

HEALTH - HEALTH CARE AND TREATMENT

III. JURISPRUDENCE

ICCPR

- *Setelich / Sendic v. Uruguay* (R.14/63), ICCPR, A/37/40 (28 October 1981) 114 at para. 20.

...

20. The Human Rights Committee...is of the view that the facts...disclose violations of the International Covenant on Civil and Political Rights, particularly:

of article 7 and article 10 (1) because Raul Sendic is held in solitary confinement in an underground cell, was subjected to torture for three months in 1978 and is being denied the medical treatment his condition requires...

- *Pinto v. Trinidad and Tobago* (232/1987), ICCPR, A/45/40 vol. II (20 July 1990) 69 at para. 12.7.

...

12.7 As to the author's allegations that he has been denied adequate medical care during his detention on death row, in particular in respect of ophthalmologic and dental treatment, the Committee notes, firstly, that these allegations were made at a late stage, after the communication, was declared admissible, as it stood on 18 July 1989, and, secondly, that these additional allegations have not been sufficiently corroborated, for instance by medical certificates, to justify a finding of a violation of article 10, paragraph 1 of the Covenant. The Committee reaffirms, however, that the obligation to treat individuals deprived of their liberty with respect for the inherent dignity of the human person encompasses the provision of adequate medical care during detention, and that this obligation, obviously, extends to persons under the sentence of death.

- *Kelly v. Jamaica* (253/1987), ICCPR, A/46/40 (8 April 1991) 241 (CCPR/C/41/D/253/1987) at para. 5.7.

...

5.7 Inasmuch as the author's claim under article 10 is concerned, the Committee reaffirms that the obligation to treat individuals with respect for the inherent dignity of the human person encompasses the provision of *inter alia*, adequate medical care during detention. a/ The provision of basic sanitary facilities to detained persons equally falls within the ambit of article 10. The Committee further considers that the provision of inadequate food to detained individuals and the total absence of recreational facilities does not, save under

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exceptional circumstances, meet the requirements of article 10. In the author's case, the State party has not refuted the author's allegation that he contracted health problems as a result of a lack of basic medical care, and that he is only allowed out of his cell for 30 minutes each day. As a result, his right under article 10, paragraph 1, of the Covenant has been violated.

Notes

a/ See final views in para. 12.7 of communication No.232/1987 (*Daniel Pinto v. Trinidad and Tobago*), adopted on 20 July 1990.

- *Linton v. Jamaica* (255/1987), ICCPR, A/48/40 vol. II (22 October 1992) 12 (CCPR/C/46/D/255/1987) at paras. 2.7 and 8.5.

...

2.7 The author notes that the injuries sustained in the escape attempt have left him handicapped, as medical treatment received subsequently was inadequate; as a result, he cannot walk properly. He considers that he cannot be held responsible for the escape attempt, on account of what had occurred previously. He further notes that he complained to the official charged with the investigation of the incident and to the prison chaplain. Since that time, he has not been given further information about the result of the investigation and his complaint.

...

8.5 Concerning the author's claim of ill-treatment during pre-trial detention on death row, the Committee deems it appropriate to distinguish between the various allegations. Concerning the claim of ill-treatment during pre-trial detention, the Committee notes that this has not been further substantiated. Other considerations apply to the claims relating to the author's treatment in November 1986 and January 1988, which have not been refuted by the State party. In the absence of such detailed refutation, the Committee considers that the physical abuse inflicted on the author on 20 November 1986, the mock execution set by prison warders and the denial of adequate medical care after the injuries sustained in the aborted escape attempt of January 1988 constitute cruel and inhuman treatment within the meaning of article 7 and, therefore, also entails a violation of article 10, paragraph 1, of the Covenant, which requires that detained persons be treated with respect for their human dignity.

See also:

- *Bailey v. Jamaica* (334/1988), ICCPR, A/48/40 vol. II (31 March 1993) 72 (CCPR/C/47/D/334/1988) at para. 9.3.

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- *Thomas v. Jamaica* (321/1988), ICCPR, A/49/40 vol. II (19 October 1993) 1 (CCPR/C/49/D/321/1988) at paras. 9.2 and 11.
- *Mika Miha v. Equatorial Guinea* (414/1990), ICCPR, A/49/40 vol. II (8 July 1994) 96 (CCPR/C/51/D/414/1990) at para. 6.4.
- *Colin Johnson v. Jamaica* (653/1995), ICCPR, A/54/40 vol. II (20 October 1998) 135 (CCPR/C/64/D/653/1995) at para. 8.1.

- *Kalenga v. Zambia* (326/1988), ICCPR, A/48/40 vol. II (27 July 1993) 68 (CCPR/C/48/D/326/1988) at para. 6.5.

...

6.5 As to Mr. Kalenga's claim of inhuman and degrading treatment in detention, the Committee notes that the author has provided information in substantiation of his allegation, in particular concerning the denial of recreational facilities, the occasional deprivation of food and failure to provide medical assistance when needed. Although the author has not shown that such treatment was cruel, inhuman and degrading within the meaning of article 7, the Committee considers that the State party has violated the author's right under article 10, paragraph 1, to be treated with humanity and respect for the inherent dignity of his person.

- *Pinto v. Trinidad and Tobago* (512/1992), ICCPR, A/51/40 vol. II (16 July 1996) 61 at para. 8.4.

...

8.4 As to the author's claim of denial of medical treatment, the Committee notes that the author was provided with an opportunity to comment on the State party's detailed account of 4 March 1993 in this respect; he retained this opportunity even after informing the Committee that comments allegedly prepared on 28 May 1994 had not reached the Committee. He never subsequently provided any information as to the contents of that document. As a result, the State party's submission that Mr. Pinto did receive ophthalmologic, dental and stress treatment is uncontested. In the circumstances, the Committee finds that such medical attention as the author received while on death row did not violate articles 7 or 10, paragraph 1.

- *Lewis v. Jamaica* (527/1993), ICCPR, A/51/40 vol. II (18 July 1996) 89 (CCPR/C/57/D/527/1993) at para. 10.4.

...

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10.4 As regards the author's claim that he has been denied medical treatment on death row, the Committee notes that the author has furnished specific information showing that although appointments were made for a medical doctor to see him, these appointments were not kept, and that his skin condition has been left untreated. The Committee further notes that the State party has stated that it is investigating the matter, but that, two and a half years after the complaint was brought to the State party's attention and more than a year after this communication was declared admissible, the State party has not forwarded any information explaining the matter. In the circumstances, the Committee finds that the lack of medical treatment constitutes a violation of article 10, paragraph 1, of the Covenant.

- *Henry and Douglas v. Jamaica* (571/1994), ICCPR, A/51/40 vol. II (25 July 1996) 155 (CCPR/C/57/D/571/1994) at para. 9.5.

...

9.5 With regard to the authors' claim of ill-treatment on death row, and in Mr. Henry's case prior to his death, two separate issues arise: the ill-treatment each author was subjected to while detained on death row including, this is, in Mr. Henry's case, being kept in a cold cell after being diagnosed for cancer, and in Mr Douglas' case having medical problems caused by a gunshot wound. These allegations have not been contested by the State party. In the absence of a response from the State party, the Committee must give appropriate weight to these allegations, to the extent that they have been substantiated. In the opinion of the Committee, therefore, the conditions of incarceration under which Mr. Henry continued to be held until his death, even after the prison authorities were aware of his terminal illness, and the lack of medical attention, for the gunshot wounds, received by Mr. Douglas, reveal a violation of articles 7, and 10 paragraph 1, of the Covenant. As to Mr. Henry's claim that he did not receive adequate medical attention for his cancer, the State party has forwarded a report which shows that the author did visit various hospitals and received medical treatment for his cancer, including chemotherapy. With regards to the contention of counsel for Mr. Henry that the author's cancer had been diagnosed in 1989 rather than in 1993, as asserted by the State party, the Committee concludes that counsel for Mr. Henry has failed to produce any evidence to support the contention advanced. In this respect the Committee finds that there has been no violation of articles 7 and 10, paragraph 1, of the Covenant on this count.

- *Williams v. Jamaica* (609/1995), ICCPR, A/53/40 vol. II (4 November 1997) 63 (CCPR/C/61/D/609/1995) at para. 6.5.

...

6.5 In the instant case, the material before the Committee indicates that the author's mental

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condition seriously deteriorated during his detention on death row. This conclusion is buttressed by the correspondence addressed to the Committee on the author's behalf by other inmates on death row, and by the report prepared by Dr. Irons on his examination of the author on 14 March 1992...On the other hand, the State party, which had promised to investigate the author's state of mental health and to forward its findings to the Committee, has failed to do so, more than two years after its submission. Finally, it is not apparent that the psychiatric examination which had been scheduled for the author in September 1994 by the State party's Department of Correctional Services has been carried out since that date. All these factors justify the conclusion that the author did not receive any or received inadequate medical treatment for his mental health condition while detained on death row. This situation constitutes a violation of articles 7 and 10, paragraph 1, of the Covenant, since the author was subjected to inhuman treatment and was not treated with respect for the inherent dignity of his person.

- *Jones v. Jamaica* (585/1994), ICCPR, A/53/40 vol. II (6 April 1998) 45 (CCPR/C/62/D/585/1994) at paras. 8.2 and 9.4.

...

8.2 On the claims under article 10, counsel observes that the State party's authorities were informed of the author's arthritic condition in September 1994 and 1995 and August 1996. In spite of visits by the Inspector (of Prisons) in April and September 1996, Mr. Jones has still not received any medication for his arthritic condition...

...

9.4 In respect of the claims under article 10, the Committee notes that, again, the State party observes that its investigations show that the author did receive treatment for his arthritic condition, while the author denies that any treatment was provided. In the circumstances, the Committee considers that a violation of article 10 in this respect has not been established...

- *Whyte v. Jamaica* (732/1997), ICCPR, A/53/40 vol. II (27 July 1998) 195 (CCPR/C/63/D/732/1997) at para. 9.4.

