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III. JURISPRUDENCE

ICCPR

- *Perdomo v. Uruguay* (8/1977) (R.2/8), ICCPR, A/35/40 (3 April 1980) 111 at paras. 14(i), 14(ii) and 16.

...

14. The Committee...decides to base its views on the following considerations:

(i) Alcides Lanza Perdomo was arrested for investigation on 2 February 1976 and detained under the prompt security measures as stated by the Government. He was kept incommunicado for many months...[A]fter nearly 21 months in detention, he was sentenced for that offence by a military judge to three years severe imprisonment, less the period already spent in detention. Throughout his period of detention and during his trial he had no effective access to legal assistance. Although he had served his sentence on 2 February 1979, he was not released until 1 July 1979. His present state of physical and mental ill-health for which no other explanation has been offered by the Uruguayan Government, confirms the allegations of ill-treatment which he suffered while under detention.

(ii) Beatriz Weismann de Lanza was arrested for investigation on 17 February 1976 and detained under the prompt security measures, as stated by the Government. She was kept incommunicado for many months...She was tried and sentenced in April 1978 by a military judges at which time her offence was deemed to be purged by the period spent in custody pending trial. She was, however, kept in detention until 11 February 1979. Throughout her period of detention and during her trial she had no effective access to legal assistance. With regard to her allegations that during her detention she was subjected to ill-treatment and to physical and mental torture, she states that she complained to the military Judge, but there is no evidence that her complaints have been investigated.

15. ...As regards the observations of the Government...it appears from the above findings of the Committee (para. 14) that various guarantees of due process have not been effectively observed, and that a number of quite specific allegations of ill-treatment and torture have only been deemed by the Government "not worthy of any further comment". In its decision of 26 October 1979 concerning case No. R.2/9, the Committee has emphasized that denials of a general character do not suffice. Specific responses and pertinent evidence (including copies of the relevant decisions of the courts and findings of any investigations which have

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taken place into the validity of the complaints made) in reply to the contentions of the author of a communication are required. The Government did not furnish the Committee with such information. Consequently, the Committee cannot but draw appropriate conclusions on the basis of the information before it.

16. The Human Rights Committee...is of the view that the facts set out above (para. 14), in so far as they continued or occurred after 23 March 1976 (the date on which-the Covenant and the Optional Protocol entered into force for Uruguay), disclose, for the reasons set out above (para. 15) violations of the International Covenant on Civil and Political Rights, in particular:

with respect to both Alcides Lanza Perdomo and Beatriz Weismann de Lanza;

of article 7 and article 10 (1), because of the treatment which they received during their detention...

See also:

- *Ramírez v. Uruguay* (R.1/4), ICCPR, A/35/40 (23 July 1980) 121 at paras. 15, 17 and 18.
- *Weinberger v. Uruguay* (28/1978) (R.7/28), ICCPR, A/36/40 (29 October 1980) 114 at paras. 12-14 and 16.

...

12. The Committee therefore decides to base its views on the following facts which have either been essentially confirmed by the State party or are uncontested except for denials of a general character offering no particular information or explanation: Ismael Weinberger Weisz was arrested at his home in Montevideo, Uruguay, on 25 February 1976 without any warrant of arrest. He was held incommunicado at the prison of "La Paloma" in Montevideo for more than 100 days and could be visited by family members only 10 months after his arrest. During this period, he was most of the time kept blindfolded with his hands tied together. As a result of the treatment received during detention, he suffered serious physical injuries (one arm paralysed, leg injuries and infected eyes) and substantial loss of weight.

13. As regards the treatment to which Ismael Weinberger has been subjected, the Committee notes that the State party did not at all comment thereon in its submission of 10 July 1980.

14. The Human Rights Committee has considered whether acts and treatment, which are *prima facie* not in conformity with the Covenant, could for any reasons be justified under the Covenant in the circumstances. The Government has referred to provisions of Uruguayan

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law, including the "prompt security measures". The Covenant (art. 4) allows national measures derogating from some of its provisions only in strictly defined circumstances, and the Government has not made any submissions of fact or law to justify such derogation. Moreover, some of the facts referred to above raise issues under provisions from which the Covenant does not allow any derogation under any circumstances.

...

16. The Human Rights Committee...is of the view that these facts, in so far as they have occurred after 23 March 1976 (the date on which the Covenant entered into force in respect of Uruguay), disclose violations of the Covenant, in particular of:

Articles 7 and 10 (1), because of the severe treatment which Ismael Weinberger received during the first 10 months of his detention...

- *Carballal v. Uruguay* (33/1978) (R.8/33), ICCPR, A/36/40 (27 March 1981) 125 at paras. 10, 11 and 13.

...

10. As to the allegations of torture, the Committee notes that they relate explicitly to events said to have occurred prior to 23 March 1976 (the date on which the Covenant and the Optional Protocol entered into force for Uruguay). As regards the harsh conditions of Mr. Buffo Carballal's detention, which continued after that date, the State party has adduced no evidence that the allegations were duly investigated. A refutation in general terms to the effect that "in no Uruguayan place of detention may any situation be found which could be regarded as violating the integrity of persons" is not sufficient. The allegations should have been investigated by the State party, in accordance with its laws and its obligations under the Covenant and the Optional Protocol.

11. The Human Rights Committee has considered whether acts and treatment which *prima facie* are not in conformity with the Covenant could, for any reasons be justified under the Covenant in the circumstances. The Government has referred to provisions of Uruguayan law, including the "prompt security measures". The Covenant (art. 4) allows national measures derogating from some of its provisions only in strictly defined circumstances, and the Government has not made any submission of fact or law to justify derogation. Moreover, some of the facts referred to above raise issues under provisions from which the Covenant does not allow any derogation under any circumstances.

...

13. The Human Rights Committee...is of the view that these facts, in so far as they have occurred on or after 23 March 1976 (the date on which the Covenant entered into force in respect of Uruguay) or continued or had effects which themselves constitute a violation after that date, disclose violations of the Covenant, in particular:

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of articles 7 and 10 (1), because of the conditions under which Mr. Buffo Carballal was held during his detention...

- *De Bouton v. Uruguay* (37/1978) (R.9/37), ICCPR, A/36/40 (27 March 1981) 143 at paras. 10-13.

...

10. The Committee decides to base its view on the following facts which have either been essentially confirmed by the State Party or are uncontested except for denials of a general character offering no particular information or explanation: Esther Soriano de Bouton was arrested on 12 February 1976, allegedly without any warrant. Although her arrest place before the coming into force of International Covenant on Civil and Political Rights and of the optional Protocol thereto on 23 March 1976 in respect of Uruguay, her detention without trial continued after 23 March 1976. Following her arrest, Esther Soriano de Bouton was detained for eight months incommunicado, before she was taken before a military court which, within one month, decided that she was innocent and ordered her release. Her release was effected one month later on 25 January 1977.

11. As regards the serious allegations of ill-treatment made by Ms. Soriano de Bouton, the State Party has adduced no evidence that these allegations have been investigated. A refutation of these allegations in general terms, as contained in the State party's submission of 10 July 1980, is not sufficient.

12. The Human Rights Committee has considered whether acts and treatment, which are prima facie not in conformity with the Covenant, could for any reasons be justified under the Covenant in the circumstances. The Government, in its submission, has referred to the provisions of Uruguayan law, such as the prompt security measures. However, the Covenant (art.4) does not allow national measures derogating from any of its provisions except in strictly defined circumstances and the Government has not made any submissions of fact or law to justify such derogation. Moreover, some of the facts referred to above raise issues under provisions from which the Covenant does not allow any derogations under any circumstances.

13. The Human Rights Committee...is of the view that the facts as found by it, in so far as they have occurred after 23 March 1976 (the date on which the Covenant entered into force in respect of Uruguay), disclose violations of the Covenant, in particular:

Of articles 7 and 10(1), on the basis of evidence of inhuman and degrading treatment of Esther Soriano de Bouton...

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- *Pietraroia v. Uruguay* (44/1979) (R.10/44), ICCPR, A/36/40 (27 March 1981) 153 at paras. 13.2, 14 and 17.

...

13.2 Rosario Pietraroia Zapala was arrested in Uruguay, without a warrant for arrest, early in 1976 (according to the author on 19 January 1976; according to the state party on 7 March 1976), and held incommunicado under the prompt security measures for four to six months. During the first period of his detention he was at least on two occasions committed to the military hospital...

14. The Human Rights Committee has considered whether acts and treatment which are prima facie not in conformity with the Covenant could, for any reasons, be justified under the Covenant in the circumstances. The Government has referred to provisions of Uruguayan law, including the prompt security measures. The Covenant (art.4) allows national measures derogating from some of its provisions only in strictly defined circumstances, and the Government has not made any submissions of fact or law to justify such derogation. Moreover, some of the facts referred to above raise issues under provisions from which the Covenant does not allow any derogations under any circumstances.

...

17. The Human Rights Committee...is of the view that these facts, in so far as they occurred after 23 March 1976 (the date on which the Covenant into force in respect of Uruguay), disclose violations of the Covenant, in particular:

...

Of article 10(1), because he was held incommunicado for months...

See also:

- *Casariego v. Uruguay* (56/1979) (R.13/56), ICCPR, A/36/40 (29 July 1981) 185 at paras. 9 and 11.
- *Gonzalez v. Uruguay* (R.2/10), ICCPR, A/37/40 (29 March 1982) 122 at paras. 1.2 and 15.
- *Machado v. Uruguay* (83/1981) (R.20/83), ICCPR, A/39/40 (4 November 1983) 148 at paras. 11.2 and 13.
- *Conteris v. Uruguay* (139/1983), ICCPR, A/40/40 (17 July 1985) 196 at paras. 9.2 and 10.

- *Setelich / Sendic v. Uruguay* (R.14/63), ICCPR, A/37/40 (28 October 1981) 114 at paras. 16.2 and 20.

...

16.2 Events subsequent to the entry into force of the Covenant: In September 1976, [Raúl Sendic Antonaccio] was transferred to the barracks of Ingenieros in the city of Paso de los Toros. There, from February to May 1978, or for the space of three months, he was subjected

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to torture ("*plantónes*", beatings, lack of food). On 28 November 1979 (date of the author's initial communication), his whereabouts were unknown. He is now detained in the Regimiento-Pablo Galarza No. 2, Department of Durazno, in an underground cell. His present state of health is very poor (because of his hernia, he can take only liquids and is unable to walk without help) and he is not being given the medical attention it requires. In July 1980, he was sentenced to 30 years' imprisonment plus 15 years of special security measures.

...

20. The Human Rights Committee...is of the view that the facts as found by the Committee, in so far as they continued or occurred after 23 March 1976 (the date on which the Covenant and the Optional Protocol entered into force for Uruguay), 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...

- *Pinkney v. Canada* (R.7/27) (27/1978), ICCPR, A/37/40 (29 October 1981) 101 at paras. 23, 26 and 27.

...

23. Mr. Pinkney alleges that he has been subjected to continual racial insults and ill-treatment in prison. He claims, in particular...that prison guards insulted him, humiliated him and physically ill-treated him because of his race, in violation of articles 10(1) and 17(1) of the Covenant...

...

26. ...Mr. Pinkney's allegations that he was insulted, humiliated and physically ill-treated because of his race by prison guards while he was detained...were the subject of inquiries on three occasions by the Inspection and Standards Division of the British Columbia Correction Service...

27. ...Mr. Pinkney has not...submitted to the Committee any contemporary written evidence of complaints of ill-treatment made by him and the Committee finds that it does not have before it any verifiable information to substantiate his allegations of violations of articles 10(1) and 17(1)...The Committee is not in a position to inquire further in this matter.

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- *Bleier v. Uruguay* (R.7/30), ICCPR, A/37/40 (29 March 1982) 130 at paras. 13.3, 13.4 and 14.

...

13.3 With regard to the burden of proof, this cannot rest alone on the author of the communication, especially considering that the author and the State party do not always have equal access to the evidence and that frequently the State party alone has access to relevant information. It is implicit in article 4 (2) of the Optional Protocol that the State party has the duty to investigate in good faith all allegations of violation of the Covenant made against it and its authorities, especially when such allegations are corroborated by evidence submitted by the author of the communication, and to furnish to the Committee the information available to it. In cases where the author has submitted to the Committee allegations supported by substantial witness testimony, as in this case, and where further clarification of the case depends on information exclusively in the hands of the State party, the Committee may consider such allegations as substantiated in the absence of satisfactory evidence and explanations to the contrary submitted by the State party.

13.4 The Committee finds that the disappearance of Eduardo Bleier in October 1975 does not alone establish that he was arrested by Uruguayan authorities. But, the allegation that he was so arrested and detained is confirmed (i) by the information, unexplained and substantially unrefuted by the State party, that Eduardo Bleier's name was on a list of prisoners read out once a week at an army unit in Montevideo where his family delivered clothing for him and received his dirty clothing until the summer of 1976, and (ii) by the testimony of other prisoners that they saw him in Uruguayan detention centres. Also there are the reports of several eyewitnesses that Eduardo Bleier was subjected to severe torture while in detention.

14. It is therefore the Committee's view that the information before it reveals breaches of articles...10(1)...

See also:

- *Marais v. Madagascar* (49/1979), A/38/40 (24 March 1983) 141 at para. 18.2.
- *Simones v. Uruguay*, (R.17/70), ICCPR, A/37/40 (1 April 1982) 174 at paras. 11.2 and 12.

...

11.2 Mirta Cubas Simones was arrested on 27 January 1976, without any warrant for her arrest, in her family's home, in the presence of her mother and sister. For the subsequent three months she was held *incommunicado* at an unknown place. During this time the Uruguayan authorities denied her detention. In July 1976, five months after her arrest, Mirta

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Cubas Simones was brought to trial and charged with the offence of “aiding a conspiracy to violate the law”...

12. Accordingly, the Human Rights Committee...is of the view that the facts as found by it, in so far as they occurred after 23 March 1976 (the date on which the Covenant entered into force in respect of Uruguay), disclose the following violations of the Covenant, in particular:

of article 10(1), because Mirta Cubas Simones was held *incommunicado* for three months and during this period the authorities wrongfully denied that she was detained...

- *Izquierdo v. Uruguay* (R.18/73), ICCPR, A/37/40 (1 April 1982) 179 at paras. 7.8, 7.9, 8 and 9.

...

7.8 After a visit of the International Red Cross to Libertad prison in February/March 1980, Mario Alberto Teti Izquierdo was subjected to physical attacks and threats of death. In August 1980 he was moved to a punishment cell and held in solitary confinement. He was then in a very poor physical and psychological state of health.

7.9 On 26 September 1980 he was moved to another detention establishment for interrogation in connexion with his alleged involvement, together with other detainees, in operations aimed at reactivating a subversive organization (the "Tupamaros" movement) from within the Libertad prison. In this connexion Mario Alberto Teti Izquierdo faces new charges. His family was unable to obtain information about his whereabouts until May 1981, when he was brought back to Libertad. From September 1980 to May 1981 he was held *incommunicado*. When Mario Alberto Teti Izquierdo was transferred from Libertad he weighed 80 kilograms, and after his return only 60 kilograms.

8. As regards the allegations of ill-treatment made by the author, the State party has adduced no evidence that these allegations have been investigated.

9. The Human Rights Committee...is of the view that the facts as found by the Committee, in so far as they continued or occurred after 23 March 1976 (the date on which the Covenant and the Optional Protocol entered into force for Uruguay) disclose the following violations of the International Covenant on Civil and Political Rights:

of articles 7 and 10 (1), because of the ill-treatment which Mario Alberto Teti Izquierdo has been subjected...

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See also:

- *Motta v. Uruguay* (11/1977) (R.2/11), ICCPR, A/35/40 (29 July 1980) 132 at paras. 14-16.
- *Masiotti v. Uruguay* (R.6/25), ICCPR, A/37/40 (26 July 1982) 187 at paras. 11 and 13.

...

11. Carmen Amendola Massiotti was arrested in Montevideo on 8 March 1975, kept incommunicado until 12 September that year and subjected to severe torture. On 17 April 1975 she was brought before a military judge...Until 1 August 1977 she served her sentence at the women's prison "Ex Escuela Naval Dr. Carlos Nery". During the rainy period the water was 5 to 10 cm deep on the floor of the cells. In three of the cells, each measuring 4m by 5m, 35 prisoners were kept. The prison had no open courtyard and the prisoners were kept indoors under artificial light all day. On 1 August 1977 Carmen Amendola Massiotti was transferred to Punta Rieles prison. There she was kept in a hut measuring 5m by 10m. The place was overcrowded with 100 prisoners and the sanitary conditions were insufficient. She was subjected to hard labour and the food was very poor. The prisoners were constantly subjected to interrogations, harassment and severe punishment. Despite having served her sentence on 9 November 1977, she was kept in detention until 11 or 12 December 1977 when the choice was offered to her of either remaining in detention or leaving the country. She opted for the latter and obtained political asylum in the Netherlands.

...

13. The Human Rights Committee...is of the view that the facts as found by the Committee, in so far as they continued or occurred after 23 March 1976 (the date on which the Covenant and the Optional Protocol entered into force for Uruguay) disclose the following violations of the International Covenant on Civil and Political Rights,

In the case of Carmen Amendola Massiotti

of articles 7 and 10 (1), because the conditions of her imprisonment amounted to inhuman treatment...

- *Schweizer v. Uruguay* (66/1980), ICCPR, A/38/40 (12 October 1982) 117 at paras. 11, 17.5 and 19.

...

11. ...David Campora...described the daily life of the prisoners, including their constant harassment and persecution by the guards; the regime of arbitrary prohibitions and unnecessary torments; the combination of solitude and isolation on the one hand and the fact

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of being constantly watched, listened to and followed by microphones and through peepholes on the other hand; the lack of contact with their families, aggravated by worries about the difficulties experienced and pressures exerted on their families; the cruel conditions in the punishment wing in which a prisoner might be confined for up to 90 days at a time; the breakdown of physical and mental health through malnutrition, lack of sunshine and exercise, as well as nervous problems created by tension and ill-treatment. In sum, he asserts that the Libertad Prison is “an institution designed, established and operated with the exclusive objective of totally destroying the individual personality of everyone of the prisoners confined in it”.

...

17.5 On the basis of the information submitted by the initial author and later confirmed by David Alberto Campora Schweizer himself, it cannot be established whether the mistreatment complained of continued or occurred on or after 23 March 1976, the date on which the Covenant entered into force for Uruguay. As far as the period after the coming into force of the Covenant is concerned, both authors refer only in general terms to mistreatment without mentioning any specific incident...The Committee is, however, in a position to conclude that the conditions of imprisonment to which David Campora was subjected at Libertas prison were inhuman (see, in particular, para. 11 above).

...

19. The Human Rights Committee...is of the view that the facts as found by the Committee, in so far as they continued or occurred after 23 March 1976 (the date on which the Covenant and the Optional Protocol entered into force for Uruguay), disclose the following violations of the...Covenant:

...

Of article 10(1) because he was detained under inhuman prison conditions...

See also:

- *Cariboni v. Uruguay* (159/1983), ICCPR, A/43/40 (27 October 1987) 184 at paras. 9.2 and 10.
- *Marais v. Madagascar* (49/1979), ICCPR, A/38/40 (24 March 1983) 141 at paras. 17.4 and 19.

...

17.4 In December 1979, Dave Marais was transferred from the Antananarivo Prison to a cell measuring 1m by 2m in the basement of the political police prison at Ambohibao and has been held incommunicado ever since, except for two brief transfers to Antananarivo for trial proceedings.

...

19. The Human Rights Committee...is of the view that the communication discloses

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violations of the Covenant, in particular,

of articles 7 and 10 (1), because of the inhuman conditions in which Dave Marais, Jr., has been held in prison in Madagascar *incommunicado* since December 1979...

See also:

- *Wight v. Madagascar* (115/1982) (R.25/115), ICCPR, A/40/40 (1 April 1985) 171 at paras. 15.2 and 17.
- *Larrosa v. Uruguay* (88/1981) (R.22/88), ICCPR, A/38/40 (29 March 1983) 180 at paras. 10.3, 11.3, 11.5 and 12.

...

10.3 Events subsequent to the entry into force of the Covenant:...Gustavo Larrosa has been frequently punished in prison, and from October 1980 to March 1981 he was allowed to receive only one visit. He has also been held in what is called "La Isla", a prison wing of small cells without windows, where the artificial light is left on 24 hours a day and the prisoner was kept in solitary confinement for over a month.

...

11.3 With respect to the state of health of the alleged victim, the Committee finds that the author's allegations as to his brother's loss of hearing in one ear, loss of weight and impaired vision called for more precise information from the State party. Similarly, with respect to general prison conditions and the allegations of ill-treatment made by the author, the State party has adduced no evidence that these allegations have been adequately investigated. A refutation of these allegations in general terms, as contained in the State party's submissions, is not sufficient.

...

11.5 With regard to the burden of proof, the Committee has already established in its views in other cases (e.g., R.7/30) that said burden cannot rest alone on the author of the communication, especially considering that the author and the State party do not always have equal access to the evidence and that frequently the State party alone has access to relevant information. It is implicit in article 4 (2) of the Optional Protocol that the State party has the duty to investigate in good faith all allegations of violation of the Covenant made against it and its authorities.

12. The Human Rights Committee...is of the view that the facts as found by the Committee, in so far as they continued or occurred after 23 March 1976 (the date on which the Covenant and the Optional Protocol entered into force for Uruguay), disclose violations of the International Covenant on Civil and Political Rights, particularly:

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of articles 7 and 10 (1), because Gustavo Raúl Larrosa Bequio has not been treated in prison with humanity and with respect for the inherent dignity of the human person.

- *Estrella v. Uruguay* (74/1980) (R.18/74), ICCPR, A/38/40 (29 March 1983) 150 at paras. 1.13, 8.5, 9.2 and 10.

...

1.13 The author states that the detainees' correspondence is subjected to severe censorship, that they cannot write to their lawyers or to international organizations and that prison officials who act as "censors" arbitrarily delete sentences and even refuse to dispatch letters. He claims that during his entire detention he was given only 35 letters, though he certainly received hundreds. During a seven-month period he was given none. He states that Lieutenant Rodriguez and Lieutenant Curruchaga asked him to sign for the receipt of letters which he never saw.

...

8.5 At Libertad prison the author was subjected to continued ill-treatment and to arbitrary punishments including 30 days in solitary confinement in a punishment cell and seven months without mail or recreation and subjected to harassment and searches. His correspondence was subjected to severe censorship...

...

9.2 With regard to the censorship of Miguel Angel Estrella's correspondence, the Committee accepts that it is normal for prison authorities to exercise measures of control and censorship over prisoners' correspondence. Nevertheless, article 17 of the Covenant provides that "no one shall be subjected to arbitrary or unlawful interference with his correspondence"...the degree of restriction must be consistent with the standard of humane treatment of detained persons required by article 10(1)...In particular, prisoners should be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, by correspondence as well as by receiving visits...[T]he Committee finds that Miguel Angel Estralla's correspondence was censored and restricted...to an extent which the State party has not justified as compatible with article 17 read in conjunction with article 10(1) of the Covenant.

10. The Human Rights Committee...is of the view that the facts, as found by the Committee, disclose the following violations of the International Covenant on Civil and Political Rights, in particular,

...

of article 17 read in conjunction with article 10(1), because of the extent to which his correspondence was censored and restricted at Libertad prison.

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- *Vasilskis v. Uruguay* (80/1980) (R.20/80), ICCPR, A/38/40 (31 March 1983) 173 at paras. 2.6, 2.7, 10.3, 10.4 and 11.

...

2.6 With respect to the conditions of her imprisonment, the author states that his sister is interned at the EMR No. 2 (*Penal Punta de Rieles*), which is used exclusively for the detention of women political prisoners and is not administered by special personnel instructed in the treatment of women prisoners, but by military personnel on short assignment. She occupies a cell with 14 other women prisoners. If she fails to perform her tasks she is allegedly punished by solitary confinement for up to three months and by prohibition of visits, denial of cigarettes, etc. Visits may occur every 15 days and last only half an hour. The only persons authorized to visit her are close relatives, but no unrelated friends are allowed. The author claims that the worst part of his sister's imprisonment is the arbitrariness of the guards and the severity of the punishment for, *inter alia*, reporting to her relatives on prison conditions or speaking with other inmates at certain times. The inmates allegedly live in a state of constant fear of being again submitted to military interrogation in connection with their prior convictions or with alleged political activities in the prison. The author alleges that the penitentiary system is not aimed at reformation and social rehabilitation of prisoners but at the destruction of their will to resist. They are given a number and are never called by their name. Elena Beatriz Vasilskis is No. 433 of Sector B. Psychological pressures on the inmates are allegedly designed to lead them to denounce other inmates.

