving torture and enforced disappearances. **Pakistan** was recommended to ensure military personnel are tried in civil courts for acts of torture and to end the use of paramilitary forces to carry out law enforcement tasks.¹⁹⁴

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¹⁸⁶ DRC, §§23-24

¹⁸⁷ Cameroon, §§23-24

¹⁸⁸ Mauritius, §§17-18

¹⁸⁹ DRC, §§27, 29, 43

¹⁹⁰ Cameroon, §§25-26

¹⁹¹ Swaziland, §§30-31

¹⁹² Madagascar, §§27-28

¹⁹³ Bangladesh, §§19-20; Pakistan, §19

¹⁹⁴ CAT, Cameroon, §9; CAT, Pakistan, §§10-11

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Welcoming the adoption of the Ethics Code of the National Police and regulation of use of force, compliant with the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the HR Committee expressed concern over the excessive force used by the police and the high rate of extrajudicial executions in **Dominican Republic**.¹⁹⁵

The HR Committee expressed concern about reports of extrajudicial executions in **Thailand**, notably in cases of shooting of civilians during the political violence of 2010;¹⁹⁶ the impunity and the slow progress of investigations; and reports of 'social cleansing' and other forms of extrajudicial execution; and excessive use of force by the police and the armed forces in **Honduras**.¹⁹⁷

Mob justice in **Cameroon** and **Madagascar** caused concern.¹⁹⁸ For the latter, the HR Committee expressed concern over mob justice being caused by the distrust in the justice system, and reports of the discontinuance of criminal proceedings against the responsible actors.

Common recommendations to the States included: ensuring that the legislation on the use of force and firearms by law enforcement officials, and training materials are compatible with the Covenant and the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; impartial and prompt investigations on all alleged cases of extrajudicial killings and excessive use of force by security forces; all necessary measures to prevent executions and excessive use of force; ensuring that all members of security forces receive adequate training in accordance with international standards and human rights; and to full reparations to the victims.

Bangladesh was asked to provide information on the investigations conducted, the number of convictions and the penalties imposed in its next periodic review;¹⁹⁹ **Pakistan** was recommended to create a mechanism for reparations to victims and their families;²⁰⁰ **Thailand** was asked to review the Martial Law and Emergency Decree with a view to lifting it;²⁰¹ **Dominican Republic** was recommended to amend its legislation to introduce State civil responsibility for the actions of police officers;²⁰² and **Madagascar** was recommended to continue the awareness raising campaigns on the illegality of mob justice.²⁰³

3.1.3. Enforced Disappearances

The persistence of enforced disappearances of human rights defenders, political opponents and enforced disappearances in the context of current and past armed conflicts were common concerning in respect of **Thailand, Bangladesh, Honduras, Bosnia and Herzegovina, Turkmenistan, Serbia** and **Pakistan**. Common shortcomings included lack of criminalization of enforced disappearances, and lack of effective investigations and sanctions.

For instance, the HR Committee addressed the lack of criminalization of enforced disappearances in **Thailand**, noting reports of human rights defenders being subject to enforced disappearances at the southern border provinces, and the widespread impunity in this regard. It referred to the lack of

¹⁹⁵ Dominican Republic, §§17-18

¹⁹⁶ Thailand, §21

¹⁹⁷ Honduras, §§22-23

¹⁹⁸ Cameroon, §§25-26; Madagascar, §§25-26

¹⁹⁹ Bangladesh, §§19-20

²⁰⁰ Pakistan, §20

²⁰¹ Thailand, §§21-22

²⁰² Dominican Republic, §§17-18

²⁰³ Madagascar, §§25-26

²⁰⁴ Thailand, §§21-22

proper investigation of the enforced disappearances of Somchai Neelapaijit and Porlajee "Billy" Rakchongcharoen.²⁰⁴ It also referred to reports about secret detention and a large number of enforced disappearances of convicted persons in **Turkmenistan**, including persons convicted for the assassination attempts on the former President and the former Foreign Minister Boris Shikmuradov.²⁰⁵

The HR Committee also highlighted the large number of enforced disappearances that remain unsolved and the accompanying impunity in **Honduras** and **Bangladesh**, and it regretted the latter's lack of recognition of the matter.²⁰⁶

Concerns regarding **Pakistan** were expressed over the high incidence of enforced disappearances supposedly committed by the police and military forces; the lack of criminalization of said action; the 'Actions in Aid of Civil Power' regulation of 2011, which permits detention by the army, without guarantees or judicial supervision, and indefinite detention in military facilities; the high number of cases of secret detention; the reports of victims' family members being intimidated to discourage complaints; the lack of investigation, and the inadequacy of remedies and reparations. The HR Committee expressed concerns over the Commission of Inquiry on Enforced Disappearances having insufficient powers and resources, the non-compliance of relevant authorities with the Commission's orders, and the high number of unresolved complaints before the Commission.²⁰⁷

