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International Covenant on Civil and Political Rights

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Views

Communication No. 1870/2009

Submitted by:	Mr. Charles Gurmurkh Sobhraj (represented by Isabelle Coutant Peyre)
Alleged victim:	The author
State party:	Nepal
Date of communication:	21 November 2008 (initial submission)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 3 March 2009 (not issued in document form)
Date of adoption of Views:	27 July 2010

* Made public by decision of the Human Rights Committee.

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Subject matter:	Life sentence following unfair trial
Substantive issue:	Unfair trial, arbitrary arrest and detention; life sentence imposed following unfair trial.
Procedural issue:	none.
Articles of the Covenant:	10, 14, paragraphs 1, 2, 3, 5 and 7; and 15, paragraph 1.
Article of the Optional Protocol:	2

On 27 July 2010, the Human Rights Committee adopted the annexed text as the Committee's Views under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1870/2009.

[Annex]

Annex

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political rights (ninety-ninth session)

concerning

Communication No. 1870/2009[**]

Submitted by:	Mr. Charles Gurmurkh Sobhraj (represented by Isabelle Coutant Peyre)
Alleged victim:	The author
State party:	Nepal
Date of communication:	21 November 2008 (initial submission

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 27 July 2010,

Having concluded its consideration of communication No. 1870/2009, submitted to the Human Rights Committee on behalf of Mr. Charles Gurmurkh Sobhraj under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication, and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1. The author of the communication is Mr. Charles Gurmurkh Sobhraj, a French national, born on 6 April 1944 in Saïgon, Viet Nam. He claims to be a victim by Nepal of violations under article 10; article 14, paragraphs 1, 2, 3, 5 and 7; and article 15, paragraph 1, of the Covenant. He is represented by a lawyer, Ms. Isabelle Coutant Peyre. The Optional Protocol entered into force for the State Party on 4 March 1996.

The facts as presented by the author

2.1 On 13 September 2003, the author was arrested by the Nepalese police in Kathmandu, while in possession of a legal visa issued by the Consulate of Nepal in Paris. He was detained for 25 days without the assistance of a lawyer, supposedly for verification of identity. He was first accused of being in possession of false documents, then accused of

[**] The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Lazhari Bouzid, Mr. Mahjoub El Haiba, Mr. Yuji Iwasawa, Ms. Helen Keller, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Mr. Fabián Omar Salvioli and Mr. Krister Thelin.

having committed a murder, which allegedly had occurred in December 1975.[1] During the trial, the author was not able to confront any of the witnesses testifying against him nor was he allowed to request the hearing of any witness for his defence, as he did not speak or understand Nepali. On 12 August 2004, the Kathmandu District Court sentenced him to life imprisonment.

2.2 The author appealed to Patan Appeal Court. During the court hearings, the author's lawyers had to make the same defence plea on three occasions (30 March, 14 July and 4 August 2005). The court sessions before the Appeal Court were postponed twice (10 March and 9 June 2005), at the last minute and upon the request of the Public Prosecutor, despite the fact that a French lawyer had flown in each time from Paris for this purpose. On 14 July 2005, after a day of pleadings by the author's lawyers, the two judges of the Appeal Court decided not to adopt the judgement. The author's lawyers produced a report, prepared by an expert on 18 March 2005, and certified by the French courts, concerning the only evidence presented by the prosecution. This report established that the documents[2] presented by the police against the author were practically impossible to read and were obviously forged documents. The report stressed that no conclusion could be drawn from these photocopies. The Nepalese assessment previously undertaken by the Nepalese police laboratory had also established that no conclusion could be made without examining the original documents. The originals were never produced. On 4 August 2005, a different set of judges confirmed the First Instance judgement.[3]

2.3 The author appealed to the Supreme Court. At the time of the initial complaint on 21 November 2008 before the Committee, the Supreme Court had not yet returned its verdict, although 38 hearings had already been scheduled. On 18 June 2006, the Court ordered the prosecution to produce the originals of the materials used as evidence before the court.[4] The Court confirmed its order to the prosecution on 6 December 2006. The appearance before the Court of the two witnesses who were in the hotel at the time of the incriminated facts (December 1975) was also required. The witnesses were heard on 1 January 2007. On 29 January and 4 February 2007, the hotel managers and the police confirmed that the originals of the documents produced by the police did not exist. On 4 February 2007, the investigation before the Court ended and only the pleadings by the Prosecution and the Defence were to be heard. These pleadings had to be repeated several times, at different hearings. On 4 November 2007, the final decision of the Supreme Court was scheduled. The hearing however did not take place as one of the judges was ill. At the following hearing on 25 November 2007, another judge was absent as his daughter was getting married. On 19 December 2007, the two judges who were finally present ordered the reopening of the procedure, on the ground that they had overlooked one aspect of the file. Another dozen or so of hearings took place before the author submitted his complaint before the Committee.