2.7 With respect to the state of health of his sister, the author states that she was in excellent physical health at the time of her arrest. He claims that as a direct consequence of torture and eight years' imprisonment (at the time of writing on 7 November 1980) she had diminished vision in both eyes and has lost 40 per cent of the hearing in her left ear. He states that she also suffers from Raynaud's disease, which may have been brought about by prolonged detention in a cold cell and by emotional pressure. Medicines sent to her for the relief of her condition were allegedly never delivered. The loss of hearing was established by a doctor at the Military Hospital between October and November 1979. Raynaud's disease was diagnosed by the cardio-vascular specialist at the military hospital in October 1979. Moreover, the food provided and the conditions of imprisonment are such that his sister has become extremely thin, has retracted gums and many cavities in her teeth. This is allegedly due to an unbalanced diet, deficient in protein and vitamins, and to the almost complete lack of exercise throughout the day, the intense cold (prisoners are forced to take cold baths in the dead of winter) and the total absence of natural light in the cells.

...

10.3 With respect to the state of health of the alleged victim, the Committee finds that the author's precise allegations, which include allegations that her treatment in prison has

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contributed to her ill-health, called for more detailed submissions from the State party. With regard to general prison conditions, the State party has made no attempt to give a detailed description of what it believes the real situation to be. Similarly, with respect to general prison conditions and the serious allegations of ill-treatment made by the author, the State party has adduced no evidence that these allegations have been adequately investigated. A refutation of these allegations in general terms, as contained in the State party's submissions, is not sufficient.

10.4. With regard to the burden of proof, the Committee has already established in its views in other cases (e.g., R.7/30) that said burden cannot rest alone on the author of the communication, especially considering that the author and the State party do not always have equal access to the evidence and that frequently the State party alone has access to relevant information. It is explicitly stated in article 4, paragraph 2, of the Optional Protocol that the State party concerned has the duty to contribute to clarification of the matter. In the circumstances, the appropriate evidence for the State party to furnish to the Committee would have been the medical reports on the state of health of Elena Beatriz Vasilskis specifically requested by the Committee in its decision of 25 March 1982. Since the State party has deliberately refrained from providing such expert information, in spite of the Committee's request, the Committee cannot but draw conclusions from such failure.

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

articles 7 and 10, paragraph 1, because Elena Beatriz Vasilskis has not been treated in prison with humanity and with respect for the inherent dignity of the human person...

- *Caldas v. Uruguay* (43/1979) (R.10/43), ICCPR, A/38/40 (21 July 1983) 192 at paras. 12, 12.1, 13.3, and 14.

...

12. The Committee decides to base its views on the following facts which have either been essentially confirmed by the State party or are uncontested except for denials of a general character offering no particular information or explanation.

12.1 Adolfo Dreshcer Caldas, a former trade-union official, was arrested in Montevideo, Uruguay, on 28 September 1978, by officials who did not identify themselves or produce any judicial warrant and who apparently belonged to the Navy. He was informed that he was arrested under the prompt security measures, but not, it appears, more specifically of the reasons for his arrest. During the first six weeks of his detention he was kept

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incommunicado and his relatives did not know his whereabouts. Recourse to habeas corpus was not available to him...

13.3 The Committee observes that the holding of a detainee incommunicado for six weeks after his arrest is...incompatible with the standard of humane treatment required by article 10(1).

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

...
of article 10(1), because he was kept incommunicado for six weeks after his arrest...

- *Luyeye v. Zaire* (90/1981) (R.22/90), ICCPR, A/38/40 (21 July 1983) 197 at paras. 7.2 and 8.

...

7.2 Luyeye Magana ex-Philibert was arrested on 24 March 1977 when three agents of the Centre Nationale de Documentation furnished with a search warrant, came to his house to carry out a search for no apparent reason...Following the search, though without any warrant of arrest or summons, they requested him to accompany them to the Centre Nationale...Once there...one of the directors...simply ordered him to be kept in detention. While in detention, he was kept in a cell, locked in from morning to night, sleeping on the ground; he was deprived of all contact with his family and he was refused all medical attention...His detention continued until 9 January 1978 when he was released following an amnesty pronounced by the President of the Republic, without ever having been interrogated or given any document relating to the detention...It is further alleged that during his detention, five members of his immediate family died and were buried without his having been able to be present at the funeral...

8. 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 10(1), because, while in detention, he was not treated with humanity...

- *Estradet v. Uruguay* (105/1981) (R.24/105), ICCPR, A/38/40 (21 July 1983) 209 at paras. 10.2 and 11.

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...

10.2 The Committee notes that the State party in its submission of 20 October 1982 has, apart from denials in general terms, replied only to certain of the author's allegations that her son has been ill-treated and held under inhuman prison conditions at Libertad [prison] and, in particular, the State party has not satisfied the Committee that living conditions and the treatment received by Luis Alberto Estradet at Libertad have met the requirements of article 10(1) of the Covenant. In this connection, the Committee recalls its findings in other cases a/ that a practice of inhuman treatment existed at Libertad prison during the period to which the present communication relates and that it has come to this conclusion on the basis of specific accounts by former detainees themselves. The Committee concludes that, in the present case also, Luis Alberto Estradet has not been treated with humanity and with respect for the inherent dignity of the human person as required by article 10(1) of the Covenant.

...

11. 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 10(1) because Luis Alberto Estradet has not been treated in prison with humanity and with respect for the inherent dignity of the human person.

Notes

a/ For the views of the Committee, see annex VIII to the present report concerning communication no.66/1980 (*Campora Schweizer v. Uruguay*), adopted on 12 October 1982, and annex XIII to the present report, concerning communication 74/1980 (*Miguel Estrella v. Uruguay*), adopted on 29 March 1983.

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- *Quinteros v. Uruguay* (107/1981) (R.24/107), ICCPR, A/38/40 (21 July 1983) 216 at paras. 12.3 and 13.

...

12.3 The Human Rights Committee...finds that, on 28 June 1976, Elena Quinteros was arrested on the grounds of the Embassy of Venezuela at Montevideo by at least one member of the Uruguayan police force and that August 1976 she was held in a military detention centre in Uruguay where she was subjected to torture.

13. It is, therefore, the Committee's view that the information before it reveals breaches of articles 10 (1) of the International Covenant on Civil and Political Rights.

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- *Nieto v. Uruguay* (92/1981) (R.23/92), ICCPR, A/38/40 (25 July 1983) 201 at paras. 1.7, 10.4 and 11.

...

1.7 The author alleges that at the Penal de Libertad her father is subjected to inhuman prison conditions. She stresses...“My father shares a cell measuring 2 by 3.50 m with another detainee, and they are kept in it for continuously 23 hours a day; if the weather is good and they are not being punished, they are taken out for one hour in the open air...[M]y father is never taken out of his cell to work, to eat or for anything other than exercise and visits. He can read only those books which pass the military censorship...[D]etainees live under constant fear and are subject to harassment by the guards who are at liberty to impose sanctions on prisoners...From time to time a prisoner is taken out of prison and brought to military quarters in order to be interrogated and tortured...[B]ecause of this situation the physical and mental health of detainees is seriously endangered...

...

10.4 The Committee observes that the State party, in its submission of 11 October 1982, refuted only in general terms the author’s detailed allegations that her father is held under inhuman prison conditions at Libertad...The submission of the State party in this respect are an insufficient answer to the allegations made. The Committee recalls its findings in other cases a/ that a practice of inhuman treatment existed at Libertad prison during the period to which the present communication relates and that it has come to this conclusion on the basis of specific accounts by former detainees themselves. The Committee concludes that, in the present case also Juan Almarati Nieto has not been treated with humanity and with respect for the inherent dignity of the human person as required by article 10(1) of the Covenant.

...

11. 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 10(1) because Juan Almarati Nieto has not been treated in prison with humanity and with respect for the inherent dignity of the human person.

Notes

a/ For the review of the Committee, see annex VIII to the present report concerning communication No.66/1980 (*Campora Schweizer v. Uruguay*), adopted on 12 October 1982, and annex XIII to the present report, concerning communication 74/1980 (*Miguel Estrella v. Uruguay*), adopted on 29 March 1983.

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See also:

- *Acosta v. Uruguay* (162/1983), ICCPR, A/44/40 (25 October 1988) 183 at paras 10.2-10.5 and 11.
- *De Romero v. Uruguay* (85/1981) (R.21/85), ICCPR, A/39/40 (29 March 1984) 159 at paras. 2.2, 2.3 and 13.

...

2.2 ...[Hector Romeo] was reportedly arrested for the first time in September 1970...At the end of 1975 he was sentenced to a five-year prison term which, counting the time he had already spent in detention, was soon finished and his released ordered...From then on, Hector Romeo was allegedly transferred from one police detention centre to another, held incommunicado, and during that time allegedly subjected to torture and ill-treatment in order to have him confess crimes he had not committed...

2.3 According to Jose Valdes Pieri, a former Uruguayan prisoner a present residing in Spain, Hector Romeo was transferred by the military in November 1976 to an unknown place and kept incommunicado until the middle of 1977, when he again appeared in Libertad prison...

...

13. The Human Rights Committee...is of the view that the facts...disclose violations of:

- Article 10, paragraph 1...because Hector Alfredo Romero has not been treated with humanity and with respect for the inherent dignity of the human person, in particular because he was kept incommunicado at an unknown place of detention for several months (from November 1976 to the middle of 1977) during which time his fate and his whereabouts were unknown.

- *Viana v. Uruguay* (110/1981) (R.25/110), ICCPR, A/39/40 (29 March 1984) 169 at paras. 2.7, 14 and 15.

...

2.7 The author...claims, without providing any detail, that on 14 and 15 April 1977 he was interrogated and subjected to torture at Libertad prison, that on 22 November 1978 he was again subjected to torture (giving the names of his torturers in both instances), that he started a hunger strike protesting against this ill-treatment and that in retaliation he was held incommunicado in a punishment cell for 45 days without any medical attention. He claims that in April 1980 he was again held incommunicado because he had spoken with members of the International Red Cross visiting Libertad prison. The author lists the names of several

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Uruguayan officials who allegedly practised torture.

...

14. Concerning the author's allegations of torture, the Committee notes that the periods of torture, except for 14 and 15 April 1977 and 22 November 1978, (see para. 2.7 above) occurred before the entry into force of the Covenant and the Optional Protocol thereto for Uruguay, and that regarding torture alleged to have occurred after 23 March 1976 no details have been provided by the author. These allegations are therefore, in the opinion of the Committee, unsubstantiated. Nevertheless, the information before the Committee evidences that Antonio Viana Acosta was subjected to inhuman treatment.

15. The Human Rights Committee...is of the view that the facts as found by the Committee, in so far as they continued or occurred after 23 March 1976 (the date on which the Covenant and the Optional Protocol entered into force for Uruguay), disclose violations of the International Covenant on Civil and Political Rights, with respect to:

- articles 7 and 10 (1) because Antonio Viana Acosta was subjected to inhuman treatment...
- *Manera v. Uruguay* (123/1982) (R.26/123), ICCPR, A/39/40 (6 April 1984) 175 at paras. 9.2 and 10.

...

9.2 Jorge Manera Lluberas was a civil engineer and principal founder of the Movimiento de Liberacion Nacional-Tuparamos (MLT-T). He was arrested in July 1972; from January to September 1976 he was held at the Pavilion of Cells at the Batallon de Infanteria No.4 "Colonia", where cells measure 1.60 x 2 m, electric lights were kept continuously on, the only piece of furniture was a mattress provided at nights and where detainees had to remain in the cells 24 hours per day in solitary confinement. From September 1976 to August 1977 he was held at Trinidad prison, where prison conditions were described by two witnesses being characterized by dirty cells without light, without furniture, very hot in the summer and very cold in the winter. In April 1978, he was transferred to Colonia, where he was kept in complete isolation for six months; in May 1980 he was transferred to the Batallon de Ingenieros No.3, where he is detained at present.

...

10. 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 10(1), because Jorge Manera Lluberas has not been treated with humanity and with respect for the inherent dignity of the human person...

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- *de Voituret v. Uruguay* (109/1981) (R.25/109), ICCPR, A/39/40 (10 April 1984) 164 at paras. 12.2 and 13.

...

12.2 Teresa Gomez de Voituret was arrested on 27 November 1980 by plainclothes men without any warrant and taken to Military Unit No.1, where she was held in solitary confinement in a cell almost without natural light and which she was not allowed to leave until she was brought to trial in June 1981. She was subsequently allowed to leave until she was brought to trial in June 1981. She was subsequently transferred to Punta de Rieles prison, where she is still detained...

13. The Human Rights Committee...is of the view that the facts...disclose a violation of article 10(1) of the International Covenant on Civil and Political Rights, because Teresa Gomez was kept in solitary confinement for several months in conditions which failed to respect the inherent dignity of the human person.

- *Muteba v. Zaire* (124/1982) (R.26/124), ICCPR, A/39/40 (24 July 1984) 182 at paras. 10.2 and 11-13.

...

10.2 Mr. Tshitenge Muteba was arrested on 31 October 1981 by members of the Military Security of Zaire at Ngobila Beach, Zaire, when arriving from Paris via Brazzaville (Congo). From the time of his arrest until about March 1982 he was detained at the "OUA II" prison. During the first nine days of detention he was interrogated and subjected to various forms of torture including beatings, electric shocks and mock executions. He was kept incommunicado for several months and had no access to legal counsel. After nine months of detention members of his family, who did not see him in person, were allowed to leave food for him at the prison. Although in the prison register he was charged with attempts against the internal and external security of the State and with the foundation of a secret political party, he was never brought before a judge nor brought to trial. After more than a year and a half of detention he was granted amnesty under a decree of 19 May 1983 and allowed to return to France...

11. In formulating its views the Human Rights Committee also takes into account the failure of the State party to furnish any information and clarifications necessary for the Committee to facilitate its tasks. In the circumstances, due weight must be given to the authors' allegation. It is implicit in article 4 (2) of the Optional Protocol that the State party has the

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duty to investigate in good faith all allegations of violation of the Covenant made against it and its authorities, and to furnish to the Committee the information available to it. In no circumstances should a State party fail to duly investigate and to properly inform the Committee of its investigation of allegations of ill-treatment when the person or persons allegedly responsible for the ill-treatment are identified by the author of a communication. The Committee notes with concern that, in spite of its repeated requests and reminders and in spite of the State party's obligation under article 4 (2) of the Optional Protocol, no submission whatever has been received from the State party in the present case.

12. The Human Rights Committee...is of the view that these facts disclose violations of the Covenant, in particular:

- of articles 7 and 10, paragraph 1, because Mr. Tshitenge Muteba was subjected to torture and not treated in prison with humanity and with respect for the inherent dignity of the human person, in particular because he was held incommunicado for several months...

...

13. The Committee, accordingly, is of the view that the State party is under an obligation to provide Mr. Muteba with effective remedies, including compensation, for the violations which he has suffered, to conduct an inquiry into the circumstances of his torture, to punish those found guilty of torture and to take steps to ensure that similar violations do not occur in the future.

- *Arzuaga v. Uruguay* (147/1983), ICCPR, A/41/40 (1 November 1985) 128 at paras. 13.2 and 14.

...

13.2 Lucia Arzuaga Gilboa was arrested in Montevideo on 15 June 1983 and kept incommunicado at an unknown Place of detention until 30 June 1983. During this period she was subjected to torture (beatings, "electric prod", stringing up) and her whereabouts were unknown. On 30 June 1983 she reappeared at the Police headquarters in Montevideo. She was charged with the offence of "subversive association" and taken to the prison of Punta de Rieles (Military Detention establishment No. 2). She was released on 3 September 1984.

14. The Human Rights Committee...is of the view that the facts as found by the Committee, disclose violations of the Covenant, in particular;

...

- Article 10, paragraph 1, because she was held incommunicado for a period of 15 days and subjected to inhuman prison conditions for 14 months until

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her release in September 1984.

- *Mpandanjila v. Zaire* (138/1983), ICCPR, A/41/40 (26 March 1986) 121 at paras. 8.2 and 10.

...

8.2 The authors are eight former Zairian parliamentarians and one Zairian businessman. In December 1980, they were subjected to measures of arrest, banishment or house arrest on account of the publication of an “open letter” to President Mobutu. The eight parliamentarians were also stripped of their membership of parliament and forbidden to hold public office for a period of five years. Although they were covered by an amnesty decree of 17 January 1981, they were not released from detention or internal exile until 4 December 1981...The accused were sentenced to 15 years’ imprisonment. The authors were released pursuant to an amnesty decree promulgated on 21 May 1983, but they were then subjected to an “administrative banning measure” and deported along with their families to different parts of the country. The banned family members include children still of elementary-school age, adolescent boys and girls and married brothers who are head of families and whose lives have been left in Kinshasa alone with small children and without any means of support. The authors were subjected to ill-treatment during the period of banishment and deprived of adequate medical attention.

...

10. The Human Rights Committee...is of the view that these facts disclose violations of the Covenant, with respect to:

...

Article 10, paragraph 1, because they were subjected to ill-treatment during the period of banishment...

- *Solorzano v. Venezuela* (156/1983), ICCPR, A/41/40 (26 March 1986) 134 at paras. 10.2, 11 and 12.

...

10.2 Mr. Luis Alberto Solorzano was arrested on 28 February 1977 on suspicion of participation in armed rebellion, brought before a military tribunal and kept in detention until his release by virtue of a Presidential Decree of 21 December 1984, that is after more than seven years of detention...He was subjected to ill-treatment during detention, particularly in February 1983 when he suffered injuries to the head and other parts of the body.

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11. In formulating its views, the Human Rights Committee also takes into account the failure of the State party to furnish certain information and clarifications necessary for the Committee to facilitate its tasks, in particular with regard to the treatment in February 1983 of which Mr. Solorzano has complained. In the circumstances, due weight must be given to the authors' allegations. It is implicit in article 4, paragraph 2, of the Optional Protocol that the State party has the duty to investigate in good faith all allegations of violation of the Covenant made against it and its authorities, and to furnish to the Committee the information available to it. In no circumstances should a State party fail to investigate duly and to inform the Committee properly of its investigation of allegations of ill-treatment when the person or persons allegedly responsible for the ill-treatment are identified by the author of a communication. A denial of the author's allegations in general terms and the reference to an unsubmitted investigation by the Public Prosecutor's Department are not sufficient. The Committee would need precise information and reports, *inter alia*, on the questioning of prison officials accused of maltreatment of prisoners.

12. The Human Rights Committee...is of the view that the facts as found by the Committee disclose violations of the Covenant with respect to:

Article 10, paragraph 1, because of the ill-treatment that Mr. Solorzano suffered during detention, in particular in February 1983...

- *Herrera Rubio v. Colombia* (161/1983), ICCPR, A/43/40 (2 November 1987) 190 at paras. 10.2 and 11.

...

10.2 Joaquin Herrera Rubio was arrested on 17 March 1981 by members of the Colombian armed forces on suspicion of being a "guerrillero". He claims that he was tortured ("submarine", "hanging" and beatings) by Colombian military authorities who also threatened him that unless he signed a confession his parents would be killed...

...

11. The Human Rights Committee...of the Optional Protocol to the International Covenant of Civil and Political Rights, is of the view that the facts as found by the Committee disclose violations of the Covenant with respect to:

...

Article 7 and article 10, paragraph 1, because Joaquin Herrera Rubio was subjected to torture and ill-treatment during his detention.

- *Portorreal v. Dominican Republic* (188/1984), ICCPR, A/43/40 (5 November 1987) 207 at paras. 9.2 and 11.

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...

9.2 Mr. Ramón B. Martínez Portorreal is a national of the Dominican Republic, a lawyer and Executive Secretary of the Comité Dominicano de los Derechos Humanos. On 14 June 1984 at 6 a.m., he was arrested at his home, according to the author, because of his activities as a leader of a human rights association, and taken to a cell at the secret service police headquarters, from where he was transferred to another cell measuring 20 by 5 metres, where approximately 125 persons accused of common crimes were being held, and where, owing to lack of space, some detainees had to sit on excrement. He received no food or water until the following day. On 16 June 1984, after 50 hours of detention, he was released. At no time during his detention was he informed of the reasons for his arrest.

...

11. The Human Rights Committee...is of the view that these facts disclose violations of the Covenant, with respect to:

Articles 7 and 10, paragraph 1, because Ramón Martínez Portorreal was subjected to inhuman and degrading treatment and to lack of respect for his inherent human dignity during his detention...

- *Vuolanne v. Finland* (265/1987), ICCPR, A/44/40 (7 April 1989) 249 at para. 9.2.

...

9.2. The Committee recalls that article 7 prohibits torture and cruel or other inhuman or degrading treatment. It observes that the assessment of what constitutes inhuman or degrading treatment falling within the meaning of article 7 depends on all the circumstances of the case, such as the duration and the manner of the treatment, its physical or mental effects as well as the sex, age and state of health of the victim. A thorough examination of the present communication has not disclosed any facts in support of the author's allegations that he is a victim of a violation of his rights set forth in article 7. In no case was severe pain or suffering, whether physical or mental, inflicted upon Antii Vuolanne by or at the instigation of a public official; nor does it appear that the solitary confinement to which the author was subjected, having regard to its strictness, duration and the end pursued, produced any adverse physical or mental effects on him. Furthermore, it has not been established that Mr. Vuolanne suffered any humiliation or that his dignity was interfered with apart from the embarrassment inherent in the disciplinary measure to which he was subjected. In this connection, the Committee expresses the view that for punishment to be degrading, the humiliation or debasement involved must exceed a particular level and must, in any event, entail other elements beyond the mere fact of deprivation of liberty. Furthermore, the Committee finds that the facts before it do not substantiate the allegation that during his detention Mr. Vuolanne was treated without humanity or without respect for the inherent

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dignity of the person, as required under article 10, paragraph 1, of the Covenant.

- *Birindwa and Tshisekedi v. Zaire* (241 and 242/1987), ICCPR, A/45/40 vol. II (2 November 1989) 77 at paras. 12.2 and 13.

...

12.2 The authors of the communication are two leading members of the Union pour la Democratie et le Progres Social (U.D.P.S.), a political party in opposition to the government of President Mobutu. From mid-June 1986 to the end of June 1987, they were subjected to administrative measures of internal banishment, as a result of the views adopted by the Human Rights Committee on 26 March 1986 in Communication 138/1983. On 27 June and 1 July 1987, respectively, they were released following a presidential amnesty, and decided to travel abroad. Upon his return to Zaire in mid-January 1988, Mr. Tshisekedi sought to organize manifestation which met with the disapproval of the State authorities. On 17 January 1988 he was arrested and subjected to inhuman treatment, in that he was deprived of food and drink for several days and was placed in a high-security cell. Between 17 January and 11 March 1988, he was kept detained in a prison in Kinshasa; during this time, he was neither informed of the reasons for his arrest or of charges against him nor brought before a judge, while the State party's authorities ordered his psychiatric examination and consistently referred to him in the press as being mentally disturbed. From 16 March to the beginning of April 1988, Mr. Tshisekedi was kept under house arrest at his home in Kinshasa - Gombe, and from 11 April to 19 September 1988, he was intermittently subjected to renewed military camps. During his internment, he had to live in unacceptable sanitary conditions.

...

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

...

(b) in respect to Etienne Tshisekedi wa Malumba:

...

of article 10, paragraph 1, because he was not treated with humanity during his detention from 17 January to 11 March and from 11 April to 19 September 1988...

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

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...

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 paras. 3.8 and 5.7.

...

3.8 ...[T]he author affirms that he is the victim of a violation of article 10 of the Covenant, since the treatment he is subjected to on death row is incompatible with the respect for the inherent dignity of the human person. In this context, he encloses a copy of a report about the conditions of detention on death row at St. Catherine Prison, prepared by a United States non-governmental organization, which describes the deplorable living conditions prevailing on death row. More particularly, the author claims that these conditions put his health at considerable risk, adding that he receives insufficient food, of very low nutritional value, that he has no access whatsoever to recreational or sporting facilities and that he is locked in his cell virtually 24 hours a day. It is further submitted that the prison authorities do not provide for even basic hygienic facilities, adequate diet, medical or dental care, or any type of educational services. Taken together, these conditions are said to constitute a breach of article 10 of the Covenant. The author refers to the Committee's jurisprudence in this regard.^{a/}

...

