

3. Right to Life (Art 6); Prohibition of Torture, Cruel, Inhuman and Degrading Treatment (Art 7); and Issues of Detention (Arts 9, 10)

The States parties where the death penalty remained in force were Kuwait, Jamaica, Burkina Faso, Kazakhstan and Morocco.

3.1 Right to Life

In its observations, the Committee took note of several issues surrounding arbitrary deprivations of life, the prohibition of torture and cruel, inhuman and degrading treatment (CIDT) and respect for human dignity for persons deprived of their liberty. The Committee also shed light on the obligation of non-refoulement as it applies to Article 6 (prohibition of arbitrary deprivation of life) and Article 7 (prohibition of torture and CIDT) of the Covenant. In certain individual communications, issues surrounding detentions and deprivation of liberty under Article 9 were also considered.

3.1.1 Death Penalty

The States parties where the death penalty remained in force were **Kuwait, Jamaica, Burkina Faso, Kazakhstan** and **Morocco**. In **Kuwait**, the Committee was concerned regarding the large number of offenses for which the death penalty could be imposed, including for “vague” offenses related to internal and external security.²⁶⁵ Most of these offenses did not meet the threshold of “the most serious crimes” as specified in the Covenant.²⁶⁶ Moreover, there was information that indicated that imposition of death penalty was mandatory for certain crimes.²⁶⁷ The Committee recommended that **Kuwait** only impose the death penalty for the most serious crimes.²⁶⁸ Similarly in **Kazakhstan** the Committee recommended the death penalty be limited to the most serious crimes only.²⁶⁹ In **Morocco**, the Committee noted the addition of three new categories of crimes punishable by death in the draft Criminal Code.²⁷⁰

The Committee asked Jamaica, **Kazakhstan, Burkina Faso, Morocco, Kuwait and Ghana** to consider acceding to the Second Optional Protocol to the Covenant aimed at abolishing the death penalty.²⁷¹ Additionally, the Committee recommended States parties such as **Burkina Faso** and **Morocco** to continue the political and legislative process aimed at abolishing the death penalty and its efforts to sensitize public opinion and campaign in favor of its abolition.²⁷²

Other UN Treaty Bodies

The **CRC** issued strong recommendations to **Maldives** and **Saudi Arabia** concerning the death penalty. The Committee urged both States to repeal all provisions providing for death penalty for persons under the age of 18, to not carry out the death penalty on minors and to give them alternative sanctions, with utmost priority.²⁷³ The Committee also urged **Saudi Arabia** to release children who have not benefited from a fair trial²⁷⁴ and who have been sentenced to death for the exercise of their right to freedom of opinion and expression.²⁷⁵

3.1.2 Enforced Disappearances

In **Morocco, Namibia** and **Rwanda** there were several reports of enforced disappearances.²⁷⁶ The Committee encouraged investigations, as well as prosecutions and punishment of those who were found guilty.²⁷⁷ The Committee also recommended

States parties to take all possible measures to establish the truth of the circumstances and determine the fate of the victims of such disappearances.²⁷⁸

3.1.3 Non-Refoulement

According to the Committee's jurisprudence, the obligation of non-refoulement is defined in General Comment No. 31 as "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" under Articles 6 and 7 of the Covenant.²⁷⁹ There is a high threshold for providing substantial grounds in order to establish the existence of a real risk of irreparable harm and the risk must be personal.²⁸⁰ The Committee has decided that in order to make the assessment of whether a real risk of irreparable harm exists if the person would be expelled or removed to their country of origin, all relevant facts and circumstances must be considered, including the general human rights situation in the country of origin.²⁸¹

Moreover, the Committee gives important weight to the assessment conducted by the State party, unless the State's evaluation was found to be clearly arbitrary or to amount to a denial of justice.²⁸² According to the Committee's jurisprudence, it is generally for the organs of States parties to review or evaluate facts and evidence in order to determine whether a real risk of irreparable harm exists.²⁸³

In an individual communication filed against **Canada**, the author alleged that Canada had violated the guarantees it had made to the author by denying the author a chance to comment on Thailand's request on the waiver of specialty. This waiver allowed **Thailand** to add further chargers not a part of the extradition request.²⁸⁴ The Committee recalled its earlier jurisprudence to affirm that extradition proceedings fall within its jurisdiction when considering claims under Article 13 of the Covenant.²⁸⁵ The Committee held that **Canada** violated the procedural guarantees afforded to the author by refusing him the chance to comment on the waiver request thus violating the author's rights under Article 13 of the Covenant.²⁸⁶

3.2 Prohibition of Torture and Ill-treatment

Under Article 7 of the Covenant, the prohibition on torture, cruel, inhuman or degrading treatment or punishment is absolute.²⁸⁷ The Committee, in its observations, noted several issues with regard to States parties' implementation of Article 7.

3.2.1 Definition of torture

The Committee found that many States Parties lacked either a proper definition of torture in their domestic statutes or lacked remedies. States parties, such as **Sweden**²⁸⁸, **Ghana**²⁸⁹ and **Denmark**²⁹⁰, did not have the specific crime of torture in their criminal law. **Kazakhstan** did not cover acts of torture that were committed by people acting in an official capacity.²⁹¹ Moreover, **Kuwait**, **Jamaica** and **Poland** did not include all acts of torture as defined by the internationally accepted definition in their domestic provisions.²⁹² With respect to **South Africa**, the Committee noted that while it did have legislation on torture, it

3. Right to Life (Art 6); Prohibition of Torture, Cruel, Inhuman and Degrading Treatment (Art 7); and Issues of Detention (Arts 9, 10)

Under Article 7 of the Covenant, the prohibition on torture, cruel, inhuman or degrading treatment or punishment is absolute.