...

9.4 Counsel has claimed that the author is allergic to dust and to the paint used in St. Catherine Prison and that his allergy provokes attacks of asthma and burning eyes, for which he does not receive any treatment. He has also described the conditions of detention on death row as inhumane and degrading. Finally, he has claimed that the author was beaten on 5 March 1997 and again on 7 March 1997, and that he did not receive medical attention for his injuries. The State party has not answered to any of these allegations. In the absence of any

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information from the State party, due weight must be given to the author's claims. The Committee considers that the treatment to which the author has been subjected and the conditions of detention described by him, constitute a violation of articles 7 and 10, paragraph 1, of the Covenant.

- *Leslie v. Jamaica* (564/1993), ICCPR, A/53/40 vol. II (31 July 1998) 21 (CCPR/C/63/D/564/1993) at paras. 3.2-3.5, 3.8 and 9.2.

...

3.2 On 20 November 1987, the author was transferred to the General Penitentiary, Kingston; upon arrival, he was allegedly hit on his left arm, near the wrist, by one of the warders. It is submitted that because he had previously broken his left wrist, this blow caused him great pain. He remained at the General Penitentiary until 4 April 1990; throughout this period he had to share a cell of approximately 1.50 by 3 metres with four to five other prisoners. Furthermore, on an unspecified day, the author was stabbed in the face by an inmate which caused a deep cut about 10 cm long and 1 cm wide, stretching from his left ear down to his left cheek. He immediately requested medical care, but had to wait two hours before he was taken to a doctor. He received twenty stitches, but was denied follow-up medical treatment. He submits that he suffered much pain the following three days, but that he was denied pain killers.

3.3 After his conviction on 4 April 1990 the author was transferred to the death row section at St. Catherine District Prison, where he has been detained since. He claims to have suffered several assaults while in prison...

3.4 The author reported these assaults to the Prison Authorities and repeatedly requested medical attention, to no avail. He then wrote to the Prison Ombudsman; as a result, he was finally taken to hospital in early 1992. The doctor who treated him prescribed pain killers. On the sequels of the beatings, the author notes that: "There is a specific pain in the left part of my back which has never completely disappeared. It feels as if there is a broken bone or that a bone is cracked. I experience the pain particularly badly in the morning when I wake up. All my requests to see a doctor again have been in vain and the warders simply give me pain tablets [...]".

3.5 The author further states that on several occasions warders told him that there was no point in providing him with medical treatment, because he was about to be executed. He submits that this caused him "great embarrassment and depression". Furthermore, on three occasions he was not allowed out of his cell for an entire day, and was given no food or water. Thus, he remained confined to his cell from around 4:00 p.m. until 10:00 a.m. two days later. The author characterizes the situation as "extremely discomfoting and

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humiliating".

...

3.8 Counsel adduces documentary evidence of the inhuman conditions of detention at the General Penitentiary and St. Catherine District Prison. It is submitted that the lack of recreation, rehabilitation and other facilities in these prisons clearly indicates that they fall far short of the U.N. Standard Minimum Rules for the Treatment of Prisoners, and that the lack of provision for the basic needs for Junior Leslie amounts to a violation of both articles 7 and 10, paragraph 1. He concludes that the lack of washing facilities in custody, the crowded conditions under which Mr. Leslie was detained, the long periods of confinement, the lack of medical treatment, the reasons given for the denial of such treatment, and the unprovoked assaults by the police officer and prison warders to which Mr. Leslie was subjected, amount to violations of articles 7 and 10, paragraph 1.

...

9.2 With regard to the author's various complaints of ill-treatment while both at the General Penitentiary and then at St. Catherine's District Prison, the Committee notes that the author has made very precise allegations, related to the various instances where he was beaten and to the deplorable conditions of detention, as set out in paragraphs 3.1 to 3.8 supra. None of this has been contested by the State party, except to say some 14 months later that it would investigate. In the Committee's opinion, the conditions described in para 3.1 to 3.8, are such as to violate the author's right to be treated with humanity and with respect for the inherent dignity of the human person, and are therefore contrary to articles 7 and 10, paragraph 1.

- *Henry v. Jamaica* (610/1995), ICCPR, A/54/40 vol. II (20 October 1998) 45 (CCPR/C/64/D/610/1995) at para. 7.3.

...

7.3 Mr. Henry also alleges that he has suffered lack of medical treatment despite a recommendation from a doctor that he be operated. The author has further submitted detailed claims that he was beaten by soldiers and warders on 4 May 1993 and again on 1 March 1995. The author's claims have not been refuted by the State party, which has promised to investigate but has not communicated the results of its investigation, even though more than three years have passed since. The Committee recalls that a State party is under the obligation to investigate seriously allegations of violations of the Covenant made under the Optional Protocol. In the absence of any explanation by the State party, due weight must be given to the author's allegations. The Committee considers that the lack of medical treatment is in violation of article 10 of the Covenant, and that the beatings which the author suffered constitute violations of article 7 of the Covenant.

- *Pennant v. Jamaica* (647/1995), ICCPR, A/54/40 vol. II (20 October 1998) 118

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(CCPR/C/64/D/647/1995) at para. 8.3.

...

8.3 With respect to the author's claim that he was beaten while in police custody and did not receive medical treatment until the committing magistrate ordered the police to take him to hospital, the State party has alleged that this complaint was vague and requested that counsel provide a copy of the letter sent to the author's counsel in Jamaica, requesting confirmation of the said incident. The Committee notes that despite having sent this letter to the State party on 15 March 1996 and the State party's promise to investigate the incident once it was clear which event counsel had confirmed, no information has been received. The Committee consequently considers that due weight must be given to the author's complaint to the extent to which it has been substantiated and accordingly, finds that the treatment the author received at the hands of the police while in detention is in violation of articles 7 and 10, paragraph 1, of the Covenant.

- *Levy v. Jamaica* (719/1996), ICCPR, A/54/40 vol. II (3 November 1998) 208 (CCPR/C/64/D/719/1996) at para. 7.4.

...

7.4 As to the allegation of a violation of articles 7 and 10, paragraph 1, of the Covenant on the ground of the conditions of detention, including lack of medical treatment, at St. Catherine's District Prison, the Committee notes that the author has made specific allegations...[H]e states that there in general is a lack of medical assistance, and specifically he mentions that he in April 1995 should have had an operation on his jaw and throat, but that the prison authorities made it impossible for him to keep his appointment. The State party has not refuted these specific allegations, and has not forwarded results of the announced investigation into the author's allegations that he was denied opportunity to have an operation in April 1995. The Committee finds that these circumstances disclose a violation of article 10, paragraph 1, of the Covenant.

- *Marshall v. Jamaica* (730/1996), ICCPR, A/54/40 vol. II (3 November 1998) 228 (CCPR/C/64/D/730/1996) at para. 6.7.

...

6.7 As to the allegation of a violation of articles 7 and 10, paragraph 1, of the Covenant on the ground of the conditions of detention, including lack of medical treatment, at St. Catherine's District Prison, the Committee notes that the author has made specific allegations...He also claims that in December 1994 he was hit in the side by a warden to such an extent that he was taken before the prison surgeon. The author contends that the

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conditions have caused serious detriment to his health, and that he has never received any treatment despite repeated requests. The State party has not refuted these specific allegations, and has not forwarded any results of the announced investigation into the author's allegations that he has been denied necessary medical attention. The Committee finds that these circumstances disclose a violation of article 10, paragraph 1, of the Covenant.

See also:

- *Morgan and Williams v. Jamaica* (720/1996), ICCPR, A/54/40 vol. II (3 November 1998) 216 (CCPR/C/64/D/720/1996) at para. 7.2.
- *Morrison v. Jamaica* (663/1995), ICCPR, A/54/40 vol. II (3 November 1998) 148 (CCPR/C/64/D/663/1995) at para. 8.8.

...

8.8 The author has claimed a violation of article 10 of the Covenant, because he has not received any medical treatment for his synovitis. The State party has promised to investigate the claim about the lack of medical treatment. The Committee recalls that a State party is under an obligation to investigate seriously allegations of violations of the Covenant made under the Optional Protocol procedure 66/. This entails forwarding the outcome of the investigations to the Committee, in detail and without undue delay. The Committee finds that in spite of its promise of 19 January 1996 to investigate the claim of lack of medical treatment, the State party has failed to provide any additional information. Consequently, due weight must be given to the author's allegation that he was denied medical treatment, and the Committee finds that the lack of medical treatment to the author constitutes a violation of article 10 of the Covenant.

Notes

...

66/ See, *inter alia*, the Committee's Views in case No. 161/1983 (*Herrera Rubio v. Colombia*), adopted on 2 November 1987.

- *Brown v. Jamaica* (775/1997), ICCPR, A/54/40 vol. II (23 March 1999) 260 (CCPR/C/65/D/775/1997) at paras. 3.2 and 6.5.

...

3.2 The author claims that after having been detained at Almond Town police station for over two weeks, he was taken to Patrick Gardens Police Station for one day, where he was beaten, after which he suffered an asthma attack. He claims that he was induced into signing

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the caution statement with promises of medical attention. He further complains about the conditions of pre-trial detention in the different prisons. It is alleged that despite suffering from asthma he was made to sleep, in some instances on a cold concrete floor without a mattress, in others in an extremely hot cell where his asthma worsened. At the General Penitentiary, he was remanded at the hospital section of the prison.

...

6.5 ...[T]he author has made specific complaints about the circumstances of his pre-trial detention which have not been addressed by the State party. In the circumstances, due weight must be given to the author's allegations to the extent that they are substantiated. The Committee finds that the circumstances of the author's pre-trial detention, as described by the author and taking into account that he suffered an asthmatic condition, constitute a violation of article 10, paragraph 1, of the Covenant.