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 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

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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.

- *Fillastre v. Bolivia* (336/1988), ICCPR, A/47/40 (5 November 1991) 294 (CCPR/C/43/D/336/1988) at para. 6.2.

...

6.2 With respect to the allegation of violation of article 10 of the Covenant, the Committee observes that the author has not corroborated, in a manner sufficiently substantiated, her claim that the prison conditions at the penitentiary of San Pedro are inhuman and do not respect the inherent dignity of the human person. The state party has endeavoured to investigate this claim, and the findings of its commission of inquiry, which have not been refuted either by the authors or by the alleged victims, conclude that Mr. Fillastre and Mr. Biouzarn benefit from basic amenities during detention, including medical treatment, adequate diet, recreational facilities as well as contacts with their relatives and representatives. In the circumstances, the Committee concludes that there has been no violation of article 10.

- *Jijón v. Ecuador* (277/1988), ICCPR, A/47/40 (26 March 1992) 261 at para. 5.2.

...

5.2 Mr. Terán has claimed that he was subjected to torture and ill-treatment during his detention, which included remaining shackled and blind-folded for five days; the State party dismisses this claim. The Committee notes that Mr. Terán has submitted corroborative evidence in support of his allegation; the medical report, prepared on 13 March 1986, i.e. shortly after his arrest, records haematomas and numerous skin lesions ("*escoriaciones*") all over his body. Moreover, the author has submitted that he was forced to sign more than ten blank sheets of paper. In the Committee's opinion, this evidence is sufficiently compelling to justify the conclusion that he was subjected to treatment prohibited under article 7 of the Covenant, and that he was not treated with respect for the inherent dignity of his person, in violation of article 10 paragraph 1.

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- *Wolf v. Panama* (289/1988), ICCPR, A/47/40 (26 March 1992) 277 at para. 6.7.

...

6.7 The Committee...notes that the State party has not addressed the author's claim of ill-treatment during his detention. In the Committee's opinion, the physical ill-treatment to which the author was subjected and the denial of food for five days, while not amounting to a violation of article 7 of the Covenant, did violate the author's right, under article 10, paragraph 1, to be treated with respect for the inherent dignity of his person.

- *Barrett and Sutcliffe v. Jamaica* (270/1988 and 271/1988), ICCPR, A/47/40 (30 March 1992) 246 at paras. 8.6 and 9.

...

8.6 ...The Committee considers that the fact of having first been beaten unconscious and then left without medical attention for almost one day, in spite of a fractured arm and other injuries, amounts to cruel and inhuman treatment within the meaning of article 7 and, therefore, also entails a violation of article 10, paragraph 1. In the Committee's view, it is an aggravating factor that the author was later warned against further pursuing his complaint about the matter to the judicial authorities. The State party's offer, made in January 1992, that is over five years after the event, to investigate the claim "out of humanitarian considerations" does not change anything in this respect.

9. The Human Rights Committee...is of the view that the facts before it disclose a violation of articles 7 and 10, paragraph 1, of the International Covenant on Civil and Political Rights in respect of Mr. Sutcliffe.

- *Parkanyi v. Hungary* (410/1990), ICCPR, A/47/40 (27 July 1992) 317 (CCPR/C/45/D/410/1990) at para. 8.3.

...

8.3 As to the substance of the claim, the Committee considers that, in the light of the information provided by the State party, it cannot be concluded that the food was insufficient and that the author was made to wear rags. However, the Committee notes that the State party does not dispute the author's allegation that he was allowed only five minutes per day for personal hygiene and five minutes for exercise in the open air. The Committee considers that such limitation of time for hygiene and recreation is not compatible with article 10 of the Covenant.

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- *Wright v. Jamaica* (349/1989), ICCPR, A/47/40 (27 July 1992) 300 (CCPR/C/45/D/349/1989) at para. 8.6.

...

8.6 ...[T]he Committee has considered the author's allegation that he was ill-treated by the police. While this claim has only been contested by the State party in so far as its admissibility is concerned, the Committee is of the view that the author has not corroborated his claim, by either documentary or medical evidence. Indeed, the matter appears to have been raised in the court of first instance, which was unable to make a finding, and brought to the attention of the Court of Appeal. In the circumstances and in the absence of further information, the Committee is unable to find that article 10 has been violated.

- *Linton v. Jamaica* (255/1987), ICCPR, A/48/40 vol. II (22 October 1992) 12 (CCPR/C/46/D/255/1987) at paras. 2.5-2.7 and 8.5.

...

2.5 As to the conditions of detention, the author indicates that throughout the years spent on death row, he experienced physical abuse and psychological torture. From 1986, the situation allegedly deteriorated gradually; thus, on 20 November 1986, warders allegedly led a party consisting of about 50 men who came to his cell early in the morning with clubs, batons and electric wire, forced him out and beat him unconscious. At around midnight the same day, he found himself on a stretcher in the hospital of Spanish Town, in severe pain, with bruises all over his body and blood trickling from his head. At 1 a.m., he was taken back to the prison and transferred to another cell. Subsequently, he contends, the warders tried to depict him as a "subversive character", so as to cover up the brutalities to which he had been subjected.

2.6 Towards the end of January 1988, five inmates were transferred to the death cells. When the rumour spread that a warrant for the execution of the author and of the inmate occupying the neighbouring cell, F.M., had also been issued, and warders began to tease the author and F.M. by describing in detail all the stages of the execution, the author and F.M. began to plan their escape. They sawed off the bars in front of their doors and, on 31 January 1988, attempted to escape by climbing over the prison walls. Warders fired at them; the author was hit in the hip, whereas F.M. was fatally shot in the head, allegedly after indicating his surrender.

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

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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 and 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.

- *Francis v. Jamaica* (320/1988), ICCPR, A/48/40 vol. II (24 March 1993) 62 (CCPR/C/47/D/320/1988) at para. 12.4.

...

12.4 With regard to the author's allegation of ill-treatment in detention, the Committee notes that where the State party has not replied to the Committee's request for clarifications, due weight must be given to the author's allegations. In this context, the Committee observes that the author has made specific allegations, which have not been contested by the State party, that, on 9 July 1988, he was assaulted by soldiers and warders, who beat him, pushed him with a bayonet, emptied a urine bucket over his head, threw his food and water on the floor and his mattress out of the cell. In the Committee's view, this amounts to degrading treatment within the meaning of article 7 and also entails a violation of article 10, paragraph 1.

- *Bailey v. Jamaica* (334/1988), ICCPR, A/48/40 vol. II (31 March 1993) 72 (CCPR/C/47/D/334/1988) at paras. 9.2 and 9.3.

...

9.2 The author has alleged that he suffered beatings and injuries at the hand of prison officers during an incident on 29 May 1990. This claim has not been refuted by the State party, which has confined itself to the mere statement that the claim is being investigated and that, in the circumstances, it would be inappropriate for the Committee to make a finding on

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the merits.

9.3 The Committee is unable to share the State party's reasoning. Firstly, the author's claim that he was threatened by warders when he sought to pursue his complaint with the Ombudsman has remained uncontested. Secondly, the Committee has not been notified whether the investigation into the author's allegations have been concluded some 35 months after the event or whether, indeed, they are proceeding. In the circumstances, it is fully within the Committee's competence to proceed with the examination of the author's claim, and in the absence of any further information on such investigations, due weight must be given to the author's allegations, to the extent that they have been substantiated. The Committee considers that his claims have been substantiated. In the Committee's opinion, the fact that Mr. Bailey was beaten repeatedly with clubs, iron pipes and batons, and then left without any medical attention in spite of injuries to head and hands, amounts to cruel and inhuman treatment within the meaning of article 7 of the Covenant and also entails a violation of article 10, paragraph 1.

- *Soogrim v. Trinidad and Tobago* (362/1989), ICCPR, A/48/40 vol. II (8 April 1993) 110 (CCPR/C/47/D/362/1989) at paras. 13.2-13.4 and 14.

...

13.2 As to the substance of the communication, two issues are before the Committee: (a) whether the author was a victim of inhuman or degrading treatment, because on two occasions, he was allegedly beaten by prison warders and on one occasion left naked in a cell for two weeks; and (b) whether the conditions of his detention constitute a violation of article 10 of the Covenant.

13.3 In order to decide on these issues, the Committee must consider the arguments put forward by the author and the State party and assess their respective merits and intrinsic credibility. Concerning the beatings he allegedly received, Mr. Soogrim has given precise details, identified those he holds responsible and affirmed that he lodged complaints after being ill-treated. In this regard, the State party has not really issued any denial. It has admitted only that force was used against Mr. Soogrim although within reasonable limits and in order to control him, this having occurred on the dates referred to by the author of the communication. The State party furthermore recognizes that the author did report the facts he alleges and that his complaints were brought to the attention of the Inspector of Prisons, the Ministry of Justice and National Security and the Ombudsman. In addition, the explanations given by the author and the State party regarding the disciplinary charges reportedly filed against him are contradictory, but nevertheless concur in that some of them were dismissed by the State party. The dismissal of these charges, however, casts doubt on the facts as presented in the report dated 20 November 1991. Lastly, concerning the

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allegation that the author was left naked in his cell for two weeks, the Committee has no more specific information available to it than the claims of the author and the denials of the State party.

13.4 With regard to the author's allegations that he has not received the necessary medical care for his state of health and has been deprived of open-air exercise, the information communicated by the State party shows, with reference to his medical record, that he has been given medical treatment and, in particular, that his eyesight has been corrected and is checked regularly at the Port-of-Spain General Hospital. As to the hour of open-air exercise per day allowed by the prison regulations, there is no basis, apart from Mr. Soogrim's allegations, on which to affirm that he is being regularly deprived of such exercise.

14. The Human Rights Committee...is of the view that the facts before it disclose a violation of articles 7 and, consequently, article 10, paragraph 1, of the International Covenant on Civil and Political Rights in so far as the author was beaten by prison warders on several occasions.

- *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.

- *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.

...

9.2 It remains uncontested that, on 9 July 1988, the author was assaulted by soldiers and warders, who beat him with rifle butts, as a result of which he sustained injuries in his chest, his back, his left hip and his lower abdomen, for which he did not receive medical treatment. The Committee considers that these claims have been substantiated and that the facts before the Committee amount to degrading treatment within the meaning of article 7 of the

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International Covenant on Civil and Political Rights and also entail a violation of article 10, paragraph 1, of the Covenant.

...

11. The Committee is of the view that Mr. Maurice Thomas, a victim of a violation of articles 7 and 10 the International Covenant on Civil and Political Rights, is entitled, under article 2, paragraph 3(a), of the Covenant, to an effective remedy, including appropriate compensation. The State party is under an obligation to investigate the allegations made by the author with a view to instituting as appropriate criminal or other procedures against those found responsible and to take such other measures as may be necessary to prevent similar violations from occurring in the future.

- *Kanana v. Zaire* (366/1989), ICCPR, A/49/40 vol. II (2 November 1993) 65 (CCPR/C/49/D/366/1989) at para. 5.3.

...

5.3 As to the treatment to which the author was subjected between 8 p.m. on 1 May 1989 and the early morning hours of 2 May 1989, it has remained uncontested that Mr. Kanana remained strapped to the concrete floor of his cell for close to four hours, and that he was thereafter subjected to acts of torture for several more hours. The Committee observes in this context that Mr. Kanana has provided photographic evidence of the consequences of this treatment. In the circumstances, the Committee concludes that the author has substantiated his claim that he was subjected to torture and cruel and inhuman treatment, in violation of article 7 of the Covenant, and that he was not treated with respect for the inherent dignity of his person, in violation of article 10, paragraph 1.

- *Megreisi v. Libyan Arab Jamahiriya* (440/1990), ICCPR, A/49/40 vol. II (23 March 1994) 128 (CCPR/C/50/D/440/1990) at para. 5.4.

...

5.4 ...[T]he Committee notes, from the information before it, that Mohammed El-Megreisi was detained incommunicado for more than three years, until April 1992, when he was allowed a visit by his wife, and that after that date he has again been detained incommunicado and in a secret location. Having regard to these facts, the Committee finds that Mr. Mohammed Bashir El-Megreisi, by being subjected to prolonged incommunicado detention in an unknown location, is the victim of torture and cruel and inhuman treatment, in violation of articles 7 and 10, paragraph 1, of the Covenant.

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- *Berry v. Jamaica* (330/1988), ICCPR, A/49/40 vol. II (7 April 1994) 20 (CCPR/C/50/D/330/1988) at paras. 3.4 and 11.2.

...

3.4 The author alleges a violation of article 10, paragraphs 1 and 2 (a). He claims that, during the ten months of his pre-trial detention at Brown's Town Station, he was not segregated from convicted persons and was not subject to separate treatment appropriate to his status as an unconvicted person. He further claims that, during that period, he was kept chained. Furthermore, he alleges that he was hit in the face by a policeman on one of the three days of his trial when he was brought back to his cell...

...

11.2 The Committee notes that the author's claim under article 10 of the Covenant, in respect to his treatment in pre-trial detention and in respect to his treatment on death row (see paragraph 3.4 above) have not been contested by the State party. In the absence of a response from the State party, the Committee will give appropriate weight to the author's allegations that, during the 10 months of his pre-trial detention at Brown's Town Police Station, he was not segregated from convicted persons, was not subject to separate treatment appropriate status as an unconvicted person, and was kept chained. Furthermore, he was hit in the face by a policeman on one of the days of his trial when he was brought back to his cell. In the opinion of the Committee, therefore, he was not treated in accordance with article 10, paragraphs 1 and 2(a), of the Covenant...

- *Bozize v. Central African Republic* (428/1990), ICCPR, A/49/40 vol. II (7 April 1994) 124 (CCPR/C/50/D/428/1990) at paras. 2.2, 2.3 and 5.2.

...

2.2 ...Mr. Bozize was imprisoned at Camp Roux, where he allegedly suffered serious maltreatment and beatings. The author claims that her brother was not allowed access to a lawyer of his own choosing, nor to a member of his family. Allegedly, not even a doctor was allowed to see him to provide basic medical care. Furthermore, the sanitary conditions of the prison are said to be deplorable and the food allegedly consists of rotten meat mixed with sand; as a result, the weight of Mr. Bozize dropped to 40 kilograms by the summer of 1990.

2.3 During the night of 10 to 11 July 1990, the prison authorities of Camp Roux reportedly staged a power failure in the sector of town where the prison is located, purportedly to incite Mr. Bozize to attempt an escape. As this practice is said to be common and invariably results in the death of the would be escapee, Mr. Bozize did not leave his cell. The author contends that, in the course of the night, her brother was brutally beaten for several hours and severely injured. This version of the events was confirmed by Mr. Bozize's

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lawyer, Maître Thiangaye, who was able to visit his client on 26 October 1990 and who noticed numerous traces of beatings and ascertained that Mr. Bozize had two broken ribs. The lawyer also reported that Mr. Bozize was kept shackled, that his reading material had been confiscated and that the prison guards only allowed him out of his cell twice a week. Allegedly, this treatment is known to, and condoned by, President Kolingba and the Ministers of Defence and of the Interior.

...

5.2 The Committee decides to base its views on the following facts, which have not been contested by the State party. Mr. François Bozize was arrested on 24 July 1989 and was taken to the military camp at Roux, Bangui, on 31 August 1989. There, he was subjected to maltreatment and was held incommunicado until 26 October 1990, when his lawyer was able to visit him. During the night of 10 to 11 July 1990, he was beaten and sustained serious injuries, which was confirmed by his lawyer. Moreover, while detained in the Camp at Roux, he was held under conditions which did not respect the inherent dignity of the human person...The Committee finds that the above amount to violations by the State party of articles 7, 9, and 10 in the case.

- *Hylton v. Jamaica* (407/1990), ICCPR, A/49/40 vol. II (8 July 1994) 79 (CCPR/C/51/D/407/1990) at para. 9.3.

...

9.3 The author alleges that he was severely beaten by prison warders during a search of the cells of the death row section at St. Catherine District Prison on 28 May 1990. He claims that since the death of one of his co-defendants, who died as a result of the violence, he has repeatedly been threatened with death by warders, and that the amount of threats increased after those responsible for the death of three inmates were indicted. He further claims that he continues to suffer from psychological torture by the warders, in particular after his case was classified as a capital case in January 1993. These claims have not been refuted by the State party. Furthermore, since the State party has confined itself to the general observation that an investigation was initiated by the Ministry of National Security and Justice into the prison disturbances which occurred at St. Catherine District Prison on 9 September 1989, the Committee remains uninformed whether the threats and ill-treatment to which the author himself allegedly was, and remains, subjected, are also under investigation. In the absence of further information on such investigations, and taking into account that such investigations as have been undertaken do not appear to have been concluded four and a half years after the events, due weight must be given to the author's allegations to the extent that they have been substantiated. Taking into account the detailed description of the events by the author and in view of the lack of information from the State party, the Committee considers that the threats and the ill-treatment to which Mr. Dwayne Hylton has been subjected by the prison warders amount to cruel and inhuman treatment within the meaning of article 7, and also

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entail a violation of article 10, paragraph 1, of the Covenant.

See also:

- *Adams v. Jamaica* (607/1994), ICCPR, A/52/40 vol. II (30 October 1996) 163 (CCPR/C/58/D/607/1994) at para. 8.2.
- *Richards v. Jamaica* (639/1995), ICCPR, A/52/40 vol. II (28 July 1997) 183 (CCPR/C/60/D/639/1995) at para. 8.1.

- *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.

...

6.4 The author has claimed, and the State party has not refuted, that he was deprived of food and water for several days after his arrest on 16 August 1988, tortured during two days after his transfer to the prison of Bata and left without medical assistance for several weeks thereafter. The author has given a detailed account of the treatment he was subjected to and submitted copies of medical reports that support his conclusion. On the basis of this information, the Committee concludes that he was subjected to torture at the prison of Bata, in violation of article 7; it further observes that the deprivation of food and water after 16 August 1988, as well as the denial of medical attention after the ill-treatment in or outside of the prison of Bata, amounts to cruel and inhuman treatment within the meaning of article 7, as well as to a violation of article 10, paragraph 1.

- *Zelaya v. Nicaragua* (328/1988), ICCPR, A/49/40 vol. II (20 July 1994) 12 (CCPR/C/51/D/328/1988) at para. 10.5.

...

10.5 With regard to the author's allegations of having been subjected to torture and ill-treatment, the Committee observes that the author's submissions are very detailed and that he mentions the names of the officers who ordered, participated in or were ultimately responsible for the ill-treatment. Moreover, the author has named numerous witnesses of the alleged mistreatment. In the circumstances and bearing in mind that the State party has not disputed the author's allegations, the Committee finds that the information before it sustains a finding that the author was a victim of a violation of articles 7 and 10, paragraph 1, of the Covenant.

- *Griffin v. Spain* (493/1992), ICCPR, A/50/40 vol. II (4 April 1995) 47 (CCPR/C/53/D/493/1992) at paras. 3.1, 9.3 and 10.6.

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...

3.1 The author claims that he has been subjected to cruel, inhuman and degrading treatment and punishment during his incarceration at the prison of Mellila. The living conditions in this prison are said to be “worse than those depicted in the film ‘Midnight Express’”; a 500-year-old prison, virtually unchanged, infested with rats, lice, cockroaches and diseases; 30 persons per cell, among them old men, women, adolescents and an eight-month-old baby; no windows, but only steel bars open to the cold and wind; high incidence of suicide, self-mutilation, violent fights and beatings; human feces all over the floor as the toilet, a hole in the ground, was flowing over; sea water for showers and often for drink as well; urine soaked blankets and mattresses to sleep on in spite of the fact that the supply rooms full of new linen, clothes etc...

...

9.3 As to the author’s claim of a violation of article 10, on account of his conditions of detention, the Committee notes that they relate primarily to his incarceration at the prison of Melilla, where he was held from 18 April to 28 November 1991. Mr. Griffin has provided a detailed account about those conditions (see para. 3.1 above). The State party has not addressed this part of the author’s complaint, confining itself to his treatment in the prison of Malaga, where he was transferred after his detention at Mellila, and to setting out relevant legislation. This apart, it has merely indicated that the old prison of Mellila was replaced by a modern penitentiary in the summer of 1993. In the absence of State party information on the conditions of detention at the prison of Mellila in 1991, and in the light of the author’s detailed account of those conditions and their effect on him, the Committee concluded that Mr. Griffin’s rights under article 10, paragraph 1, have been violated during his detention from 18 April to 28 November 1991.

...

10.6 The Committee considers violations of articles 7 and 10, paragraph 1, of the Covenant to be extremely serious, and requiring prompt investigation by States parties to the Covenant.

- *G. Peart and A. Peart v. Jamaica* (464/1991 and 482/1991), ICCPR, A/50/40 vol. II (19 July 1995) 32 (CCPR/C/54/D/464/1991/482/1991) at para. 11.6.

...

11.6 With regard to the author’s allegations about maltreatment on death row, the Committee notes that the State party has indicated that it would investigate the allegations, but that the results of the investigations have not been transmitted to the Committee. Due weight must therefore be given to the authors’ allegations, to the extent that they are substantiated. The Committee notes that the authors have mentioned specific incidents, in May 1990 and May 1993, during which they were assaulted by prison warders or soldiers and, moreover, that Andrew Peart has been receiving death threats. In the Committee’s view

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this amounts to cruel treatment within the meaning of article 7 of the Covenant and also entails a violation of article 10, paragraph 1.

- *Stephens v. Jamaica* (373/1989), ICCPR, A/51/40 vol. II (18 October 1995) 1 (CCPR/C/55/D/373/1989) at para. 9.2.

...

9.2 The Committee has noted the author's contention that his rights under articles 7 and 10(1) have been violated because of the beatings he was subjected to on death row by a prison warder. It observes that while the author's allegation in this respect has remained somewhat vague, the State party itself concedes that the author suffered injuries as a result of use of force by warders; the author has specified that these injuries were to his head, and that he continues to have problems with his right eye as a sequel. The Committee considers that the State party has failed to justify, in a manner sufficiently substantiated, that the injuries sustained by the author were the result of the use of "reasonable force" by a warder. It further reiterates that the State party is under an obligation to investigate, as expeditiously and thoroughly as possible, incidents of alleged ill-treatment of inmates. On the basis of the information before the Committee, it appears that the author's complaint to the Ombudsman was acknowledged but neither investigated thoroughly nor expeditiously. In the circumstances of the case, the Committee concludes that the author was treated in a way contrary to articles 7 and 10, paragraph 1, of the Covenant.

- *Chaplin v. Jamaica* (596/1994), ICCPR, A/51/40 vol. II (2 November 1995) 197 (CCPR/C/55/D/596/1994) at para. 8.2 and Individual Opinion by Messrs Nisuke Ando and Eckart Klein, 205.

...

8.2 With regard to the author's allegation to have been subjected to ill-treatment on 6 September 1992 by prison warders, the Committee notes that the author has made very precise allegations, including to the Parliamentary Ombudsman and to the Jamaican Council for Human Rights. The State party has not submitted any medical evidence for information concerning any official investigation of the alleged events. In these circumstances, the Committee must rely on the author's submissions and finds that article 10, paragraph 1 of the Covenant, has been violated.

Individual Opinion by Messrs Nisuke Ando and Eckart Klein

We concur with the Committee's view on the present case. However, with respect to the violation of art. 10, paragraph 1, we would like to point out the following:

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It is a well established rule of general public international law that individuals who claim to be victims of a violation of their rights by a State may resort to international remedies only after exhausted all available domestic remedies. This is also expressly required by article 5, paragraph 2(b), of the Optional Protocol to the Covenant. However, it is also well established that the State bears no international responsibility if the domestic remedies granted to the victims have led to an adequate reparation, thus satisfying the requirements of public international law.

In the present case, on the basis of the information made available to the Committee, it seems clear that beatings of the author by a prison warder did take place and that, through the author's complaint to the Parliamentary Ombudsman, the warder was dismissed from his job. However, in the absence of further information, for which the State party must be held responsible, we have to conclude that the dismissal of the warder through the complaint to the Ombudsman was the only remedy granted to the author. In our opinion this procedure does not constitute an effective remedy that meets the requirements of the Covenant.