3. Right to Life (Art 6); Prohibition of Torture, Cruel, Inhuman and Degrading Treatment (Art 7); and Issues of Detention (Arts 9, 10)

In Kazakhstan, the Committee expressed concern regarding the high number of torture cases that were dismissed.

lacked specific provisions relating to the right of redress and remedy for victims of torture.²⁹³ Thus, the Committee recommended that these parties take measures to include the definition of torture in their criminal codes in line with the Covenant and internationally established norms.²⁹⁴

3.2.2 Investigation, prosecution and punishment of perpetrators

The Committee expressed concern that **Burkina Faso** and **Costa Rica** did not provide any information regarding the investigation and punishment of human rights violations committed by officials in detention centers and by members of police.²⁹⁵ Thus, the Committee recommended that **Burkina Faso** and **Costa Rica** ensure that reports of torture or ill-treatment were investigated promptly, thoroughly and independently so that perpetrators are brought to justice and, if found guilty, are punished with penalties proportionate to the gravity of the crime.²⁹⁶ Additionally, the Committee recommended that **Burkina Faso** ensure that the confessions obtained under such conditions were rejected by the courts and to make the national observatory for the prevention of torture and related practices operational.²⁹⁷

In **Kazakhstan**, the Committee expressed concern regarding the high number of torture cases that were dismissed due to the excessive evidentiary standard that was required to pursue an investigation. In addition, most investigations continued for a long period of time and there was a very low rate of effective prosecution. There was also the practice of charging unsuccessful claims of torture with the charge of "false reporting of a crime." Finally, the Committee noted that victims were not provided with the full reparation and there had been an "alleged" increase in the number of cases being reported since the investigation and penitentiary facilities had been transferred to the Ministry of Internal Affairs.²⁹⁸

Thus, the Committee encouraged the State party to determine standards of proof and credibility for investigations regarding cases of torture and ill-treatment committed by State officials and to establish special prosecutor units who would act independently of law enforcement agencies.²⁹⁹ Additionally, the Committee asked the State party to ensure that the sanctions for the crime of torture were in accordance with the nature and gravity of the crime, to refrain from using false reporting of a crime against alleged victims of torture or ill-treatment and to take measures to ensure that victims would have full access to reparation.³⁰⁰

In **Morocco**, the Committee noted that there were reports of torture being carried out by agents of the State particularly in cases where the individuals were thought to be terrorists.³⁰¹ The Committee was concerned about confessions obtained under duress and torture by officials.³⁰² The Committee found that the judges and prosecutors did not always ensure that medical examinations were conducted and the necessary investigations were undertaken.³⁰³ The Committee encouraged the State Party to conduct impartial investigations, prosecute and punish the perpetrators and ensure that medical examinations were performed without delay.³⁰⁴ The Committee requested that the prohibition on the

extraction of confessions under duress be observed in practice and the evidence obtained through such means not be admitted in court.³⁰⁵ The Committee encouraged **Morocco** to offer proper mechanisms to victims and guarantee them reparation. It also requested the State party to adopt national preventive mechanisms to combat such practices.³⁰⁶

Further, the Committee noted that in **Namibia**, a majority of reported cases of violence and harassment against lesbian, gay, bisexual and transgender persons was committed by members of the police.³⁰⁷ There were also reports that members of the police regularly detained and raped sex workers.³⁰⁸ Accordingly, the Committee asked **Namibia** to adopt legislation consistent with the provision of the Covenant and train relevant professionals including police and prison guards.³⁰⁹ In addition, the Committee directed the State party to ensure that sex workers could report crimes without risk of being prosecuted for their occupation.³¹⁰

In its observations on **Argentina**, the Committee noted that the primary causes attributed to violence were the system of prison self-governance, limited number of convictions and the light penalties for perpetrators.³¹¹ The Committee noted that though there had been an establishment of a national registry for cases of torture and ill-treatment in 2014, **Argentina** was still lacking a unified system for the acts and victims of torture at a federal level.³¹² The Committee also expressed concern regarding the reports of humiliating searches, high rates of inter-prisoner violence, forced transfers and the recurrent use of solitary confinement as a method of punishment.³¹³ It also noted that only a small number of victims of torture had been granted reparation after judicial proceedings.³¹⁴

3.2.3 National Preventive Mechanisms

In **Moldova**, the Committee was concerned regarding the insufficient response mechanisms for cases of torture and cruel, inhuman or degrading treatment of individuals in police custody.³¹⁵ The Committee requested the State party to integrate the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) in all training programs for law enforcement officials.³¹⁶ Additionally, the Committee encouraged the State party to enable the national preventive mechanism to carry out its functions without delay.³¹⁷ Finally, the Committee proposed the implementation of a unified registration system for victims of torture with the view of establishing special policies such as conducting systematic human rights training programs for law enforcement and security officers.³¹⁸

The Committee noted that though **Argentina** had adopted the National Preventive Mechanism Act (Act No. 26.827) in 2012, it had not been implemented yet.³¹⁹ The Committee encouraged the State party to establish a system to ensure that all complaints of torture and ill-treatment were investigated promptly and independently with the help of forensic examinations to make the process more impartial and comprehensive.³²⁰ In addition, the Committee asked the State party to take measures to establish a unified registration system

3. Right to Life (Art 6); Prohibition of Torture, Cruel, Inhuman and Degrading Treatment (Art 7); and Issues of Detention (Arts 9, 10)

In Moldova, the Committee was concerned regarding the insufficient response mechanisms.