2.4 The author was held in pre-trial detention from the date of arrest. Since 1 November 2004, he has been held almost permanently in isolation, with no possibility to challenge this decision. During the summer of 2008, he was put in isolation with shackles, on the ground

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[1] The author affirms that he went to Nepal for the first time in 2003, the year of his arrest by the Nepali authorities.

[2] These were the hotel registration cards for two hotels in December 1975, which could prove the presence of the author at the time of the commission of the murder.

[3] The author emphasizes that in Nepal, each court hearing has a different set of judges who are designated each morning (rotating system), hence the different set of judges returning the verdict on 4 August 2005. In a subsequent letter dated 10 March 2010, the Counsel refers to a different date i.e 8 August 2005.

[4] In Nepal, photocopies cannot be considered as evidence in court.

that he had had a disagreement with another prisoner. Because of inadequate and unsanitary conditions at Kathmandu Central Prison, as well as a lack of medical health care, the author's health condition has deteriorated dramatically.

2.5 On 27 February 2009, the author sent an additional letter to the Committee stating that on 13 January 2009, the Supreme Court, which had not yet returned its verdict, adopted a deferment, ordering the Patan Appeal Court to decide whether the author had entered Nepalese territory illegally and using a false identity in December 1975. In order to justify this deferment, the Supreme Court considered that an existing immigration law could apply retroactively to the author's case. In a letter submitted on 13 August 2009, the author noted that in its previous decision dated 4 August 2005, the Patan Appeal Court had already established that no particular immigration law existed in 1975; no other legislation required a visa to enter Nepal; and that the new law could not apply retroactively to the incriminated facts. Despite this ruling, the Supreme Court ordered the Patan Appeal Court to find that the Immigration Act 2049 could be applied albeit retroactively. On 4 June 2009, the Patan Appeal Court quashed its previous judgement and sentenced the author to one year imprisonment and a fine of 2,000 Nepalese rupees for illegal entry into the Nepalese territory in 1975. The author has already completed the sentence as he has been detained since 2003. The matter was then referred back to the Supreme Court for the main trial to continue.

2.6 In a letter dated 23 April 2009, the author informed the Committee that on 9 November 2008, the judgement of the Supreme Court was supposed to be handed down. However, the hearing was cancelled at the last minute as one of the judges took an unexpected leave. It was rescheduled for 13 January 2009. However, the Supreme Court returned the case to the Appeal Court on the issue of illegal entry into the Nepalese territory (see para. 2.5 above). From 26 March 2006 until 23 April 2010, 41 hearings took place. This does not include the hearings which were either postponed or cancelled.

The complaint

3.1 The author claims that the State Party violated article 10; article 14, paragraphs 1, 2, 3, 5 and 7; and article 15, paragraph 1, of the Covenant.

3.2 The author claims that since his arrest, he has not been afforded the judicial guarantees provided for by article 14 of the Covenant. The only evidence introduced by the prosecution were simple photocopies, which Nepalese Law does not consider valid. The author contends that the judgements passed by the Kathmandu District Court and the Patan Appeal Court therefore violate article 14, paragraph 2. Despite its order to produce originals and the failure of the prosecution to do so, the Supreme Court did not dismiss the case, which would also contravene article 14, paragraph 2 of the Covenant.[5]

3.3 The author claims a violation of article 14, paragraph 3 (f) by the State party as he was not afforded the free assistance of an interpreter during the court's proceedings as well as when the judgement was adopted. The author can neither read, nor understand, nor write Nepali. As he could not understand anything during the hearings of the First Instance Court, he was unable to prepare his defence and call any witnesses, in violation of article 14, paragraph 3 (a), (b), (d) and (e) of the Covenant.[6]

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[5] Despite the fact that the author has not clearly made this line of argument, this can be assumed from the facts as presented by the author and his general claim under article 14, paragraph 2, of the Covenant.