- *E. Johnson v. Jamaica* (588/1994), ICCPR, A/51/40 vol. II (22 March 1996) 174 (CCPR/C/56/D/588/1994) at paras. 8.1-8.6.

...

8.1 The Committee first has to determine whether the length of the author's detention on death row since December 1983, i.e. over 11 years, amounts to a violation of articles 7 and 10, paragraph 1, of the Covenant. Counsel has alleged a violation of these articles merely by reference to the length of time Mr. Johnson has spent confined to the death row section of St. Catherine District Prison. While a period of detention on death row of well over 11 years is certainly a matter of serious concern, it remains the jurisprudence of this Committee that detention for a specific period of time does not amount to a violation of articles 7 and 10 (1) of the Covenant in the absence of some further compelling circumstances. The Committee is aware that its jurisprudence has given rise to controversy and wishes to set out its position in detail.

8.2 The question that must be addressed is whether the mere length of the period a condemned person spends confined to death row may constitute a violation by a State party of its obligations under articles 7 and 10 not to subject persons to cruel, inhuman and degrading treatment or punishment and to treat them with humanity. In addressing this question, the following factors must be considered:

- (a) The Covenant does not prohibit the death penalty, though it subjects its use to severe restrictions. As detention on death row is a necessary consequence of imposing the death penalty, no matter how cruel, degrading

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and inhuman it may appear to be, it cannot, of itself, be regarded as a violation of articles 7 and 10 of the Covenant.

(b) While the Covenant does not prohibit the death penalty, the Committee has taken the view, which has been reflected in the Second Optional Protocol to the Covenant, that article 6 "refers generally to abolition in terms which strongly suggest that abolition is desirable". d/ Reducing recourse to the death penalty may therefore be seen as one of the objects and purposes of the Covenant.

(c) The provisions of the Covenant must be interpreted in the light of the Covenant's objects and purposes (article 31 of the Vienna Convention on the Law of Treaties). As one of these objects and purposes is to promote reduction in the use of the death penalty, an interpretation of a provision in the Covenant that may encourage a State party that retains the death penalty to make use of that penalty should, where possible, be avoided.

8.3 In light of these factors, we must examine the implications of holding the length of detention on death row *per se* to be in violation of articles 7 and 10. The first, and most serious, implication is that if a State party executes a condemned prisoner after he has spent a certain period of time on death row, it will not be in violation of its obligations under the Covenant, whereas if it refrains from doing so, it will violate the Covenant. An interpretation of the Covenant leading to this result cannot be consistent with the Covenant's object and purpose. The above implication cannot be avoided by refraining from determining a definite period of detention on death row, after which there will be a presumption that detention on death row constitutes cruel and inhuman punishment. Setting a cut-off date certainly exacerbates the problem and gives the State party a clear deadline for executing a person if it is to avoid violating its obligations under the Covenant. However, this implication is not a function of fixing the maximum permissible period of detention on death row, but of making the time factor, *per se*, the determining one. If the maximum acceptable period is left open, States parties which seek to avoid overstepping the deadline will be tempted to look to the decisions of the Committee in previous cases so as to determine what length of detention on death row the Committee has found permissible in the past.

8.4 The second implication of making the time factor *per se* the determining one, i.e. the factor that turns detention on death row into a violation of the Covenant, is that it conveys a message to States parties retaining the death penalty that they should carry out a capital sentence as expeditiously as possible after it was imposed. This is not a message the Committee would wish to convey to States parties. Life on death row, harsh as it may be, is preferable to death. Furthermore, experience shows that delays in carrying out the death penalty can be the necessary consequence of several factors, many of which may be

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attributable to the State party. Sometimes a moratorium is placed on executions while the whole question of the death penalty is under review. At other times the executive branch of government delays executions even though it is not feasible politically to abolish the death penalty. The Committee would wish to avoid adopting a line of jurisprudence which weakens the influence of factors that may very well lessen the number of prisoners actually executed. It should be stressed that by adopting the approach that prolonged detention on death row cannot, *per se*, be regarded as cruel and inhuman treatment or punishment under the Covenant, the Committee does not wish to convey the impression that keeping condemned prisoners on death row for many years is an acceptable way of treating them. It is not. However, the cruelty of the death row phenomenon is first and foremost a function of the permissibility of capital punishment under the Covenant. That situation has unfortunate consequences.

8.5 Finally, to hold that prolonged detention on death row does not, *per se*, constitute a violation of articles 7 and 10, does not imply that other circumstances connected with detention on death row may not turn that detention into cruel, inhuman and degrading treatment or punishment. The jurisprudence of the Committee has been that where compelling circumstances of the detention are substantiated, that detention may constitute a violation of the Covenant. This jurisprudence should be maintained in future cases.

8.6 In the present case, neither the author nor his counsel have pointed to any compelling circumstances, over and above the length of the detention on death row, that would turn Mr. Johnson's detention into a violation of articles 7 and 10. The Committee therefore concludes that there has been no violation of these provisions.

Notes

...

d/ [See Official Records of the General Assembly,] Thirty-seventh Session, Supplement No. 40 (A/37/40), annex V, General Comment No. 6 (16), para. 6; see also preamble to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (General Assembly resolution 44/128 of 15 December 1989).

See also:

- *Sterling v. Jamaica* (598/1994), ICCPR, A/51/40 vol. II (22 July 1996) 214 (CCPR/C/57/D/598/1994) at para. 8.1.
- *Adams v. Jamaica* (607/1994), ICCPR, A/52/40 vol. II (30 October 1996) 163 (CCPR/C/58/D/607/1994) at para. 8.1.
- *Edwards v. Jamaica* (529/1993), ICCPR, A/52/40 vol. II (28 July 1997) 28 (CCPR/C/60/D/529/1993) at paras. 8.2 and 8.3.

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- *LaVende v. Trinidad and Tobago* (554/1993), ICCPR, A/53/40 vol. II (29 October 1997) 8 (CCPR/C/61/D/554/1993) at paras. 5.3-5.7.
- *Bickeroo v. Trinidad and Tobago* (555/1993), ICCPR, A/53/40 vol. II (29 October 1997) 15 (CCPR/C/61/D/555/1993).
- *Forbes v. Jamaica* (649/1995), ICCPR, A/54/40 vol. II (20 October 1998) 127 (CCPR/C/64/D/649/1995) at para. 7.4.
- *Amore v. Jamaica* (634/1995), ICCPR, A/54/40 vol. II (23 March 1999) 281 at para. 6.3.
- *Robinson v. Jamaica* (731/1996), ICCPR, A/55/40 vol. II (29 March 2000) 116 at para. 9.3.

- *Kulomin v. Hungary* (521/1992), ICCPR, A/51/40 vol. II (22 March 1996) 73 (CCPR/C/50/D/521/1992) at para. 11.4.

...

11.4 The author has...claimed that he was not allowed to study Hungarian while in police custody and that he was not allowed to correspond with his family and friends. The State party has denied the allegations, stating that the author requested permission for reading on 9 November 1988, which request was granted, and that there is no trace of a request concerning correspondence, but that no records of the inmates' correspondence are kept. In the circumstances, the Committee finds that the facts before it do not sustain a finding that the author was a victim of a violation of article 10 of the Covenant.

- *Fuenzalida v. Ecuador* (480/1991), ICCPR, A/51/40 vol. II (12 July 1996) 50 (CCPR/C/57/D/480/1991) at paras. 9.3 and 9.4.

...

9.3 With regard to the allegations of ill-treatment perpetrated by a police officer, the Committee observes that they were submitted by the author to the Cuarto de Pichincha criminal court, which rejected them, as is shown by the judgement of 30 April 1991. In principle, it is not for the Committee to question the evaluation of the evidence made by national courts, unless that evaluation was manifestly arbitrary or constituted a denial of justice. The materials made available to the Committee by the author do not demonstrate the existence of such shortcomings in the procedure followed before the courts.

9.4 The file does not, however, reveal any evidence that the incident in which the author suffered a bullet wound was investigated by the court. The accompanying medical report

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neither states nor suggests how the wound might have occurred. Given the information submitted by the author and the lack of investigation of the serious incident in which the author was wounded, the Committee concludes that there has been a violation of articles 7 and 10 of the Covenant.

- *Pinto v. Trinidad and Tobago* (512/1992), ICCPR, A/51/40 vol. II (16 July 1996) 61 at paras. 8.3 and 8.4.

...

8.3 ...[T]o convey to the author that the prerogative of mercy would not be exercised and his early release denied because of his human rights complaints reveals a lack of humanity and amounts to treatment that fails to respect the author's dignity, in violation of article 10, paragraph 1.

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.

- *Neptune v. Trinidad and Tobago* (523/1992), ICCPR, A/51/40 vol. II (16 July 1996) 1 (CCPR/C/57/D/523/1992) at para. 9.1.

...

9.1 The Committee notes that the author's claims that he is sharing a 9 by 6 feet cell with six to nine fellow prisoners, that there are only three beds in the cell, that there is not enough natural light, that he was aired only half an hour once every two/three weeks and that the food is inedible have remained uncontested. The Committee finds that the conditions of detention as described by the author are not compatible with the requirements of article 10, paragraph 1, of the Covenant, which stipulates that prisoners and detainees shall be treated with humanity and with respect for the inherent dignity of the human person.

- *Hylton v. Jamaica* (600/1994), ICCPR, A/51/40 vol. II (16 July 1996) 224 (CCPR/C/57/D/600/1994) at para. 8.

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...

8. The Committee must determine whether the length of time the author spent on death row - seven years - amounts to a violation of articles 7 and 10, paragraph 1, of the Covenant. Counsel has claimed a violation of these provisions merely by reference to the length of time Mr. Hylton was confined to death row. It remains the Committee's jurisprudence that detention on death row for a specific time does not violate articles 7 and 10, paragraph 1, of the Covenant, in the absence of further compelling circumstances. The Committee refers in this context to its Views on Communication No. 588/1994, 4/ in which it explained and clarified its jurisprudence on the issue of the death row phenomenon. In the Committee's opinion, neither the author nor his counsel have shown the existence of further compelling circumstances beyond the length of detention on death row. While a period of detention on death row of seven years is a matter of concern, the Committee concludes that this delay does not per se constitute a violation of articles 7 and 10, paragraph 1.

Notes

...

4/ Communication No. 588/1994 (*Errol Johnson v. Jamaica*), adopted on 22 March 1996, paras. 8.2 to 8.5.

See also:

- *Spence v. Jamaica* (599/1994), ICCPR, A/51/40 vol. II (18 July 1996) 219 (CCPR/C/57/D/599/1994) at para. 7.1.
- *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.

...

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.

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- *Spence v. Jamaica* (599/1994), ICCPR, A/51/40 vol. II (18 July 1996) 219 (CCPR/C/57/D/599/1994) at para. 7.2.

...

7.2 The author has further alleged a violation of articles 7 and 10, paragraph 1, on account of the ill-treatment he was subjected to on 4 May 1993, in the context of police and armed forces intervention during a prison riot. The State party has promised to investigate said claim, but failed to forward to the Committee its findings on the matter. The Committee notes that the author's allegations, which are contained in a signed and witnessed deposition dated 14 May 1993, are precise, in that he identifies the warders who ill-treated him, furnishes a description of a soldier who also beat him, and describes the weapons with which he was beaten. His additional claim that he was refused the medical treatment he was entitled to and which the State party should have provided him with after sustaining injuries in the incident has not been refuted. The Committee further observes that in spite of the author's deposition, the Office of the Parliamentary Ombudsman claims to have been unable to identify anyone said to have been involved in the incident. In the circumstances of the case, and in the absence of State party explanations on this issue, the Committee concludes that there has been a violation of articles 7 and 10, paragraph 1.

- *Sterling v. Jamaica* (598/1994), ICCPR, A/51/40 vol. II (22 July 1996) 214 (CCPR/C/57/D/598/1994) at paras. 2.2 and 8.2.

...

2.2 On May 1993, the author was the victim of beatings at the hand of prisons warders and police officers, while a search was carried out in his cell. As a result of the beatings the author was in severe pain, which included passing blood into his urine. He informed the acting superintendent that he wished to see a doctor...He was finally taken to hospital, where medication was prescribed. However, the author did not receive any medication from the prison authorities; he purchased pain-killing tablets himself.

...

8.2 With regard to the author's alleged ill-treatment and lack of medical attention at St. Catherine District Prison, the Committee notes that the author has made very precise allegations, which he documented in complaints to the prison authorities and to the Parliamentary Ombudsman of Jamaica. The State party has promised to investigate these claims, but has failed to forward to the Committee its findings, a year and four months after promising to do so, in spite of a reminder sent on 22 April 1996. In the circumstances, the Committee finds the author's submissions on the treatment he was subjected to on death row credible and concludes that article 7 and 10, paragraph 1, of the Covenant have been violated.

See also:

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- *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.
- *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.

- *Hill v. Spain* (526/1993), ICCPR, A/52/40 vol. II (2 April 1997) 5 (CCPR/C/59/D/526/1993) at paras. 2.7 and 13.

...

2.7 After having been held in police custody for 10 days, for five of which they were allegedly left without food, only warm water to drink, they were transferred to a prison in Valencia.

...

13. With respect to the author's allegations regarding their treatment during detention, particularly during the first 10 days when they were in police custody (para. 2.7), the Committee notes that the information and documents submitted by the State party do not refute the author's claim that they were not given any food during the first five days of police

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detention. The Committee concludes that such treatment amounts to a violation of article 10 of the Covenant.

For dissenting opinion in this context, see Hill v. Spain (526/1993), ICCPR, A/52/40 vol. II (2 April 1997) 5 (CCPR/C/59/D/526/1993) at Individual Opinion by Mr. Nisuke Ando, 20.

- *Reynolds v. Jamaica (587/1994), ICCPR, A/52/40 vol. II (3 April 1997) 157 (CCPR/C/59/D/587/1994) at paras. 10.2-10.4.*

...

10.2 The author has claimed that on 9 July 1988, he was in his cell when soldiers and warders were conducting a search. His cell was opened, and he was beaten up by three men with guns and batons. Later, in the corridor he was stripped off his clothes, beaten, stabbed and hit with a metal detector. A warder, whom the author has mentioned by name, allegedly told the soldiers to kill the author. The items the author had in his cell were destroyed, and his clothes and sleeping mat were drenched with water. The author was then locked away without receiving any medical treatment. He then complained to the Parliamentary Ombudsman by letter of 9 July 1988, to which he received no reply.

10.3 The author has alleged further incidents of ill-treatment, and named the warders responsible. In particular, he has claimed that on 4 May 1993, during a search, he was taken out of his cell and kicked twice, once on his testicles, and that he was denied painkillers or other medical treatment afterwards.

10.4 The Committee considers that, in absence of any concrete information from the State party, the treatment as described by the author constituted treatment prohibited by article 7 of the Covenant, and is likewise in violation with the obligation under article 10, paragraph 1, of the Covenant, to treat prisoners with humanity and with respect for the inherent dignity of the human person.

- *Blaine v. Jamaica (696/1996), ICCPR, A/52/40 vol. II (17 July 1997) 216 (CCPR/C/60/D/696/1996) at para. 8.2.*

...

8.2 As regards the author's claim that he was beaten in order to make him sign a confession, the Committee notes that this claim was put before the judge and the jury at trial, who rejected it. The Committee further notes that the author, in his statement from the dock during the trial, did not make any allusion to having been beaten by the police. Although the matter was raised on appeal, counsel did not pursue it and the Court found no merit in it.

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The Committee concludes that the information before it does not justify the finding of a violation of articles 7 and 10 of the Covenant.

- *Lewis v. Jamaica* (708/1996), ICCPR, A/52/40 vol. II (17 July 1997) 244 (CCPR/C/60/D/708/1996) at paras. 8.5 and 9.

...

8.5 The Committee notes that the State party has not contested the author's claims under article 10 of the Covenant (1) that after his arrest he spent a week in a filthy cell with seven other prisoners, (2) that in the General Penitentiary he was kept with convicted prisoners in a cell without basic sanitary facilities and (3) that the cell in which he is held on the death row is dirty, smelly and infected with insects and that he is there all day except for five minutes to slop out and during visits, once week for five minutes. The Committee finds that, in the circumstances, the facts presented by the author constitute a violation of article 10, paragraphs 1 and 2 (a) of the Covenant.

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

- *McLawrence v. Jamaica* (702/1996), ICCPR, A/52/40 vol. II (18 July 1997) 225 (CCPR/C/60/D/702/1996) at para. 5.4.

...

5.4 The author complains about beatings and treatment in violation of articles 7 and 10, paragraph 1, at the hand of police officers following his arrest; the State party has rejected his allegation. The Committee notes that the incidents invoked by the author were considered in detail by the court of first instance and the Court of Appeal. No material has been produced to show that the evaluation of the evidence by these instances was arbitrary or amounted to a denial of justice. The Committee therefore finds no violation of articles 7 and 10, paragraph 1.

- *Elahie v. Trinidad and Tobago* (533/1993), ICCPR, A/52/40 vol. II (28 July 1997) 34 (CCPR/C/60/D/533/1993) at para. 8.3.

...

8.3 With regard to the author's allegations of conditions of detention and ill-treatment, the Committee notes that the State party has not offered any information to refute the author's allegations. Due weight must therefore be given to the author's allegation that he only had

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“a piece of sponge and old newspapers” to sleep on, “food not fit for human consumption” given to him, and that he was treated with brutality by the warders whenever complaints were made. In the Committee’s view, the author was not treated with humanity and respect for the inherent dignity of the human, in person, in violation of article 10, paragraph 1, of the Covenant.

- *Williams v. Jamaica* (609/1995), ICCPR, A/53/40 vol. II (4 November 1997) 63 (CCPR/C/61/D/609/1995) at paras. 6.4 and 6.5.

...

6.4 Counsel has claimed a violation of articles 7 and 10, paragraph 1, because of the length of the author's detention on death row, which, at the time of submission of the communication was six years and by the time of commutation of the sentence nearly seven years. The Committee reiterates its jurisprudence that prolonged detention on death row does not per se amount to a violation of articles 7 and 10, paragraph 1, of the Covenant in the absence of further compelling circumstances. On the other hand, each case must be considered on its own merits, bearing in mind the psychological impact of detention on death row on the convicted prisoner. 6/

6.5 In the instant case, the material before the Committee indicates that the author's mental condition seriously deteriorated during his incarceration 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 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.

Notes

...

6/ See Committee's Views on Communication No. 606/1994 (*Clement Francis v. Jamaica*), adopted on 25 July 1995, paragraph 9.1.

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- *Polay Campos v. Peru* (577/1994), ICCPR, A/53/40 vol. II (6 November 1997) 36 at paras. 8.2 and 8.4-8.7.

...

8.2 Two issues arise in the present case: first, whether the conditions of detention of Mr. Polay Campos, and the ill-treatment he allegedly has been subjected to, amount to a violation of articles 7 and 10 of the Covenant...

...

Detention from 22 July 1992 to 26 April 1993 and transfer from Yanamayo to Callao

8.4 The author claims that Victor Polay Campos was detained incommunicado from the time of his arrival at the prison in Yanamayo until his transfer to the Callo Naval Base detention centre. The State party has not refuted this allegation; nor has it denied that Mr. Polay Campos was not allowed to speak or to write to anyone during that time, which also implies that he would have been unable to talk to a legal representative, or that he was kept in his unlit cell for 23 and a half hours a day in freezing temperatures. In the Committee's opinion, these conditions amounted to a violation of article 10, paragraph 1, of the Covenant.

8.5 The author contends that her husband was beaten and subjected to electric shocks during his transfer to the Callao Naval Base facility, and that he was displayed to the media in a cage on that occasion. Although this allegation was not addressed by the State party, the Committee considers that the author did not adequately substantiate her allegation concerning the beating and the administration of electric shocks during the transfer to Callao. It accordingly makes no finding on articles 7 and 10, paragraph 1, of the Covenant on this count. On the other hand, it is beyond dispute that during his transfer to Callao Mr. Polay Campos was displayed to the press in a cage: this, in the Committee's opinion, amounted to degrading treatment contrary to article 7 and to treatment incompatible with article 10, paragraph 1, since it failed to respect Mr. Polay Campos' inherent and individual human dignity.

Detention at Callao from 26 April 1993 to the present

8.6 As to the detention of Victor Polay Campos at Callao, it transpires from the file that he was denied visits by family and relatives for one year following his conviction, i.e. until 3 April 1994. Furthermore, he was unable to receive and to send correspondence. The latter information is corroborated by a letter dated 14 September 1993 from the International Committee of the Red Cross to the author, which indicates that letters from Mr. Polay Campos' family could not be delivered by Red Cross delegates during a visit to him on 22 July 1993, since delivery and exchange of correspondence were still prohibited. In the Committee's opinion, this total isolation of Mr. Polay Campos for a period of a year and the restrictions placed on correspondence between him and his family constitute inhuman

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treatment within the meaning of article 7 and are inconsistent with the standards of human treatment required under article 10, paragraph 1, of the Covenant.

8.7 As to Mr. Polay Campos' general conditions of detention at Callao, the Committee has noted the State party's detailed information about the medical treatment Mr. Polay Campos has received and continues to receive, as well as his entitlements to recreation and sanitation, personal hygiene, access to reading material and ability to correspond with relatives. No information has been provided by the State party on the claim that Mr. Polay Campos continues to be kept in solitary confinement in a cell measuring two metres by two, and that apart from his daily recreation, he cannot see the light of day for more than 10 minutes a day. The Committee expresses serious concern over the latter aspects of Mr. Polay Campos' detention. The Committee finds that the conditions of Mr. Polay Campos' detention, especially his isolation for 23 hours a day in a small cell and the fact that he cannot have more than 10 minutes' sunlight a day, constitute treatment contrary to article 7 and article 10, paragraph 1, of the Covenant.

- *Yasseen and Thomas v. Guyana* (676/1996), ICCPR, A/53/40 vol. II (30 March 1998) 151 (CCPR/C/62/D/676/1996) at para. 7.6.

...

7.6 The authors claim that their long detention in degrading conditions violated articles 7 and 10, paragraph 1. They have submitted sworn affidavits in support of their allegation that the conditions of their detention on death row are inhuman and particularly insalubrious. The State party refutes these claims but acknowledges that the authors' cells are illuminated by outside lighting units implying that the cells receive no natural lighting. The Committee considers that the fact that the authors are deprived of natural lighting save for their one hour of daily recreation, constitutes a violation of article 10, paragraph 1, of the Covenant, since it fails to respect the authors' inherent dignity as persons.

...

For dissenting opinions in this context, see Yasseen and Thomas v. Guyana (676/1996), ICCPR, A/53/40 vol. II (30 March 1998) 151 (CCPR/C/62/D/676/1996) at Individual Opinion by Nisuke Ando, 163.

- *Matthews v. Trinidad and Tobago* (569/1993), ICCPR, A/53/40 vol. II (31 March 1998) 30 (CCPR/C/62/D/569/1993) at paras. 3.1-3.3 and 7.3.

...

3.1 Mr. Matthews contends that between 1990 and 1993, he was denied attendance at an eye

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clinic in Port-of-Spain on 14 occasions; according to him, an ophthalmologist and registered practitioner at the eye clinic could corroborate his story. The author complained to the Ombudsman and to prison authorities about lack of medical treatment, to no avail.

3.2 The author contends that the prison diet and conditions of detention have contributed to a worsening of his situation. He claims that the prison diet consists of two slices of (mostly dry) bread and a cup of 'sugar water' in the morning, and 1/4 pound of rice and peas and flour at lunch time. Prison authorities allegedly do not listen to, or transmit, complaints about the daily diet. Food brought by the inmates' relatives allegedly goes to the prison officers' kitchen.

3.3 The author describes the conditions of detention as appalling and inhuman. He notes that he is 'cramped' into a small cell with four inmates, and that the cell 'leaks profusely' during rainfalls, which in turn has increased the incidence of influenza among inmates. There is no medication against influenza in the prison.

...

7.3 As to the conditions of detention at Carrera Convict Prison, the Committee notes that the author has made very detailed allegations which have been refuted by the State party as preposterous and exaggerated. On the basis of the information before it, the Committee concludes that the conditions of detention at Carrera Convict Prison described by the author, in particular the sanitary conditions, amount to a violation of article 10, paragraph 1, of the Covenant.