In the context of past armed conflicts, the HR Committee praised **Bosnia and Herzegovina** for the creation of a central register of missing persons; while regretting the verification process not being completed in the time frame set by the Law on Missing Persons, the budget cuts to the Missing Persons Institute, and the State not complying with its Constitutional Court's decision ordering the creation of a fund to support families of missing persons.²⁰⁸ With regard to **Serbia**, the HR Committee expressed concern over the little progress made in the search of disappeared persons, and the requirement that victims be declared dead to obtain compensation for them; and regretted the lack of redress for parents of newborn children who died or disappeared from maternity wards during the 1970s and 1990s.²⁰⁹

Generally, the HR Committee recommended that States criminalize enforced disappearances; and, ensure that all cases are investigated promptly, thoroughly and impartially and that culprits are tried and punished accordingly. It further recommended that States provide the truth about the circumstances in such cases, clarify the whereabouts of victims and ensure full reparation for the victims. It asked **Bangladesh** to report on investigative outcomes in the next periodic review;²¹⁰ and **Thailand** to amend the Martial Law Act, Emergency Decree and Order 3/2015 to include guarantees against incommunicado detention.²¹¹

It also recommended that **Turkmenistan** end the practice of secret detention and enforced disappearances, allowing visits from the families of detainees and confidential access to their lawyers.²¹² **Bosnia and Herzegovina** was asked to provide adequate resources to the Missing Persons Institute and to

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²⁰⁵ Turkmenistan, §§ 16-17

²⁰⁶ Honduras, §§ 22-23; Bangladesh, §§ 19-20

²⁰⁷ Pakistan, § 19

²⁰⁸ Bosnia & Herzegovina, §§ 19-20

²⁰⁹ Serbia, §§ 24-25

²¹⁰ Bangladesh, §§ 19-20

²¹¹ Thailand, §§ 21-22

²¹² Turkmenistan, §§ 16-17

²¹³ Bosnia & Herzegovina, §§ 19-20

²¹⁴ Serbia, §§ 24-25

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establish the fund for supporting the families of missing persons 'as a matter of urgency'.²¹³ It was recommended that **Serbia** adopt a law for redress for the parents of disappeared new-born children;²¹⁴ and that **Pakistan** review the 'Actions in Aid of Civil Power' Regulation of 2011 so that it complies with international standards, and strengthen the authority and resources of the Commission of Inquiry on Enforced Disappearances.²¹⁵

On the issue of enforced disappearances, the CAT noted that despite the establishment of a central register of missing persons in **Bosnia and Herzegovina**, more than half of the cases of missing persons have not been verified, that the Missing Persons Institute continues to experience budget cuts, understaffing and lack of necessary equipment, and that a fund for families of missing persons has not been established due to political disagreement. **Cameroon** was noted not to have indicated whether investigations had been launched to establish the whereabouts of the individuals reported as missing or killed during cordon-and-search operations. In its review of **Pakistan**, the CAT also stressed upon the need to criminalise enforced disappearances as a distinct offence and to sufficiently fund and maintain independence of National Commission of Inquiry on Enforced Disappearances.²¹⁶

3.1.4. Armed Conflict Zones

The HR Committee expressed its concern over the areas of armed conflict in **DRC**, particularly in relation to the Kasai situation. It recalled reports of rape, torture and extrajudicial killings, committed against civilians in areas where armed militias are active. It noted that the violence included sexual violence, mutilation, recruitment of child soldiers, and destruction of schools, homes and state infrastructure, which could amount to international crimes. It also expressed concern about reports of military forces and affiliated groups committing abuses against civilians on the basis of ethnic criteria. The HR Committee also regretted the murders of two UN experts Michael Sharp and Zaida Catalan, and their 4 companions who were on an enquiry mission to assess the violations in Central Kasai.²¹⁷

It recommended that **DRC** ensure that armed forces provide effective protection for the victims of serious violations.²¹⁸ With regard to the Kasai, the HR Committee recommended establishing an efficient, transparent and independent mechanism to establish the truth about human rights violations; taking measures to dismantle and disarm the pro-government armed groups suspected of engaging in said violations; and collaborating with the UN agencies and team of experts in charge of conducting the fact-finding mission in Kasai.²¹⁹

3.1.5. Non-State Actors

The HR Committee recalled **Honduras's** duty to protect the rights of persons under its jurisdiction from the actions of third party actors. In this regard, the HR Committee highlighted the high rates of homicide, physical assault, property damage and recruitment of children by gangs; and expressed concern about the militarization of law enforcement, the insufficient regulation of private security companies, and inadequate control over weapons possession.²²⁰