3. Right to Life (Art 6); Prohibition of Torture, Cruel, Inhuman and Degrading Treatment (Art 7); and Issues of Detention (Arts 9, 10)

In finding a violation of the obligation of non-refoulement, the Committee considers whether the State has given sufficient weight to the author's allegations.

for the victims with the view to formulating policies directed towards prevention of torture and cruel treatment and to ensure that they received the appropriate reparation.³²¹

In **Azerbaijan**, the Committee observed that a majority of reports of torture and ill-treatment related to journalists, human rights defenders and youth activists. Though they had established a national preventive mechanism in 2011, the Committee was apprehensive regarding the effectiveness of this body.³²² Thus, it asked the State party to employ independent and effective mechanisms to monitor areas where deprivation of liberty was taking place and to involve NGOs to aid in this process.³²³

3.2.4 Non-Refoulement

In finding a violation of the obligation of non-refoulement, the Committee considers whether the State has given sufficient weight to the author's allegations, in particular with regard to the author's personal circumstances.³²⁴ The Committee has found violations when the author's personal circumstances were not accorded sufficient weight, such as in a case in which the Committee decided that **Denmark** did not give sufficient consideration to the fact that the author in question left Somalia at a young age, had no remaining family or social network in Somalia, had limited literacy skills in the Somali language, was a member of a minority clan and recently suffered from tuberculosis.³²⁵ The Committee decided that in these circumstances, the author's removal to Somalia would put him at a real risk of irreparable harm under Article 7 of the Covenant.³²⁶

3.3 Issues Relating to Detention

This sub-theme encompasses both conditions in detention and the nature of detention, as well as an individual's treatment in detention.

3.3.1 Unlawful detention

The Committee has considered that a pretrial detention that is not in accordance with domestic law may constitute a violation of Article 9.³²⁷ For example, the Committee decided that the detention of an author who was held in pretrial detention for approximately seven months in **Uzbekistan** in contravention of a law in **Uzbekistan** that stated that a convicted person must be transferred from a pretrial detention facility to a prison at the latest ten days after the final sentence of a court violated Article 9(1) of the Covenant.³²⁸ Similarly, the Committee found in another individual communication that the circumstance of an author who was continuously held in pretrial detention in the **Democratic Republic of the Congo** despite a court order for his placement under house arrest was a breach of the State's internal law and thus violated Article 9(1).³²⁹ The Committee also noted that Article 9(4) of the Covenant entitles anyone who is deprived of liberty (through arrest or detention) to challenge the lawfulness of their arrest/detention.³³⁰ Further, the Committee held that any courts must assess the lawfulness of any detention not only in terms of domestic law but whether the requirements of the Covenant have been met.³³¹

3. Right to Life (Art 6); Prohibition of Torture, Cruel, Inhuman and Degrading Treatment (Art 7); and Issues of Detention (Arts 9, 10)

The Committee was concerned that in **Morocco**, vaguely worded provisions of the Criminal Code regarding what constitutes an act of terrorism and these provisions were used to target journalists and discourage the right to freedom of expression. Accordingly, the Committee recommended that **Morocco** revise the provisions in its Criminal Code on terrorism to include the right to counsel, define terrorism-related offenses on the basis of their objective and define the nature of such acts precisely.³³² In **Argentina**, the Committee noted that several individuals were subjected to arrests and detention without warrants.³³³ The Committee urged the State party to end this practice of unlawful detention.³³⁴

In **Rwanda**, the Committee was concerned about reports where individuals had been held unlawfully by military and police in unlawful detention centers. There was a lack of information regarding the measures taken to investigate these claims.³³⁵ Thus, the Committee requested the State party to make legislative amendments to ensure that the individual was brought before the judge within 48 hours, to investigate all allegations of torture, guarantee the victims of torture the right to effective remedy and redress and also ensure that those who were deprived of their liberty in detention would be provided with all the necessary legal safeguards.³³⁶

The Committee has also held that commitment to and treatment in a psychiatric institution of a person against their will, when they pose no danger to themselves or others, constitutes unlawful detention.³³⁷ Additionally, the Committee held that when individuals were committed to a psychiatric institution against their will, the same must be based on a court order.³³⁸ Further, an individual must be given a chance to appeal the order before being committed to an institution.³³⁹

In **Morocco**, the Committee noted with concern that imprisonment was used to enforce contractual obligations and accordingly the Committee also recommended Morocco refrain from using imprisonment as a method for enforcing contractual obligations.³⁴⁰

3.3.2 Time period of detention

With regard to police custody, the Committee found that in **Argentina, Ghana, Morocco, Sweden, Rwanda, Moldova** and **Namibia**, suspects were not always brought before a judge within the prescribed time period.³⁴¹ The States parties were encouraged to ensure that the prescribed period of police custody was followed and suspects were not abused and kept for an excessive period of detention.³⁴² In **Argentina**, the Committee found that the police were taking individuals into custody without a warrant. The reasons for these arrests were that the police were seeking to verify the identity of the arrested persons and as a result were detaining the individuals for a long period of time. During this time, the arrested persons were not brought before a judge or a relevant judicial authority.³⁴³ The Committee recommended that the State adopt legislative measures that would put an end to the practice of such detentions was not related to the commission of an offense.³⁴⁴

The Committee has also held that commitment to and treatment in a psychiatric institution of a person against their will, when they pose no danger to themselves or others, constitutes unlawful detention.

3. Right to Life (Art 6); Prohibition of Torture, Cruel, Inhuman and Degrading Treatment (Art 7); and Issues of Detention (Arts 9, 10)

In the case of Sweden, the Committee suggested the creation of a time limit for the duration of pretrial detention.