- *McLeod v. Jamaica* (734/1997), ICCPR, A/53/40 vol. II (31 March 1998) 213 (CCPR/C/62/D/734/1997) at para. 6.4.

...

6.4 With regard to the author's claim that his conditions of detention at St.Catherine's District Prison, where he has been held on death row since his conviction, constitute a violation of articles 7 and 10, paragraph 1, the Committee notes that the author has made specific allegations, about the deplorable conditions of his detention. He claims that he is confined to a 2 metre square cell for twenty-three hours each day, and remains isolated from other men for most of the day. He spends most of his waking hours in enforced darkness and has little to keep him occupied. He is not permitted to work or to undergo education. The State party has not refuted these specific allegations. In these circumstances, the Committee finds that confining the author under such circumstances constitutes a violation of his right to be treated with humanity and with respect for the inherent dignity of the human person contrary to article 10, paragraph 1, of the Covenant.

See also:

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- *Finn v. Jamaica* (617/1995), ICCPR, A/53/40 vol. II (31 July 1998) 78 (CCPR/C/63/D/617/1995) at para. 9.3.
- *Forbes v. Jamaica* (649/1995), ICCPR, A/54/40 vol. II (20 October 1998) 127 (CCPR/C/64/D/649/1995) at para. 7.5.
- *Freemantle v. Jamaica* (625/1995), ICCPR, A/55/40 vol. II (24 March 2000) 11 at para. 7.3.

- *McTaggart v. Jamaica* (749/1997), ICCPR, A/53/40 vol. II (31 March 1998) 221 (CCPR/C/62/D/749/1997) at paras 8.5-8.7.

...

8.5 The author has claimed that the conditions in his cell, prior to trial, were very poor; he was kept in a cell with a number of men, with no slop bucket. The State party has failed to address this allegation except in a very general manner. Consequently, the Committee considers that the author's rights as a person in detention have been violated, in breach of article 10, paragraph 1, of the Covenant.

8.6 With regard to the conditions of detention at St.Catherine's District Prison, the Committee notes that the author has made specific allegations, about the deplorable conditions of his detention. He claims that he is kept in a solitary cell, with only a foam mattress to sleep on, and a slop bucket for all sanitation which he may only empty twice a day. Intermittently, his visitors are sent away and when allowed in it is only very briefly. The State party has not refuted these specific allegations. In these circumstances, the Committee finds that confining the author under such circumstances constitutes a violation of article 10, paragraph 1, of the Covenant.

8.7 The author has alleged that, on 4 March 1997, he and several other death row inmates were severely beaten by warders and then five men including himself were forced into one cell. Later, the warders burnt his belongings including letters from his lawyers, trial transcripts and copy of his petition to the Privy Council. The Committee notes that the State party promised to investigate the matter. It considers that, in the absence of any information from the State party, the treatment described by the author constitutes treatment prohibited by article 7 of the Covenant, and is likewise in violation with the obligation under article 10, paragraph 1, of the Covenant, to treat prisoners with humanity and with respect for the inherent dignity of the human person.

- *Shaw v. Jamaica* (704/1996), ICCPR, A/53/40 vol. II (2 April 1998) 164 (CCPR/C/62/D/704/1996) at paras. 7.1 and 7.2.

...

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7.1 The author alleges a violation of articles 7 and 10 (1) of the Covenant because he was detained in unacceptable conditions for several months following his arrest. The State party has not refuted this claim and promised to investigate it, but failed to forward to the Committee the findings, if any, of its investigation. In the circumstances, due weight must be given to the author's allegations. The Committee notes that during pre-trial detention, much of it which was spent at Montego Bay Police Lock-Up, the author was confined to a cell which was grossly overcrowded, that he had to sleep on a wet (concrete) floor, and that he was unable to see family, relatives or a legal representative until late in 1992. It concludes that these conditions amount to a violation of articles 7 and 10, paragraph 1, of the Covenant, constituting inhuman and degrading treatment and a failure, on the State party's part, to respect the inherent dignity of the author as a person.

7.2 ...The conditions of detention may...constitute a violation of articles 7 or 10 of the Covenant Mr. Shaw alleges that he is detained in particularly bad and insalubrious conditions on death row; the claim is supported by reports which are annexed to counsel's submission. There is a lack of sanitation, light, ventilation and bedding; confinement for 23 hours a day and inadequate health care. Counsel's submission takes up the main arguments of these reports and shows that the prison conditions affect Steve Shaw himself, as a condemned prisoner on death row. The author's claims have not been refuted by the State party, which remains silent on the issue. The Committee considers that the conditions of detention described by counsel and which affect Mr. Shaw directly are such as to violate his right to be treated with humanity and respect for the inherent dignity of his person, and are thus contrary to article 10, paragraph 1, of the Covenant.

See also:

- *Desmond Taylor v. Jamaica* (705/1996), ICCPR, A/53/40 vol. II (2 April 1998) 174 (CCPR/C/62/D/705/1996) at para. 7.4.
- *Deidrick v. Jamaica* (619/1995), ICCPR, A/53/40 vol. II (9 April 1998) 87 (CCPR/C/62/D/619/1995) at para. 9.3.
- *Daley v. Jamaica* (750/1997), ICCPR, A/53/40 vol. II (31 July 1998) 235 (CCPR/C/63/D/750/1997) at paras. 3.2 and 7.2.

- *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. Concerning the instances of Mr.

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Jones' ill-treatment, counsel recalls that the State party authorities were always notified promptly and fully about the incidents which took place in May 1990, October 1993 and May 1995:

- On 28 May 1990, the author was twice hit in the face by a prison officer during disturbances at St. Catherine District Prison;

- On 31 October 1994, the author was assaulted by a soldier and a warder known as "Paddy foot" and was subjected to constant threats by "Paddy foot", as Mr. Jones had said that he would testify about an incident involving a prison warder known to "Paddy foot" in which 4 inmates were killed;

- On 30 May 1995, the author was hit in the mouth by warder Page, after "Paddy foot's" transfer to another prison, as a result of the author's complaint against him. On the same day, Mr. Jones was denied food and not allowed to visit the surgery.

...

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. As to the beatings to which the author allegedly was subjected, the State party merely notes that it would need details and names for the matter to be investigated, while the author gives both dates and details of the incidents during which he sustained beatings. The Committee observes that it was incumbent upon the State party to investigate the author's allegations, which were sufficiently precise, in good faith. Moreover, it has not been contested that the author did notify the prison authorities after these incidents. The Committee therefore concludes that the beatings Mr. Jones sustained in May 1990, October 1993 and May 1995 violated his right, under article 10, paragraph 1, to be treated with humanity and respect for the inherent dignity of his person.

- *Domukovsky, Tsiklauri, Gelbakhiani and Dokvadze v. Georgia* (623, 624, 626 and 627/1995), ICCPR, A/53/40 vol. II (6 April 1998) 95 (CCPR/C/62/D/623/1995/624/1995/626/1995/627/1995) at para. 18.6.

...

18.6 Each of the authors have claimed that they have been subjected to torture and ill-treatment, including severe beatings and physical and moral pressure, which in the case of Domukovsky, caused concussion, in the case of Tsiklauri, caused concussion, broken bones, wounding and burning, in the case of Gelbakhiani caused scarring, and in the case of Dokvadze, involved both torture and threats to his family. The State party has denied that

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torture has taken place, and stated that the judicial examination found that the claims were unsubstantiated. It has however, not indicated how the court has investigated the allegations, nor has it provided copies of the medical reports in this respect. In particular, with regard to the claim made by Mr. Tsiklauri, the State party has failed to address the allegation, simply referring to an investigation which allegedly showed that he had jumped from a moving vehicle and that he had spilled hot tea over himself. No copy of the investigation report has been handed to the Committee, and Mr. Tsiklauri has contested the outcome of the investigation, which according to him was conducted by police officers without a court hearing ever having been held. In the circumstances, the Committee considers that the facts before it show that the authors were subjected to torture and to cruel and inhuman treatment, in violation of articles 7 and 10, paragraph 1, of the Covenant.

- *Chung v. Jamaica* (591/1994), ICCPR, A/53/40 vol. II (9 April 1998) 55 (CCPR/C/62/D/591/1994) at paras. 3.4 and 8.2.

...

3.4 The author submits that during his incarceration on death row, he was subjected to beatings and other forms of ill-treatment, in violation of articles 7 and 10, paragraph 1. He notes that after one inmate had been beaten to death in front of his cell by warders in 1989, warders returned the following day to beat him up as well. Although he suffered a kidney injury, he was left in his cell for a full four days before he was brought to a hospital. Mr. Chung complained about his treatment to the Parliamentary Ombudsman, by letters of 12 January and 10 September 1989. Subsequently, counsel requested information from the Ombudsman's Office about the author's complaints, to no avail.

...

8.2 The Committee has noted the State party's argument that investigations into the allegations of ill-treatment if Mr. Chung have not substantiated his version of beatings and ill-treatment sustained on death row. It observes that the State party has not indicated whether a formal report on the result of these investigations was issued, nor who investigated the claim and when it was investigated. On the other hand, Mr. Chung has given a detailed account of the beatings he sustained at the hand of warders in 1989...In the absence of detailed reply from the state party, due weight must be given to the author's allegations. The Committee finds that the ill-treatment described by the author constitutes a violation of articles 7 and 10, paragraph 1, of the Covenant.

- *Morrison v. Jamaica* (635/1995), ICCPR, A/53/40 vol. II (27 July 1998) 113 (CCPR/C/63/D/635/1995) at para. 23.3.

...

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23.3 The author has also referred to two specific incidents, on 5 March and 12 August 1997, during which he claims he was ill-treated by the warders and on one occasion, all his belongings were destroyed. The State party has not replied to these allegations, although it had an opportunity to do so. In the circumstances, the Committee concludes that the author was subjected to treatment in violation of articles 7 and 10, paragraph 1, of the Covenant.

- *Whyte v. Jamaica* (732/1997), ICCPR, A/53/40 vol. II (27 July 1998) 195 (CCPR/C/63/D/732/1997) at paras. 9.3 and 9.4.

...

9.3 The State party has not contested the author's claim that during his pre-trial detention he was kept in a very small cell with seven other men, and that he had to sleep on a piece of cardboard. In the absence of a reply from the State party, the Committee finds that the conditions of pre-trial detention as described by the author constitute a violation of article 10, paragraph 1, of the Covenant.

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 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.

- *Perkins v. Jamaica* (733/1997), ICCPR, A/53/40 vol. II (30 July 1998) 205 (CCPR/C/63/D/733/1997) at paras. 3.2, 11.4 and 11.7.

...

3.2 The author further claims that while awaiting trial he was held in a cell with 23 other people and that he had to stand most of the time because of lack of space. If he slept, it was usually on the floor. Since his conviction, he has been held in a single very small cell. He sleeps on a sponge and has to use a bucket as a toilet. He is not provided with reading material. He further states that he is being bullied by the warders who tell him that the hangman is on his way and that he will be the next to go to the gallows.

...

11.4 The Committee notes that the State party has failed to address the author's claim that

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he was kept in deplorable conditions of detention before his trial. In the absence of a reply from the State party, due weight must be given to the author's allegations to the extent that they are substantiated. The Committee finds that the conditions of pre-trial detention as described by the author constitute a violation of article 10, paragraph 1, of the Covenant.

...

11.7 The author has claimed that since his conviction he has been held in a very small cell with only a sponge to sleep on and a bucket as toilet. Furthermore, he states that he is being bullied by the warders. The author's claims have not been refuted by the State party, which remains silent on the issue. The Committee considers that the conditions of detention and the treatment as described by the author are in violation of article 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. 3.1-3.8 and 9.2.

...

3.1 With regard to articles 7 and 10, paragraph 1, of the Covenant, counsel forwards a statement taken from the author at St. Catherine District Prison on 28 January 1993. This states that, on 15 November 1987, while held at the Hunts Bay Police Station, the author was hit on the chest by the investigating officer (name given). Furthermore, the author claims that, throughout his detention at Hunts Bay Police Station (from 14 to 20 November 1987), he was held in a cell measuring 2 by 4 metres together with five to six other persons. He was not allowed to wash himself and was only permitted to leave the cell in order to fetch drinking water. He was further denied recreational facilities.

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...

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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 discomforting and humiliating".

3.6 By letter of 9 June 1993, the author submits that, on 5 June 1993 at 12:28 p.m., he was harassed by a warder, one M., reportedly because he had complained to the Ombudsman and to "the Human Rights Office" about the treatment by warders. M. allegedly hit the author on his knee with a baton, and when the author held on to the baton, M. drew a knife. He alleges that M. was about to use the knife but that it fell from his hand. The author then reported the incident to the officer-in-charge of the Section, who referred him to the Prison Superintendent; the latter allegedly refused to see him. The author further alleges that, on 4 May 1993, a warder stuck a finger in his eye and that he was kicked several times as he lay on the floor. The same warder subjected him to further physical and verbal abuse on 23, 24, 29 and 30 September 1993. On 30 September the author's room was searched and 200 dollars removed, which have not been returned.

3.7 Counsel refers to the records of a meeting held on 25 January 1993 with the author's local lawyer. This lawyer observed that Mr. Leslie displayed a number of new cuts and bruises on his face which the lawyer did not recall from their first meeting in 1989. The lawyer suspected that this was the result of treatment in prison, which is not uncommon in Jamaica. Counsel submits that this lawyer's observations corroborate all the allegations made by the author in his statement and letters. Counsel, on behalf of Mr. Leslie, has lodged formal complaints with the Prison Superintendent on 30 November 1993, and with the Jamaican Commissioner of Prisons on 14 March 1994.

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

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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.

- *Daley v. Jamaica* (750/1997), ICCPR, A/53/40 vol. II (31 July 1998) 235 (CCPR/C/63/D/750/1997) at para. 7.6.

...

7.6 The author has claimed that his continued detention on death row in itself, as well the conditions of this detention, constitute a violation of articles 7 and 10, paragraph 1, of the Covenant. The Committee reaffirms its constant jurisprudence ^{6/} that detention on death row for a specific period - in this case two years and seven months after his first conviction, and two years and eight months after his second conviction - does not violate the Covenant in the absence of further compelling circumstances. The conditions of detention may, however, constitute a violation of articles 7 and 10 of the Covenant. Mr. Daley alleges that he is detained in particularly bad and insalubrious conditions on death row; this claim is supported by reports which are annexed to counsel's submission. There is lack of sanitation, light, ventilation and bedding. Counsel's submission takes up the main elements of these reports and shows that the prison conditions affect Silbert Daley himself, as a prisoner on death row. Furthermore, the author has claimed that he has been assaulted regularly by other inmates, leading to his hospitalization, and that the State party has taken no measures to protect him. The author's claims have not been refuted by the State party, which remains silent on the issue. The Committee considers that the conditions of detention described by counsel and which affect Mr. Daley directly are such as to violate his right to be treated with humanity and respect for the inherent dignity of his person, and are thus contrary to article 10, paragraph 1.

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Notes

...

6/ See *inter alia*, the Committee's Views in cases Nos. 588/1994 (*Erroll Johnson v. Jamaica*), adopted 22 March 1996, paragraphs 8.1 to 8.6; 554/1993 (*Robinson Lavende v. Trinidad and Tobago*), adopted 29 October 1997, paragraphs 5.2 to 5.7; and 555/1993 (*Ramcharan Bicharoo v. Trinidad and Tobago*), adopted 29 October 1997, paragraphs 5.2 to 5.7.

See also:

- *Campbell v. Jamaica* (618/1995), ICCPR, A/54/40 vol. II (20 October 1998) 78 (CCPR/C/64/D/618/1995) at paras. 7.1 and 7.2.
- *Forbes v. Jamaica* (649/1995), ICCPR, A/54/40 vol. II (20 October 1998) 127 (CCPR/C/64/D/649/1995) at para. 7.3.

...

7.3 As to the author's claim that he is a victim of a violation of articles 7 and 10, paragraph 1, on the ground that he was severely beaten by two police officers while at Spanish Town Lock-Up, the Committee notes both that the author has not given any medical evidence of such an occurrence, and that he has failed to bring these allegations to the attention of his former lawyers and the courts. The author has explained that this failure was due partly to the lapse of time from the occurrence until he obtained counsel, and partly to the fear of reprisals. The Committee notes, however, that the author in his statement of 8 September 1994 claims that the beatings occurred in July of 1982, and that he in his letter of 7 September 1993 claims that he had contact with his counsel, Mr. Robert Pickersgill, several times before the preliminary hearings started in August 1982. Subsequently, there does not appear to have been much of a lapse of time from the alleged beatings until the author obtained contact with his lawyer. The Committee also notes that the author soon after the alleged beatings was moved from Spanish Town Lock-Up to the General Penitentiary, and therefore any fear of reprisal should have been reduced. In these circumstances, on the basis of the information before it, the Committee concludes that the author has not substantiated his claim and, accordingly, there is no basis for finding a violation of articles 7 or 10 on the ground of beatings. Consequently, the Committee also finds that there is no basis for finding a violation of articles 7 and 10 on the ground of inadequate medical treatment during the author's detention at Spanish Town Police Lock-Up.

- *Colin Johnson v. Jamaica* (653/1995), ICCPR, A/54/40 vol. II (20 October 1998) 135 (CCPR/C/64/D/653/1995) at para. 8.2.

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...

8.2 The author has also made specific allegations, about the deplorable conditions of his detention. He claims that he is kept in a poorly lit cell of 6 by 9 feet, with only a concrete slab to sleep on, and no integral sanitation. The Committee considers that the treatment described by the author is in violation of the State party's obligation under article 10, paragraph 1, of the Covenant, to treat prisoners with humanity and with respect for the inherent dignity of the human person.

- *Pennant v. Jamaica* (647/1995), ICCPR, A/54/40 vol. II (20 October 1998) 118 (CCPR/C/64/D/647/1995) at paras. 8.3 and 8.4.

...

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.

8.4 ...[T]he author has made specific allegations, about the deplorable conditions of his detention. He claims that he was permanently confined to his cell except for an average of 15 minutes twice everyday to empty his slops bucket. That his cell was infested with ants and other insects, that he only has a sponge with which to clean the cell. He also complained of the abysmal quality of the food and the sanitary conditions. The State party has not refuted these specific allegations. In these conditions, the Committee finds that confining the author under such circumstances constitutes a violation of article 10, paragraph 1, of the Covenant.

See also:

- *Phillip v. Trinidad and Tobago* (594/1992), ICCPR, A/54/40 vol. II (20 October 1998) 30 (CCPR/C/64/D/594/1992) at para. 7.4.
- *Henry v. Trinidad and Tobago* (752/1997), ICCPR, A/54/40 vol. II (3 November 1998) 238 (CCPR/C/64/D/752/1997) at paras. 2.1-2.3, 7.3 and 7.4.

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...

2.1 The author states that he was beaten on the head by prison officers on 3 May 1988, resulting in a head wound which required several stitches. The author states that he submitted a complaint to the Ombudsman, on an unspecified date, and that on 16 July 1993 the Office of the Ombudsman replied that it had investigated his complaints and that the investigation revealed that the matters complained of were already receiving the attention of the Prison authorities.

2.2 The author further submits that the medical treatment in prison is wholly inadequate and deficient. According to the author, due to the lighting in his cell on death row, his eyes have become extremely sensitive to light and he has to wear dark glasses. He states that he saw an eye specialist on 10 March 1994, but that he still has not received any new eye glasses, although his eye sight has deteriorated.

2.3 The author states that during his detention on death row, he was confined in a 9 x 6' cell for 23 hours a day. A light burned in his cell 24 hours a day and no natural lighting existed. There was no integral sanitation in the cell. There was a ventilation hole, measuring 8" x 8", but no window. The exercise periods were insufficient and were not longer than one hour in a small exercise yard with handcuffs on.

...

7.3 The State party has failed to provide any information with regard to the conditions of the author's detention on death row. In the circumstances due weight must be given to the author's allegations, if substantiated. The Committee finds that the circumstances of detention as described by the author amount to a violation of article 10, paragraph 1, of the Covenant.

7.4 The State party has contested the information provided by the author concerning the circumstances of his detention since the commutation of his death sentence. The Committee notes, however, that the State party admits that the author is being kept in a 9 x 6' cell together with five other inmates; nor has the State party challenged that the prisoners share a single slop pail. The Committee finds that such overcrowding is not in compliance with the requirement that prisoners be treated with humanity and with respect for the inherent dignity of the human person and constitutes a violation of article 10, paragraph 1.

- *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

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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 states that he is detained twenty-three hours a day in a cell with no mattress, other bedding or furniture, that the cell has no natural light and inadequate sanitation, and that the food is not palatable. Furthermore, he 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.

See also:

- *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.

- *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 states that the prison conditions are unsanitary, with waste sewage and a constant smell pervading the prison, and complains of the degrading and unhygienic practice of using slop buckets which are filled with human waste and stagnant water and only are emptied in the morning. The author also contends that the running water in the prison is polluted with insects and human excrement, and that the inmates are required to share utensils which are not cleaned properly. 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 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

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the Covenant.

- *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.

...

7.2 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 authors have made specific allegations. They state that they are detained twenty-three hours a day in cells with no mattress, other bedding or furniture, that the cells have inadequate sanitation and no natural light, and that the food is not palatable. Furthermore, they state that there in general is a lack of medical assistance, and the author Leroy Morgan specifically mentions that at the time of the commencement of his detention, despite numerous requests to the Superintendent, he was denied medical attention to injuries he sustained after a gun shot in 1987. 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 medical attention in 1991. The Committee finds that these circumstances disclose a violation of article 10, paragraph 1, of the Covenant.

- *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

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66/ See *inter alia* the Committee's Views in case No. 161/1983, *Herrera Rubio v. Colombia*, Views 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, 6.4 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 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.

...

6.4 With respect to the alleged violation of articles 7 and 10, paragraph 1, of the Covenant, because the author was maltreated by the police upon his arrest, the Committee notes that the issue was subject of a *voir dire* and that it was before the jury during the trial, that the jury rejected the author's allegations, and that the matter was not raised on appeal. The Committee finds that the information before it does not justify the finding of a violation of articles 7 and 10, paragraph 1, of the Covenant in this respect.

6.5 On the other hand, the 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

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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.

- *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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- *Bailey v. Jamaica* (709/1996), ICCPR, A/54/40 vol. II (21 July 1999) 185 at para. 7.6.

...

7.6 With regard to the alleged violation of articles 7 and 10, paragraph 1, on the ground that the time the author spent on death row (14 year) and the non-parole period of 20 years set by the judge together amount to cruel and inhuman punishment, the Committee recalls its constant jurisprudence that the period of time spent on death row does not per se constitute a violation of article 7. As to whether the combined effect of the 14 years on death row and the non-parole period of 20 years amounts to cruel and inhuman punishment, bearing in mind the nature of the offence, the Committee finds that there has been no violation of article 7 or 10 in this regard.

- *Gallimore v. Jamaica* (680/1996), ICCPR, A/54/40 vol. II (23 July 1999) 170 (CCPR/C/66/D/680/1996) at para. 7.1.

...

7.1 With respect to the author's claims of ill-treatment, the Committee notes that he has alleged beatings while in police custody, which the State party has failed to address altogether. Consequently, the Committee finds that due weight must be given to the allegations. With respect to the author's claim that he was beaten while in detention at St. Catherine District Prison and did not receive medical treatment for a hand injury, as a result of which he was unable to use his hand for 17 days, the Committee notes the State party's claim that it required additional information as to the events. It also notes that Counsel has stated that the author raised the issue with the prison warders. In return the State party merely requests additional information and does not seem to have investigated the matter. It also notes that the letter from counsel informing the Committee of his inability to provide more information than that already submitted was transmitted to the State party in December 1996. In the absence of further information from the State party, the Committee considers that due weight must be given to the author's complaint and accordingly finds that the treatment he received at the hands of the authorities both while in police custody and later in detention are in violation of articles 7 and 10, paragraph 1, of the Covenant.

- *Hamilton v. Jamaica* (616/1995), ICCPR, A/54/40 vol. II (23 July 1999) 73 (CCPR/C/66/D/616/1995) at paras. 3.1 and 8.2.

...