²¹³ Pakistan, § 19

²¹⁴ CAT, Bosnia & Herzegovina, § 26; CAT, Cameroon, § 9; CAT, Pakistan, §§ 24-25

²¹⁷ DRC, §§ 25-27

²¹⁸ Ibid, §§ 25-26

²¹⁹ Ibid, §§ 27-28

²²⁰ Honduras, §§ 18-21, 22-23

It recommended prompt, thorough and impartial investigations into all violent crimes and other offences; prosecution and punishment of the perpetrators; and ensuring that all victims receive full reparation. Recommendations were also made to strengthen the national police forces so that armed forces are no longer necessary for law enforcement functions; to pursue the certification process for police members in a transparent, impartial manner; to adopt a legislative framework that guarantees that private sector companies operate in accordance with the Covenant; to improve the supervision of these companies by the Security Company Oversight Unit; and to exercise effective control over the possession and use of firearms.²²¹

3.2. Prohibition of Torture, Cruel, Inhuman or Degrading Treatment or Punishment

3.2.1. Torture or Cruel, Inhuman or Degrading Treatment or Punishment

Reports of torture and cruel, inhuman or degrading treatment were the common cause for concern in the periodic reviews of **Bangladesh, Bosnia and Herzegovina, Cameroon, DRC, Honduras, Mauritius, Mongolia, Romania, Thailand** and **Turkmenistan**.

The HR Committee expressed its concern about reports of a high rate of custodial deaths caused by torture and ill-treatment performed by State agents in **DRC**, in spite of the adoption the law n° 11/08 in July 2011;²²² and reports of **Mauritius'** security forces inflicting ill-treatment on detained persons, and the lack of information on the number of complaints, investigations, convictions and sanctions imposed.²²³ It expressed concern over the numerous reports of abuse and ill-treatment during detention, and police brutality, especially against the Roma people, in **Romania**.²²⁴

With regard to **Turkmenistan**, the HR Committee referred to reports of severe beatings and electric shocks to extract confessions; allegations of torture and ill-treatment of detainees at Seydi labour camp and at the Ovadan Depe prison used for political opponents; placement of prisoners in 'kartsers' in extreme temperatures with mosquito infestations and miniscule amounts of food and water; prolonged detention periods in 'hunchback cells' where there is no room to stand; deaths in custody, including that of Lukman Yaylanov and Narkuly Baltayev; and the hazing of conscripts in armed forces which caused two deaths in 2014.²²⁵ In relation to **Thailand**, it referred to reports of torture and ill-treatment perpetrated by law enforcement officers and the military against human rights defenders; while highlighting the case of Kritsuda Khunasenb who was subjected to torture.²²⁶

The HR Committee noted that in spite of **Bangladesh's** adoption of the Torture and Custodial Death (Prevention) Act, 2013, torture and ill-treatment to obtain confessions was a widespread practice among police and military officers; and that the State reported no ongoing investigations in this regard.²²⁷ It also referred to the lack of information on ill-treatment complaints related to detentions pursuant to the February 2014 demonstrations in **Bosnia and Herzegovina**.²²⁸

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²²¹ Honduras, §§22-23

²²² DRC, §§31-32

²²³ Mauritius, §§33-34

²²⁴ Romania, §§27-28

²²⁵ Turkmenistan, §§20-21

²²⁶ Thailand, §§21-22

²²⁷ Bangladesh, §§21-22

²²⁸ Bosnia & Herzegovina, §§45-46

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The HR Committee further highlighted that torture and ill-treatment were common and widespread in **Pakistan** and **Cameroon**. It noted reports on numerous such cases in detention facilities controlled by the 'Quick detention brigade' and the 'General Directorate for external research' leading to custodial deaths and grave disabilities, and the existence of secret detention facilities that operate without any supervision in **Cameroon**.²²⁹

Another common concern was the legal inconformity with international standards, the incompatibility or lack of torture definitions in the domestic legislation; and the lack of effective independent mechanisms to receive and investigate complaints in **Jordan, Turkmenistan, Mongolia, Serbia, Madagascar, Liechtenstein, Honduras, Thailand, Pakistan, Switzerland** and **Italy**. For instance, the HR Committee noted that the torture definition included in the penal code in **Jordan** does not comply with the international definition, and that the law on public security permits the Public Security Directorate to decide over acts of torture, which are treated as minor offences with penalties up to three years of imprisonment. It further noted the lack of an independent mechanism to receive and investigate alleged cases of torture and ill-treatment.²³⁰

The HR Committee also expressed concern over the possibility of using the definition of torture in **Turkmenistan's** Criminal Code, which includes a note that exempts criminal liability for 'infliction of severe pain or physical or mental suffering as a result of lawful acts (justifiable defense of oneself or others)', to circumvent the prohibition on it.²³¹

Zhaslan Suleimenov v. Kazakhstan, UN Doc. CCPR/C/119/D/2146/2012, 2017.