- *Bennett v. Jamaica* (590/1994), ICCPR, A/54/40 vol. II (25 March 1999) 12 (CCPR/C/65/D/590/1994) at paras. 10.7 and 10.8.

...

10.7 The author has claimed a violation of article 10, paragraph 1, both on the ground of the conditions of detention to which he is subjected at St. Catherine's District Prison and on the ground of lack of medical attention for an ulcer he allegedly sustained in 1990. To substantiate his claims, the author has invoked a report of March 1989 from the government appointed Task Force on Correctional Services, Amnesty International's report of December 1993, and a statement from the Prison Chaplain, based on his visit to the author on 25 May 1994. The State party has contested the allegations as to the general conditions of detention at St. Catherine's District Prison merely by invoking an unpublished report made by the Inter-American Commission on Human Rights after an on site visit which, allegedly, contains nothing to support the "terrible picture painted by the author's allegations". The State party has also disputed the author's allegation that he has an ulcer for which he has received no medical attention, as it states that it has investigated the matter without finding any evidence to support the allegations.

10.8 The Committee notes that the author refers not only to the inhuman and degrading prison conditions in general, but also makes specific allegations such as sharing a cell with mentally ill inmates, not having seen a doctor since 1990 and having close to his cell a large pipe carrying waste water with foul odour. The Committee notes that with regard to these specific allegations, the State party has merely disputed that the author was denied adequate medical attention. In the circumstances, the Committee finds that article 10, paragraph 1, has been violated.

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- *Smith and Stewart v. Jamaica* (668/1995), ICCPR, A/54/40 vol. II (8 April 1999) 163 (CCPR/C/65/D/668/1995) at para. 7.5.

...

7.5 As to Mr. Stewart's claim of a violation of articles 7 and 10, paragraph 1, on the ground of the conditions of detention, including lack of medical treatment, at St. Catherine's District Prison, the Committee notes that Mr. Stewart has made specific allegations. He states that the sanitary conditions of the prison are dreadful, that the quality and quantity of the food is grossly inadequate and that he has been denied access to non-legal mail. Furthermore, he states that he has been subjected to inadequate medical attention, which has caused the loss of his sight in one eye. The State party has not refuted these specific allegations, and has not, in spite of its explicit promise and the principle in article 4, paragraph 2, of the Optional Protocol, forwarded results of the investigation announced in 1996 into the author's allegations that he was denied medical attention. The Committee finds that these circumstances disclose a violation of articles 7 and 10, paragraph 1, of the Covenant.

- *Leehong v. Jamaica* (613/1995), ICCPR, A/54/40 vol. II (13 July 1999) 52 (CCPR/C/66/D/613/1995) at paras. 3.11 and 9.2.

...

3.11 The author concludes that the maltreatment he has been - and is being - subjected to at St. Catherine District Prison, and his present conditions of incarceration amount to violations of articles 7, 10, paragraph 1, and 17 of the Covenant. He emphasizes that the conditions of imprisonment are seriously undermining his health. While on death row, he has only been allowed to see a doctor once, despite having sustained beatings by warders and having requested medical attention.

...

9.2 With regard to the author's complaints of ill-treatment while in detention at St. Catherine's District Prison, the Committee notes that author has made very precise allegations, relating to the incidents referred to in paragraph 3.11 supra. These allegations have not been contested by the State party, except to say that it would investigate. There is no information from the State party as to whether an investigation has been carried out and if so, what its result has been, contrary to its obligation to cooperate with the Committee as required by article 4, paragraph 2 of the Optional Protocol. In the Committee's opinion, the ill-treatment and conditions described are such as to violate the author's right to be treated with humanity and with respect for the inherent dignity of the human person and the right not to be subjected to cruel, inhuman or degrading treatment, and are therefore contrary to articles 7, and 10, paragraph 1.

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- *Simpson v. Jamaica* (695/1996), ICCPR, A/57/40 vol. II (31 October 2001) 67 (CCPR/C/73/D/695/1996) at paras. 2.1, 2.5-2.7, 3.2, 4.6, 7.2, 8 and 9.

...

2.1 On 15 August 1991, the author was arrested on suspicion of murder. He was assaulted by the police and was refused medical treatment. He did not bring this matter to the attention of the authorities, as he was not aware that the beatings violated his rights. He was kept in a cell with 17 other inmates at the Half-Way-Tree Police Lock Up, where some of the inmates had already been convicted. Shortly afterwards, he was moved to the General Prison, where he shared a cell of 8 by 4 feet with five other inmates. There was no artificial light in the cell, no slop bucket, and he was only allowed to use the toilet once a day.

...

2.5 On 6 November 1992, the author was convicted of two offences of capital murder and sentenced to death by the Home Circuit Court in Kingston.^{1/}

2.6 Since his conviction, the author has been confined in a cell alone for periods of up to 22 hours each day, most of his waking time is spent in darkness making it impossible for him to keep occupied. Slop buckets are used, filled with human waste and stagnant water, and only emptied once per day. There is also no running water provided in the author's cell. Consequently, the author has to wait until he is released to get running water which he then stores in a bottle. It is also stated that the author slept on cardboard and newspapers on concrete until October 1994 when he was provided with an old mattress.

2.7 For several years the author has been experiencing an undiagnosed and untreated medical condition giving rise to symptoms of great pain and swelling in his testicle. He complains of a back problem, from which he has suffered since childhood, and which makes it difficult for him to sit upright for a long period of time. He has also developed eye problems because of the darkness in his cell. Although he was visited by a doctor in prison, the tablets the author has been given do not provide any relief and he has been refused specialist treatment.

...

3.2 ...[C]ounsel claims that: (a) the conditions, described above in paragraphs 2.1 and 2.6, in which the author has been detained since his arrest, as well as his lack of medical treatment described above in paragraphs 2.1 and 2.7, amount themselves to cruel, inhuman and degrading treatment and punishment, in breach of articles 7 and 10, paragraph 1, of the Covenant; and (b) the period of delay, when addressed in the context of the conditions of detention and lack of medical treatment, constitutes a breach of articles 7 and 10, paragraph 1, of the Covenant. In this respect, counsel submits that numerous non-governmental organizations^{2/} have reported on the appalling conditions of the prison regime at St. Catherine's District Prison, observing that the facilities are poor: no mattresses, bedding or furniture in the cells; no sanitation in the cells; broken plumbing, piles of refuse and open

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sewers; until 1994 there was no artificial lighting in the cells; there are only small air vents through which natural light can enter; no employment opportunities available to inmates; no proper facilities to wash and infrequent permission to wash; no doctor attached to the prison, so that medical problems are generally treated by warders who receive very limited training; and inmates on death row occupy single cells where they are generally confined more than 18 hours per day.^{3/}

...

4.6 The State party indicates that, with respect to the alleged violations of articles 7 and 10 (1), it will investigate the allegations concerning the alleged lack of medical treatment as well as the circumstances under which the author was placed in the condemned cell.

...

7.2 As to the allegation of a violation of articles 7 and 10 of the Covenant, the Committee notes that counsel has provided specific and detailed allegations concerning inappropriate conditions of detention prior to his trial and since his conviction, and lack of medical treatment. The State party has not responded to these allegations with specific responses but in its initial submission merely denies that the conditions constitute a violation of the Covenant and then goes on to say that it would investigate these allegations, including the allegation of the failure to provide medical treatment (para. 4.6). The Committee notes that the State party has not informed the Committee of the outcome of its investigations. In the absence of any explanation from the State party, the Committee considers that the author's conditions of detention and his lack of medical treatment as described violate his right to be treated with humanity and with respect for the inherent dignity of the human person and are therefore contrary to article 10, paragraph 1. In light of this finding in respect of article 10, a provision which deals with the situation of persons deprived of their liberty and encompasses the elements set out generally in article 7, it is not necessary to consider separately the claims arising under that article. (para. 3.2)

...

8. The Human Rights Committee...is of the view that the facts as found by the Committee reveal a violation by Jamaica of articles 10, and 14, paragraph 3 (d) of the Covenant.

9. Pursuant to article 2, paragraph 3 (a), of the Covenant, the Committee considers that the author is entitled to an appropriate remedy, including adequate compensation, an improvement in the present conditions of detention and due consideration of early release.

Notes

^{1/} At the trial, the case rested on the eyewitness evidence of three witnesses. They alleged that they saw Simpson coming to George S. Cockett's grocery, where Cecil Cockett (George S. Cockett's father) and his brother Donovan were working at 7.30 p.m. on 8 August 1991. They testified that Simpson drew a gun and fired several shots, outside the shop and in the shop through the window, at Donovan, Cecil and Simon Cockett, which led to the death of

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Donovan and Cecil Cockett. One of the witnesses testified that a week before the incident, Simpson and Donovan Cockett had an argument in the course of which Simpson threatened to kill the whole family. The author made an unsworn statement in which he denied being present and stated that the accusations against him were being made falsely because one of the witnesses believed that Simpson had informed on him in relation to drug dealing, which had resulted in a police raid a few weeks before the incident.

2/ Counsel specifically refers to the Jamaican Council For Human Rights, America Watch and Amnesty International.

3/ This specific information is provided by counsel from a report compiled by Amnesty International following its mission to St. Catherine's Prison in November 1993.

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- *Lantsova v. Russian Federation* (763/1997), ICCPR, A/57/40 vol. II (26 March 2002) 96 (CCPR/C/74/D/763/1997) at paras. 2.1-2.7, 9.2, 10 and 11.

...

2.1 In August 1994, Mr. Lantsov, during an argument, inflicted injuries on another person, as a consequence of which both criminal and civil charges were pressed against him. On 1 March 1995, he made full reparation to the plaintiff for damages determined in the civil case. Awaiting his criminal trial, set for 13 April 1995, Mr. Lantsov was initially released. However, on 5 March 1995, after failing to appear for a meeting with the investigator, he was placed pre-trial detention at Moscow's pre-trial detention centre, "Matrosskaya Tishina", where he died on 6 April 1995, at the age of 25.