3.1 Counsel explains that the author was shot, in the lower area of his spine by a police officer after a hearing by the Magistrate as part of the Preliminary Enquiry. He had, for other

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reasons, been in hospital prior to his arrest. He was then readmitted to hospital, because of the injury to his back, where he spent three months between his arrest and his trial. As a long term outcome, as a result of this, he is paralysed in both legs and is unable to move from his cell unless he is carried by other inmates. He is also unable to remove his slop bucket from the cell himself and he has therefore been obliged to pay other inmates to remove it. This means that sometimes it has to remain in his cell until he has obtained the necessary funds. The author complained several times to the superintendent about the conditions in which he is kept, to no avail. Furthermore, the London solicitors wrote twice to the Prison Governor on Mr. Hamilton's behalf, requesting him to ensure that the author is given proper assistance to enable him to leave his cell for some period during each day, and also to make proper arrangements for his slop bucket to be removed from his cell daily. To date no reply has been received. Counsel refers to a 1993 report from a non-governmental organisation in which it is stated that, although the Parliamentary Ombudsman seems to make a genuine effort to address the problems in the prisons of Jamaica, his office does not have sufficient funding to be effective, and the Ombudsman has no powers of enforcing his recommendations which are non-binding. Therefore, counsel argues, the office of the Parliamentary Ombudsman does not provide an effective remedy in the circumstances of the author's case. It is submitted that the author's rights under articles 7 and 10 of the Covenant have been violated, because of the prison authorities' failure to take into account the author's paralysed condition and to make proper arrangements for him. The lack of proper care is also said to be in violation of the UN Standard Minimum Rules for the treatment of Prisoners.

...

8.2 With regard to the author's complaints with respect to his conditions of detention at St. Catherine's District Prison, the Committee notes that the author has made very precise allegations, relating to the difficulties he has encountered as a disabled person (see paragraph 3.1 supra). All of this has not been contested by the State party, except to say that measures would have to be put in place to accommodate the author as a disabled person in prison. In the Committee's opinion, the conditions described in para 3.1, 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 article 10, paragraph 1.

- *Freemantle v. Jamaica* (625/1995), ICCPR, A/55/40 vol. II (24 March 2000) 11 at paras. 3.3 and 7.2.

...

3.3 As to alleged violations of articles 7 and 10, the author recalls that on 28 May 1990, he and other inmates broke out of their cells because they had not been allowed to exercise and slop up. The disturbances spread to other parts of the prison. Inmates were asked to return to the cells and complied, but subsequently, warders took the author from his cell, took off

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his clothes, searched him and started to beat him with a piece of metal. He sustained injuries to head, knee, stomach and eyes, having been beaten for about five minutes. He was then left in his cell unattended, without medical attention. Only at midnight was he taken to the hospital for treatment; he received stitches to the head and was discharged. Even after the event, and investigations into the actions of some warders, the author contends that he continued to be subjected to constant verbal intimidation and abuse. On 16 June 1990, the Jamaica Council for Human Rights wrote to London counsel, noting that the author was “badly battered as a result of the disturbances in the prison at the end of last month”, and submitted a complaint before the Jamaican authorities on the author’s behalf.

...

7.2 With regard to the author’s complaints of ill-treatment while in detention at St. Catherine’s District Prison, the Committee notes that the author has made very precise allegations, relating to the incidents where he was beaten (paragraph 3.3 supra). The Committee notes the State party’s information, that an enquiry had taken place to investigate the 1990 disturbances in which three prisoners had died, and that the author gave evidence at that enquiry. It also notes the information provided in the further submission whereby the State party contended that at the interview with the author, carried out by the Ministry, he had been unable to provide sufficient information on the names of the persons who had beaten him and those names that he had provided were of persons who either no longer worked in the prison or had retired. The State party, consequently, considered that no meaningful investigation could be carried out. The Committee considers that the fact that the perpetrators no longer work in the prison, in no way absolves the State party from its obligations to ensure the enjoyment of Covenant rights. The Committee notes that no investigation was undertaken by the State party in 1990 after the Jamaica Council for Human Rights had submitted a complaint, to the authorities on the author’s behalf. In the absence of any refutation by the State party due weight should be given to the author’s allegations. In these circumstances the author’s right not to be subjected to degrading treatment but to be treated with humanity and with respect for the inherent dignity of the human person, were not respected in violation of articles 7 and 10, paragraph 1.

- *Robinson v. Jamaica* (731/1996), ICCPR, A/55/40 vol. II (29 March 2000) 116 at paras. 10.1-10.3 and 12.

...

10.1 The author has claimed a violation of articles 7 and 10, paragraph 1, on the ground of the conditions of detention to which he was subjected while detained at St. Catherine’s District Prison. To substantiate his claim, the author has invoked three NGO reports...The Committee notes that the author refers to the inhuman and degrading prison conditions in general, such as the complete lack of mattresses, other bedding and furniture in the cells; that there is a desperate shortage of soap, toothpaste and toilet paper; that the quality of food and

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drink is very poor; that there is no integral sanitation in the cells and open sewers and piles of refuse; that there is no doctor, leaving warders with very limited training to treat medical problems. In addition to the NGO reports, counsel makes reference to reports from prisoners, stating that the prison is infested by vermin, and that the kitchen and the bakery despite having been condemned for many years are still in regular use. In addition to these claims, the author has also made specific allegations that he is confined to his cell for 22 hours every day in enforced darkness, isolated from other men, without anything to keep him occupied.

10.2 The Committee notes that with regard to these allegations, the State party has disputed only that there is inadequate medical facilities, that the prison is infested with vermin and that the kitchen and bakery have been condemned. The rest of the allegations put forward by the author stand undisputed and, in the circumstances, the Committee finds that article 10, paragraph 1, has been violated.

10.3 With regard to the author's claim that, on 5 March 1997, he was beaten by several warders at St. Catherine's District Prison, the Committee notes that the State party in its investigations of the allegations found that the beating was unavoidable as the author and three inmates had failed to follow repeated instructions to leave a particular cell. However, the Committee also notes the medical report provided by the State party which reveals that the author sustained injuries to his head, back, chest and legs which appear to go beyond that which is necessary to forcefully remove someone from a cell. The Committee therefore concludes that excessive force was used, in violation of articles 7 and 10, paragraph 1, of the Covenant.

...

12. ...[T]he State party is under an obligation to provide Mr. Robinson with an effective remedy, including compensation. The State party is under an obligation to ensure that similar violations do not occur in the future.

- *Wuyts v. The Netherlands* (785/1997), ICCPR, A/55/40 vol. II (17 July 2000) 210 at paras. 2.1, 2.2, 3 and 10.4.

...

2.1 On 11 February 1994, the author was convicted on several counts of theft with use of violence or threat of violence against persons, as well as attempts and threats of serious physical abuse. He was sentenced to eight months of imprisonment and ordered to be detained at her Majesty's pleasure for compulsory treatment in a psychiatric hospital. The initial detention was set at two years, renewable. According to the judgement, the author's treatment was to begin on 3 March 1994, but according to counsel it did not actually begin until 17 March 1995, more than one year later. During that period, the author was detained

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without any treatment.

2.2 On 6 February 1996, the District Court in Middelburg ordered the renewal of the author's treatment for two years. It considered that the psychiatric reports showed that the author's condition had not improved and that he refused anti-psychotic medication. On appeal, on 19 June 1996, the Court of Appeal in Arnhem confirmed the District Court's decision.

3. Counsel argues that the author is a victim of a violation of article 10 of the Covenant, since he was kept in detention without treatment for over a year, although the treatment had been ordered by the Court. He also argues that if the treatment would have started on time, it would not have been necessary to renew his confinement. According to counsel, in the circumstances any further treatment should be on a voluntary basis only, and the confinement of the author therefore violates the inherent dignity of the human person and thus article 10 of the Covenant.

...

10.4 ...[T]he Committee considers that neither counsel's arguments nor the material before it substantiate, for purposes of admissibility, that the author's prolonged compulsory confinement in a psychiatric hospital amounts to a violation of article 10 of the Covenant. Under the circumstances, this part of the communication is inadmissible under article 2 of the Optional Protocol.

- *Thompson v. Saint Vincent and the Grenadines* (806/1998), ICCPR, A/56/40 vol. II (18 October 2000) 93 at paras. 8.4 and 9.

...

8.4 The author has claimed that his conditions of detention are in violation of articles 7 and 10 (1) of the Covenant, and the State party has denied this claim in general terms and has referred to the judgement by the High Court, which rejected the author's claim. The Committee considers that, although it is in principle for the domestic courts of the State party to evaluate facts and evidence in a particular case, it is for the Committee to examine whether or not the facts as established by the Court constitute a violation of the Covenant. In this respect, the Committee notes that the author had claimed before the High Court that he was confined in a small cell, that he had been provided only with a blanket and a slop pail, that he slept on the floor, that an electric light was on day and night, and that he was allowed out of the cell into the yard one hour a day. The author has further alleged that he does not get any sunlight, and that he is at present detained in a moist and dark cell. The State party has not contested these claims. The Committee finds that the author's conditions of detention constitute a violation of article 10 (1) of the Covenant...

9. The Human Rights Committee ... is of the view that the facts before it disclose a violation

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of articles 6 (1) and 10 (1) of the Covenant.

- *Sextus v. Trinidad and Tobago* (818/1998), ICCPR, A/56/40 vol. II (16 July 2001) 111 at paras. 2.1-2.4, 7.4 and 8.

...

2.1 On 21 September 1988, the author was arrested on suspicion of murdering his mother-in-law on the same day. Until his trial in July 1990, the author was detained on pre-trial remand at Golden Grove Prison, Arouca, in a cell measuring 9 feet by 6 feet which he shared with 7 to 11 other inmates. He was not provided with a bed, and forced to sleep on a concrete floor or on old cardboard and newspapers.

2.2 After a period of over 22 months, the author was brought to trial on 23 July 1990 in the High Court of Justice. On 25 July 1990, the author was convicted by unanimous jury verdict and sentenced to death for the murder charged. From this point (until commutation of his sentence), the author was confined in Port-of-Spain State Prison (Frederick Street) in a solitary cell measuring 9 feet by 6 feet, containing an iron bed, mattress, bench and table.^{1/} In the absence of integral sanitation, a plastic pail was provided as toilet. A small ventilation hole measuring 8 inches by 8 inches, providing inadequate ventilation, was the only opening. In the absence of any natural light, the only light was provided by a fluorescent strip light illuminated 24 hours a day (located above the door outside the cell). Due to his arthritis, the author never left his cell save to collect food and empty the toilet pail. Due to stomach problems, the author was placed on a vegetable diet, and when these were not provided the author went without food. The author did not receive a response from the Ombudsman on a written complaint on this latter matter.

2.3 After a period of over 4 years and 7 months, on 14 March 1995, the Court of Appeal refused the author's application for leave to appeal.^{2/} On 10 October 1996, the Judicial Committee of the Privy Council in London rejected the author's application for special leave to appeal against conviction and sentence. In January 1997, the author's death sentence was commuted to 75 years' imprisonment.

2.4 From that point, the author has been detained in Port-of-Spain Prison in conditions involving confinement to a cell measuring 9 feet by 6 feet together with 9 to 12 other prisoners, which overcrowding causes violent confrontations between prisoners. One single bed is provided for the cell and therefore the author sleeps on the floor. One plastic bucket is provided as slop pail and is emptied once a day, such that it sometimes overflows. Inadequate ventilation consists of a 2 foot by 2 foot barred window. The prisoner is locked in his cell, on average 23 hours a day, with no educational opportunities, work or reading materials. The location of the prison food-preparation area, around 2 metres from where the

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prisoners empty their slop pails, creates an obvious health hazard. The contention is repeated that the provision of food does not meet the author's nutritional needs.

...

7.4 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, the Committee notes the State party's general argument that the conditions in its prisons are consistent with the Covenant. In the absence of specific responses by the State party to the conditions of detention as described by the author,^{26/} however, the Committee must give due credence to the author's allegations as not having been properly refuted. As to whether the conditions as described violate the Covenant, the Committee notes the State party's arguments that its courts have, in other cases, found prison conditions in other cases satisfactory.^{27/} The Committee cannot regard the courts' findings on other occasions as answering the specific complaints made by the author in this instance. The Committee considers, as it has repeatedly found in respect of similar substantiated allegations,^{28/} 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 separately consider the claims arising under article 7.

8. The Human Rights Committee ... is of the view that the facts before it disclose a violation of articles 9, paragraph 3, 10, paragraph 1, and 14, paragraphs 3 (c) and 5, of the Covenant.

Notes

1/ Counsel's description of these conditions is derived from the author's correspondence and a personal visit by counsel to the author in custody in July 1996.

2/ On this date, after hearing argument, the Court refused leave to appeal and affirmed the conviction and sentence. The reasons for judgement (20 pages) were delivered shortly thereafter on 10 April 1995.

...

26/ In the case of *Chadee v. Trinidad and Tobago* (Communication 813/1998) which the State party refers to, the State party did provide details of fact and the Committee, by a majority, ultimately found itself not in a position to make a finding of a violation of article 10.

27/ These cases have interpreted a constitutional provision analogous in its terms to article 7 of the Covenant, and therefore might have bearing only upon the evaluation of the claims presently made under article 7 but not on the different standard contained in article 10.

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28/ See, for example, *Kelly v. Jamaica* (Communication 253/1987) and *Taylor v. Jamaica* (Communication 707/1996).

- *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

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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 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

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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 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.

- *Lantsova v. Russian Federation* (763/1997), ICCPR, A/57/40 vol. II (26 March 2002) 96 (CCPR/C/74/D/763/1997) at paras. 2.1-2.3, 9.1 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/

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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/}

...

9.1 Regarding the conditions of detention, the Committee notes that the State party concedes that prison conditions were bad and that detention centres at the time of the events held twice the intended number of inmates. The Committee also notes the specific information received from the author, in particular that the prison population was, in fact, five times the allowed capacity and that the conditions in Matrosskaya Tishina prison were inhuman, because of poor ventilation, inadequate food and hygiene. The Committee finds that holding the author's son in the conditions prevailing at this prison during that time entailed a violation of his rights under article 10, paragraph 1 of the Covenant.

...

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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- *Kennedy v. Trinidad and Tobago* (845/1998), ICCPR, A/57/40 vol. II (26 March 2002) 161 (CCPR/C/74/D/845/1998) at paras. 7.8, 8 and 9.

...

7.8 The author claims that his conditions of detention are in violation of articles 7 and 10(1). Once again, this claim has not been addressed by the State party. The Committee notes that the author was kept on remand for a total of 42 months with at least five and up to ten other detainees in a cell measuring 6 by 9 feet; that for a period of almost eight years on death row, he was subjected to solitary confinement in a small cell with no sanitation except for a slop pail, no natural light, being allowed out of his cell only once a week, and with wholly inadequate food that did not take into account his particular dietary requirements. The Committee considers that these - uncontested - conditions of detention amount to a violation of article 10, paragraph 1, of the Covenant.

...

8. The Human Rights Committee...is of the view that the facts before it reveal violations by Trinidad and Tobago of articles 6, paragraph 1, 7, 9, paragraph 3, 10 paragraph 1, 14, paragraphs 3(c) and 5, and 14, paragraphs 1 and 3(d), the latter in conjunction with article 2, paragraph 3, of the Covenant.

9. Under article 2, paragraph 3(a), of the Covenant, the State party is under an obligation to provide Mr. Rawle Kennedy with an effective remedy, including compensation and consideration of early release. The State party is under an obligation to take measures to prevent similar violations in the future.

See also:

- *Evans v. Trinidad and Tobago* (908/2000), ICCPR, A/58/40 vol. II (21 March 2003) 216 (CCPR/C/77/D/908/2000) at paras. 2.3 and 6.4.
- *Teesdale v. Trinidad and Tobago* (677/1996) ICCPR, A/57/40 vol. II (1 April 2002) 36 (CCPR/C/74/D/677/1996) at paras. 3.1, 9.1, 10, 11 and Individual Opinion by Mr. Rajssoomer Lallah (concurring).

...

3.1 The author claims that he is a victim of a violation of articles 7 and 10, paragraph 1, of the Covenant. Between the date of the arrest and the date of his trial the author was remanded in custody for almost one and a half years. During that time he was in a cell (12 x 8 ft.) in which conditions were totally unsanitary, as there was no sunlight, no air, the men had to urinate and defecate anywhere in the cell, no bedding, nowhere to wash. After being sentenced to death, he has been detained in similar surroundings (10 x 8 ft.) with a light bulb

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directly overhead, which is kept on day and night. The author claims that he does not get any visitors and lacks privacy. He is handcuffed and placed in a box (3 x 3 ft.) when he consults his attorney. During the interview at least two guards are standing directly behind the attorney. Furthermore, the author was denied an eye test until September 1996, even though his glasses did not fit since 1990. The author claims that he was prevented by the prison authorities to pick up his new glasses in person and that the glasses he received as prescribed do not sufficiently correct his sight.

...

9.1 With regard to the conditions of the author's detention at State Prison, Port-of-Spain, both before and after conviction, the Committee notes that in his different submissions the author made specific allegations, in respect of the deplorable conditions of detention (see 3.1 above). The Committee recalls its earlier jurisprudence that certain minimum standards regarding the conditions of detention must be observed and that it appears from the author's submissions that these requirements were not met during the author's detention since 28 May 1988. In the absence of any response from the State party, the Committee must give due weight to the allegations of the author. Consequently, the Committee finds that the circumstances described by the author disclose a violation of articles 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, is not necessary to consider separately the claims arising under article 7.

...

10. The Human Rights Committee...is of the view that the facts before it disclose violations of articles 7; 9, paragraph 3; 10, paragraph 1; and 14, paragraphs 3 (b) and (c) of the Covenant.

11. Under article 2, paragraph 3, of the Covenant, Mr. Teesdale is entitled to an effective remedy, including compensation and consideration by the appropriate authorities of a reduction in sentence. The State party is under an obligation to ensure that similar violations do not occur in the future.

...

Individual Opinion by Mr. Rajsoomer Lallah (concurring)

I agree with the views of the Committee but would wish to add some observations on the length of the term of imprisonment of 75 years to which the sentence of the author was commuted.

The author did not raise any issue on the possible impact of the commuted sentence, by reason of its length, on the author's rights and the State party's obligations under Article 10 (1) and (3) of the Covenant. The result is that the State party was not given an opportunity of responding to that issue and the Committee could not make a pronouncement on it.

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The issue is nevertheless important as Article 10 (1) requires that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. Would imprisonment for 75 years meet that standard?

Further, Article 10 (3) requires that the penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Both reformation and social rehabilitation assume that a prisoner will be released during his expected lifetime. Would the commuted sentence meet this requirement?

The State party may still wish to take these observations into account in considering the reduction of the sentence of the author.

- *Sahadath v. Trinidad and Tobago* (684/1996), ICCPR, A/57/40 vol. II (2 April 2002) 61 (CCPR/C/684/1996) at paras. 2.7, 2.8, 7.3, 8 and 9.

...

2.7 With regard to the conditions of detention of the author, counsel submits that he visited the prison where the author was detained, on 16 July 1996, in order to meet with clients and to receive some information on this issue. Counsel then states the following c:/

"The information gained from 3 prisoners who had their sentences commuted from death to life imprisonment in 1984 reveal conditions which appear to be quite appalling, with far too many people sharing a single cell, no space to lie down let alone sleep, and degrading sanitary arrangements, to say nothing on the absence of useful employment, education and recreational facilities.

Prisoners who have had their sentence commuted to life imprisonment share cells measuring approximately 9' x 6' with between 9 and 12 other prisoners. Each cell consists of 2 bunks, therefore only 4 men can sleep at any one time. All the occupants of the cell share a single plastic bucket for all toilet functions. They are permitted to empty the contents of the bucket once a day. Ventilation consists of a single barred window measuring approximately 2 foot square. Each prisoner spends as average of 23 hours each day locked inside his cell, although exceptionally and unpredictably he and his cell mates are allowed out for as long as 6 hours."

2.8 As to detention on death row, counsel refers to the affidavits made by four other prisoners on death row, who were due to be executed at the same time as the author, and concludes that similar conditions applied to the author. Counsels submits the following:

"The prisoners are kept confined in a very small cell measuring approximately nine

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feet by six. The cell contains a bed, table, chair and "Slop Pail", that is, a bucket provided to each prisoner to use as a toilet. There is no window, only a small ventilation hole, measuring eighteen inches by eight inches approximately. The entire cell block is illuminated by means of fluorescent lights which are kept on all night and affects my [sic] ability to sleep. They are kept in this cell twenty-three hours every day except on weekends, public holidays, and days of staff shortage, when they are shut in for the entire twenty-four hours. Apart from the customary one hour exercise in the exercise yard, they are only permitted to leave their cells to meet with visitors and to have a bath once a day during which time they clean out their slop pail.

The hour's exercise is conducted with handcuffs on in an extremely small enclosure thus making meaningful exercise extremely difficult if not impossible. Visiting and other privileges are severely restricted, They are allowed two visits per week each of only twenty minutes duration. Writing material are provided only upon a request being entered in the request book. Often there is no paper or pens available. Writing is permitted only between 4.30 pm and 7.15 pm on weekends and public holidays.

The persons of death row are subjected to three searches of cell and body every day. The final such search is conducted at 9.30 at night at which time they are often asleep. They will be awakened and search accordingly. Shortly after this search, the three electronic alarm bells in death row are tested. The resulting effect of the noise makes it difficult to return to sleep, concluding that the author notes that cells measure approximately 9 by 6 feet, with an 18 inch hole for ventilation. The death row section is entirely illuminated by fluorescent lights, including at night, thereby impeding sleep. Prisoners are only allowed out of their cells one hour per day, except on weekends, when they are kept in 24 hours because of shortage of staff. Meaningful exercise is impossible, as prisoners remain handcuffed during the exercise period. They are permitted two twenty-minute visits per week, and writing pads and books are severely restricted.”

...

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

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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

...

c/ Counsel refers to general conditions of detention in the prison but does not expressly state that the author was personally subjected to these conditions.

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

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- *Boodoo v. Trinidad and Tobago* (721/1996), ICCPR, A/57/40 vol. II (2 April 2002) 76 (CCPR/C/74/D/721/1996) at paras. 2.2-2.8, 6.4, 6.6, 6.7 and 8.

...

2.2 On 3 December 1990, while still in pre-trial detention, a map of the prison and a hand made weapon were found in the author's cell. As punishment, the author was placed in "cellular confinement" in a special high security cellblock for "escapees" in Carrera Prison. The author has remained in cellular confinement since. Such confinement consists of being locked in his cell for 23 hours a day, where he sleeps on a 1-inch thick carpet. He is allowed out only once a day for his airing and to bathe. His airing takes place in an area where inmate urinal and faecal wastes are disposed of, while other inmates are allowed their airings in a much larger, cleaner facility where they are allowed to exercise, play tennis and football, and engage in other recreational activities. His airing facility is damp, slippery, infested with worms and flies and faecal waste is often scattered on the ground. If the author complains about the conditions of his airing facility, he is left in his cell. In March 1991 his diet was

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restricted for 21 days.

2.3 As a result of his conditions of detention, the author is going blind. The prison doctor recommended at least 3 hours of sunlight a day for him, but this recommendation is not being implemented. While other inmates in the maximum security cell-block are allowed to take part in entertainment programs and to worship at Christian or Muslim prayer services, the author has been denied these privileges.

2.4 After his conviction, and on having his photograph taken, the photographer forced him to have his beard shaved off, despite the author's claim that his Muslim faith forbids him to do so. Later that day, the author complained to the Inspector of Prisons, who gave the author permission to grow a beard again.

2.5 On 1 December 1992, the author was threatened by the warders, assaulted, and then returned to his cell. On 8 December 1992, he learnt from the prison authorities that an inmate had told them that he was masterminding an escape from prison.

2.6 On 18 January 1993, the author was searched, his prayer clothes were taken from him and his beard was forcibly shaven off. He was then assaulted by prison warders. He received blows to the head, chest, groin and legs and his request for immediate medical attention were ignored. Some weeks later, on complaining of continual pain, the medical officer gave him painkillers. On 27 May 1993, the author complained in writing to the Inspector of Prisons, but no action was taken.

2.7 From time to time, the author is transferred to Port-of-Spain prison for brief periods of incarceration. When at Port-of-Spain Prison, the author is left in a dimly-lit cell 24 hours a day and is not let out for recreation or airing. He does not know the reason why he is shuttled between prisons. Upon returning to Carrera Prison, the author is forced to strip naked, and pull back the foreskin on his penis. He is forced to pull his buttocks apart and squat 3 to 4 times in front of the prison guards. According to the author, no other prisoners are subjected to such humiliation.