In the case of **Sweden**, the Committee suggested the creation of a time limit for the duration of pretrial detention.³⁴⁵ It requested the State party to ensure that restrictions on contacts for pretrial detainees were time-bound, justified as necessary, proportionate and the extent of their application subject to constant review.³⁴⁶ In situations where the detainees were young, the Committee asked the State party to take the appropriate measures to mitigate isolation.³⁴⁷

The Committee has held that anyone arrested or detained on a criminal charge must be afforded a judicial hearing within 48 hours and any delay longer than 48 hours must remain absolutely exceptional and be justified under the circumstances.³⁴⁸

In an individual communication, the Committee noted (in a partly dissenting opinion) that mandatory sentencing schemes that fail to account for individual circumstances and are disproportionate given the facts of particular cases could be arbitrary or unlawful, and contrary to Article 9(1) of the Covenant.³⁴⁹

3.3.3 Conditions in detention

Regarding conditions and treatment in detention, the Committee held that persons deprived of their liberty may not be subjected to hardship or constraint other than that resulting from the deprivation of liberty and they must be treated with humanity and respect for their dignity.³⁵⁰ In addition, the Committee held that incommunicado detention is inconsistent with this obligation.³⁵¹

In the context of allegations of either torture or cruel, inhuman or degrading treatment in detention, the Committee decided that the failure of a State party to refute an author's specific allegations of such treatment and a failure by the State party to carry out an effective investigation into the author's allegations of torture would constitute a violation of Article 7 of the Covenant.³⁵² The Committee has also found a violation of Article 7 when the author claimed that while he was held in detention, he suffered prison overcrowding and a lack of hygiene, ventilation, lighting, food and physical exercise and the State did not contest these claims.³⁵³ Similarly, the Committee found in another communication, regarding an author who had claimed that he had been deprived of adequate medical care during his imprisonment due to the authorities forcibly returning him to prison and taking no action in response to reports of his medical problems, that the State had violated Article 10(1) of the Covenant because of its failure to provide detailed information contesting its alleged failure to follow the prescriptions in the author's medical reports and the author's forced departure from the hospital.³⁵⁴

3.3.4 Police custody, pretrial detention and fundamental legal safeguards

The Committee acknowledged the **Argentinean** Initiative undertaken as part of the Justice 2020 Programme to review the system of pretrial detention in accordance with the Covenant.³⁵⁵ On the issue of pretrial detention, the Committee asked Argentina to review the current legislation and investigate other alternative non-custodial arrangements.³⁵⁶

The Committee also encouraged the State party to provide additional training to those administering justice to ensure that pretrial detention was not the norm and its duration was strictly limited.³⁵⁷

In **Burkina Faso**, the Committee noted reports of wrongful arrests and detention in police custody and the excessive use of force by officials in pretrial detention.³⁵⁸ It requested the State party to ensure that the rules regarding the duration of police custody and pretrial detention were followed. The Committee also encouraged the State party to observe fundamental legal safeguards and to inform individuals of the rights that were available to them.³⁵⁹

The Committee proposed States such as **Argentina** and **Burkina Faso** to take measures to ensure that those who were detained had access to lawyers, to review regulations governing pretrial detention and expedite application of non-custodial alternatives.³⁶⁰

In **Sweden**, the Committee noted deficiencies in the present legal framework regulating pretrial detention. It expressed concern regarding the absence of a statutory time limit, the lack of access to a counsel and strict restrictions that were placed on people in remand.³⁶¹ The Committee suggested the State party take measures to ensure that there was a limit on the duration of pretrial detention, that it constituted an exceptional measure, that individuals were provided with counsel, that all restrictions that were placed were necessary and proportionate in light of all relevant circumstances and finally that these restrictions were time bound and subject to constant review.³⁶²

3.3.5 Overcrowding

The Committee found that when it came to conditions of detention, most prisons in **Costa Rica, Burkina Faso, Namibia, Jamaica, Rwanda, Argentina, Morocco, Slovenia, Ecuador** and **South Africa** were overcrowded.³⁶³ It asked these States to comply with the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) and remedy the problem of overcrowding through putting in place a policy on the use of alternative means to the deprivation of liberty.³⁶⁴

In **Burkina Faso, Jamaica, South Africa** and **Ghana**, the Committee found that there was a large number of prisoners who had been kept in extremely poor conditions, with reports of unsatisfactory sanitary conditions, inadequate medical care and the poor quality of food served to prisoners.³⁶⁵ As a result, it encouraged the States parties to address overcrowding in places of detention by giving prisoners proper facilities and access to medical care, separating prisoners according to their detention scheme and combating corruption in prisons.³⁶⁶

In **Ghana**, prisoners who were in pretrial detention were not separated from those who had been convicted. The Committee also noted reports of inmates in **Ghana** designated as "black coats" exercising authority over other prisoners.³⁶⁷ It encouraged the State party to ensure that necessary steps were taken to separate prisoners by age, sex and custodial status and to ensure that inmates were not given any

3. Right to Life (Art 6); Prohibition of Torture, Cruel, Inhuman and Degrading Treatment (Art 7); and Issues of Detention (Arts 9, 10)

The Committee asked the States to comply with the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules).