[Key words: Torture; Prompt and impartial investigation; Freedom of thought, conscience or religion; Conditions of detention]

This communication was brought by a disabled person alleging ill-treatment and lack of adequate medical assistance during his detention imposed by law enforcement authorities in Kazakhstan.

The HR Committee found that despite a number of verifiable complaints from the author, no prompt and impartial investigation was carried out, and therefore found a violation of the author's rights under Article 7 of the Covenant. Furthermore, the detention facilities where the author was held were not suited for disabled persons, and the HR Committee noted that the State is under an obligation to provide medical care and treatment for sick prisoners, in accordance with the UN Standard Minimum Rules for the Treatment of Prisoners. The failure of the State to ensure certain minimum standards of detention amounted to a violation of the author's right to be treated with humanity and with respect for the inherent dignity of the human person under Article 10 (1) of the Covenant.

Therefore, the State was recommended to conduct a prompt and impartial investigation into the author's allegations of torture and ill-treatment, as well as to provide the author with adequate compensation and appropriate medical care

²²⁹ Cameroon, §§27-28

²³⁰ Jordan, §§16-17

²³¹ Turkmenistan, §§18-19

considering his disability and medical condition. The State was also under an obligation to take all steps necessary to prevent similar violations in the future.

It also expressed concern over **Madagascar's** law not providing penalties for ill-treatment, and the non-applicability of statutory limitations for acts of torture, and **Honduras'** lack of objective criteria to determine the penalty for these crimes.²³² While noting the creation of a new Police Complaints Division within the National Human Rights Commission of **Mauritius**, the HR Committee highlighted the lack of information on the human and financial resources allocated to it.²³³ It noted that despite **Swaziland's** Constitution forbidding torture, it was not legally criminalized, that there is no independent body to investigate complaints of torture or ill-treatment by law officers, and that there is a lack of progress on the ratification of the UNCAT's Optional Protocol, despite the State's commitment to do so.²³⁴

The HR Committee also expressed concern about how **Australia's** coroners, who are in charge of investigating allegations of excessive use of force by the police, may be influenced by their close relationship with police investigations.²³⁵

In general, the HR Committee asked the States to ensure that law enforcement officers and judges respect the prohibitions of forced confessions and the inadmissibility of evidence obtained through such means; to provide adequate training on torture prevention and humane treatment; to implement effective complaint mechanisms; and, to ensure that all allegations of torture and ill-treatment, hazing and deaths in custody are investigated, prosecuted and punished, and victims fully repaired, which may include rehabilitation.²³⁶ It also recommended reviewing criminal legislation to harmonize the definition of torture with international standards, incorporating an absolute prohibition, wherein no statute limitation applies to cases of torture; applying adequate sanctions proportionate to the crimes' gravity; and establishing an independent mechanism to receive and investigate complaints.²³⁷

Fakhrudin Ashirov v. Kyrgyzstan, UN Doc. CCPR/C/120/D/2435/2014, 2017.

[Key words: Torture; Fair trial; Legal assistance; Arbitrary arrest and detention; discrimination on the ground of ethnic origin]

This communication involved allegations of ill-treatment and torture during pre-trial detention and forced confessions in a criminal proceeding before national courts. The HR Committee found a lack of effective investigations into the allegations of torture, despite a witness statement from the author's father, and a medical certificate indicating injuries on the author's body. Furthermore, the failure to justify the exclusion of relatives of the author from being present during the hearings was found to be a disproportionate restriction on the author's rights to a fair and public hearing.

The State Party was found to be under an obligation to quash the author's conviction, release the author, conduct a new trial with all procedural safeguards, conduct a prompt and impartial

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²³² Madagascar, §§29-30; Honduras, §§24-27

²³³ Mauritius, §§33-34

²³⁴ Swaziland, §§32-33

²³⁵ Australia, §§31-32

²³⁶ Turkmenistan, §§20-21

²³⁷ Jordan, §§16-17

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investigation into the allegations of torture, and provide the author with adequate compensation.