2.8 The author has been assaulted by the warders on several occasions. In addition, he has received threats from the warders in connection with his complaint to the United Nations, and correspondence has not always been delivered to him. He further states that he has to request permission before writing to someone, and that on occasion he has been refused permission to write to the United Nations, the President, and his lawyer.

...

6.4 The Committee notes the author's complaint in paragraphs 2.2 and 2.6 above that he has been held in appalling and insalubrious conditions as a result of which his eyesight has deteriorated. In the Committee's opinion, the conditions described therein are such as to

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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, of the Covenant.

...

6.6 As to the author's claim that he has been forbidden from wearing a beard and from worshipping at religious services, and that his prayer books were taken from him, the Committee reaffirms that the freedom to manifest religion or belief in worship, observance, practice and teaching encompasses a broad range of acts and that the concept of worship extends to ritual and ceremonial acts giving expression to belief, as well as various practices integral to such acts. In the absence of any explanation from the State party concerning the author's allegations in paragraphs 2.3 - 2.6, the Committee concludes that there has been a violation of article 18 of the Covenant.

6.7 As to the author's claims concerning attacks on his privacy and dignity, in the absence of any explanation from the State party, the Committee concludes that his rights under article 17 were violated.

...

8. Pursuant to article 2, paragraph 3 (a), of the Covenant, the Committee considers that the author is entitled to an appropriate remedy including compensation for the treatment to which he has been subjected. The State party is under an obligation to ensure that similar violations do not occur in the future.

- *Wackenheim v. France* (854/1999), ICCPR, A/57/40 vol. II (15 July 2002) 179 at paras. 2.1-2.3, 2.5, 3 and 7.2-7.6.

...

2.1 The author, who suffers from dwarfism, began in July 1991 to appear in "dwarf tossing" events organized by a company called Société Fun-Productions. Wearing suitable protective gear, he would allow himself to be thrown short distances onto an air bed by clients of the establishment staging the event (a discotheque).

2.2 On 27 November 1991, the French Ministry of the Interior issued a circular on the policing of public events, in particular dwarf tossing, which instructed prefects to use their policing powers to instruct mayors to keep a close eye on spectacles staged in their communes. The circular said that dwarf tossing should be banned on the basis of, among other things, article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

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2.3 On 30 October 1991 the author applied to the administrative court in Versailles to annul an order dated 25 October 1991 by the mayor of Morsang-sur-Orge banning a dwarf tossing event scheduled to take place in a local discotheque. The court annulled the mayor's order in a ruling on 25 February 1992 ...

...

2.5 By an order dated 27 October 1995 the Council of State overturned the ruling on the grounds, first, that dwarf tossing was an attraction that affronted human dignity, respect for human dignity being part of public order and the authority vested in the municipal police being the means of ensuring it, and second, that respect for the principle of freedom of employment and trade was no impediment to the banning of an activity, licit or otherwise, in exercise of that authority if the activity was of a nature to disrupt public order. The Council of State went on to say that the attraction could be banned even in the absence of particular local circumstances.

...

3. The author affirms that banning him from working has had an adverse effect on his life and represents an affront to his dignity. He claims to be the victim of a violation by France of his right to freedom, employment, respect for private life and an adequate standard of living, and of an act of discrimination. He further states that there is no work for dwarves in France and that his job does not constitute an affront to human dignity since dignity consists in having a job...

...

7.2 The Committee must decide whether the authorities' ban on dwarf tossing constitutes discrimination within the meaning of article 26 of the Covenant, as the author asserts.

7.3 The Committee recalls its jurisprudence whereby not every differentiation of treatment of persons will necessarily constitute discrimination, which is prohibited under article 26 of the Covenant. Differentiation constitutes discrimination when it is not based on objective and reasonable grounds. The question, in the present case, is whether the differentiation between the persons covered by the ban ordered by the State party and persons to whom this ban does not apply may be validly justified.

7.4 The ban on throwing ordered by the State party in the present case applies only to dwarves (as described in paragraph 2.1). However, if these persons are covered to the exclusion of others, the reason is that they are the only persons capable of being thrown. Thus, the differentiation between the persons covered by the ban, namely dwarves, and those to whom it does not apply, namely persons not suffering from dwarfism, is based on an objective reason and is not discriminatory in its purpose. The Committee considers that the State party has demonstrated, in the present case, that the ban on dwarf tossing as practised by the author did not constitute an abusive measure but was necessary in order to protect public order, which brings into play considerations of human dignity that are compatible with the objectives of the Covenant. The Committee accordingly concludes that the differentiation

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between the author and the persons to whom the ban ordered by the State party does not apply was based on objective and reasonable grounds.

7.5 The Committee is aware of the fact that there are other activities which are not banned but which might possibly be banned on the basis of grounds similar to those which justify the ban on dwarf tossing. However, the Committee is of the opinion that, given that the ban on dwarf tossing is based on objective and reasonable criteria and the author has not established that this measure was discriminatory in purpose, the mere fact that there may be other activities liable to be banned is not in itself sufficient to confer a discriminatory character on the ban on dwarf tossing. For these reasons, the Committee considers that, in ordering the above-mentioned ban, the State party has not, in the present case, violated the rights of the author as contained in article 26 of the Covenant.

7.6 The Human Rights Committee...is of the view that the facts before it do not reveal any violation of the Covenant.

- *Francis et al. v. Trinidad and Tobago* (899/1999), ICCPR, A/57/40 vol. II (25 July 2002) 206 (CCPR/C/75/D/899/1999) at paras. 2.1-2.5, 5.6, 6, 7 and Individual Opinion by Mr. Hipólito Solari Yrigoyen (dissenting in part).

...

2.1 Messrs. Francis, Glaude and George were arrested on 24 July 1986, 23 July 1986 and 24 May 1987 respectively for suspicion of murder on 19 July 1986 of one Ramesh Harriral. Until their trial in November 1990, the authors were detained at the remand section of Golden Grove Prison, Arouca, in a cell measuring 9 feet by 6 feet with between 8 to 15 other inmates.

2.2 After a period of four years and three months for Messrs. Francis and Glaude, and of three years and five months for Mr. George, the authors were tried between 6 and 30 November 1990, convicted by unanimous jury verdict and sentenced to death for the murder charged. From their conviction on 30 November 1990 until the commutation of their sentences on 3 March 1997, the authors were confined on death row at Port of Spain Prison, Trinidad. They were detained in solitary confinement in a cell measuring 9 feet by 6 feet, containing an iron bed, mattress, bench and table.^{1/}

2.3 In the absence of sanitation facilities in the cell, a plastic pail was provided as toilet. A small ventilation hole, measuring 8 inches by 8 inches, provided scarce and inadequate ventilation. The only light provided was by a fluorescent strip illuminated 24 hours a day located outside the cell above the door. The authors remained locked inside their cell continuously, save for collecting food, bathing, and slopping out the contents of their plastic

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pail. They enjoyed exercise outside their cell approximately once a month only in handcuffs. They were allowed only a limited number of personal items, excluding radios, and access to writing and reading material remained very limited. Mr. Francis further stated that he had no right to see copies of the Prison Rules, that he was not allowed to write to the Ministry of National Security complaining as to his conditions of detention, that doctors visits were irregular and that letters to his family had been intercepted and not processed without explanation. Mr. Glaude also stated that poor food had resulted in significant weight loss, and that no medicine had been provided to him.

2.4 On 10 October 1994, the authors applied for leave to appeal against their convictions to the Court of Appeal of Trinidad and Tobago. The Court of Appeal dismissed their application for leave on 13 March 1995. The authors' petitions to the Judicial Committee of the Privy Council for Special Leave to Appeal as Poor Persons were dismissed on 14 November 1996. On 3 March 1997 the authors' death sentences were commuted to 75 years' imprisonment.

2.5 From that point, the authors have been detained in Port of Spain Prison in conditions involving confinement to a cell measuring 9 feet by 6 feet together with 9 to 12 other prisoners. It is stated that such overcrowding leads to violent confrontations amongst the prisoners. One single bed is provided for the cell and therefore the authors sleep on the floor. One plastic bucket is provided as slop pail and is emptied once a day, such that it sometimes overflows or is spilled over. Inadequate ventilation consists of a 2 foot by 2 foot barred window. The prisoners are locked in their cell, on average 23 hours a day, with no educational opportunities, work or reading materials. The location of the prison food-preparation area, around 2 metres from where the prisoners empty their slop pails, creates an obvious health hazard. The quantity and quality of food are said not to meet the authors' nutritional needs, and the complaint mechanisms for prisoners are inadequate.

...

5.6 As to the authors' claims that the conditions of detention in each phase of their imprisonment violated articles 7 and 10, paragraph 1, in the absence of any responses by the State party to the allegations concerning the conditions of detention as described by the authors, the Committee must give due consideration to the authors' allegations since they have not been properly refuted. The Committee considers that the authors' conditions of detention as described violate their 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, 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 separately to consider the claims arising under article 7 of the Covenant.

...

6. The Human Rights Committee...is of the view that the facts before it disclose a violation

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of articles 9, paragraph 3, 10, paragraph 1, and 14, paragraph 3 (c), of the Covenant.

7. 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, including adequate compensation. In the light of the long years spent by the authors in deplorable conditions of detention that violate article 10 of the Covenant, the State party should consider release of the authors. The State party should, in any event, improve the conditions of detention in its prisons without delay, in order to bring the authors' conditions of detention into line with article 10 of the Covenant.

Notes

1/ Counsel's description of these conditions of confinement on death row is derived from a visit by him to, and interviews with, the authors on 15 July 1996. The description of conditions post-commutation is derived from counsel's visits to, and interviews with, other prisoners at the same prison on the same day.

Individual Opinion by Mr. Hipólito Solari Yrigoyen (dissenting in part)

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, including adequate compensation. In the light of the long years spent by the authors in deplorable conditions of detention that violate article 10 of the Covenant, the State party should release the authors. The State party should, in any event, improve the conditions of detention in its prisons without delay, in order to bring the authors' conditions of detention into line with article 10 of the Covenant.

- *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

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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 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

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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 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 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

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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.

- *Reece v. Jamaica (796/1998), ICCPR, A/58/40 vol. II (14 July 2003) 61 CCPR/C/78/D/796/1998 at paras. 2.4, 7.8 and 9.*

...

2.4 On death row, the area to which the author was confined was also used by prisoners who were mentally ill and who, on occasion, attacked fellow prisoners. The author also refers to reports of random beatings and brutal warders.^{1/} He complained of unsanitary conditions, in particular of waste littering the area and the constant presence of unpleasant odours. He refers to further reports of the digging of pits for excrement and overwhelming stench.^{2/} Slop buckets of human waste and stagnant water were emptied only once daily in the morning. Running water was polluted with insects and excrement, and inmates were required to share dirty plastic utensils. The daily time the author was allowed out of his cell was severely limited, sometimes to less than half an hour. These conditions caused serious detriment to his health, with skin disorders and eyesight problems developing. While he had been referred to an eye specialist by the prison doctor in 1994, he had not been allowed to see such a specialist by the time of the communication. Moreover, when he sustained a chipped bone injury to his finger in an accident, he was not taken to hospital until two days after the accident, making it impossible for the finger to heal properly and affecting his ability to write.

...

7.8 As to the author's claims under articles 7 and 10, paragraph 1, concerning the specific conditions and length of his detention on death row, the Committee must, in the absence of any responses by the State party, give due credence to the author's allegations as not having been properly refuted. The Committee considers, as it has repeatedly found in respect of similar substantiated allegations,^{13/} 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 separately consider the claims arising

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under article 7.

...

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. The State party is also under an obligation to improve the present conditions of detention of the author, or to release him.

Notes

...

1/ *Prison Conditions in Jamaica: An Americas Watch Report* (Human Rights Watch, New York, May 1990).

2/ *Ibid.* at 13 and, further, *Report of the Task Force on Correctional Services* (Ministry of Public Services, Jamaica, March 1989).

...

13/ See, for example, *Sextus v. Trinidad and Tobago* Case No. 818/1998, Views adopted on 16 July 2001.

...

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- *Kang v. Republic of Korea* (878/1999), ICCPR, A/58/40 vol. II (15 July 2003) 152 (CCPR/C/78/D/878/1999) at paras. 2.1, 2.3, 2.5, 2.8, 7.3, 8 and 9.

...

2.1 The author, along with other acquaintances, was an opponent of the State party's military regime of the 1980s. In 1984, he distributed pamphlets criticizing the regime and the use of security forces to harass him and others. At that time, he also made an unauthorized (and therefore criminal) visit to North Korea. In January, March and May 1985, he distributed dissident publications covering numerous political, historical, economic and social issues.

...

2.3 In January 1986, the author was tried before the 10th Panel of the Seoul Criminal District Court for alleged violations of the National Security Law, as part of a spy ring case in which 15 persons were convicted in 1985 and 1986.2/ At trial, he contended that his confessions had been obtained by torture. On 20 January 1986, the court relied on the author's confessions, convicting and sentencing him to life imprisonment. The court found that he had "become a member of an anti-State organization", and that dialogue and meeting with other regime critics constituted a "crime of praising, encouraging or siding with the anti-State organization" and "crime of meeting with a member of the anti-State organization". The distribution of publications was said to amount to "espionage".

...

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2.5 After his conviction, the author was held in solitary confinement. He was classified as a communist “confident criminal”^{4/} under the “ideology conversion system”, a system given legal foundation by the 1980 Penal Administration Law and designed to induce change to a prisoner’s political opinion by the provision of favourable benefits and treatment in prison. Due to this classification, he was not eligible for more favourable treatment. On 14 March 1991, the author’s detention regime was reclassified by the Regulation on the Classification and Treatment of Convicts (‘the 1991 Regulation’) to “those who have not shown signs of repentance after having committed crimes aimed at destroying the free and democratic basic order by denying it”. Moreover, having been convicted under the National Security Law, the author was subject to an especially rigorous parole process.^{5/}

...

2.8 Following the inauguration of a new administration in 1998, on 25 February 1999 (after submission of the communication), the author was released under the terms of a general amnesty...

...

7.3 As to the author’s remaining claims under article 10, the Committee considers that his detention in solitary confinement for a period as long as 13 years, of which more than eight were after the entry into force of the Optional Protocol, is a measure of such gravity, and of such fundamental impact on the individual in question, that it requires the most serious and detailed justification. The Committee considers that confinement for such a lengthy period, apparently on the sole basis of his presumed political opinion, fails to meet that such particularly high burden of justification, and constitutes at once a violation of article 10, paragraph 1, protecting the inherent dignity of the author, and of paragraph 3, requiring that the essential aim of detention be reformation and social rehabilitation.

...

8. The Human Rights Committee...is of the view that the facts before it disclose violations of article 10, paragraphs 1 and 3, and articles 18, paragraph 1, and 19, paragraph 1, in conjunction with 26, of the Covenant.

9. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy. The Committee notes that, although the author has been released, the State party is under an obligation to provide the author with compensation commensurate with the gravity of the breaches in question. The State party is under an obligation to avoid similar violations in the future.

...

Notes

...

^{2/} In 1994, the Working Group on Arbitrary Detention of the Commission on Human Rights found, in the absence of a response from the State party, the imprisonment of two of these other individuals to be of arbitrary character. (E/CN.4/1994/27, at 95 et seq.)

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...

4/ "Confident criminal" is not specifically defined, but appears from the context of the communication to be a prisoner who fails to comply with the ideology conversion system and its renunciation requirements...

5/ Under the Parole Administration Law, in such cases, the Parole Examination Committee "shall examine whether the convict has converted the [sic] thought, and, when deemed necessary, shall request the convict to submit an announcement or statement of conversion".

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- *Sarma v. Sri Lanka* (950/2000), ICCPR, A/58/40 vol. II (16 July 2003) 248 (CCPR/C/78/D/950/2000) at paras. 2.1-2.6, 9.3 and 11.

...

2.1 The author alleges that, on 23 June 1990, at about 8.30 a.m., during a military operation, his son, himself and three others were removed by army members from their family residence in Anpuvalipuram, in the presence of the author's wife and others. The group was then handed over to other members of the military, including one Corporal Sarath, at another location (Ananda Stores Compound Army Camp). The author's son was apparently suspected of being a member of the LTTE (Liberation Tigers of Tamil Eelam) and was beaten and tortured. He was thereafter taken into military custody at Kalaimagal School allegedly after transiting through a number of other locations. There, he was allegedly tortured, hooded and forced to identify other suspects.

2.2 In the meantime, the author and other persons arrested were also transferred to Kalaimagal School, where they were forced to parade before the author's hooded son. Later that day, at about 12.45 p.m., the author's son was taken to Plaintain Point Army Camp, while the author and others were released. The author informed the Police, the International Committee of the Red Cross (ICRC) and human rights groups of what had happened.

2.3 Arrangements were later made for relatives of missing persons to meet, by groups of 50, with Brigadier Pieris, to learn about the situation of the missing ones. During one of these meetings, in May 1991, the author's wife was told that her son was dead.

2.4 The author however claims that, on 9 October 1991 between 1:30 and 2 p.m., while he was working at "City Medicals Pharmacy", a yellow military van with license plate No. 35 Sri 1919 stopped in front of the pharmacy. An army officer entered and asked to make some photocopies. At this moment, the author saw his son in the van looking at him. As the author tried to talk to him, his son signalled with his head to prevent his father from approaching.

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2.5 As the same army officer returned several times to the pharmacy, the author identified him as star class officer Amarasekara. In January 1993, as the "Presidential Mobile Service" was held in Trincomalee, the author met the then Prime Minister, Mr. D. B. Wijetunge and complained about the disappearance of his son. The Prime Minister ordered the release of the author's son, wherever he was found. In March 1993, the military advised that the author's son had never been taken into custody.

2.6 In July 1995, the author gave evidence before the "Presidential Commission of Inquiry into Involuntary Removals and Disappearances in the Northern and Eastern Provinces" (The Presidential Commission of Inquiry), without any result. In July 1998, the author again wrote to the President, and was advised in February 1999 by the Army that no such person had been taken into military custody. On 30 March 1999, the author petitioned to the President, seeking a full inquiry and the release of his son.

...

9.3 The Committee notes the definition of enforced disappearance contained in article 7, paragraph 2 (i) of the Rome Statute of the International Criminal Court^{14/}: *"Enforced disappearance of persons" means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time. Any act of such disappearance constitutes a violation of many of the rights enshrined in the Covenant, including the right to liberty and security of person (art. 9), the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment (art. 7), and the right of all persons deprived of their liberty to be treated with humanity and with respect for the inherent dignity of the human person (art. 10). It also violates or constitutes a grave threat to the right to life (art. 6).^{15/}*

...

11. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author and his family with an effective remedy, including a thorough and effective investigation into the disappearance and fate of the author's son, his immediate release if he is still alive, adequate information resulting from its investigation, and adequate compensation for the violations suffered by the author's son, the author and his family. The Committee considers that the State party is also under an obligation to expedite the current criminal proceedings and ensure the prompt trial of all persons responsible for the abduction of the author's son under section 356 of the Sri Lankan Penal Code and to bring to justice any other person who has been implicated in the disappearance. The State party is also under an obligation to prevent similar violations in the future.

Notes

...

^{14/} Text of the Rome Statute circulated as document A/CONF.183/9 of 17 July 1998 and

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corrected by *procès-verbaux* of 10 November 1998, 12 July 1999, 30 November 1999, 8 May 2000, 17 January 2001 and 16 January 2002. The Statute entered into force on 1 July 2002.

15/ See article 1, paragraph 2 of the Declaration on the Protection of All Persons from Enforced Disappearances, General Assembly Resolution 47/133, 47 UN GAOR Supp. (No. 49) at 207, U.N. Doc. A/47/49 (1992). Adopted by General Assembly resolution 47/133 of 18 December 1992.

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- *Cabal and Pasini v. Australia* (1020/2002), ICCPR, A/58/40 vol. II (7 August 2003) 346 (CCPR/C/78/D/1020/2002) at paras. 7.2, 8.2, 8.3, 9 and 10.

...

7.2 Prior to considering the admissibility of the individual claims raised, the Committee must consider whether the State party's obligations under the Covenant apply to privately-run detention facilities, as is the case in this communication, as well as State-run facilities. While this is not an argument put forward by the State party, the Committee must consider *ex officio* whether the communication concerns a State party to the Covenant in the meaning of article 1 of the Optional Protocol. It recalls its jurisprudence in which it indicated that a State party "is not relieved of its obligations under the Covenant when some of its functions are delegated to other autonomous organs."21/ The Committee considers that the contracting out to the private commercial sector of core State activities which involve the use of force and the detention of persons does not absolve a State party of its obligations under the Covenant, notably under articles 7 and 10 which are invoked in the instant communication. Consequently, the Committee finds that the State party is accountable under the Covenant and the Optional Protocol of the treatment of inmates in the Port Philip Prison facility run by Group 4.

...

8.2 With respect to the claim that the State party violated articles 7 and 10, paragraph 1, because of prison conditions and the treatment to which the authors were subjected, the Committee notes that the allegations of shackling the authors with 12 link shackles, subsequently replaced by 17 link ones during transport to and from prison, and of having stripped and subjected them to cavity searches after each visit, are factually uncontested by the State party. However, the State party has provided justification for the treatment in question, explaining that the assessment of the authors flight risk was made because they had in the past evaded arrest through the use of false travel and identity documents, that they had access to considerable financial resources; had made payments to other prisoners, and that prison intelligence had reported incidents of other prisoners offering to assist any escape in return for financial payment. Also, the State party has explained that the authors were not singled out for searches but that the searches were carried out in a manner designed to

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minimise the embarrassment to them, and were carried out only to ensure the safety and security of the prison. In the assessment of the Committee, there has been no violation of article 7 or article 10, paragraph 1, in these respects.

8.3 As to the issues raised by the authors' detention for an hour in a triangular "cage", the Committee notes the State party's justification that this holding cell was the only one capable of holding two persons at the time, and that the authors requested to be placed together. In the Committee's view, a failure to have a cell sufficient adequately to hold two persons is insufficient explanation for requiring two prisoners to alternately stand and sit, even if only for an hour, within such an enclosure. In the circumstances, the Committee considers this incident to disclose a violation of article 10, paragraph 1, of the Covenant.

9. The Human Rights Committee...is of the view that the facts as found by the Committee reveal a violation by Australia of article 10, paragraph 1, of the International Covenant on Civil and Political Rights.

10. Pursuant to article 2, paragraph 3 (a) of the Covenant, the Committee concludes that the authors are entitled to an effective remedy of compensation for both authors. The State party is under an obligation to ensure that similar violations of the Covenant do not occur in the future.

Notes

...

21/ *B. d. B. v. The Netherlands*, Case No. 273/88, Decision of 30 March 1989, and *Lindgren et al v. Sweden*, Case No. 298-299/88, Views adopted on 9 November 1990.

22/ *Lantsova v. The Russian Federation*, Case No. 736/1997, Views adopted on 26 March 2002.

...

For dissenting opinion in this context, see Cabal and Pasini v. Australia (1020/2002), ICCPR, A/58/40 vol. II (7 August 2003) 346 (CCPR/C/78/D/1020/2002) at Individual Opinion of Mr. Hipólito Solari-Yrigoyen, 362.

- *Wilson v. The Philippines* (868/1999), ICCPR, A/59/40 vol. II (30 October 2003) 48 (CCPR/C/79/D/868/1999) at paras. 2.1, 2.3-2.6, 2.8, 7.3, 8 and 9.

...

2.1 On 16 September 1996, the author was forcibly arrested without warrant as a result of

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a complaint of rape filed by the biological father of the author's twelve year old step-daughter and transferred to a police station. He was not advised of his rights, and, not speaking the local language, was unaware as to the reasons for what was occurring. At the police station, he was held in a 4 x 4 ft cage with three others, and charged on the second day with attempted rape of his stepdaughter. He was then transferred to Valenzuela municipal jail, where the charge was changed to rape. There he was beaten and ill-treated in a "concrete coffin". This 16 x 16 ft cell held 40 prisoners with a 6 inch air gap some 10 ft from the floor. One inmate was shot by a drunken guard, and the author had a gun placed to his head on several occasions by guards. The bottoms of his feet were struck by a guard's baton, and other inmates struck him on the guards' orders. He was ordered to strike other prisoners and was beaten when he refused to do so. He was also constantly subjected to extortion by other inmates with the acquiescence and in some instances on the direct instruction of the prison authorities, and beaten when he refused to pay or perform the directed act(s). There was no running water, insufficient sanitary conditions (a single non-flush bowl in the cell for all detainees), no visiting facility, and severe food rationing. Nor was he segregated from convicted prisoners.