3. Right to Life (Art 6); Prohibition of Torture, Cruel, Inhuman and Degrading Treatment (Art 7); and Issues of Detention (Arts 9, 10)

The Committee found that Ecuador had not taken adequate measures to prevent death related to prison violence.

disciplinary authority over other inmates.³⁶⁸

Additionally, the Committee also recommended that **South Africa** adopt practical measures to reduce overcrowding such as the loosening of bail requirements, revising arrest quotas as indicators of police performance and ensuring that bail determinations are made promptly and that persons on remand are not kept in custody for an unreasonable period of time.³⁶⁹

3.3.6 Prevention of custodial deaths

The Committee expressed concern regarding suicides and death in temporary holding facilities in **Kazakhstan**.³⁷⁰ It recommended establishing early prevention strategies and programs, improving the identification of persons at risk of committing suicide, ensuring prompt, impartial and independent investigations into the circumstances surrounding deaths in custody, bringing responsible persons to justice, where appropriate, and providing victims' families with remedies.³⁷¹

The Committee found that **Ecuador** had not taken adequate measures to prevent death related to prison violence.³⁷² The Committee recommended that the State party investigate instances of custodial deaths and ensure that those who were responsible were punished commensurately with the seriousness of their actions.³⁷³

In **South Africa**, the Committee noted that were reports of deaths resulting from actions of police and prison officials.³⁷⁴ The Committee suggested the use of an independent mechanism for the investigation of violence that had been committed in State or contract managed prisons.³⁷⁵ It encouraged the State party to ensure that the perpetrators and accomplices of these acts were punished and victims were provided with proper redress.³⁷⁶

3.3.7 Solitary confinement

The Committee expressed concern regarding the use of solitary confinement as a disciplinary measure for convicts. In **Denmark**, under domestic law, it is possible for detainees to be sentenced to solitary confinement for more than six years for adults and four weeks for minors.³⁷⁷ The Committee requested the State party to bring its legislation in line with international standards as reflected in the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), by abolishing solitary confinement of minors and reducing the total length of permissible solitary confinement for remand detainees even if it is used as a measure of last resort.³⁷⁸

In **South Africa**, the Committee noted that prisoners in two super-maximum security prisons could be locked up 23 hours a day for a minimum period of six months.³⁷⁹ Thus, it recommended that the State party ensure that solitary confinement measures including segregation were used only for the most rare circumstances for a limited period of time.³⁸⁰

3.4 Excessive Use of Force

The Committee was concerned about the excessive use of force by law enforcement officials in **Slovakia, Kuwait, Sweden, Ghana** and **New Zealand**. The Committee noted that in **Sweden**, excessive use of force had included the use of expandable bullets; it also expressed concerns about the Department of Special Investigation being under the purview of the Swedish Police Authority.³⁸¹ Moreover, investigations into allegations of excessive use of force were not perceived as independent by the public.³⁸² The Committee recommended that Sweden review the operations of its investigative bodies and also requested the State party to ensure that all reported cases of excessive use of force were independently investigated.³⁸³

A similar issue was found in **Slovakia**, where the Committee noted that there was a discrepancy in the number of reported incidents and the ensuing number of legal proceedings and prosecutions.³⁸⁴ On many occasions, the investigations were not impartial and the perpetrators were subject to lenient penalties.³⁸⁵ The Committee requested the State party to ensure that appropriate measures were taken to carry out investigations by misconduct of police offices and that training programs directed towards the prevention of torture and ill-treatment were continued.³⁸⁶

For **South Africa**, on the issue of excessive use of force committed by law enforcement officials, the Committee proposed that the State party should undertake regular review of measures employed in law enforcement operations³⁸⁷, including types of firearms and ammunition used, and ensure that the professional training to avoid excessive use of force was imparted. The State party was also requested to ensure that a proper investigation take place regarding the Marikana incident and that the liability of those who were involved be properly determined.³⁸⁸

Similarly, in **Ghana** and **Kuwait**, the Committee noted that there were a number of reports regarding the excessive use of force and unlawful killings committed by law enforcement and security personnel.³⁸⁹ The Committee recommended the States parties ensure that prompt, thorough, effective, independent and impartial investigations were launched into all incidents involving the use of force and that the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials were followed.³⁹⁰

Similarly, in **Poland**, the Committee was concerned regarding the excessive use by those in law enforcement and the lack of legal proceedings against them.³⁹¹ It encouraged the State party to ensure that all complaints of torture and ill-treatment were investigated and to ensure victims had access to redress and adequate compensation.³⁹²

The Committee found that in **New Zealand** there was use of electro-muscular disruption devices and an absence of information regarding the rules and guidelines that were governing the use of such equipment.³⁹³

3. Right to Life (Art 6); Prohibition of Torture, Cruel, Inhuman and Degrading Treatment (Art 7); and Issues of Detention (Arts 9, 10)

The Committee was concerned about the excessive use of force by law enforcement officials in Slovakia, Kuwait, Sweden, Ghana and New Zealand.

3. Right to Life (Art 6); Prohibition of Torture, Cruel, Inhuman and Degrading Treatment (Art 7); and Issues of Detention (Arts 9, 10)

It requested that the State Party reevaluate its policies on the use of electro-muscular disruption devices and ensure that the Basic Principles on the Use of Force and Firearms were complied with. In addition, the Committee suggested that law enforcement officers be equipped with body mounted cameras in order to monitor their actions.³⁹⁴