[6] Although the author did not specifically refer to sub-paragraphs (a), (b), (d) and (e), the arguments provided in the communication relate to these provisions.

3.4 The author considers that the review carried out by the Patan Appeal Court of the First Instance judgement did not follow the minimum procedural guarantees, under article 14, paragraph 5 of the Covenant.

3.5 From the date of his arrest until the date of the last correspondence sent to the Committee, seven years have elapsed. The author considers that his trial was unreasonably prolonged, in violation of article 14, paragraph 3 (c) of the Covenant.

3.6 The author also contends that his prolonged detention since 1 November 2004, almost continuously in isolation, with no justification and no possibility to challenge this decision, amounts to torture, in violation of article 10 of the Covenant.

3.7 The author also contends that the deferment by the Supreme Court to the Patan Appeal Court, on the ground that existing immigration laws could apply retroactively to the author's alleged entry into Nepalese territory in 1975 under a false identity, violates article 15, paragraph 1, of the Covenant. The author insists that there was no particular immigration law nor was there an obligation to hold an entry visa in 1975. This obligation derives from a law that was adopted several years after the incriminated facts. The Supreme Court's imposition on the Patan Appeal Court to quash its own decision dated 4 August 2005 and establish that this new legislation could retroactively apply to facts, which did not qualify as a criminal offence in 1975, implies that the acquittal of the author with regard to that particular charge by the Appeal Court was reversed upon the order of the Supreme Court. The author considers therefore that the State party has violated articles 15, paragraph 1, and 14, paragraph 7 of the Covenant.

State party's observations on admissibility and merits

4.1 On 23 April 2010, the State party submitted its observations on the admissibility and merits of the communication. It first contends that the Covenant is only applicable to ordinary citizens and not to convicted persons serving a criminal offence. The State party further considers that the allegation that the documents submitted by the police were forged is not tenable since these documents were thoroughly examined by the relevant experts, following a regular procedure of verification. As for the results of the Nepalese assessment of the photocopies previously undertaken by the police laboratory (see para. 2.2 above), the State party emphasizes that the production of originals only had the purpose to reinforce the conclusion of the police experts.

4.2 The State party contests the allegation of the author that the originals of the hotel registration cards did not exist. Not all the records were available owing to the change in the management of the hotel. However, one of the hotel managers attested that the hotel registration card produced to the court had indeed been issued by the management in place at the time of the incriminated facts. The State party therefore concludes that the author's trial was carried out in conformity with Nepalese law, that the author is currently imprisoned following a decision by a court of law and that his appeal is under consideration by a higher court.

Author's comments

5.1 On 17 May 2010, the author rejects the arguments submitted by the State party. On the first argument, the author notes that the whole purpose of the Covenant is to protect from arbitrary procedures. He points out that the State party did not enter any reservation to the Covenant and can therefore not exclude convicted persons serving a criminal offence from the persons entitled to protection under the Covenant. He further emphasizes that articles 9, 10, 14 and 15 precisely refer to persons deprived of liberty, whether they have already been sentenced or not.

5.2 With regard to the second, third and fourth arguments of the State party, the author reiterates that no material evidence has been produced and the only documents presented to the Court were forged photocopies.

5.3 As for the allegations submitted under article 14, the author notes that the State party limits itself to stating that his trial was carried out in conformity with Nepalese law; that he is detained following a decision by a court of law and that the verdict is currently being reviewed by a higher court. It does not give any explanation on, inter alia, the reason why the trial was carried out in a language that the author does not understand; why the author was not able to call his own witnesses and confront the prosecution witnesses; why he was detained for 25 days after his arrest without being assisted by a counsel; and why the trial was unduly delayed. The author insists on the fact that he is presumed innocent until proven guilty and that the right to have his sentence reviewed by a higher tribunal, under article 14, paragraph 5, is undermined by the excessive length of the proceedings, the lack of impartiality of the courts and the numerous violations of the right of defence.

5.4 The author also notes that the State party has not provided any justifications for the author's inhumane conditions of detention, which allegedly violate article 10 of the Covenant. The author also reiterates his concern with regard to the alleged violation of article 15, paragraph 1 of the Covenant (see para. 2.5 and 3.7 above).

