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III. JURISPRUDENCE

ICCPR

- *Massera v. Uruguay* (R.1/5), ICCPR, A/34/40 (15 August 1979) 124 at paras. 9(e)(i)-(iii) and 10(i)-(iii).

> ...
> 9. ...(e) ...
>
> (i) Luis María Bazzano Ambrosini was arrested on 3 April 1975 on the charge of complicity in "assistance to subversive association"...After being detained for one year he was granted conditional release, but this judicial decision was not respected and the prisoner was taken to an unidentified place, where he was confined and held incommunicado until 7 February 1977. On that date he was tried on the charge of "subversive association" and remained imprisoned in conditions seriously detrimental to his health. His lawyer twice attempted to obtain his provisional release, but without success.
>
> (ii) José Luis Massera, a professor of mathematics and former Deputy to the National Assembly, was arrested in October 1975 and has remained imprisoned since that date. He was denied the remedy of *habeas corpus*, and another application for remedy made to the Commission on Respect for Human Rights of the Council of State went unanswered. On 15 August 1976 he was tried on charges of "subversive association" and remained in prison...
>
> (iii) Martha Valentini de Massera was arrested on 28 January, 1976. In September 1976, she was charged with "assistance to subversive association". She was kept in detention and was initially held *in communicado.*
>
> 10. The Human Rights Committee...is of the view that these facts in so far as they have occurred after 23 March 1976 disclose violations of the International Covenant on Civil and Political Rights, in particular:
>
> (i) with respect to Luis María Bazzano Ambrosini,
>
> ...
> of Article 9 (3) and article 14 (1), (2) and (3), because he was not brought to trial within a reasonable time and was tried in circumstances in which he was denied the requisite safeguards of fair trial...

...

(ii) With respect to Jose Luis Massera,

...

of Article 9 (2), because he was not promptly informed of the charges brought against him;

of Article 9 (3) and article 14 (1), (2) and (3), because he was not brought to trial within a reasonable time and was tried in circumstances in which he was denied the requisite safeguards of fair trial...

...

(iii) With respect to Martha Valentini de Massera,

of Article 9 (2), because she was not promptly informed of the charges brought against her...

See also:

- *Conteris v. Uruguay* (139/1983), ICCPR, A/40/40 (17 July 1985) 196 at paras. 9.2 and 10.

- *Perdomo v. Uruguay* (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. It is not in dispute that he was kept in detention for nearly eight months without charges, and later for another 13 months, on the charge of "subversive associations" apparently on no other basis than his political views and connexions. Then, after 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...

(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. It is not in dispute that she was kept in detention for more than seven months without charges, and later, according to the information provided by the Government,

> she was kept in detention for over 18 months (28 September 1976 to April 1978) on the charge of "assisting a subversive association", apparently on similar grounds to those in the case of her husband. 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...

...

16. The Human Rights Committee...is of the view that the facts...disclose...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 9 (3) both because they were not upon their arrest brought promptly before a judicial officer and because they were not brought to trial within a reasonable time...

See also:

- *Weinberger v. Uruguay* (R.7/28), ICCPR, A/36/40 (29 October 1980) 114 at paras. 12 and 16.
- *Pietraroia v. Uruguay* (R.10/44), ICCPR, A/36/40 (27 March 1981) 153 at paras. 13.2, 14 and 17.
- *Setelich/Sendic v. Uruguay* (R.14/63), ICCPR, A/37/40 (28 October 1981) 114 at paras. 16.1, 16.2 and 20.
- *Oxandabarat v. Uruguay* (103/1981)(R.24/103), ICCPR, A/39/40 (4 November 1984) 154 at paras. 9.2 and 11.

- *Sequeira v. Uruguay* (R.1/6), ICCPR, A/35/40 (29 July 1980) 127 at paras. 12, 14 and 16.

...

12. ...Miguel Angel Millan Sequeira, 20 years old at the time of the submission of the communication in 1977, was arrested in April and released in May 1975. He was rearrested on 18 September 1975 and detained until he escaped from custody on 4 June 1976...Although brought before a military Judge on three occasions, no steps were taken to commit him for trial or to order his release...

...

14. The Human Rights Committee has considered whether acts, which are *prima facie* not in conformity with the Covenant, could for any reasons be justified under the Covenant in the circumstances. The Covenant (article 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.

...

16. The Human Rights Committee...is of the view that these facts, in so far as they have occurred on or after 23 March 1976...disclose violations of the Covenant, in particular:

> of article 9 (3) because Mr. Millan Sequeira was not brought to trial within a reasonable time...

- *Carballal v. Uruguay* (R.8/33), ICCPR, A/36/40 (27 March 1981) 125 at paras. 9, 11 and 13.

...