- 265 Kuwait, ¶ 22 (b)
- 266 Kuwait, ¶ 22 (b)
- 267 Kuwait, ¶ 22 (c)
- 268 Kuwait, ¶ 23
- 269 Kazakhstan, ¶ 16
- 270 Morocco, ¶ 19
- 271 Jamaica ¶ 36 Kazakhstan, ¶ 16; Burkina Faso, ¶ 22, Morocco, ¶ 20; Kuwait, ¶ 23; Ghana, ¶ 20
- 272 Burkina Faso, ¶ 22; Morocco, ¶ 20
- 273 CRC, Concluding Observations of the Maldives, UN Doc. CRC/C/MDV/CO/4-5 ¶30-31 (**CRC, Maldives**); CRC, Saudi Arabia, ¶20-21.
- 274 CRC, Saudi Arabia, ¶20-21.
- 275 Ibid, ¶24, 43.
- 276 Morocco ¶ 27; Namibia ¶ 19; Rwanda ¶ 21
- 277 Morocco, ¶ 28; Namibia, ¶ 20; Rwanda ¶ 22
- 278 Morocco, ¶ 28; Namibia, ¶ 20; Rwanda ¶ 22
- 279 *S.Z. v. Denmark*, Communication No. 2443/2014, UN Doc. CCPR/C/117/D/2443/2014 (13 July 2016) ¶ 9.2; *A.H.A. v. Denmark*, Communication No. 2493/2014, UN Doc. CCPR/C/117/D/2493/2014 (8 July 2016) ¶ 8.2; *A.A.S. v. Denmark*, Communication No. 2464/2014, UN Doc. CCPR/C/117/D/2464/2014 (4 July 2016) ¶ 7.2; *E.U.R. v. Denmark*, Communication No. 2469/2014, UN Doc. CCPR/C/117/D/2469/2014 (1 July 2016) ¶ 9.3; *Y v. Canada*, Communication No. 2327/2014, UN Doc. CCPR/C/116/D/2327/2014 (10 March 2016) ¶ 10.3; *K.G. v. Denmark*, Communication No. 2347/2014, UN Doc. CCPR/C/116/D/2347/2014 (22 March 2016) ¶ 7.2; *Z v. Denmark*, Communication No. 2422/2014, UN Doc. CCPR/C/116/D/2422/2014 ¶ 7.2; *A v. Denmark*, Communication No. 2357/2014, UN Doc. CCPR/C/116/D/2402/2014 (30 March 2016) ¶ 7.4; *Y v. Canada*, Communication No. 2314/2013, UN Doc. CCPR/C/116/D/2314/2013 (22 March 2016) ¶ 7.2; *Abdilafir Abubakar Ali and Mayul Ali Mohamad v. Denmark*, Communication No. 2409/2014, UN Doc. CCPR/C/116/D/2409/2014 (29 March 2016) ¶ 7.3; *A.A.I. and A.H.A v. Denmark*, Communication No. 2402/2014, UN Doc. CCPR/C/116/D/2402/2014 (March 2016) ¶ 6.5 A&B v. *Denmark*, Communication No. 2291/2013, UN Doc. CCPR/C/117/2291/2013 (9 September 2016)¶ 8.3, *A.S.M. and R.A.H. v. Denmark*, Communication No. 2378/2014, UN Doc. CCPR/C/117/2378/2014 (18 November 2016)¶ 8.3 V.R. and *N.R. v. Denmark*, Communication No. 2745/2016, UN Doc. CCPR/C/117/D/2745/2016 (30 August 2016) ¶ 4.4; *I.M.Y. v. Denmark*, Communication No. 2559/2015, UN Doc. CCPR/C/117/D/2559/2015 (9 September 2016) ¶ 7.6; *Ms. Obah Hussein Ahmed v. Denmark*, Communication No. 2379/2014, UN Doc. CCPR/C/117/2379/2014 (22 September 2016) ¶ 13.3; *A.M.M. v. Denmark*, Communication No. 2415/2014, UN Doc. CCPR/C/117/2415/2014 (5 September 2016) ¶ 7.4; *B.M.I and N.A.K. v. Denmark*, Communication No. 2569/2015, UN Doc. CCPR/C/118/D/2569/2015 (16 December 2016) ¶ 8.3²⁸⁰ Ibid
- 281 Ibid
- 282 *S.Z. v. Denmark*, Communication No. 2443/2014, UN Doc. CCPR/C/117/D/2443/2014 (13 July 2016) ¶ 9.5
- 283 Ibid
- 284 *Rakesh Saxena v. Canada*, Communication No. 2118/2011, UN Doc. CCPR/C/118/D/2118/2011 (3 November 2016) ¶¶ 11-12
- 285 See *Ngoc Si Truong v. Canada – Decision of Inadmissibility*, Communication No. 743/1997, UN Doc. CCPR/C/77/D/743/1997 (28 March 2003) ¶ 7.6. *Everett v. Spain – Decision of Inadmissibility* Communication No. 961/2000, UN Doc. CCPR/C/81/D/961/2000 (9 July 2004) ¶ 6.4
- 286 *Rakesh Saxena v. Canada*, Communication No. 2118/2011, UN Doc. CCPR/C/118/D/2118/2011 (3 November 2016) ¶¶ 11-12
- 287 *Amanda Jane Mellet v. Ireland*, Communication No. 2324/2013, UN Doc. CCPR/C/116/D/2324/2013 (31 March 2016) ¶ 7.4
- 288 Sweden, ¶ 26
- 289 Ghana, ¶ 25
- 290 Denmark, ¶ 21
- 291 Kazakhstan, ¶ 21
- 292 Kuwait, ¶ 24, Poland, ¶ 25, Jamaica ¶33
- 293 South Africa, ¶ 23
- 294 Sweden ¶ 27; Ghana ¶ 26; Kazakhstan, ¶ 22; Denmark ¶ 22; Kuwait ¶25; Poland ¶26; Jamaica ¶ 34 (a)
- 295 Burkina Faso, ¶ 27; Costa Rica, ¶ 25
- 296 Burkina Faso ¶ 28; Costa Rica, ¶ 26
- 297 Burkina Faso ¶ 28
- 298 Kazakhstan, ¶ 23
- 299 Kazakhstan, ¶24
- 300 Kazakhstan, ¶24
- 301 Morocco, ¶ 23
- 302 Morocco, ¶ 23
- 303 Morocco, ¶ 23
- 304 Morocco, ¶ 24
- 305 Morocco, ¶ 24
- 306 Morocco, ¶ 24
- 307 Namibia, ¶ 21
- 308 Namibia, ¶ 21
- 309 Namibia, ¶ 22 (c)
- 310 Namibia, ¶ 22 (c)
- 311 Argentina, ¶ 13 ³¹² Ibid
- 313 Ibid ³¹⁴ Ibid
- 315 Moldova, ¶ 21
- 316 Moldova, ¶ 22 (c)
- 317 Moldova ¶ 22 (d)
- 318 Moldova, ¶ 22 ³¹⁹ Ibid
- 320 Argentina, ¶ 14 ³²¹ Ibid
- 322 Azerbaijan, ¶ 18
- 323 Azerbaijan, ¶ 19(b)