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not the communication is admissible under the Optional Protocol to the Covenant.

6.2 The Committee notes, as required by article 5, paragraph 2 (a), of the Optional Protocol, that the same matter is not being examined under any other international procedure of investigation or settlement.

6.3 The Committee notes that the author has conceded non-exhaustion of domestic remedies but claims that remedies have been ineffective and unreasonably prolonged. The Committee refers to its case law, to the effect that, for the purposes of article 5, paragraph 2(b), of the Optional Protocol, domestic remedies must both be effective and available, and must not be unduly prolonged.[7] The author was arrested on 13 September 2003 and was sentenced by the First Instance Court in 2004. A year later, the Appeal Court confirmed the life sentence. To date, the appeal filed in 2005 before the Supreme Court has not been resolved and remains pending due to successive postponements and cancellations of court hearings. The Committee considers that, in the circumstances of the present case, domestic remedies have been unreasonably prolonged. The Committee notes that the State Party does not challenge the admissibility of the communication because of non-exhaustion of domestic remedies. Accordingly, it finds that article 5, paragraph 2 (b), of the Optional Protocol does not preclude it from considering the complaint.

6.4 The State party challenges the admissibility of the author's claim on the ground that the Covenant only applies to ordinary citizens and not to persons convicted and serving their sentence. The Committee recalls that this argument has no basis in law. The Committee reiterates its general comment No. 32 (2007) on the right to equality before

[7] Communications No. 1560/2007, *Marcellana and Gumanoy v. The Philippines*, Views adopted on 30 October 2008, para. 6.2; and No. 1469/2006, *Sharma v. Nepal*, Views adopted on 28 October 2008, para. 6.3.

courts and tribunals and to a fair trial,[8] where it has established that the right of access to courts and tribunals and equality before them is not limited to citizens of States parties, but must also be available to all individuals, regardless of nationality or statelessness, or whatever their status, whether asylum-seekers, refugees, migrant workers, unaccompanied children or other persons, who may find themselves in the territory or subject to the jurisdiction of the State party. The committee also notes that the protection afforded by article 14 applies to all individuals facing criminal charges, whether they have already been sentenced or not. This is also true of articles 9 and 15 of the Covenant. Considering the amount of information provided by the author on the circumstances of his arrest and the circumstances in which he was tried by the District Court, the Appeal Court and the Supreme Court, the Committee considers that the author has sufficiently demonstrated, for purposes of admissibility, that the treatment he was subjected to in detention and the trial he has faced raise issues under articles 10, 14 and 15 of the Covenant, which should be examined by the Committee on the merits

Consideration of the merits

7.1 The Human Rights Committee has considered the communication in the light of all the information made available to it by the parties, as provided for under article 5, paragraph 1, of the Optional Protocol.

7.2 The Committee notes the author's claim that after his arrest, he was detained for 25 days without the assistance of a lawyer. He was not afforded the free assistance of an interpreter during the court's proceedings as well as when the judgement was handed down. As the author can neither read, nor understand, nor write Nepali, he could not understand the issues raised during the hearings of the First Instance Court and was therefore unable to prepare his defence, call his witnesses or confront the prosecution witnesses. Considering that the State party has not commented on that allegation, the Committee must give due consideration to the allegations submitted by the author. It refers to its general comment No 32, where it stated that the right to have the free assistance of an interpreter if the accused cannot understand or speak the language used in court as provided for by article 14, paragraph 3 (f) enshrines another aspect of the principles of fairness and equality of arms in criminal proceedings.[9] The importance of this principle has also been emphasized in the Committee's jurisprudence where it considered that the right to a fair trial implies that the accused be allowed, in criminal proceedings to express himself in the language in which he normally expresses himself, and that the denial of an interpreter constitutes a violation of article 14, paragraph 3 (e) and (f). [10] In the present case, the Committee considers that the author's lack of access to an interpreter from the time of arrest and during the District Court hearings, as well as the lack of access to a lawyer at the initial phase of the procedure, not only violates the two provisions cited above but also violates the right to a defence, under article 14, paragraph 3 (a), (b) and (d), of the Covenant.