It recommended that **DRC** enhance the training of all security and justice officers on the content of the law N°11/08 and establish a national mechanism for the prevention of torture in accordance with the UNCAT's Optional Protocol;²³⁸ that **Swaziland** establish an independent system for monitoring detention places, and accelerate the ratification procedure of UNCAT's Optional Protocol;²³⁹ that **Turkmenistan** ensure that torture cannot be justified both in law and practice;²⁴⁰ and that **Mongolia** provide adequate training on investigation and detection of torture in accordance with the Protocol of Istanbul for law enforcement officials.²⁴¹

The HR Committee also recommended that **Serbia** remove all obstacles to victims' right to judicial remedies;²⁴² that **Mauritius** extend video recording to all police and detention settings to prevent ill-treatment;²⁴³ that **Jordan** permit further independent visits to all places of detention, including the facilities of the General intelligence directorate;²⁴⁴ and that **Honduras** reinforce the independence and investigative capacity of the Office of the Special Prosecutor for Human Rights to ensure adequate investigation in accordance with the Istanbul Protocol, and provide it and the national torture prevention mechanism with adequate human and financial resources.²⁴⁵

The CAT dealt with the issue of ill-treatment and torture in police holding facilities in its review of **Bosnia and Herzegovina, Pakistan, Italy** and **Cameroon**. The Committee expressed serious concern at the findings of the report by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) following its visit to **Bosnia and Herzegovina** in 2015, which indicated that detainees were routinely ill-treated or even tortured in police holding facilities and that the practice of repeated slaps, punches, kicks and blows with a truncheon in order to extort a confession was even considered as normal. The absence of a well-defined crime of torture that unambiguously reaffirm the absolute prohibition of torture was noted in **Pakistan**. In **Cameroon** there have never been any cases in which the court has declared evidence obtained through torture or under duress to be inadmissible. It was noted that in **Italy** the crime of torture is subject to a statute of limitations of 18 years.²⁴⁶

3.2.2. Ill-treatment of migrants and asylum seekers by law enforcement officers

The HR Committee highlighted its concern over reports of police brutality in **Switzerland**, especially against asylum seekers, migrants and foreigners, and recommended the establishment of an independent mechanism for receiving complaints, conducting effective and impartial investigations, and maintaining centralized and disaggregated statistics.²⁴⁷

It expressed concern about reports of excessive force used by **Italy's** law enforcement officers when conducting migrant identification procedures, the prevailing impunity in this regard,

²³⁸ DRC, §§31-32

²³⁹ Swaziland, §§32-33

²⁴⁰ Turkmenistan, §§18-19

²⁴¹ Mongolia, §§21-22

²⁴² Serbia, §§26-27

²⁴³ Mauritius, §§33-34

²⁴⁴ Jordan, §§18-19

²⁴⁵ Honduras, §27

²⁴⁶ CAT, Bosnia and Herzegovina, §§12-

14,38; CAT, Pakistan, §§6-9, 14-1; CAT,

Italy, §§10-13; CAT, Cameroon, §§21,29

²⁴⁷ Switzerland, §§28-29

and the criminal code requiring victims to file complaints. It recommended increasing training; introduction of a code of conduct; the mandatory use of identification tags by law enforcement officers; and amending the criminal code so that instances of ill-treatment and excessive use of force are investigated without victim complaints.²⁴⁸

The CAT expressed its concern about reports of alleged arbitrary detention, ill-treatment, acts of violence, sexual exploitation and extortion of asylum seekers in the Far North of **Cameroon** by military personnel, who had allegedly taken them to be members of Boko Haram. **Italy** was urged to clarify the legal basis for deprivation of liberty and the use of force to obtain fingerprints from uncooperative asylum seekers and migrants, ensure that law enforcement officials receive appropriate professional training, including on how to avoid excessive use of force and how to handle the fingerprinting of uncooperative migrants and asylum seekers, and take necessary measures to ensure appropriate reception conditions for asylum seekers and irregular migrants.²⁴⁹

3.3. Detention conditions

While **Section 2.1.1** addresses circumstances that render detention, arbitrary and unlawful, including pre-trial detention, this Section will focus on the material conditions of detention. *See Section 5.2.3. (Immigration detention) for more.*

Common findings on poor detention conditions in 2017 relate to overcrowding, poor sanitation and hygiene, lack of access to healthcare, poor nutrition, and lack of separation between detainees according to detention regimes and age. In general, the HR Committee recommended the States to take practical measures to reduce overcrowding, such as applying alternatives to detention; to ensure the humane and dignified treatment of detainees; separation of detainees by age and detention regime; to ensure that conditions of detention comply with the UN Standard Minimum Rules for the Treatment of Prisoners; to provide adequate training for all justice and prison staff; and to investigate, prosecute and punish all cases of inmate deaths, and provide full reparation to the victims.