- ³²⁴ *A.A.S. v. Denmark*, Communication No. 2464/2014, UN Doc. CCPR/C/117/D/2464/2014 (4 July 2016) ¶ 7.7; *E.U.R. v. Denmark*, Communication No. 2469/2014, UN Doc. CCPR/C/117/D/2469/2014 (1 July 2016) ¶ 9.11; *Ms. Obah Hussein Ahmed v. Denmark*, Communication No. 2379/2014, UN Doc. CCPR/C/117/2379/2014 (22 September 2016) ¶ 13.8
- ³²⁵ *A.A.S. v. Denmark*, Communication No. 2464/2014, UN Doc. CCPR/C/117/D/2464/2014 (4 July 2016) ¶ 7.7
- ³²⁶ There was a dissenting opinion in this case by Committee members Yuval Shany, Yuji Iwasawa and Konstantin Vardzelashvili, in which the members dissented against the finding by the Committee that the obligation of non-refoulement under Article 7 was violated. Specifically, the members stated that the Committee had engaged in an independent risk assessment and had thus failed to properly apply the “clearly arbitrary” standard. The members also noted that the Committee may simply have disagreed with the risk assessment of the Danish authorities. See *A.A.S. v. Denmark*, Communication No. 2464/2014, UN Doc. CCPR/C/117/D/2464/2014 (4 July 2016) Annex ¶ 3.5
- In addition, in *E.U.R.*, there were multiple dissenting opinions, the first by Yuval Shany, Yuji Iwasawa, Sir Nigel Rodley and Konstantin Vardzelashvili, and the second by Anja Seibert-Fohr, both of which disagreed with the Committee’s conclusion that the non-refoulement obligation had been violated on similar grounds as the dissenting opinion in *A.A.S. v. Denmark*. See *E.U.R. v. Denmark*, Communication No. 2469/2014, UN Doc. CCPR/C/117/D/2469/2014 (1 July 2016) Annex I, Annex II
- ³²⁷ *Ortikov v. Uzbekistan*, Communication No. 2317/2013, UN Doc. CCPR/C/117/D/2317/2013 (26 October 2016) ¶ 10.3
- ³²⁸ *Ibid*
- ³²⁹ *Mambu v. Democratic Republic of the Congo*, Communication No. 2465/2014, UN Doc. CCPR/C/118/D/2465/2014 (3 November 2016) ¶ 9.3
- ³³⁰ *Griffiths v. Australia*, Communication No. 1973/2010, UN Doc. CCPR/C/112/D/1973/2010 (21 October 2014) ¶ 7.6
- ³³¹ *Nasir v. Australia*, Communication No. 2229/2012, UN Doc. CCPR/C/116/D/2229/2012 (29 March 2016) ¶ 7.4
- ³³² Morocco, ¶¶ 17-18
- ³³³ Argentina, ¶ 17
- ³³⁴ Argentina, ¶ 18
- ³³⁵ Rwanda, ¶ 19
- ³³⁶ Rwanda, ¶ 20
- ³³⁷ *T.V. and A.G. v. Uzbekistan*, Communication No. 2044/2011, UN Doc. CCPR/C/116/D/2044/2011 (11 March 2016) ¶¶ 7.3-7.8
- ³³⁸ *T.V. and A.G. v. Uzbekistan*, Communication No. 2044/2011, UN Doc. CCPR/C/116/D/2044/2011 (11 March 2016) ¶¶ 7.9-7.10
- ³³⁹ *Ibid*
- ³⁴⁰ Morocco, ¶¶ 31-32
- ³⁴¹ Ghana, ¶ 41; Moldova, ¶ 22; Namibia ¶ 27; Sweden ¶ 28; Argentina, ¶ 17; Namibia ¶ 27; Morocco, ¶¶ 17, 25
- ³⁴² Ghana, ¶ 42; Morocco, ¶ 26; Kuwait ¶ 24; Rwanda, ¶ 20; Namibia ¶ 28; Sweden ¶ 29 (a); Morocco, ¶¶ 18, 26
- ³⁴³ Argentina, ¶ 17
- ³⁴⁴ Argentina, ¶ 18
- ³⁴⁵ Sweden, ¶ 28
- ³⁴⁶ Sweden, ¶ 29 (b)
- ³⁴⁷ Sweden, ¶ 29(a)
- ³⁴⁸ *Vyacheslav Berezhnoy v. Russian Federation*, Communication No. 2107/2011, UN Doc. CCPR/C/118/D/2107/2011 (28 October 2016)
- ³⁴⁹ *Nasir v. Australia*, Communication No. 2229/2012, UN Doc. CCPR/C/116/D/2229/2012 (29 March 2016) Individual opinion of Committee member Sarah Cleveland (partly dissenting) Annex II, ¶¶ 3-13