2.2 Mrs. Lantsova submits that her son was healthy when he first entered Matrosskaya Tishina, but that he fell ill due to the very poor conditions at the prison. She complains that her son was given no medical treatment despite repeated requests. Finally, she complains that the Russian Federation has failed to bring those responsible to justice.1/

2.3 The author submits that the conditions at Moscow's pre-trial detention centres are inhuman, in particular because of extreme overcrowding, poor ventilation, inadequate food and appalling hygiene. She refers to the 1994 report of the Special Rapporteur against torture to the Commission on Human Rights.2/ Regarding access to health care, the report states that overcrowding exacerbates the inability of the staff to provide food and health care, and notes the high incidence of disease in the centres.3/ Matrosskaya Tishina is held out for particular criticism in the report: "The conditions are cruel, inhuman and degrading; they are torturous".4/

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2.4 According to Mrs. Lantsova, based on statements from other detainees in the cell with her son, shortly after he was brought to Matrosskaya Tishina his physical and mental state began to deteriorate. He began to lose weight and developed a temperature. He was coughing and gasping for breath. Several days before his death he stopped eating and drank only cold water. He became delirious at some point and eventually lost consciousness.

2.5 It appears that other detainees requested medical assistance for Mr. Lantsov some time after the first week of his detention, that a medical doctor attended to him once or twice in the cell and that he was given aspirin for his temperature. However, between 3 and 6 April, during what was a rapid and obvious deterioration in his condition, he received no medical attention, despite repeated requests for assistance by the other detainees. On 6 April, after the other detainees cried out for assistance, medical personnel arrived with a stretcher. Mr. Lantsov died later that day in the prison clinic. His death certificate identifies the cause of death as "acute cardiac/circulatory insufficiency, intoxication, cachexia of unknown etiology".

2.6 With regard to the exhaustion of domestic remedies the author states that decision to open a criminal investigation into Mr. Lantsov's death is within the competence of the chief of the pre-trial detention centre. A final decision on the matter lies with the procurator's office. Mrs. Lantsov has made timely and repeated applications for a criminal investigation to be opened, but these were consistently denied. She therefore concludes that she has exhausted domestic remedies.

2.7 The procurator's decisions refusing to open a criminal investigation are based on the conclusion that the death in this case resulted from a combination of pneumonia and the stressful conditions of confinement, and that under these circumstances it would be impossible to find the detention centre personnel liable.

...

9.2 Concerning the death of Mr. Lantsov, the Committee notes the author's allegations, on the strength of testimony by several fellow detainees, that after the deterioration of the health of the author's son, he received medical care only during the last few minutes of his life, that the prison authorities had refused such care during the preceding days and that this situation caused his death. It also takes note of the information provided by the State party, namely that several inquiries were carried out into the causes of the death, i.e. acute pneumonia leading to cardiac insufficiency, and that Mr. Lantsov had not requested medical assistance. The Committee affirms that it is incumbent on States to ensure the right of life of detainees, and not incumbent on the latter to request protection. The stated intention of the State party to improve conditions has no impact in the assessment of this case. The Committee notes that the State party has not refuted the causal link between the conditions of the detention of Mr. Lantsov and the fatal deterioration of his state of health. Further, even if the Committee starts from the assertion of the State party that neither Mr. Lantsov himself nor his

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co-detainees had requested medical help in time, the essential fact remains that the State party by arresting and detaining individuals takes the responsibility to care for their life. It is up to the State party by organizing its detention facilities to know about the state of health of the detainees as far as may be reasonably expected. Lack of financial means cannot reduce this responsibility. The Committee considers that a properly functioning medical service within the detention centre could and should have known about the dangerous change in the state of health of Mr. Lantsov. It considers that the State party failed to take appropriate measures to protect Mr. Lantsov's life during the period he spent in the detention centre. Consequently, the Human Rights Committee concludes that, in this case, there has been a violation of paragraph 1 of article 6 of the Covenant.

...

10. The Human Rights Committee...is of the view that the State party failed in its obligation to ensure the protection of Mr. Lantsov, who lost his life as a direct result of the existing prison conditions. The Committee finds that articles 6, paragraph 1, and article 10, paragraph 1 of the Covenant were violated.

11. The Committee is of the view that Mrs. Lantsova is entitled, under article 2, paragraph 3 (a) of the Covenant, to an effective remedy. The State party should take effective measures: (a) to grant appropriate compensation (b) to order an official inquiry into the death of Mr. Lantsov; and (c) to ensure that similar violations do not recur in the future, especially by taking immediate steps to ensure that conditions of detention are compatible with the State party's obligation under articles 6 and 10 of the Covenant.

Notes

1/ The communication also indicates that notification of Mr. Lantsov's death was not given to the family or to the local registry office until 11 April 1995, after Mr. Lantsov's lawyer had discovered the fact of his death while at the detention centre to meet with him. This matter was apparently examined by the chief of the pre-trial detention centre (according to the letter of 10 July 1995 from the deputy city procurator, provided with the communication), but the results of this investigation are unknown.

2/ *Report of the Special Rapporteur, Mr. Nigel S Rodley*, submitted pursuant to Commission on Human Rights resolution 1994/37 (E/CN.4/1995/34/Add.1).

3/ *Ibid*, para. 41.

4/ *Ibid*, para. 71.

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- *Sahadath v. Trinidad and Tobago* (684/1996), ICCPR, A/57/40 vol. II (2 April 2002) 61 (CCPR/C/684/1996) at paras. 7.3, 8 and 9.

...

7.3 As to the author's claims that the conditions of detention in the various phases of his imprisonment violated articles 7 and 10, paragraph 1, in the absence of a responses by the State party to the conditions of detention as described by the author, the Committee notes that author's counsel has provided a detailed description of the conditions in the prison in which the author was detained and has also claimed that no psychiatric treatment was available in the prison. As the State party has made no attempt to challenge the detailed allegations made by author's counsel, nor to contest that these conditions applied to the author himself, the Committee must give due credence to the counsel's allegations. As to whether the conditions as described violate the Covenant, the Committee considers, as it has repeatedly found in respect of similar substantiated allegations,^{d/} that the author's conditions of detention as described violate his right to be treated with humanity and with respect for the inherent dignity of the human person, and are therefore contrary to article 10, paragraph 1. In the light of this finding in respect of article 10, a provision of the Covenant dealing specifically with the situation of persons deprived of their liberty and encompassing for such persons the elements set out generally in article 7, it is not necessary to consider separately the claims arising under article 7.

8. The Human Rights Committee...is of the view that the facts before it disclose a violation of article 7 and 10, paragraph 1 of the International Covenant on Civil and Political Rights.

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 appropriate medical and psychiatric care. The State party is also under an obligation to improve the present conditions of detention so as to ensure that the author is detained in conditions that are compatible with article 10 of the Covenant, or to release him, and to prevent similar violations in the future.

Notes

...

^{d/} See, for example, *Kelly v. Jamaica* (Communication 253/1987) and *Taylor v. Jamaica* (Communication 707/1996).

- *C. v. Australia* (900/1999), ICCPR, A/58/40 vol. II (28 October 2002) 188 (CCPR/C/76/D/900/1999) at paras. 2.1, 3.1, 3.2, 8.4, 8.5, 9 and 10.

...

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2.1 The author, who has close family ties in Australia ^{3/} but none in Iran, was lawfully in Australia from 2 February 1990 to 8 August 1990 and left thereafter. On 22 July 1992, the author returned to Australia with a Visitor's Visa but no return air ticket, and was detained, as a "non-citizen" without an entry permit, in immigration detention under (then) s.89 *Migration Act 1958* pending removal ("the first detention").

...

3.1 The author contends that he has suffered a violation of his rights under article 7 in dual fashion. Firstly, he was detained in such a way and for such a prolonged period (from his arrival on 22 July 1992 until 10 August 1994) as to cause him mental illness, from which he did not earlier suffer. The medical evidence was unanimous in concluding that his severe psychiatric illness was brought about by his prolonged incarceration ... and this had been accepted by the AAT [Administrative Appeals Tribunal] and the courts. The author contends that he was initially imprisoned without any evidence of a risk of abscondment or other danger to the community. He could have been released into the community with commonly utilized bail conditions such as a bond or surety, or residential and/or reporting requirements. The author also alleges that his current detention is in breach of article 7.^{20/}

3.2 Secondly, the author argues a violation of article 7 by Australia in that his proposed deportation to Iran would expose him to a real risk of a violation of his Covenant rights, at least of article 7 and possibly also article 9, by Iran. He refers in this connection to the Committee's jurisprudence that if a State party removes a person within its jurisdiction, and the necessary and foreseeable consequence is a violation of that person's rights under the Covenant in another jurisdiction, the State party itself may be in violation of the Covenant.^{21/} He considers that the Minister's delegate found that the author had a well-founded fear of persecution in Iran because of his religion and because his psychological state may bring him to the notice of the authorities which could lead to the deprivation of his liberty under such conditions as to constitute persecution. Far from being overturned in subsequent proceedings, the AAT in fact affirmed this position. Moreover, the author argues that the pattern of conduct shown by Iran supports the conclusion that he will be exposed to a violation of his Covenant rights in the event of deportation.^{22/}

...

8.4 As to the author's allegations that his first period of detention amounted to a breach of article 7, the Committee notes that the psychiatric evidence emerging from examinations of the author over an extended period, which was accepted by the State party's courts and tribunals, was essentially unanimous that the author's psychiatric illness developed as a result of the protracted period of immigration detention. The Committee notes that the State party was aware, at least from August 1992 when he was prescribed tranquillisers, of psychiatric difficulties the author faced. Indeed, by August 1993, it was evident that there was a conflict between the author's continued detention and his sanity. Despite increasingly serious assessments of the author's conditions in February and June 1994 (and a suicide attempt), it was only in August 1994 that the Minister exercised his exceptional power to release him

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from immigration detention on medical grounds (while legally he remained in detention). As subsequent events showed, by that point the author's illness had reached such a level of severity that irreversible consequences were to follow. In the Committee's view, the continued detention of the author when the State party was aware of the author's mental condition and failed to take the steps necessary to ameliorate the author's mental deterioration constituted a violation of his rights under article 7 of the Covenant.