7.3 With regard to the allegation of a violation of the presumption of innocence, the author claims that the only evidence provided by the prosecution were simple photocopies, which Nepalese law does not consider valid. Moreover, despite its order to produce originals and the failure of the prosecution to do so, the Supreme Court did not dismiss the case. The State party considers on the other hand, that the allegation that the documents

[8] *Official Records of the General Assembly, Sixty-second Session, Supplement No. 40*, vol. I (A/62/40 (Vol. I)), annex VI, para. 9.

[9] Ibid., para. 40.

[10] Communication No. 219/1986, *Guesdon v. France*, Views adopted on 25 July 1990, para. 10.2. See *a contrario* communications No. 221/1987 and 323/1988, *Cadoret v. France* and *Le Bihan v. France*, Views adopted on 11 April 1991, paras. 5.7.

submitted by the police were forged is not tenable since these documents were thoroughly examined by the relevant experts, following a regular procedure of verification. As for the results of the Nepalese assessment of the photocopies previously undertaken by the police laboratory (see para. 2.2 above), the State party emphasizes that the production of originals only had the purpose to reinforce the conclusion of the police experts. The Committee is concerned to note the assertion in both the District Court's and the Patan Appeal Court's judgements that if the person claims that he was in another place during the incident, then he has to prove it and if he cannot, then it should not be held against him. The Committee refers to its general comment No 32, where it stated that the presumption of innocence, which is fundamental to the protection of human rights, imposes on the prosecution the burden of proving the charge, guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt, ensures that the accused has the benefit of doubt, and requires that persons accused of a criminal act must be treated in accordance with this principle.[11] The Committee insists on the fact that a criminal court may convict a person only when there is no reasonable doubt of his or her guilt, and it is for the prosecution to dispel any such doubt.[12] In the present case, both the District Court and the Patan Appeal Court have shifted the burden of proof to the detriment of the author, thereby violating article 14, paragraph 2, of the Covenant.

7.4 On the length of the proceedings, the Committee notes the author's argument that from 26 March 2006 until 23 April 2010, 41 hearings have been scheduled which do not include the hearings which were either postponed or cancelled prior to these dates. The Committee also notes that most court hearings were allegedly cancelled or postponed at the last minute and without reasons being provided. The State party has not provided any information on the reason for such delays. The Committee refers to its jurisprudence, where it stated that the right of the accused to be tried without undue delay relates not only to the time between the formal charging of the accused and the time by which a trial should commence, but also the time until the final judgment on appeal[13]. All stages, whether in first instance or on appeal must take place without undue delay. In the present case, although the decisions of the District Court and the Appeal Court were adopted within two years, the proceedings before the Supreme Court started in 2005 and were still ongoing to date. The Committee reiterates its position that States parties have an obligation to organize their system of administration of justice in such a manner as to ensure an effective and expeditious disposal of the cases.[14] The length of the proceedings before the Supreme Court and most importantly the high number of postponements and cancellations of court hearings cannot be justified under the present circumstances. Accordingly, the Committee finds that the author's rights under article 14, paragraph 3 (c) of the Covenant, have been violated.

7.5 The Committee notes the author's allegation that his right to have his sentence reviewed by a higher tribunal was undermined by the excessive length of the proceedings, the lack of impartiality of the courts and the numerous violations of the right to defence. It notes that the State party confined itself to stating that the author's trial was carried out in accordance with Nepalese law. The Committee reminds the State party of its obligations under article 2, paragraph 2, of the Covenant, whereby it has to take the necessary steps and

[11] See note 8, para. 30.

[12] Communication No. 1421/2005, *Larrañaga v. The Philippines*, Views adopted on 24 July 2006, para. 7.4.

[13] Communications No. 1089/2002, *Rouse v. The Philippines*, Views adopted on 25 July 2005, para. 7.4; No. 1085/2002, *Taright et al. v. Algeria*, Views adopted on 15 March 2006, para. 8.5.

[14] Communication No. 1466/2006, *Lumanog and Santos v. The Philippines*, Views adopted on 20 March 2008, para. 8.5

adopt appropriate legislation as may be necessary to give effect to the rights recognized in the present Covenant. Where national law is not in conformity with the Covenant, appropriate amendments to that law should be adopted. The Committee is of the view that the impartiality of the courts in the present case indeed raises issues under article 14, paragraph 1, as pointed out by the author. It also considers that his right to have his sentence reviewed by a higher tribunal has been undermined by the excessive length of the proceedings before the Supreme Court, the lack of impartiality of the courts in their observance of the principle of presumption of innocence, and the violations of the right to defence outlined above. The Committee therefore considers that in the current circumstances, the author's rights under article 14, paragraphs 1 and 5, have been violated.