The issue of overcrowding in prisons was also addressed by the CAT in its concluding observations on **Bosnia and Herzegovina**, **Cameroon**, **Italy** and **Pakistan**.²⁵⁰

The HR Committee referred to reports of excessive use of restraining devices and sexual harassment in **Thailand**;²⁵¹ reports of suicides in **Mauritius's** prisons;²⁵² overrepresentation of foreigners and poor recreational facilities in detention and immigration centers in **Italy**;²⁵³ the lack of meaningful activities for prisoners in **Serbia**;²⁵⁴ and, inadequate mental healthcare facilities, and the use of solitary confinement and routine strip searches in **Australia**.²⁵⁵ It also noted the limited time out of cells and understaffing in **Romania**;²⁵⁶ the lack of specialized units for minors in pretrial detention in **Bosnia and Herzegovina**;²⁵⁷ and the requirement that prisoners with commuted death sentences serve 10 out of 30 years in solitary confinement in **Mongolia**.²⁵⁸

The HR Committee also highlighted the poor conditions in almost

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²⁴⁸ Italy, §§20-21

²⁴⁹ CAT, Cameroon, §17; CAT, Italy, §§24-25

²⁵⁰ CAT, Bosnia & Herzegovina, §22; CAT, Cameroon, §§33-35; CAT, Italy, §§32-33; CAT, Pakistan, §§16-17

²⁵¹ Thailand, §§33-34

²⁵² Mauritius, §§35-36

²⁵³ Italy, §§30-31

²⁵⁴ Serbia, §§28-29

²⁵⁵ Australia, §§41-42

²⁵⁶ Romania, §§31-32

²⁵⁷ Bosnia & Herzegovina, §§32-33

²⁵⁸ Mongolia, §19

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all of **Cameroon's** penitentiary facilities, which lead to riots, custodial deaths and violence among inmates; and regretted the obstacles faced by the detainees' family members when trying to visit, especially when the person has been condemned by a military tribunal.²⁵⁹ In regards to **DRC**, it also expressed concern about the numerous deaths caused by poor conditions in almost all of its prisons; and the insufficient and unprofessional prison staff.²⁶⁰ Similarly, the HR Committee expressed concern over reports of numerous custodial deaths in **Swaziland**, including in the cases of Luciano Reginaldo Zavale on 12 June 2015 and Sipho Jele in May 2010; and the undue delay in the investigation of these cases.²⁶¹

In respect of **Switzerland**, the HR Committee noted with concern that juveniles are held with adults in certain regional institutions, and that, despite establishing a working group on the treatment of inmates with mental illnesses, persons with psycho-social disabilities are placed in regular prisons or psychiatric institutions for 5 year periods, which are renewable.²⁶² In relation to **Bangladesh**, it also noted the practice of extortion of inmates and family members in exchange of basic rights by prison guards, and the high number of deaths in prison, allegedly caused by detention conditions, authorities' negligence, lack of access to treatment and injuries caused by torture.²⁶³ In relation to **Honduras**, it regarded with concern the use of military facilities for detaining civilians; the high number of deaths and incidents like the fire of the Comayagua prison; the disregard for detained women's special needs; and lack of separation between men and women in some mixed detention centers.²⁶⁴

The HR Committee noted reports of exposure of inmates to extreme temperatures in the Ovadan-Depe and Turkemenbashi prisons; the practice of isolation of inmates; out of cell time at Ovadan-Depe being only once a week, for seven minutes; the lack of separation of prisoners with tuberculosis from others; and the lack of an independent body for monitoring and investigating prisons conditions and abuse by law enforcement officials in **Turkmenistan**.²⁶⁵

In general, the HR Committee recommended that States take practical measures to reduce overcrowding, such as applying alternatives to detention; ensure the human and dignified treatment of detainees; separate detainees by age and detention regime; ensure that conditions of detention comply with the UN Standard Minimum Rules for the Treatment of Prisoners; provide adequate training for all justice and prisons staff; and investigate, prosecute and punish all cases of inmate deaths and provide full reparation to victims.

In particular, it recommended that **Cameroon** ensure that family members are able to visit detainees regularly;²⁶⁶ that **Italy** conduct a study on discrimination against foreigners in criminal proceedings and develop alternatives to detention for foreigners;²⁶⁷ that **Bangladesh** ensure prompt determination of bails and reasonable periods for preventive detention;²⁶⁸ and that **Honduras** ensure that military facilities are not used for detaining civilians.²⁶⁹

It also recommended **Australia** to ensure adequate mental

²⁵⁹ Cameroon, §§29-30

²⁶⁰ DRC, §§33-34

²⁶¹ Swaziland, §§32-33

²⁶² Switzerland, §§36-39

²⁶³ Bangladesh, §§25-26

²⁶⁴ Honduras, §§30-31

²⁶⁵ Turkmenistan, §§22-23

²⁶⁶ Cameroon, §§29-30

²⁶⁷ Italy, §§30-31

²⁶⁸ Bangladesh, §§25-26

²⁶⁹ Honduras, §§30-31

healthcare for prisoners; to use solitary confinement only in the most exceptional circumstances and for strictly limited periods; and to act upon the commitment to ratify the Optional Protocol to the UNCAT.²⁷⁰ Furthermore, it asked **Switzerland** to ensure that persons with disabilities are placed in specialized establishments or receive adequate therapeutic treatment in regular prisons; and to ensure that confinement in psychiatric institutions is used only as a last resort measure, aiming at rehabilitation and reintegration of the person where possible.²⁷¹