8.5 As to the author's arguments that his deportation would amount to a violation of article 7, the Committee attaches weight to the fact that the author was originally granted refugee status on the basis of a well-founded fear of persecution as an Assyrian Christian, coupled with the likely consequences of a return of his illness. In the Committee's view, the State party has not established that the current circumstances in the receiving State are such that the grant of refugee status no longer holds validity. The Committee further observes that the AAT, whose decision was upheld on appeal, accepted that it was unlikely that the only effective medication (Clozaril) and back-up treatment would be available in Iran, and found the author "blameless for his mental illness" which "was first triggered while in Australia". In circumstances where the State party has recognized a protection obligation towards the author, the Committee considers that deportation of the author to a country where it is unlikely that he would receive the treatment necessary for the illness caused, in whole or in part, because of the State party's violation of the author's rights would amount to a violation of article 7 of the Covenant.

9. The Human Rights Committee...is of the view that the facts before it disclose violations of articles 7 and 9, paragraphs 1 and 4, of the Covenant.

10. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the authors with an effective remedy. As to the violations of articles 7 and 9 suffered by the author during the first period of detention, the State party should pay the author appropriate compensation. As to the proposed deportation of the author, the State party should refrain from deporting the author to Iran. The State party is under an obligation to avoid similar violations in the future.

Notes

...

3/ The author's mother, along with his brother and sister-in-law reside in Australia, while his father is deceased. Another brother resides in Canada.

...

20/ This is clarified by his subsequent (final) submissions of 21 September 2001. See paragraph 5.3 (with footnote 57), paragraph 6.3 and paragraphs 6.5 to 6.8.

21/ *ARJ v. Australia* (No. 692/1996) and *T. v. Australia* (No. 706/1996), coupled with

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General Comment 20 on article 7.

22/ In this connection the author supplies reports, dated 14 December 1994, 1 August 1997, and 19 November 1999, by Dr. Colin Rubinstein, Senior Lecturer in Middle East Politics (Monash University) and member of Victorian Ethnic Affairs Commission, detailing "real and effective discrimination against Christians", "effective intimidation", "the fiercest campaign since 1979 against the small Christian minority", including killings of clerics and arrests of apostates and a "gradual eradication of existing churches under legal pretences". The situation for minorities, including Christians, is "clearly degenerating" and "deteriorating rapidly". Accordingly, the author could expect a "high probability of vindictive retaliation" and "real persecution" in the event of his return.

For dissenting opinions in this context, see C. v. Australia (900/1999), ICCPR, A/58/40 vol. II (28 October 2002) 188 (CCPR/C/76/D/900/1999) at Individual Opinion of Mr. Nigel Rodley, 213, and Individual Opinion of Mr. David Kretzmer, 214.

- *Zheludkov v. Ukraine (726/1996), ICCPR, A/58/40 vol. II (29 October 2002) 12 (CCPR/C/76/D/726/1996) at paras. 2, 3.1, 3.2, 8.2, 8.4, 9, 10 and Individual Opinion by Ms. Cecilia Medina Quiroga (concurring), 22.*

...

2. The author states that her son was arrested on 4 September 1992 and was charged, alongside two other men, with the rape of a minor, a 13-year-old girl, H.K. The rape was alleged to have occurred on 23 August 1992. On 28 March 1994, the author's son was convicted by the Ordzhonikidzevsky District Court (Mariupol) and sentenced to seven years' imprisonment. His appeal to the Donetsk Regional Court was dismissed on 6 May 1994. His subsequent appeal to the Supreme Court of Ukraine was dismissed on 28 June 1995.

3.1 The author claims that her son is a victim of a violation of articles 7 and 10 of the Covenant on the ground that, both on the date of his arrest and on other occasions before his trial, he was severely ill-treated and because of the inhuman conditions of detention. With regard to the first ground, she states, in particular, that on 4 September 1992, her son was brought to a police station to give evidence as a witness in a case concerning a theft. She states that at the police station he was taken to a room where he was severely beaten with metal objects by several policemen for many hours. Her son identifies one of the assailants as Mr. K., a police captain and father of the victim of the alleged rape. The author further claims that Mr. K. forced her son to write a confession to the alleged rape. She explains that he declined to make any complaints to a man in civilian dress who subsequently came into the interrogation room to ask him some questions, fearing that he would be beaten again if

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he complained. The author claims that her son has suffered serious injuries as a result of the beatings and states that he is still in bad health. In particular, he suffered severe damage to his left eye. She supplies no medical evidence, since her son has no access to his medical records. However, she provides a report by a doctor of the institution where her son was detained, which shows that he did complain to the doctor about the state of his eye. Furthermore, she has put before the Committee an extensive series of medical records aimed at showing that he was in good health until 1992.

3.2 With regard, in particular, Mr. Zheludkov's physical condition while detained and the lack of medical attention in the institution in which he was detained, the author also alleges that her son at one time suffered from methane poisoning, but that her efforts to secure medicine for him were hindered. With regard to the conditions of detention in general, the author states that the institution is severely overcrowded and that there is an alarming shortage of food, medicaments and other "absolutely essential things".

...

8.2 The Committee must decide whether the State party violated Mr. Zheludkov's rights under articles 9, paragraphs 2 and 3, and article 10, paragraph 1 of the Covenant. The Committee notes the author's claim that her son was held for more than 50 days without being informed of the charges against him and that he was not brought before a competent judicial authority during this period, and further, that medical attention was insufficient, and that he was allegedly denied access to the information in his medical records.

...

8.4 With regard to the alleged violation of article 10, paragraph 1, in respect of the alleged victim's treatment in detention, in particular as to his medical treatment and access to medical records, the Committee takes note of the State party's reply, according to which Mr. Zheludkov received medical care and underwent examinations and hospitalization during his stay in the centre and the prison, and that a medical certificate based on the medical records was issued, upon request, on 2 March 1994. However, these statements do not contradict the argument presented on behalf of the alleged victim that despite repeated requests, direct access to the actual medical records was denied by the State party's authorities. The Committee is not in a position to determine what the relevance of the medical records in question would be for the assessment of the conditions of Mr. Zheludkov's detention, including medical treatment afforded to him. In the absence of any explanation for such denial, the Committee is of the view that due weight must be given to the author's allegations. Therefore, in the circumstances of the present communication, the Committee concludes that the consistent and unexplained denial of access to medical records to Mr. Zheludkov must be taken as sufficient ground for finding a violation of article 10, paragraph 1, of the Covenant.

9. The Human Rights Committee...is of the view that the facts before it disclose a violation of paragraph 3 of article 9, and paragraph 1 of article 10, of the International Covenant on

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Civil and Political Rights.

10. The Committee is of the view that Mr. Zheludkov is entitled, under article 2, paragraph 3 (a) of the Covenant, to an effective remedy, entailing compensation.

...

Individual Opinion by Ms. Cecilia Medina Quiroga (concurring)

I concur with the Committee's decision in this case, but differ on the reasoning behind it with regard to the existence of a violation of article 10, paragraph 1, of the Covenant, as set out in paragraph 8.4 of the Committee's Views.

I consider that the Committee's reasoning excessively restricts the interpretation of article 10, paragraph 1, by linking the violation of that provision to the possible relevance which the victim's access to the medical records might have had for the medical treatment that he received in prison, in order to assess "the conditions of Mr. Zheludkov's detention, including medical treatment afforded to him".

Article 10, paragraph 1, requires States to treat all persons deprived of their liberty "with humanity and with respect for the inherent dignity of the human person". This, in my opinion, means that States have the obligation to respect and safeguard all the human rights of individuals, as they reflect the various aspects of human dignity protected by the Covenant, even in the case of persons deprived of their liberty. Thus, the provision implies an obligation of respect that includes all the human rights recognized in the Covenant. This obligation does not extend to affecting any right or rights other than the right to personal liberty when they are the absolutely necessary consequence of the deprivation of that liberty, something which it is for the State to justify.

A person's right to have access to his or her medical records forms part of the right of all individuals to have access to personal information concerning them. The State has not given any reason to justify its refusal to permit such access, and the mere denial of the victim's request for access to his medical records thus constitutes a violation of the State's obligation to respect the right of all persons to be "treated with humanity and with respect for the inherent dignity of the human person", regardless of whether or not this refusal may have had consequences for the medical treatment of the victim.

...

For dissenting opinions in this context, see Zheludkov v. Ukraine (726/1996), ICCPR, A/58/40 vol. II (29 October 2002) 12 (CCPR/C/76/D/726/1996) at Individual Opinion by Mr. Nisuke Ando, 20, Individual Opinion by Mr. P. N. Bhagwati, 21, and Individual Opinion by Mr. Rafael Rivas Posada, 23.

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- *Howell v. Jamaica* (798/1998), ICCPR, A/59/40 vol. II (21 October 2003) 21 (CCPR/C/79/D/798/1998) at paras. 2.9, 6.2, 7 and 8.

...

2.9 Two letters dated 6 January and 4 September 1997 from a friend of the author to counsel, describe the conditions of detention, such as the size of the cells, hygienic conditions, the poor diet and the lack of dental care...Hygienic and medical conditions are poor, and so is the food. Due to the poor diet and the lack of dental care, the author lost numerous teeth.

...

6.2 ...[T]aking into account the Committee's earlier views in which it has found the conditions on death row in St. Catherine's District Prison to violate article 10 (1) 4/, the Committee considers that the author's conditions of detention, taken together with the lack of medical and dental care and the incident of the burning of his personal belongings, violate the author's right to be treated with humanity and respect for the dignity of his person under article 10 (1) of the Covenant.