9. ...Leopoldo Buffo Carballal was arrested on 4 January 1976 and held incommunicado for more than five months, much of the time tied and blindfolded, in several places of detention. Recourse to *habeas corpus* was not available to him. He was brought before a military Judge on 5 May 1976 and again on 28 June or 28 July 1976, when an order was issued for his release. He was, however, kept in detention until 26 January 1977.

...

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:

> ...
> of article 9 (3), because he was not brought before a Judge until four months after he was detained and 44 days after the Covenant entered into force for Uruguay...

See also:

- *De Bouton v. Uruguay* (R.9/37), ICCPR, A/36/40 (27 March, 1981) 143 at paras. 10 and 13.
- *Tourón v. Uruguay* (R.7/32), ICCPR, A/36/40 (31 March 1981) 120 at paras. 8 and 12.

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- *Burgos v. Uruguay* (R.12/52), ICCPR, A/36/40 (29 July 1981) 176 at paras. 10.2 and 13.

...
10.2 Sergio Rubén López Burgos was living in Argentina as a political refugee until his disappearance on 13 July 1976; he subsequently reappeared in Montevideo, Uruguay, not later than 23 October 1976, the date of his purported arrest by Uruguayan authorities and was detained under prompt security measures. On 4 November 1976 pre-trial proceedings commenced when the second military examining magistrate charged him with the offence of "subversive association", but the actual trial began in April 1978 before a military court of first instance, which sentenced him on 8 March 1979 to seven years' imprisonment; upon appeal the court of second instance reduced the sentence to four years six months...
...
13. The Human Rights Committee...is of the view that the communication discloses violations of the Covenant, in particular:

> ...
> of article 9 (3) because López Burgos was not brought to trial within a reasonable time...

See also:

- *Izquierdo v. Uruguay* (R.18/73), ICCPR, A/37/40 (1 April 1982) 179 at paras. 7.2-7.5 and 9.
- *Vasilskis v. Uruguay* (80/1980)(R.20/80), ICCPR, A/38/40 (31 March 1983) 173 at paras. 9.2, 9.3 and 11.
- *Machado v. Uruguay* (83/1981)(R.20/83), ICCPR, A/39/40 (4 November 1983) 148 at paras. 11.2 and 13.
- *Viana v. Uruguay* (110/1981)(R.25/110), ICCPR, A/39/40 (29 March 1984) 169 at paras. 13.2 and 15.
- *Cariboni v. Uruguay* (159/1983), ICCPR, A/43/40 (27 October 1987) 184.

- *Pinkney v. Canada* (27/1978)(R.7/27), ICCPR, A/37/40 (29 October 1981) 101 at paras. 10, 22 and 35.

...
10. From the information submitted to the Committee it appears that Mr. Pinkney was convicted by the County Court of British Columbia on a charge of extortion on 9 December 1976. The sentence of five years' imprisonment was pronounced on 7 January 1977. On 8 February 1977, he sought leave to appeal against his conviction and his sentence to the British Columbia Court of Appeal...His appeal, however, was not heard until 34 months

later. This delay, which the Government of British Columbia described as "unusual and unsatisfactory", was due to the fact that the trial transcripts were not produced until June 1979. Mr. Pinkney alleges that the delay in the hearing, due to the lack of the trial transcripts, was a deliberate attempt by the State party to block the exercise of his right of appeal. The State party rejects this allegation and submits that, notwithstanding the efforts of officials of the Ministry of the Attorney General of British Columbia to hasten the production of the trial transcripts, they were not completed until June 1979, "because of various administrative mishaps in the Official Reporters' Office". On 6 December 1979, that is 34 months after leave to appeal was applied for, the British Columbia Court of Appeal heard the application, granted leave to appeal and on the same day, after hearing Mr. Pinkney's legal counsel (i) dismissed the appeal against conviction, and (ii) adjourned the appeal against sentence *sine die*, to be heard at a time convenient for Mr. Pinkney's counsel.

...

22. ...[T]he Committee, having considered all the information relating to the delay of two and a half years in the production of the transcripts of the trial for the purposes of the appeal considers that the authorities of British Columbia must be considered objectively responsible. Even in the particular circumstances this delay appears excessive and might have been prejudicial to the effectiveness of the right to appeal...[T]he right under Article 14(3)(c) to be tried without undue delay should be applied in conjunction with the right under article 14(5) to review by a higher tribunal, and that consequently there was in this case a violation of both of these provisions taken together.

...

35. The Human Rights Committee...is of the view that the communication discloses a violation of article 14(3)(c) and (5) of the Covenant because the delay in producing the transcripts of the trial for the purpose of the appeal was incompatible with the right to be tried without undue delay.

- *Borda v. Colombia* (R.11/46), ICCPR, A/37/40 (27 July 1982) 193 at paras. 12.3 and 14.

...