For **Turkmenistan**, recommendations included establishing a system of regular and independent monitoring of detention facilities; facilitating effective monitoring by independent organizations; granting meaningful access to the ICRC; and ensuring the availability of effective complaint mechanisms.²⁷²

3.4. Measures to Combat Human Trafficking, Slavery and Forced Labour

3.4.1. Human Trafficking

The HR Committee noted with concern the shortcomings in States' measures to prevent and counter human trafficking, such as lack of adequate resources, legislation, proper identification of victims, support services and shelters for victims. The HR Committee expressed concerns about the persistence of trafficking of women, children and persons of Haitian descent in **Dominican Republic**, and reports of nationals of **Madagascar** being victims of trafficking in North Africa and the Middle East.²⁷³ It also noted with concern the presence of criminal national and foreign groups engaged in trafficking and exploitation of migrants and refugees in **Serbia**; and that **Romania** remains a source, transit and destination for trafficking in persons.²⁷⁴ It also noted the increase of child victims being trafficked for forced begging and sex-exploitation in **Romania**.²⁷⁵

Andrei Androsov v. Kazakhstan, UN Doc. CCPR/C/121/D/2403/2014, 2017.

[Key words: *Torture; Ill-treatment; Prompt and impartial investigation; Arbitrary arrest; Detention; Fair trial*]

This communication involved torture and ill-treatment of a drug-addicted suspect during pre-trial detention. The HR Committee found that the description of facts and other materials as submitted by the author did not provide sufficient evidence to prove that he had been tortured and ill-treated by police officers and detention staff. Furthermore, the author failed to show that his injuries were caused due to lack of adequate supervision of the detention conditions.

Accordingly, the HR Committee could not conclude that the author was subjected to treatment in violation of Article 7 and that the State party failed in its obligations under Article 2(3) to investigate these claims.

It highlighted the insufficient resources to provide assistance for victims and the limited number of shelters in **Dominican Republic**;²⁷⁶ **Cameroon's** lack of disaggregated statistical data, and that cases in **Cameroon** are being detected mainly by civil

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²⁷⁰ Australia, §§41-42

²⁷¹ Switzerland, §§36-39

²⁷² Turkmenistan, §§22-23

²⁷³ Dominican Republic, §§19-20;

Madagascar, §§39-40

²⁷⁴ Serbia, §§30-31; Romania, §§37-38

²⁷⁵ Romania, §§37-38

²⁷⁶ Dominican Republic, §§19-20

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society organizations;²⁷⁷ the insufficient resources for the implementation of the task force against human trafficking, and the delay in the implementation of the victim identification guidelines in **Swaziland**;²⁷⁸ the reports of victims being arrested for acts committed as a result of being trafficked in **Mongolia**;²⁷⁹ and the reports of victims being deported without conducting a proper assessment of protection in **Thailand**.²⁸⁰ It further mentioned the lack of a work plan or proper budget for the anti-trafficking coordinator in **Serbia**, and the lack of services for victims and training for law enforcement officials, judges and prosecutors in **Romania**.²⁸¹

With regard to **Switzerland**, while satisfied with the ordinance on the prevention of offences related to human trafficking, the establishment of the Anti-Trafficking and Migrant Smuggling Coordination Unit and the adoption of the Second National Action Plan to Combat Trafficking in Persons 2017-2020; the HR Committee expressed concern over reports of insufficient human and financial resources to implement the Plan, the lack of a common procedure between the cantons to identify the victims and the lack of training of police and judicial authorities.²⁸²

In general, the HR Committee recommended the States to strengthen efforts to fight human trafficking, to ensure the identification of victims, and the provision of medical, social, psychological and legal assistance, and adequate and sufficient shelters for traffic victims; to collect disaggregated statistical data; and to ensure effective investigation, prosecution and adequate punishment of culprits in all human trafficking cases.

It asked **Cameroon** to ensure that its human trafficking legislation is in accordance with international standards; and, to reinforce institutional mechanisms working against human trafficking, such as the Network against Human Trafficking and Child Exploitation and the Inter-ministerial HR Committee for the Prevention and Combat against Human Trafficking, by providing adequate human and financial resources.²⁸³ **Madagascar** was asked to strictly enforce the Ant-trafficking Act of 2015; allocate adequate resources to the National Anti-trafficking office so that it can fulfil its mandate; strengthen monitoring mechanisms; and to oversee placement agencies to ensure that migrant workers are not exploited abroad.²⁸⁴

It also recommended that **Honduras** adopt legislation on human trafficking in accordance with the Palermo Protocol;²⁸⁵ and that **Switzerland** establish a uniform and coordinated procedure for identifying victims, and implement awareness-raising and training programs for police and judicial authorities.²⁸⁶