...

7. The Human Rights Committee...is of the view that the facts before it disclose a violation of articles 7 and 10(1) of the Covenant.

8. 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 compensation. The State party is also under an obligation to prevent similar violations in the future.

Notes

...

4/ See particularly *McTaggart v. Jamaica*, communication No. 749/1997.

...

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- *Fabrikant v. Canada* (970/2001), ICCPR, A/59/40 vol. II (6 November 2003) 443 (CCPR/C/79/D/970/2001) at paras. 2.1, 5.3 and 9.3.

...

2.1 In May 1998, the author suffered a heart attack. Angiography showed that four of his arteries were blocked - two almost totally - and allegedly indicated the need for intervention. According to the author, there is no available treatment in Quebec, but there is in British Columbia 1/. He alleges that he has been in contact with a doctor there who is willing to perform the operation but that the prison authorities refuse to transfer him. He lodged a series of internal complaints which he says have been ignored.

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...

5.3 In addition, the author provides an update on his situation, stating that on 12 December 2001, he was transferred to British Columbia to receive angioplasty which was performed on 7 January 2002. Angioplasty was also performed on 19 July 2002. He claims that the fact that this procedure was eventually performed proves that his complaint against Canada is valid. He adds that he would be prepared to withdraw his complaint if the State party can find a doctor to open the remaining three blocked arteries (apparently, angioplasty only managed to open one artery) or grant him access to such a doctor if he should find one, and if it accepts that prisoners themselves and not prison doctors should be permitted to decide which medical procedure they undergo.

...

9.3 The Committee notes the author's claim that he is being denied medical treatment in being refused a transfer to British Columbia to undergo surgery known as "angioplasty". It observes that, the author was transferred to British Columbia on three occasions for the purposes of undergoing angioplasty - a fact which the State party claims renders the communication moot. In his final comments to the Committee, the author claims that he needs angioplasty again and that he will require such treatment regularly in the future. Without considering the issue of whether a detainee has a right to choose or refuse a particular medical treatment, the Committee observes that at any rate the State party remains responsible for the life and well-being of its detainees, and that on at least three previous occasions the State party did transfer the author to British Columbia to undergo the requested procedure. In addition, the Committee notes that insufficient information has been provided to suggest that the authorities have ever failed to determine the most appropriate treatment in accordance with professional medical standards. Thus, on the basis of the information provided, the Committee finds that the author has failed to substantiate for purposes of admissibility his allegation that the State party has violated any articles of the Covenant in his regard. The communication is therefore inadmissible under article 2 of the Optional Protocol.

Notes

1/ The author provides letters from three surgeons who claim that on the basis of his medical chart they would be able to operate and a letter from another doctor with a different opinion.

...

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- *Mulezi v. Democratic Republic of the Congo* (962/2001), ICCPR, A/59/40 vol. II (6 July 2004) 159 at paras. 2.2, 2.4-2.6, 2.8, 5.3, 5.4, 6 and 7.

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...

2.2 At around 5 a.m. on 27 December 1997, members of a military intelligence service of the Congolese Armed Forces - known as “Détection Militaire des Activités Antipatrie” or DEMIAP associated with the regime of Congolese President Laurent Désiré Kabila - called on the author at his home to tell him that his services were required by Commander Mortos. The author was taken to the Gemena military camp, where he was immediately placed in detention. At 9 a.m. he was subjected to an interrogation directed by Commander Mortos concerning his alleged collaboration with the former President of the Congo, General Joseph Désiré Mobutu, and his associates.

...

2.4 When he contested these accusations, the author was brutally beaten up by at least six soldiers. In addition to injuries to the nose and mouth, his fingers were broken. He was tortured again the following day, when he was tied up and beaten all over his body until he lost consciousness. In the course of some two weeks of detention in Gemena, the author was tortured four or five times every day: hung upside down; lacerated; the nail of his right forefinger pulled out with pincers; cigarette burns; both legs broken by blows to the knees and ankles with metal tubing; two fingers broken by blows with rifle butts. Despite his condition, and in particular his loss of mobility, he was not allowed to see a doctor. Like his fellow detainees, the author was unable to leave his cell even for a shower or a walk. He states that he was in a cell measuring 3 metres by 3, which he shared at first with 8 and, eventually, 15 other detainees. Furthermore, since he was being held *incommunicado*, he was not getting enough food, unlike the other prisoners, who were brought food by their families.

2.5 After about two weeks, the author was transferred by air to the Mbandaka military camp, where he was held for 16 months. Again, he was unable to see a doctor, despite his physical condition, notably loss of mobility. He was never informed of any charge against him; he was never brought before a judge; and he was not allowed access to a lawyer. He states that he was held with 20 others in a cockroach-ridden cell measuring roughly 5 metres by 3, with no sanitation, no windows and no mattresses. His food rations consisted of manioc leaves or stalks. Two showers a week were permitted and the soldiers occasionally put the author out in the yard as he could not move by himself. The author states that he eventually obtained some medicines when Médecins sans Frontières (Doctors without Borders) visited the camp.

2.6 In late December 1998, the author’s brother-in-law, Mr. Mungala, managed to locate Mr. Mulezi through an army acquaintance, and paid him a brief visit. It was then that the author learned that, the day after his arrest, soldiers had searched his house and beaten up his wife. Commander Mortos had refused Mrs. Mulezi’s request to travel to the city of Bangui in the Central African Republic in order to receive medical attention, and she died three days later.

...

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2.8 On 25 May 1999, the author bribed some soldiers to take him to the harbour next to the military camp, and a boat owner agreed to help him to leave Mbandaka. The author then managed to escape from Africa to Switzerland. According to a medical certificate from the Geneva University Hospital, the author was hospitalized as soon as he arrived in Switzerland in December 1999, for physical and psychological *sequelae* of the violence he had been subjected to in his country of origin. After intensive medical care, the author has recovered partial mobility, but he requires further treatment if he is to regain his independence to any satisfactory degree.

...

5.3 As to the complaint of a violation of articles 7 and 10, paragraph 1, of the Covenant, the Committee notes that the author has given a detailed account of the treatment he was subjected to during his detention, including acts of torture or ill-treatment and, subsequently, the deliberate denial of proper medical attention despite his loss of mobility. Indeed, he has provided a medical certificate attesting to the *sequelae* of such treatment. Under the circumstances, and in the absence of any counter-argument from the State party, the Committee finds that the author was a victim of multiple violations of article 7 of the Covenant, prohibiting torture and cruel, inhuman and degrading treatment. The Committee considers that the conditions of detention described in detail by the author also constitute a violation of article 10, paragraph 1, of the Covenant.

5.4 With regard to alleged violations of articles 6, paragraph 1, and 23, paragraph 1, of the Covenant, the Committee notes the author's statement that his wife was beaten by soldiers, that Commander Mortos refused her request to travel to Bangui to receive medical attention, and that she died three days later. The Committee considers that these statements, which the State party has not contested although it had the opportunity to do so, and which the author has sufficiently substantiated, warrant the finding that there have been violations of articles 6, paragraph 1, and 23, paragraph 1, of the Covenant as to the author and his wife.

6. The Human Rights Committee...is of the view that the facts before it reveal violations by the Democratic Republic of the Congo of articles 6, paragraph 1; 7; 9, paragraphs 1, 2 and 4; 10, paragraph 1; and 23, paragraph 1, of the Covenant.

7. Under article 2, paragraph 3 (a), of the Covenant, the State party has an obligation to ensure that the author has an effective remedy available. The Committee therefore urges the State party (a) to conduct a thorough investigation of the unlawful arrest, detention and mistreatment of the author and the killing of his wife; (b) to bring to justice those responsible for these violations; and (c) to grant Mr. Mulezi appropriate compensation for the violations. The State party is also under an obligation to take effective measures to ensure that similar violations do not occur in future.

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- *Saidov v. Tajikistan* (964/2001), ICCPR, A/59/40 vol. II (8 July 2004) 164 at paras. 2.9, 2.10 and 6.4.

...

2.9 The author claims that her husband was detained in the Khudzhand District Police building from 25 November 1998 to 12 January 1999, although an arrested person was supposed to be kept there only for a maximum period of three days. On 12 January 1999, Mr. Saidov was transferred to the investigation centre No. 1 in Khudzhand and placed in a collective cell with 16 other detainees; the air circulation was insufficient and the cell was overcrowded. The food consisted exclusively of barley gruel; as her husband suffered from viral hepatitis before his arrest, he could not digest the food provided in the detention centre and he required a special diet, but was unable to obtain one. As a result, her husband's stomach was injured and he was obliged to consume only the food transmitted infrequently by his family.

2.10 On 24 December 1999, the Supreme Court found Mr. Saidov guilty of banditism; participation in a criminal organization; usurpation of power with use of violence; public call for forced modification of the constitutional order; illegal acquisition and storing of fire guns and munitions, terrorism and murder, and sentenced him to death. The same day, he was transferred to death row, and placed in an individual cell measuring 1 by 2 metres, with a concrete floor with no bed but a thin mattress... On 25 June 2000, Mr. Saidov was transferred to Detention Centre SIZO No. 1 in Dushanbe, where, allegedly, conditions of detention and quality of food were identical. The author claims that her husband received only every fourth parcel she sent to him through the penitentiary authorities.

...

6.4 The Committee has taken note of the author's claims under article 10, paragraph 1, of the Covenant, relating to her husband's detention subsequent to the entry into force of the Optional Protocol during the investigation and on death row, due to the lack of medical assistance and the poor conditions of detention as exposed in paragraphs 2.9 and 2.10 above. In the absence of any State party's refutation, once again, due weight must be given to the author's allegations. Accordingly, the Committee concludes that article 10, paragraph 1, has been violated with Mr. Saidov's respect.

- *Madafferi v. Australia* (1011/2001), ICCPR, A/59/40 vol. II (28 July 2004) 208 at paras. 9.2-9.4, 10 and 11.