7.6 As to the claim under article 15, paragraph 1, and article 14, paragraph 7, the Committee notes that the Supreme Court adopted a deferment to the Patan Appeal Court, ordering it to determine whether article 5, paragraph 1 (2) of the new Immigration Act 2049 applied to the alleged entry of the author into Nepalese territory in 1975. It further notes that the same Appeal Court had already decided on that matter, rejecting the application of this new law, in its decision of 4 August 2005; and that the Supreme Court ignored such decision and ordered the Appeal Court to review its previous verdict on this specific issue. The Committee takes note of the absence of any observations by the State party on the author's claim under article 15, paragraph 1, and recalls that it should therefore give due consideration to the allegations submitted by the author. The Committee refers to its jurisprudence where it stated that article 15, paragraph 1, requires any "act or omission" for which an individual is convicted to constitute a "criminal offence". Whether a particular act or omission gives rise to a conviction for a criminal offence is not an issue which can be determined in the abstract; rather, this question can only be answered after a trial pursuant to which evidence is adduced to demonstrate that the elements of the offence have been proven to the necessary standard. If a necessary element of the offence, as described in national or international law, cannot be properly proven to have existed, then it follows that a conviction of a person for the act or omission in question would violate the principle that no one shall be held guilty of any criminal offence on account of any act or omission which does not constitute a criminal offence, under national or international, at the time when it was committed, as provided by article 15, paragraph 1.[15] The Committee has already established that the national courts had shifted the burden of proof to the detriment of the author. The latter was left with the responsibility to prove that he had not entered the Nepalese territory in 1975. The above clearly discloses a violation, by the State party of article 15, paragraph 1, and article 14, paragraph 7, of the Covenant.

7.7 The Committee notes the author's claim that, since 1 November 2004, he has been held almost permanently in solitary confinement, with no possibility to challenge this decision; during the summer of 2008, he was put in isolation with shackles, on the ground that he had a disagreement with another prisoner; and because of inadequate and unsanitary conditions at Kathmandu Central Prison, as well as a lack of medical health care, the author's health condition has deteriorated dramatically. It notes that the State party has provided no information or argument against the author's allegation. It draws the attention on its general comment No. 20 (1992) on the prohibition of torture or cruel, inhuman or degrading treatment or punishment, where it has considered that prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited by article 7.[16] The Committee also refers to its jurisprudence, where it stated that persons deprived of liberty may not be subjected to any hardship or constraint other than that resulting from the

[15] Communication No. 1080/2002, *Nicholas v. Australia*, Views adopted on 19 March 2004, para. 7.5.

[16] *Official Records of the General Assembly, Forty-seventh Session, Supplement No. 40* (A/47/40), annex VI, sect. A, para. 6.

deprivation of liberty and that the measure of their treatment under the Covenant is as set out, inter alia, in the Standard Minimum Rules for the Treatment of Prisoners (1957).[17] The Committee does not have enough elements to determine whether the treatment the author has been subject to amounts to a violation of article 7. It however finds that those conditions of detention, as described by the author, including placement in solitary confinement, shackling without a possibility to appeal, and alleged lack of access to appropriate health care,[18] fail to respect the inherent dignity of the human person,[19] in violation of article 10, paragraph 1, of the Covenant.

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose a violation of articles 10, paragraph 1; 14, paragraphs 1, 2, 3, 5 and 7; and 15, paragraph 1, of the Covenant.

9. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including the speedy conclusion of the proceedings and compensation. The State party is also under an obligation to prevent similar violations in the future.

10. In becoming a State party to the Optional Protocol, the State party recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not. Pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established. The Committee wishes to receive from the State Party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the Committee’s Views.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee’s annual report to the General Assembly.]

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[17] Communication No. 1134/2002, *Gorji-Dinka v. Cameroon*, Views adopted on 17 March 2005, para. 5.2

[18] Communication No. 253/1987, *Kelly v. Jamaica*, Views adopted on 8 April 1991, para. 5.7.

[19] Communication No. 109/1981, *Gomez de Voituret v. Uruguay*, Views adopted on 10 April 1984, para. 13.