12.3 On 21 January 1979, Mr. Fals Borda and his wife, Maria Cristina Salazar de Pals Borda, were arrested by troops of the Brigade de Institutos Militates under Decree No. 1923. Mr. Fals was detained *incommunicado* at the Cuartel de Infanteria de Usaquin, from 21 January to 10 February 1979 when he was released without charges. Mrs. Fals continued to be detained for over one year. Mr. and Mrs. Fals Borda were released as a result of court decisions that there was no justification for their continued detention. They had not, however, had a possibility themselves to take proceedings before a court in order that that court might decide without delay on the lawfulness of their detention.

...

14. The Committee...is of the view that the facts...disclose violations of the International

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Covenant on Civil and Political Rights, particularly:

> of article 9 (3), because Maria Cristina Salazar de Fals Borda"s right to be tried or released within' reasonable time was not respected;
>
> of article 9 (4), because Orlando Fals Bonds and Maria Cristina Salazar de Fals Borda could not themselves take proceedings in order that a court might decide without delay on the lawfulness of their detention.

- *Schweizer v. Uruguay* (66/1980)(R.16/66), ICCPR, A/38/40 (12 October 1982) 117 at paras. 18.2 and 19.

...
18.2 ...[T]he criminal proceedings initiated against David Cámpora in 1971 were not formally concluded at first instance until the military tribunal pronounced its judgement of 10 September 1980. Article 14 (7), however, is only violated if a person is tried again for an offence for which he has been finally convicted or acquitted. This does not appear to have been so in the present case. Nevertheless, the fact that the Uruguayan authorities took almost a decade until the judgement of first instance was handed down indicates a serious malfunctioning of the judicial system contrary to article 14 (3) (c) of the Covenant.
...
19. 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:

> ...
> of article 14(3) (c) because he was not tried without undue delay.

- *Barbato v. Uruguay* (84/1981)(R.21/84), ICCPR, A/38/40 (21 October 1982) 124 at paras. 8.3 and 10(b).

...
8.3 Guillermo Ignacio Dermit Barbato...disappeared on 2 December 1980. His detention was officially acknowledged on 19 December 1980, but he continued to be held *incommunicado*. He was not brought before a judicial authority until 23 March 1981 when he was brought before a military tribunal. After some 20 months, there does not appear to have been any decision taken and the State party gives no evidence of any such decision.
...
10. The Human Rights Committee...is of the view that the communication discloses violations of the Covenant, in particular:

(b) With respect to Guillermo Ignacio Dermit Barbato,

> of article 9(3), because he was not promptly brought before a judge...

See also:

- *Caldas v. Uruguay* (43/1979)(R.10/43), ICCPR, A/38/40 (21 July 1983) 192 at paras. 12.1, 13.4 and 14.

- *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...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...During his detention he appealed without result to the Administrateur general and, by letter, to the Head of State. No other remedy was available to him...

...

8. 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 1 February 1977 (the date on which the Covenant and the Optional Protocol entered into force for Zaire), disclose violations of the International Covenant on Civil and Political Rights, particularly:

> ...
> of article 9 (3) and (4), because he was not brought promptly before a Judge and no court decided within a reasonable time on the lawfulness of his detention...

See also:

- *Bwalya v. Zambia* (314/1988), ICCPR, A/48/40 vol. II (14 July 1993) 52 (CCPR/C/48/D/314/1988) at para. 6.3.

- *Nieto v. Uruguay* (92/1981)(R.23/92), ICCPR, A/38/40 (25 July 1983) 201 at paras. 9.3, 10.5 and 11.

...

9.3 Towards the end of 1980, shortly before he was due for release upon the completion of his term of imprisonment, new criminal proceedings were started against Juan Almirati Nieto

by the military judiciary without the knowledge of his defence lawyer for offences alleged to have been committed prior to his imprisonment and in respect of which new evidence was alleged to have emerged. The military prosecutor has asked that Juan Almirati Nieto should be sentenced to 22 years' imprisonment. The Committee has received no information as to the outcome of these proceedings or that they have been concluded.

...

10.5 Concerning the allegation of the authors that article 14 (7) of the Covenant has been violated by the State party because the new criminal proceedings, started by the military judiciary against her father in December 1980, were based on the same facts as those for which he had been tried and sentenced to 10 years of imprisonment by the civil judiciary, the State party in its submissions dated 1 July and 13 August 1982 refuted this allegation on the ground that "the proceedings concerned were brought because of the emergence of fresh evidence regarding the commission of the offences of "robbery" and "assault on the safety of transport". The Committee observes, in this connection, that the State party has not specified what the new evidence was which prompted the Uruguayan authorities to initiate new proceedings. In the absence of information, as to the outcome of those proceedings, the Committee makes no finding on the question of a violation of article 14 (7), but it is of the view that the facts indicate a failure to comply with the requirement of article 14 (3) (c) of the Covenant that an accused person should be tried 'without undue delay'.