The CEDAW urged **Jordan** and **Thailand** to take concrete measures to address the root causes of trafficking and exploitation of women and girls in prostitution. **Jordan** and **Sri Lanka** were recommended to address the legal gaps that impede upon the investigation, prosecution and punishment of such acts, including adoption of a comprehensive definition of trafficking. The CEDAW recommended that **Sri Lanka** and **Thailand** repeal laws and end practices that involved violent raids and entrapments that resulted in subjecting the victims to harassment, sexual bribery and

²⁷⁷ Cameroon, §§31-32

²⁷⁸ Swaziland, §§42-43

²⁷⁹ Mongolia, §§27-28

²⁸⁰ Thailand, §§23-24

²⁸¹ Serbia, §§30-31; Romania, §§37-38

²⁸² Switzerland, §§40-41

²⁸³ Cameroon, §§31-32

²⁸⁴ Madagascar, §§39-40

²⁸⁵ Honduras, §§36-37

²⁸⁶ Switzerland, §§40-41

extortion. The CAT expressed concern at the shortcoming of state measures in **Bosnia and Herzegovina** and at reports of a sharp rise in trafficking of Nigerian women and girls, some as young as 11 years old in **Italy**, particularly in the context of mixed migration flows.²⁸⁷

3.4.2. Prohibition of Slavery and Forced Labour

The HR Committee highlighted reports on persistent child labour in domestic sectors, and labour exploitation and forced labour of Haitian migrant workers in the sugar agricultural sector in **Dominican Republic**;²⁸⁸ forced labour for sexual exploitation, fishing, agriculture and domestic purposes in **Thailand**, including migrants from China and North Korea subjected to forced labour like conditions in mining, construction and other sectors;²⁸⁹ and the limited number of inspectors and funding and the low public awareness in **Mongolia**.²⁹⁰

For **Turkmenistan**, the HR Committee expressed concern over the forced labour by farmers, students, public and private sector workers during cotton harvests under threats of loss of land, expulsion from universities, loss of wages and termination of employment.²⁹¹ For **Honduras**, it referred to reports of slavery and forced labour conditions in the Maquila industry, domestic work and dive fishing, which usually involve vulnerable populations such as women, children, indigenous peoples, afro-Hondurans and rural communities.²⁹²

The HR Committee's recommendations included preventing, combating and punishing all forms of slavery and forced labour; providing adequate training for government officials, and creating or strengthening labour inspectorates. It recommended that **Mongolia** prohibit the use of children as jockeys;²⁹³ that **Serbia** ensure that children are removed from families responsible for their exploitation and recognized as victims, and develop programs to rehabilitate the victims;²⁹⁴ and that **Turkmenistan** put an end to forced labour practices during cotton harvests, enforce the legal framework on forced labour, communicate to the public in general that mobilization of persons to pick cotton under coercion is unlawful, prosecute the culprits and provide full reparation to victims.²⁹⁵

See Section 5.1.3. (Child labour) for more.

The issue of bonded labour in **Pakistan** was raised by the CAT and the CESCR. The CAT expressed its concern over the consistent reports that refer to high levels of trafficking in persons for sexual exploitation and forced or bonded labour, including exploitation of children as domestic workers in slave-like conditions. Whilst the terms 'slavery' and 'forced labour' are not used in the CESCR's work, issues of appalling working conditions and lack of labour protections for workers in the informal economy, are regularly discussed. It recommended **Pakistan** to take all measures necessary to tackle the root causes of bonded labour; provide victims of bonded labour with a sustainable means of living; reinforce the enforcement of the Bonded Labour System (Abolition) Act 1992 by strengthening labour inspections and increasing the penalties for perpetrators and public officials complicit in violations of the Act; and enhance the understanding of judges, particularly those in the lower courts, of the Act.²⁹⁶

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²⁸⁷ CAT, Bosnia and Herzegovina, §34; Concluding observations on the sixth periodic report of Jordan, CEDAW/C/JOR/CO/6, 2017, §35-36 (**CEDAW, Jordan**); CEDAW, Sri Lanka, §§26-27; CEDAW, Thailand, §§24-27; CAT, Italy, §§46-47

²⁸⁸ Dominican Republic, §§19-20

²⁸⁹ Thailand, §§23-24

²⁹⁰ Mongolia, §§29-30

²⁹¹ Turkmenistan, §§26-27

²⁹² Honduras, §§36-37

²⁹³ Mongolia, §§27-28

²⁹⁴ Serbia, §§30-31

²⁹⁵ Turkmenistan, §§26-27

²⁹⁶ CAT, Pakistan, §§28-29; CESCR, Pakistan, §§45-46