- ³⁵⁰ *Ortikov v. Uzbekistan*, Communication No. 2317/2013, UN Doc. CCPR/C/117/D/2317/2013 (26 October 2016) ¶ 10.4; *Navruz Tahirovich Nasyrlayev v. Turkmenistan*, Communication No. 2219/2012, UN Doc. CCPR/C/117/D/2219/2012 (15 July 2016) ¶¶ 8.2-8.3; *Matkarim Aminov v. Turkmenistan*, Communication No. 2220/2012, UN Doc. CCPR/C/117/D/2220/2012 (14 July 2016) ¶ 9.2; *Dovran Bahramovich Matyakubov v. Turkmenistan*, Communication No. 2220/2012, UN Doc. CCPR/C/117/D/2220/2012 (14 July 2016) ¶ 7.3; *Shadurdy Uchetov v. Turkmenistan*, Communication No. 2226/2012, UN Doc. CCPR/C/117/D/2226/2012 (15 July 2016) ¶ 7.3; *Akmurat Halbayewich Yegendurdyev v. Turkmenistan*, Communication No. 2227/2012, UN Doc. CCPR/C/117/D/2227/2012 (14 July 2016) ¶ 7.3
- ³⁵¹ *Ibid*; There was an individual opinion in this case by Olivier de Frouville, in which he stated that incommunicado detention in itself can constitute a violation of Article 9, not just a violation of Article 10, because any incommunicado detention outside the reach of the law constitutes an arbitrary detention under Article 9(1), as well as a violation of the right to security of person under the same provision. Mr. de Frouville stated in addition that any incommunicado detention that removes a person from the protection of the law violates Article 16 because it constitutes a denial of the victim’s right to recognition everywhere as a person before the law. *Ortikov v. Uzbekistan*, Communication No. 2317/2013, UN Doc. CCPR/C/117/D/2317/2013 (26 October 2016) ¶¶ 5-6 (Annex); *Mejdoub Chani v. Algeria*, Communication No. 2297/2013, UN Doc. CCPR/C/116/D/2297/2013 (11 March 2016) ¶ 7.3
- ³⁵² *Ortikov v. Uzbekistan*, Communication No. 2317/2013, UN Doc. CCPR/C/117/D/2317/2013 (26 October 2016) ¶ 10.2
- ³⁵³ *Kerrouche v. Algeria*, Communication No. 2128/2012, UN Doc. CCPR/C/118/D/2128/2012 (3 November 2016) ¶ 8.3
- ³⁵⁴ *Mambu v. Democratic Republic of the Congo*, Communication No. 2465/2014, UN Doc. CCPR/C/118/D/2465/2014 (3 November 2016) ¶ 9.4
- ³⁵⁵ *Ibid*
- ³⁵⁶ Argentina, ¶ 20
- ³⁵⁷ Argentina, ¶ 20
- ³⁵⁸ Burkina Faso, ¶ 29
- ³⁵⁹ Burkina Faso, ¶ 30
- ³⁶⁰ Argentina, ¶ 20; Burkina Faso, ¶ 30
- ³⁶¹ Sweden, ¶ 29
- ³⁶² Sweden, ¶ 29
- ³⁶³ Argentina ¶ 23; Costa Rica, ¶ 27; Burkina Faso ¶ 33; Namibia ¶ 33; Ecuador ¶ 23; Jamaica ¶ 31; South Africa ¶ 30; Slovenia ¶ 25; Morocco ¶ 29; Rwanda, ¶ 31
- ³⁶⁴ Slovenia, ¶ 26; Moldova, ¶ 27; Burkina Faso, ¶ 34; Namibia ¶ 34; Argentina ¶ 24; Azerbaijan ¶ 23; Costa Rica ¶ 28; Ecuador ¶ 24; Ghana ¶ 30; Jamaica, ¶ 32; South Africa ¶ 31; Morocco ¶ 29; Rwanda ¶ 32
- ³⁶⁵ Burkina Faso, ¶ 33; Ghana ¶ 29; Jamaica ¶ 31; South Africa ¶ 30
- ³⁶⁶ Burkina Faso, ¶ 34; Ghana ¶ 29; Jamaica ¶ 31; South Africa ¶ 30
- ³⁶⁷ Ghana, ¶ 29
- ³⁶⁸ Ghana, ¶ 30
- ³⁶⁹ South Africa, ¶ 31(a)
- ³⁷⁰ Kazakhstan ¶ 19
- ³⁷¹ Kazakhstan, ¶ 20
- ³⁷² Ecuador, ¶ 23

- 373 Ecuador, ¶ 24
- 374 South Africa, ¶ 28
- 375 South Africa, ¶ 29
- 376 South Africa, ¶ 29
- 377 Denmark, ¶ 23
- 378 Denmark, ¶ 24
- 379 South Africa, ¶ 30
- 380 South Africa, ¶ 31 (c)
- 381 Sweden, ¶ 24
- 382 Sweden, ¶ 24
- 383 Sweden, ¶ 25
- 384 Slovakia, ¶ 28
- 385 Slovakia, ¶ 28
- 386 Slovakia, ¶ 29
- 387 South Africa, ¶ 27(b)
- 388 South Africa, ¶ 27(c)
- 389 Ghana, ¶ 21; Kuwait ¶ 42
- 390 Ghana, ¶ 22; Kuwait ¶ 43
- 391 Poland, ¶ 25
- 392 Poland, ¶ 26 (b)
- 393 New Zealand, ¶ 33
- 394 New Zealand, ¶ 34