...

2.3 On 30 September 1998 the author was convicted of rape and sentenced to death, as well as to P50,000 indemnity, by the Regional Trial Court of Valenzuela...

2.4 The author was then placed on death row in Muntinlupa prison, where a 1,000 death row prisoners were kept in three dormitories. Foreign inmates were continually extorted by other inmates with the acquiescence, and sometimes at the direction of, prison authorities. The author refers to media reports that the prison was controlled by gangs and corrupt officials, at whose mercy the author remained throughout his confinement on death row. Several high-ranking prison officials were sentenced for extortion of prisoners, and large amounts of weapons were found in cells. The author was pressured and tortured to provide gangs and officials with money. There were no guards in the dormitory or cells, which contained over 200 inmates and remained unlocked at all times. His money and personal effects had been removed from him en route to the prison, and for three weeks he had no visitors, and therefore no basic necessities such as soap or bedding. Food comprised unwashed rice and other inappropriate substances. Sanitation consisted of two non-flushing toilet bowls in an area which was also a 200-person communal shower.

2.5 The author was forced to pay for the 8 x 8 ft area in which he slept and financially to support the eight others with him. He was forced to sleep alongside drug-deranged individuals and persons who deliberately and constantly deprived him of sleep. He was forcibly tattooed with a permanent gang mark. Inmates were stretched out on a bench on public display and beaten with wood across the thighs, or otherwise "taught a lesson". The author states he lived in constant fear coming close to death and suicidal depression, watching six inmates walk to their execution while five others died violent deaths. Fearing

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death after a "brutally unfair and biased" trial, he suffered severe physical and psychological distress and felt "total helplessness and hopelessness". As a result, he is "destroyed both financially and in many ways emotionally".

2.6 On 21 December 1999, i.e. subsequent to the submission of the communication under the Optional Protocol, the Supreme Court, considering the case on automatic review, set aside the conviction, finding it based on allegations "not worthy of credence", and ordered the author's immediate release. The Solicitor-General had filed a brief with the Court recommending acquittal on the basis that material contradictions in witness testimony, as well as the physical evidence to the contrary, justified the conclusion that the author's guilt had not been shown beyond reasonable doubt.

...

2.8 Upon his return to the United Kingdom, the author sought compensation pursuant to Philippine Republic Act 7309. The Act creates a Board of Claims under the Department of Justice for victims of unjust imprisonment or detention, compensation being calculable by month. Upon inquiry, he was informed on 21 February 2001 that on 1 January 2001, he had been awarded P14,000, but that he would be required to claim it in person in the Philippines. On 12 March 2001, he wrote to the Board of Claims seeking reconsideration of quantum, on the basis that according to the legal scale 40 months in prison should result in a sum of P40,000. On 23 April 2001, he was informed that the amount claimed was "subject to availability of funds" and that the person liable for the author's misfortune was the complainant accusing him of rape. No further clarification on the discrepancy of the award was received.

...

7.3 As to the author's claims under articles 7 and 10 regarding his treatment in detention and the conditions of detention, both before and after conviction, the Committee observes that the State party, rather than responding to the specific allegations made, has indicated that they require further investigation. In the circumstances, therefore, the Committee is obliged to give due weight to the author's allegations, which are detailed and particularized. The Committee considers that the conditions of detention described, as well as the violent and abusive behaviour both of certain prison guards and of other inmates, as apparently acquiesced in by the prison authorities, are seriously in violation of the author's right, as a prisoner, to be treated with humanity and in with respect for his inherent dignity, in violation of article 10, paragraph 1. As at least some of the acts of violence against the author were committed either by the prison guards, upon their instigation or with their acquiescence, there was also a violation of article 7. There is also a specific violation of article 10, paragraph 2, arising from the failure to segregate the author, pre-trial, from convicted prisoners.

...

8. The Human Rights Committee...is of the view that the facts as found by the Committee reveal violations by the Philippines of article 7, article 9, paragraphs 1, 2 and 3, and article 10, paragraphs 1 and 2, of the Covenant.

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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. In respect of the violations of article 9 the State party should compensate the author. As to the violations of articles 7 and 10 suffered while in detention, including subsequent to sentence of death, the Committee observes that the compensation provided by the State party under its domestic law was not directed at these violations, and that compensation due to the author should take due account both of the seriousness of the violations and the damage to the author caused. In this context, the Committee recalls the duty upon the State party to undertake a comprehensive and impartial investigation of the issues raised in the course of the author's detention, and to draw the appropriate penal and disciplinary consequences for the individuals found responsible... All monetary compensation thus due to the author by the State party should be made available for payment to the author at the venue of his choice, be it within the State party's territory or abroad. The State party is also under an obligation to avoid similar violations in the future.

- *Kurbanova v. Tajikistan* (1096/2002), ICCPR, A/59/40 vol. II (6 November 2003) 354 (CCPR/C/79/D/1096/2002) at para. 7.8.

...

7.8 The State party has not provided any explanations in response to the author's fairly detailed allegations of the author's son's condition of detention after conviction being in breach of article 10 of the Covenant. In the absence of any explanation from the State party, due weight must be given to the author's allegations according to which her son's cell has no water, is very cold in the winter and hot in the summer, has inadequate ventilation and is infested with insects, and that the author's son is allowed to leave his cell only for half an hour a day. With reference to the United Nations Standard Minimum Rules for the Treatment of Prisoners, the Committee finds, that the conditions as described amount to a violation of article 10, paragraph 1, in respect of the author's son.

- *Rameka v. New Zealand* (1090/2002), ICCPR, A/59/40 vol. II (6 November 2003) 330 (CCPR/C/79/D/1090/2002) at paras. 7.3 and 7.4.

...

7.3 Turning to the issue of the consistency with the Covenant of the sentences of preventive detention of both the remaining authors, Messrs. Rameka and Harris, once the non-parole period of 10 years expires, the Committee observes that after the 10-year period has elapsed, there are compulsory annual reviews by the independent Parole Board, with the power to order the prisoner's release if they are no longer a significant danger to the public, and that the decisions of the Board are subject to judicial review. The Committee considers that the

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remaining authors' detention for preventive purposes, that is, protection of the public, once a punitive term of imprisonment has been served, must be justified by compelling reasons, reviewable by a judicial authority, that are and remain applicable as long as detention for these purposes continues...

7.4 ...As the detention in the remaining authors' cases for preventive purposes is not arbitrary, in terms of article 9, and no suffering going beyond the normal incidents of detention has been suggested, the Committee also finds that the remaining authors have not made out any additional claim under article 10, paragraph 1, that their sentence of preventive detention violates their right as prisoners to be treated with respect for their inherent dignity.

- *Lobban v. Jamaica* (797/1998), ICCPR, A/59/40 vol. II (16 March 2004) 15 at paras. 8.1, 8.2, 9 and 10.

...

8.1 The author has claimed a violation of articles 7 and 10, paragraph 1, on the ground of the conditions of detention to which he was subjected while detained on death row at St. Catherine's District Prison. In substantiation of his claim, the author has invoked reports of several non-governmental organizations. The Committee notes that the author refers to the inhuman and degrading prison conditions in general, such as the complete lack of mattresses and very poor quality of food and drink, the lack of integral sanitation in the cells and open sewers and piles of refuse, as well as the absence of a doctor. In addition, he has made specific allegations, stating that he is detained 23 hours a day in a cell with no mattress, other bedding or furniture, that his cell has no natural light, that sanitation is inadequate, and that his food is poor. He is not permitted to work or to undertake education. In addition, he claims that there is a general lack of medical assistance, and that from 1996 he suffered from ulcers, gastro-enteritis, and haemorrhoids, for which he received no treatment.

8.2 The Committee notes that with regard to these allegations, the State party has disputed only that there are inadequate medical facilities, that the author received regular medical treatment from 1997 and that now he has a mattress, receives nutritious food, and that the sewage disposal system works satisfactorily. The Committee notes, however, that the author was detained in 1987 and transferred to death row in June 1988, and from there to the General Penitentiary after commutation of his death sentence, and that it does not transpire from the State party's submission that his conditions of detention were compatible with article 10 prior to January 1997. The rest of the author's allegations stand undisputed and, in these circumstances, the Committee finds that article 10, paragraph 1, has been violated. In 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 separately to consider

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the claims under article 7 of the Covenant.

...

9. The Human Rights Committee...is of the view that the facts as found by the Committee reveal violations by Jamaica of article 9, paragraph 3, and article 10, paragraph 1.

10. Pursuant to article 2, paragraph 3 (a), of the Covenant, the Committee considers that the author is entitled to an appropriate remedy, which should include compensation. The State party is under an obligation to ensure that similar violations do not occur in the future.

- *Telitsin v. Russian Federation* (888/1999), ICCPR, A/59/40 vol. II (29 March 2004) 60 at paras. 2.1-2.4, 7.3-7.7, 8 and 9.

...

2.1 On 13 February 1994, Vladimir Nikolayevich Telitsin died as a result of acts of violence while serving a sentence in Correctional Labour Centre No. 349/5, in the town of Nizhny Tagil, in the Urals.

2.2 The author says that her son was brutally beaten, hung by a wire and left hanging inside the compound of the Centre. She disputes the view taken by the Correctional Centre authorities and the Nizhny Tagil procurator's office that the death was suicide. She also alleges that in the expert report these authorities deliberately glossed over the violent acts committed against her son. She claims to have seen in person, at the funeral, how her son's body had been mutilated - his nose had been broken and was hanging limply, a piece of flesh had been torn from the right side of his chin, his brow was swollen on the right, blood was coming out of his right ear, the palm of his right hand had been grazed and was a dark purple colour, his spine and back were damaged and his tongue was missing. The author has produced a petition signed by 11 persons who attended the funeral, confirming the condition of the deceased's body as reported above.

2.3 The author requested the Nizhny municipal procurator's office to investigate the circumstances of her son's death. On 13 April 1994, the procurator's office told the author that there was no evidence to support her claims that her son had died as a result of acts of violence, and that it had therefore decided not to initiate criminal proceedings. The author appealed against this decision on three occasions (on 26 April 1994, 20 June 1994 and 1 August 1994), but these appeals were rejected by the Sverdlovsk regional procurator's office in its decisions of 25 May 1994, 30 June 1994 and 31 August 1994, respectively.

2.4 The author also applied to have her son's body exhumed in order to obtain a second opinion, as the conclusions of the initial expert report had, according to Mrs. Telitsina, failed to mention the injuries described above. On 27 October 1994, the Nizhny Tagil procurator's

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office told the author that any exhumation was subject to the initiation of criminal proceedings, under article 180 of the Criminal Code of the Russian Federation. In the case in point, the author's request could not be met, according to the procurator's office, as the decision of 13 April 1994 by the Nizhny Tagil procurator's office was under review by the Procurator General of the Russian Federation, following an appeal lodged by Mrs. Telitsina.

...

7.3 [The Committee]...notes that the State party maintains the theory of suicide on the basis of the report by the forensic medical expert, an inspection of the scene of the incident, a study of the photographs of the deceased and statements by prison staff and prisoners. It also takes note of the author's arguments rebutting the suicide explanation, particularly the absence of photographs of the place and manner of her son's death by hanging and the production by the authorities of photographs that Mrs. Telitsina claims have been manipulated.

7.4 The Committee observes that the State party has not responded to all the arguments put forward by the author in her communication. In particular, the State party has not commented on the testimony of 11 persons who attended Mr. Telitsin's funeral (cf. paragraph 2.2). Nor has the State party produced any document to support its assertion that the photographs of the deceased show no sign of physical injury except for a graze on the chin...despite the specific allegations made by the author about her son's mutilated body. Finally, the Committee takes note of the claim that the author was not permitted to read the medical report and also of the failure to exhume the body of the deceased.

7.5 The Committee regrets that the State party did not respond to or provide the necessary clarification on all the arguments put forward by the author. As far as the burden of proof is concerned, the Committee, in accordance with its jurisprudence, considers that the burden of proof cannot rest solely with the author of the communication, especially when the author and the State party do not have equal access to the evidence and when the State party is often in sole possession of the relevant information, such as the medical report in the case in point.

7.6 Consequently, the Committee cannot do otherwise than accord due weight to the author's arguments in respect of her son's body as it was handed over to the family, which raise questions about the circumstances of his death. The Committee notes that the authorities of the State party have not carried out a proper investigation into Mr. Telitsin's death, in violation of article 6, paragraph 1, of the Covenant.

7.7 In view of the findings under article 6, paragraph 1, of the Covenant, the Committee finds that there was a violation of article 7, as well as of the provisions of article 10, paragraph 1, of the Covenant.

8. The Human Rights Committee...finds that the State party violated article 6, paragraph 1, article 7 and article 10, paragraph 1, of the Covenant.

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9. Pursuant to article 2, paragraph 3 (a), of the Covenant, the Committee considers that the author, who has lost her son, is entitled to an effective remedy. The Committee invites the State party to take effective measures (a) to conduct an appropriate, thorough and transparent inquiry into the circumstances of the death of Mr. Vladimir Nikolayevich Telitsin; and (b) to grant the author appropriate compensation. The State party is, moreover, under an obligation to take effective measures to ensure that similar violations do not occur again.

- *Arutyunyan v. Uzbekistan* (917/2000), ICCPR, A/59/40 vol. II (29 March 2004) 96 at paras. 6.2, 7 and 8.

...

6.2 The Committee notes the allegation that Mr. Arutyunyan was kept *incommunicado* for two weeks after his transfer to Tashkent. In substantiation, the author claims that the family tried, unsuccessfully, to obtain information in this regard from the Office of the Attorney-General. In these circumstances, and taking into account the particular nature of the case and the fact that no information was provided by the State party on this issue, the Committee concludes that Mr. Arutyunyan's rights under article 10, paragraph 1, of the Covenant have been violated. 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.

...

7. The Human Rights Committee...is of the view that the facts before it disclose a violation of articles 10, paragraph 1, and 14, paragraph 3 (d), of the Covenant.

8. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide Mr. Arutyunyan with an effective remedy, which could include consideration of a further reduction of his sentence and compensation. The State party is also under an obligation to prevent similar violations in the future.

- *Smirnova v. Russian Federation* (712/1996), ICCPR, A/59/40 vol. II (5 July 2004) 1 at paras. 2.6, 10.5, 11 and 12.

2.6 The author...submits that she suffers from a serious skin disease, haemorrhoidal vasculitis and that the conditions of the prison in which she was detained aggravated her medical condition. In this context, she states that there was no adequate food or medication in the prison, that the cells, designed for 24 persons, held 60, and that she was detained together with serious criminals. The author submits that, given she did not have any previous criminal record, and had not been charged with a serious or violent offence, she should not

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have been remanded in custody. With regard to the prison conditions in the Butyrskaya prison, reference is made to the report of the Special Rapporteur on torture of the Commission on Human Rights, dated 16 November 1994 2/. In March 1996, the author was transferred to a hospital ward, where she stayed until 17 May 1996, before being transferred back to her cell.

...

10.5 The author's original communication raised issues under articles 7 and 10, paragraph 1, of the Covenant insofar as she claims that the physical circumstances of her detention amounted to cruel, inhuman or degrading treatment or punishment. The author has provided a detailed account of the circumstances of her detention. In response, the State party submitted that the author was provided with medical assistance during her detention. It did not provide details of the physical conditions in which the author was detained. Accordingly, the Committee cannot do otherwise than afford due weight to the author's claims. The Committee, in accordance with its jurisprudence, considers that the burden of proof cannot rest solely with the author of the communication, considering that the author and the State party do not always have equal access to the evidence. In the circumstances, the Committee is of the view that the conditions of the author's detention as described in her complaint were incompatible with the State party's obligations under article 10, paragraph 1, of the Convention. In 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 separately to consider the claims arising under article 7 of the Covenant.

11. The Human Rights Committee...finds that the State party violated article 9, paragraphs 3 and 4, and article 10 (1) of the Covenant.

12. Pursuant to article 2, paragraph 3 (a), of the Covenant, the Committee considers that the author is entitled to an effective remedy, including appropriate compensation for the violations suffered. The State party is also under an obligation to take effective measures to ensure that similar violations do not recur.

Notes

...

2/ E/CN.4/1995/34/Add.1, paras. 70 and 71.

- *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, 2.5, 2.8, 5.3, 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.

...

2.8 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

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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.

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.

- *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.

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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. The toilet consisted of a bucket in one of the corners. According to the author, her husband, a practising Muslim, was humiliated to have to pray in such conditions. 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.

- *Ramil Rayos v. The Philippines* (1167/2003), ICCPR, A/59/40 vol. II (27 July 2004) 389 at para. 7.1.

...

7.1 The Committee notes the author's claims of violations under articles 7 and 10, paragraph 1, on account of the fact that he would not be notified of his execution until dawn of the day in question, whereupon he would be executed within 8 hours and would have insufficient time to bid farewell to family members and organize his personal affairs. It further notes the State party's contention that the death sentence shall be carried out "not earlier than one (1) year nor later than eighteen (18) months after the judgement has become final and executory, without prejudice to the exercise by the President of his executive clemency powers at all times" 6/. The Committee understands from the legislation that the author would have at least 1 year and at most 18 months, after the exhaustion of all available remedies, during which he may make arrangements to see members of his family prior to notification of the date of execution. It also notes that, under section 16 of the Republic Act No. 8177 7/, following notification of execution he would have approximately eight hours to finalize any personal matters and meet with members of his family. The Committee reiterates its prior jurisprudence that the issue of a warrant for execution necessarily causes intense anguish to the individual concerned and is of the view that the State party should attempt to minimize this anguish as far as possible 8/. However, on the basis of the information provided, the

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Committee cannot find that the setting of the time of the execution of the author within eight hours after notification, considering that he would already have had at least one year following the exhaustion of domestic remedies and prior to notification to organize his personal affairs and meet with family members, would violate his rights under articles 7, and 10, paragraph 1.

Notes

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6/ Section 1, Republic Act No. 8177.

7/ Section 16 of the Republic Act No. 8117 - "...During the interval between the notification and execution, the convict shall, as far as possible, be furnished such assistance as he may request in order to be attended in his last moments by a priest or minister of the religion he professes and to consult his lawyers, as well as in order to make a will and confer with members of his family or of persons in charge of the management of his business, of the administration of his property, or of the care of his descendants." However, on 8 March 2004, counsel forwarded the text of EP 200, pursuant to which the condemned prisoner may only meet with a priest and his lawyer but not with family members.

8/ *Pratt and Morgan v. Jamaica*, cases Nos. 210/1986 and 225/1987, Views adopted on 6 April 1989.

- *Madafferi v. Australia* (1011/2001), ICCPR, A/59/40 vol. II (28 July 2004) 208 at para. 9.3.

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

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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.

- *Girjadat Siewpersaud et al. v. Trinidad and Tobago* (938/2000), ICCPR, A/59/40 vol. II (29 July 2004) 132 at paras. 2.2-2.5, 6.3, 7 and 8.

...

2.2 The authors were convicted of a murder said to have been committed between March and April 1985. The trial commenced in January 1988, approximately 34 months after arrest. The authors state that, throughout this time, they were detained in appalling conditions. From their conviction on 19 January 1988 to the commutation of their death sentences to life imprisonment on 4 January 1994, i.e. for six years they were confined to the death row section of State Prison in Port of Spain.

2.3 The authors contend that for the above period of time, they were held in solitary confinement in a cell measuring 9 by 6 feet containing a bench, a bed, a mattress and a table. In the absence of sanitation facilities in the cell, a plastic pail was provided as a toilet. Deolal Sukhram's cell was in front of the prison officers' toilet and bath which meant that his cell was usually cold and damp, due to water leaking from the bath. A ventilation hole measuring 36 by 24 inches, provided scarce and inadequate ventilation and light to the authors' cells. The only other light provided was by a fluorescent neon light lit for 23 hours a day located outside the cell above the door. The lack of adequate light damaged Deolal Sukhram's eyesight necessitating the use of glasses. The authors were allowed out of their cells for exercise only one hour per week.

2.4 Since the commutation of their death sentences, the authors have been detained at the State Prison in similarly degrading conditions. Each author is detained in a cell together with 8 to 14 other prisoners. The cell measures 9 by 6 feet and contains one iron bed with no mattress. As a result, prisoners are forced to sleep on the concrete floor on pieces of cardboard. Cells are infested with cockroaches, rats and flies and are generally dirty. There is inadequate ventilation and the cells heat up, making it impossible to sleep. The crowded conditions and the poor ventilation result in a general lack of oxygen in the cells, causing Deolal Sukhram to feel drowsy and suffer from continuous headaches.

2.5 In the absence of integral sanitation, each cell is provided with one bucket that is emptied only every 16 hours. The bucket causes a constant stench. In the absence of toiletries or soap, it is impossible to keep any standard of hygiene or health care. Food is inadequate and virtually inedible. Prisoners are given stale bread and rotten meat or fish every day. The kitchen in which the food is prepared is only 10 feet away from the toilets

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and is infested with vermin. There is infrequent access to medical treatment. Jainerine Persaud suffers from migraines and has not been provided with proper medical treatment, although this was prescribed by a doctor. There are no provisions for facilitating religious worship of any kind. Writing of letters is restricted to one letter per month and Deolal Sukhram is denied access to legal consultation on a regular basis. Counsel submits the affidavit of one Mr. Lawrence Pat Sankar, who was held at the State Prison at the same time as the authors, and who confirms the conditions of detention in the prison.

...

6.3 As to the authors' claim that their conditions during each stage of their imprisonment violated articles 7 and 10, paragraph 1, the Committee must give due consideration to them in the absence of any pertinent State party observation in this respect. The Committee considers that the authors' conditions of detention as described in paragraphs 2.3, 2.4 and 2.5 violate their 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, 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 separately to consider the claims arising under article 7 of the Covenant.

7. The Human Rights Committee...is of the view that the facts before it disclose a violation of articles 9, paragraph 3, 10, paragraph 1, and article 14, paragraph 5 in conjunction with paragraph 3 (c), 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 authors with an effective remedy, including adequate compensation. In the light of the long period spent by the authors in deplorable conditions of detention that violate article 10 of the Covenant, the State party should consider release of the authors. The State party should, in any event, improve the conditions of detention in its prisons without delay.

- *Gorji-Dinka v. Cameroon* (1134/2002), ICCPR, A/60/40 vol. II (17 March 2005) 194 at paras. 5.2, 6 and 7.

...

5.2 With regard to the conditions of detention, the Committee takes note of the author's uncontested allegation that he was kept in a wet and dirty cell without a bed, table or any sanitary facilities. It reiterates that persons deprived of their liberty may not be subjected to any hardship or constraint other than that resulting from the deprivation of liberty and that they must be treated in accordance with, *inter alia*, the Standard Minimum Rules for the

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Treatment of Prisoners (1957) 12/. In the absence of State party information on the conditions of the author's detention, the Committee concludes that the author's rights under article 10, paragraph 1, were violated during his detention between 31 May 1985 and the day of his hospitalization.

...

6. The Human Rights Committee...is of the view that the facts before it reveal violations of articles 9, paragraph 1; 10, paragraphs 1 and 2 (a); 12, paragraph 1; and 25 (b) of the Covenant.

7. In accordance with article 2, paragraph 3, of the Covenant, the author is entitled to an effective remedy, including compensation and assurance of the enjoyment of his civil and political rights. The State party is also under an obligation to take measures to prevent similar violations in the future.

Notes

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12/ General comment No. 21 [44] on art. 10, paras. 3 and 5.

- *Kindler v. Canada* (470/1991), ICCPR, A/48/40 vol. II (30 July 1993) 138 (CCPR/C/48/D/470/1991) at Individual Opinion by Mr. Kurt Hendl and Mr. Waleed Sadi, 154 at paras. 8 and 9. For text of communication, see **LIFE - RIGHT TO - DEATH PENALTY**.

For dissenting opinions in this context generally, see:

- *Chanderballi v. Austria* (944/2000), ICCPR, A/60/40 vol. II (26 October 2004) 285 at Individual Opinion of Mr. Hipolito Solari Yrigoyen, 293.