...

9.2 As to the claim of a violation of article 9, relating to the author's detention, the Committee notes that the author has been detained since 16 March 2001, albeit for part of the period at home. It recalls its jurisprudence that, although the detention of unauthorized

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arrivals is not *per se* arbitrary, remand in custody could be considered arbitrary if it is not necessary in all the circumstances of the case: the element of proportionality becomes relevant. It notes the reasons behind the State party's decision to detain Mr. Madafferi and cannot find that his detention was disproportionate to these reasons. It also notes that although Mr. Madafferi did begin to suffer from psychological difficulties while detained at the Maribynong Immigration Centre until March 2002, at which point and on the advice of doctors, the State party removed him to home detention, he had not displayed any signs of such psychological problems on arrival at the detention centre one year earlier. Thus, although it is a matter of concern to the Committee now, after the events, that the detention of Mr. Madafferi apparently greatly contributed to the deterioration of his mental health, it cannot expect the State party to have anticipated such an outcome. Accordingly, the Committee cannot find that the State party's decision to detain Mr. Madafferi from 16 March 2001 onwards, was arbitrary within the meaning of article 9, paragraph 1, of the Covenant.

9.3 As to Mr. Madafferi's return to Maribyrnong Immigration Detention Centre on 25 June 2003, where he was detained until his committal to a psychiatric hospital on 18 September 2003, the Committee notes the State party's argument that as Mr. Madafferi had by then exhausted domestic remedies, his detention would facilitate his removal, and that the flight risk had increased. It also observes the author's arguments, which remain uncontested by the State party, that this form of detention was contrary to the advice of various doctors and psychiatrists, consulted by the State party, who all advised that a further period of placement in an immigration detention centre would risk further deterioration of Mr. Madafferi's mental health. Against the backdrop of such advice and given the eventual involuntary admission of Mr. Madafferi to a psychiatric hospital, the Committee finds that the State party's decision to return Mr. Madafferi to Maribyrnong and the manner in which that transfer was affected was not based on a proper assessment of the circumstances of the case but was, as such, disproportionate. Consequently, the Committee finds that this decision and the resulting detention was in violation of article 10, paragraph 1, of the Covenant. In the light of this finding in respect of article 10, a provision of the Covenant dealing specifically with the situation of persons deprived of their liberty and encompassing for such persons the elements set out generally in article 7, it is not necessary to separately consider the claims arising under article 7.

9.4 The Committee notes the authors' claim that Mr. Madafferi's rights were violated under articles 10, paragraph 1, and 7 also, on the grounds of his conditions of detention, while detained in the detention centre; his alleged ill-treatment including the events surrounding the birth of his child; and, in particular, the State party's failure to address the deterioration of his mental health and to take appropriate action. The Committee recalls that Mr. Madafferi spent a first period in the detention centre between 16 March 2001 and March 2002, and was released into home detention after a decision of the Minister in February 2002, on the basis of medical evidence. Although the Committee considers it unfortunate that the

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State party did not react more expeditiously in implementing the Minister's decision, which the State party has acknowledged took six weeks, it does not conclude that such delay in itself violated any of the provisions of the Covenant. Equally, the Committee does not find that the conditions of Mr. Madafferi's detention or the events surrounding the birth of his child or return into detention, amount to a violation of any of the provisions of the Covenant beyond the finding already made in the previous paragraph.

...

10. The Human Rights Committee...is of the view that the State party has violated the rights of Mr. Francesco Madafferi under articles 10, paragraph 1, of the Covenant. Moreover, the Committee considers that the removal by the State party of Mr. Madafferi would, if implemented, constitute arbitrary interference with the family, contrary to article 17, paragraph 1, in conjunction with article 23, of the Covenant in respect of all of the authors, and additionally, a violation of article 24, paragraph 1, in relation to the four minor children due to a failure to provide them with the necessary measures of protection as minors.

11. 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 and appropriate remedy, including refraining from removing Mr. Madafferi from Australia before he has had the opportunity to have his spouse visa examined with due consideration given to the protection required by the children's status as minors. The State party is under an obligation to avoid similar violations in the future.

- *Rouse v. The Philippines* (1089/2002), ICCPR, A/60/40 vol. II (25 July 2005) 123 at paras. 2.22, 7.8, 8 and 9.

...

2.22 From 2001, while in prison, the author allegedly experienced extensive suffering provoked by kidney stones. The author reports that all scheduled tests at an outside hospital were postponed for administrative reasons not imputable to the author (failure of the guards to come to work, lack of authorization of the Department of Justice, insufficient requests from the prison's doctors). As a result, the requisite tests were not made and the author did not receive an effective diagnosis and treatment. He submits a copy of a medical certificate dated 13 March 2003, resulting from a medical examination performed that day, recommending that the author be granted conditional pardon and voluntary deportation so that a thorough examination and possible operation could be done in the United States.

...

7.8 As to the author's claim under article 7, the Committee recalls that States parties are under an obligation to observe certain minimum standards of detention, which include provision of medical care and treatment for sick prisoners, in accordance with rule 22 (2) of the Standard Minimum Rules for the Treatment of Prisoners.^{3/} It is apparent from the

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author's uncontested account that he suffered from severe pain due to aggravated kidney problems, and that he was not able to obtain proper medical treatment from the prison authorities. As the author suffered such pain for a considerable amount of time, from 2001 up to his release in September 2003, the Committee finds that he was the victim of cruel and inhuman treatment in violation of article 7. In the light of this finding, it is unnecessary to consider the author's additional claim under article 7.

8. The Human Rights Committee...is of the view that the facts before it disclose a violation of articles 14, paragraphs 1 and 3 (c) and (e); 9, paragraph 1; and 7 of the International Covenant on Civil and Political Rights.

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 adequate compensation, *inter alia* for the time of his detention and imprisonment.

Notes

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3/ Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council in its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977; see *Human Rights: A Compilation of International Instruments* (United Nations publication, Sales No. E.02.XIV.4), chap. J, sect. 34.

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- *Fijalkovska v. Poland* (1061/2002), ICCPR, A/60/40 vol. II (26 July 2005) 103 at paras. 2.1-2.6, 4.3-4.5, 8.2-8.5, 9 and 10.

...

2.1 The author has been suffering from schizophrenic paranoia since 1986. On 12 February 1998, she was committed to the Provincial Psychiatric Therapeutic Centre (hereinafter the "psychiatric institution") in Torun. She was committed under article 29 of the Law on Psychiatric Health Protection, by order of the Torun District Court of 5 February 1998.

2.2 On 29 April 1998, the author was permitted to leave the psychiatric institution, but continued her treatment as an outpatient; treatment was completed on 22 July 1998.

2.3 On 1 June 1998, the author went to the court registry to examine her case file and requested copies of the transcript of the court hearing and decision of 5 February 1998. She received a copy of the decision on 18 June 1998 at the psychiatric institution. On 24 June 1998, she lodged an appeal against the Torun District Court's decision of 5 February 1998.

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On 26 June 1998, the Regional Court dismissed her appeal as she had missed the statutory deadline.^{1/}

2.4 On 1 July 1998, the author applied to the Regional Court to establish a new time limit for lodging her appeal. On 16 September 1998, the Regional Court refused her request. On 19 October 1998, the Torun Provincial Court similarly rejected the author's appeal against the decision of the Regional Court. The decision contained instructions on how to appeal to the Supreme Court.

2.5 On 24 November 1998 and following a decision of the Provincial Court of 20 October 1998, the author was assigned a legal aid lawyer to prepare her appeal to the Supreme Court. On 21 April 1999, the Supreme Court rejected the author's appeal.

2.6 On 1 September 1999, the Supreme Court rejected, for lack of competence, the author's request to review the constitutionality of the provisions of the Law on Psychiatric Health Protection.

...

4.3 The State party...noted that on 17 December 1997, the author's sister had requested the Torun District Court, under article 29 of the Mental Health Protection Act, to commit the author to a psychiatric institution as she suffered from schizophrenia. She had previously been hospitalized from 29 November 1996 to 18 February 1997, when her illness was brought under control. However, a few weeks after her discharge from hospital, her state of health deteriorated as she stopped taking her medication. She also became aggressive. In support of her application, the author's sister submitted a medical certificate issued by a psychiatrist, who stated that failure to confine the author to a psychiatric institution would cause serious deterioration of her mental health. He also confirmed that such treatment would help improve her mental health.

4.4 On 17 December 1997, and in order to corroborate the evidence submitted by the author's sister, the Torun District Court ordered that the author be independently examined. On 22 December 1997, the court-appointed medical expert informed the court that the author had not appeared when summoned for the examination. On the same day, the court ordered the author to appear for an examination on 30 December 1997. The author again ignored the summons. The court scheduled another psychiatric examination for 12 January 1998; on that day, the author was escorted to the examination by the police.

4.5 The expert who conducted the examination concluded that the author needed treatment in a psychiatric institution. On 5 February 1998 and on the basis of this evidence, the Torun District Court ordered the author's committal. The author failed to appear in court. Thus, the State party argued that there were serious grounds for subjecting the author to compulsory treatment and the decision was taken in accordance with the relevant provisions of Polish

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law. It concluded that the author has not submitted any reliable arguments in support of her submission concerning allegedly cruel, inhuman or degrading treatment.

...

8.2 As to whether the State party violated article 9 of the Covenant by committing the author to a psychiatric institution, the Committee notes its prior jurisprudence that treatment in a psychiatric institution against the will of the patient constitutes a form of deprivation of liberty that falls under the terms of article 9 of the Covenant. ^{5/} As to whether the committal was lawful, the Committee notes that it was carried out in accordance with the relevant articles of the Mental Health Protection Act and was, thus, lawfully carried out.

8.3 Concerning the possible arbitrary nature of the author's committal, the Committee finds it difficult to reconcile the State party's view that although the author was recognized, in accordance with the Act, to suffer from deteriorating mental health and inability to provide for her basic needs, she was at the same time considered to be legally capable of acting on her own behalf. As to the State party's argument that "mental illness cannot be equated to a lack of legal capacity", the Committee considers that confinement of an individual to a psychiatric institution amounts to an acknowledgement of that individual's diminished capacity, legal and otherwise. The Committee considers that the State party has a particular obligation to protect vulnerable persons within its jurisdiction, including the mentally impaired. It considers that as the author suffered from diminished capacity that might have affected her ability to take part effectively in the proceedings herself, the court should have been in a position to ensure that she was assisted or represented in a way sufficient to safeguard her rights throughout the proceedings. The Committee considers that the author's sister was not in a position to provide such assistance or representation, as she had herself requested the committal order in the first place. The Committee acknowledges that circumstances may arise in which an individual's mental health is so impaired that so as to avoid harm to the individual or others, the issuance of a committal order, without assistance or representation sufficient to safeguard her rights, may be unavoidable. In the present case, no such special circumstances have been advanced. For these reasons, the Committee finds that the author's committal was arbitrary under article 9, paragraph 1, of the Covenant.

8.4 The Committee further notes that although a committal order may be appealed to a court, thereby allowing the individual to challenge the order, in this case, the author, who had not even been served with a copy of the order, nor been assisted or represented by anyone during the hearing who could have informed her of such a possibility, had to wait until after her release before becoming aware of the possibility of, and actually pursuing, such an appeal. Her appeal was ultimately dismissed as having been filed outside the statutory deadline. In the Committee's view, the author's right to challenge her detention was rendered ineffective by the State party's failure to serve the committal order on her prior to the deadline to lodge an appeal. Therefore, in the circumstances of the case, the Committee, finds a violation of article 9, paragraph 4, of the Covenant.

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8.5 In light of a finding of a violation of article 9, the Committee need not consider whether there was also a violation of article 14 of the Covenant.

9. The Human Rights Committee...is of the view that the State party has violated article 9, paragraphs 1 and 4, of the International Covenant on Civil and Political Rights.

10. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an adequate remedy, including compensation, and to make such legislative changes as are necessary to avoid similar violations in the future. The State party is under an obligation to avoid similar violations in the future.

Notes

1/ According to the decision, dated 26 June 1998, of the Regional Court, the statutory deadline was 26 February 1998.

...

5/ Communication No. 754/1997, *A. v. New Zealand*, Views adopted on 15 July 1999.

CAT

- *G. R. B. v. Sweden* (83/1997), CAT, A/53/44 (15 May 1998) 92 at paras. 2.2, 2.3, 3.2 and 6.7.

...

2.2 On 9 May 1991, the author left Ukraine to visit her parents, and she arrived in Peru on 11 May 1991. She intended to stay in Peru until August 1991. When arriving in Palcamayo she learnt from her family that her parents' house had been searched by government soldiers in February the same year. The soldiers had confiscated books and magazines, some of which had been sent by the author from Ukraine. The author's parents had been taken to a prison, where the father had been severely beaten and tortured before they were released. Her father told the author that she should return to Ukraine as soon as possible since it was dangerous for her to stay in Peru. She nevertheless decided to stay a couple of days with relatives in Tarma.

2.3 On 16 May 1991, the author took a bus from Tarma to Palcamayo in order to visit her parents. According to the author, the bus was stopped on the way by two men belonging to the Sendero Luminoso. They forced the author off the bus and she was raped and held as a prisoner for one or two nights before she managed to escape. Her parents reported the matter to the police, but according to the author they did not show any interest in the matter. The author then returned to Ukraine on 19 May 1991.

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...

3.2 The author...claims that, in view of her fragile psychiatric condition and the severe post-traumatic stress disorder from which she is suffering as a result of her having been raped by Sendero Luminoso members, the deportation as such would constitute a violation of article 16 of the Convention.

...

6.7 The Committee must...decide whether, pursuant to paragraph 1 of article 16, the author's forced return would constitute cruel, inhuman or degrading treatment or punishment not amounting to torture as defined in article 1, in view of the author's poor state of health. The Committee notes the medical evidence presented by the author demonstrating that she suffers severely from post-traumatic stress disorder, most probably as the consequence of the abuse faced by the author in 1991. The Committee considers, however, that the aggravation of the author's state of health possibly caused by her deportation would not amount to the type of cruel, inhuman or degrading treatment envisaged by article 16 of the Convention, attributable to the State party.

- *K. K. v. Switzerland* (186/2001), CAT, A/59/44 (11 November 2003) 159 (CAT/C/31/D/186/2001) at paras. 3.1, 3.4, 6.8 and 7.

...

3.1 The complainant claims that his forcible return to Sri Lanka would constitute a violation by the State party of article 3 of the Convention, since he would face a high risk of torture if he were deported to that country, as a young single male Tamil who had previously been arrested and tortured several times as a suspected LTTE activist.

...

3.4 The complainant argues that, because of his post-traumatic stress disorder, he is likely to show uncontrolled reactions in situations of danger such as raids and street inspections, which would further increase the risk of arrest and subsequent torture by the police. Moreover, no adequate medical and therapeutic treatment exists in Sri Lanka for traumatized persons.

...

6.8 With regard to the alleged absence of adequate psychiatric treatment for the complainant's post-traumatic stress disorder in Sri Lanka, the Committee considers that the aggravation of the complainant's state of health possibly resulting from his deportation to Sri Lanka would not amount to torture within the meaning of article 3, read in conjunction with article 1, of the Convention, which could be attributed to the State party itself.g/

...

7. The Committee against Torture...concludes that the complainant's removal to Sri Lanka by the State party would not constitute a breach of article 3 of the Convention.

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Notes

...

g/ See, *mutatis mutandis*, communication No. 83/1997, *G.R.B. v. Sweden*, decision adopted 15 May 1998, para. 6.7.

- *Dhaou Belgacem Thabti v. Tunisia* (187/2001), CAT, A/59/44(14 November 2003) 167 (CAT/C/31/D/187/2001) at paras. 2.11, 2.12, and 10.6-10.8.

...

2.11 On 4 June 1991, the complainant appeared before the military examining magistrate, Major Ayed Ben Kayed. The complainant states that, during the hearing, he denied the charges against him of having attempted a *coup d'état*, and that he was refused the assistance of counsel.

2.12 The complainant claims that he was then placed in solitary confinement in the premises of the Ministry of the Interior (DST), from 4 June to 28 July 1991, and refused all visits, mail, medicine and necessary medical attention, except for one visit, on 18 July 1991, by Dr. Moncef Marzouki, President of the Tunisian Human Rights League. The complainant adds that he was not fed properly, that he was denied the right to practise his religion and that he was once again subjected to torture.

...

10.6 The Committee observes that article 13 of the Convention does not require either the formal lodging of a complaint of torture under the procedure laid down in national law or an express statement of intent to institute and sustain a criminal action arising from the offence, and that it is enough for the victim simply to bring the facts to the attention of an authority of the State for the latter to be obliged to consider it as a tacit but unequivocal expression of the victim's wish that the facts should be promptly and impartially investigated, as prescribed by this provision of the Convention.p/

10.7 The Committee notes, as already indicated, that the complainant did complain of ill-treatment to the Bouchoucha military court, and resorted to hunger strikes in protest at the conditions imposed on him. Yet notwithstanding the jurisprudence under article 13 of the Convention, the Committee notes the State party's position maintaining that the complainant should have made formal use of domestic remedies in order to lodge his complaint, for example by presenting to the court a certificate proving that a complaint had been lodged with the office of the public prosecutor, or displaying obvious traces of torture or ill-treatment, or submitting a medical report. On this latter point, to which the Committee wishes to draw its attention, it is clear that the complainant maintains that the president of the Bouchoucha court ignored his complaints of torture on the grounds that he had no

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medical report in his possession, that the complainant was informed only during his trial of the medical checks carried out on a portion of the accused during remand, and that the president of the court ignored his demands for his right to a medical report to be respected. On the other hand, the State party maintains that the complainant voluntarily opted not to request a medical examination although the court had ordered such examinations for all prisoners who wished to undergo one. The Committee refers to its consideration of the report submitted by Tunisia in 1997, at which time it recommended that the State party should ensure that medical examinations are provided automatically following allegations of abuse, and thus without any need for the alleged victim to make a formal request to that effect.

10.8 In the light of its practice relating to article 13 and the observations set out above, the Committee considers that the breaches enumerated are incompatible with the obligation stipulated in article 13 to proceed to a prompt investigation.

Notes

...

p/ Communications No. 6/1990 (*Henri Unai Parot v. Spain*) and No. 59/1996 (*Encarnación Blanco Abad v. Spain*).

See also:

- *Imed Abdelli v. Tunisia* (188/2001), CAT, A/59/44 (14 November 2003) 187 (CAT/C/31/D/188/2001) at paras. 10.6-10.8.
- *Bouabdallah Ltaief v. Tunisia* (189/2001), CAT, A/59/44 (14 November 2003) 207 (CAT/C/31/D/189/2001) at paras. 10.6-10.8.

- *A. I. v. Switzerland* (182/2001), CAT, A/59/44 (12 May 2004) 139 at paras. 6.6 and 6.8.

...

6.6 Insofar as the complainant argues that his post-traumatic stress disorder would result in uncontrolled reactions in stressful situations, thereby increasing the risk of his arrest by the Sri Lankan police, the Committee observes that the absence of any criminal proceedings against the complainant in the past, as well as his low political profile, can in turn be adduced as factors likely to lower any risk of serious consequences, should he be arrested again.

...

6.8 With regard to the question of whether the complainant would be able to receive adequate psychiatric treatment for his post-traumatic stress disorder in Sri Lanka, the Committee recalls that the aggravation of the complainant's state of health possibly resulting from his deportation to Sri Lanka would not amount to torture within the meaning of article

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3, read in conjunction with article 1 of the Convention, which could be attributed to the State party itself.