...

11. 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 14 (3) (c), because he was not tried without undue delay.

- *Manera v. Uruguay* (123/1982), ICCPR, A/39/40 (6 April 1984) 175 at paras. 9.3 and 10.

...

9.3 Mr. Manera was indicted on 12 January 1973. Six years later, in 1979, he was sentenced to the maximum penalty of 30 years' imprisonment and 15 additional years of precautionary detention (*medidas de seguridad eliminativas*) by a military tribunal of first instance; he was subsequently sentenced by the court of second instance. From March 1975 to mid 1977 Mr. Manera was not allowed to see his defence lawyer.

10. 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 14 (3) (c), because he was not tried without undue delay.

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- *Muteba v. Zaire* (124/1982)(R.26/124), ICCPR, A/39/40 (24 July 1984) 182 at paras. 10.2 and 12.

...
10.2 Mr. Tshitenge Muteba was arrested on 31 October 1981...After more than a year and a half of detention he was granted amnesty under a decree of 19 May 1983...
...
12. The Human Rights Committee...is of the view that these facts disclose violations of the Covenant, in particular:

> ...
> of article 9, paragraph 3, because, in spite of the charges brought against him, he was not promptly brought before a judge and had no trial within a reasonable time...

- *Solórzano v. Venezuela* (156/1983), ICCPR, A/41/40 (26 March 1986) 134 at paras. 10.2 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. Although he was indicted on 12 December 1977 by the Permanent Military Court of Caracas, proceedings were interrupted in 1979 because two co-defendants had been elected deputies to the National Congress, and their cases remained pending until severed by order of the Supreme Court of Justice in December 1983. At the time of his release in December 1984, no judgement had been passed against Mr. Solorzano...
...
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:

> ...
> articles 9, paragraph 3, and 14, paragraph 3 (c), because he was not brought promptly before a judge nor tried within a reasonable time, and because he was kept in detention without judgement for over seven years.

- *Muñoz v. Peru* (203/1986), ICCPR, A/44/40 (4 November 1988) 200 at para. 11.3.

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...
11.3 With respect to the requirement of a fair hearing as stipulated in article 14, paragraph 1, of the Covenant, the Committee notes that the concept of a fair hearing necessarily entails that justice be rendered without undue delay. In this connection the Committee observes that the administrative review in the Muñoz case was kept pending for seven years and that it ended with a decision against the author based on the ground that he had started judicial proceedings. A delay of seven years constitutes unreasonable delay. Furthermore, with respect to judicial review, the Committee notes that the Tribunal of Constitutional Guarantees decided in favour of the author in 1986...However, the delays in implementation have continued and two and a half years after the judgement of the Tribunal of Constitutional Guarantees, the author has still not been reinstated to his post. This delay, which the State party has not explained, constitutes a further aggravation of the violation of the principle of a fair hearing. The Committee further notes that on 24 September 1987 the Cuzco Civil Chamber, in pursuance of the decision of the Tribunal of Constitutional Guarantees, ordered that the author be reinstated; subsequently, in a written opinion dated 7 March 1988, the Public Prosecutor declared that the decision of the Cuzco Civil Chamber was valid and that the author's action of *amparo* was well founded. But even after these clear decisions, the Government of Peru has failed to reinstate the author. Instead, yet another special appeal, this time granted *ex officio* in "Defence of the State"...has been allowed, which resulted in a contradictory decision by the Supreme Court of Peru on 15 April 1988, declaring that the author's action of *amparo* had not been lodged timely and was therefore inadmissible. This procedural issue, however, had already been adjudicated by the Tribunal of Constitutional Guarantees in 1986, before which the author's action is again pending. Such seemingly endless sequence of instances and the repeated failure to implement decisions are [in]compatible with the principle of a fair hearing.

- *Pratt and Morgan v. Jamaica* (210/1986 and 225/1987), ICCPR, A/44/40 (6 April 1989) 222 at paras. 13.3-13.5, 14(b) and 15.

...
13.3 ...[T]he Committee has noted that the delays in the judicial proceedings in the authors' cases constitute a violation of their rights to be heard within a reasonable time. The Committee first notes that article 14, paragraph 3 (c), and article 14, paragraph 5, are to be read together, so that the right to review of conviction and sentence must be made available without undue delay. In this context the Committee recalls its general comment on article 14, which stipulates, *inter alia*, that "all stages [of judicial proceedings] should take place without undue delay, and that in order to make this right effective, a procedure must be available to ensure that the trial will proceed without undue delay, both in first instance and on appeal."

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13.4 The State party has contended that the time span of three years and nine months between the dismissal of the authors' appeal and the delivery of the Court of Appeal's written judgement was attributable to an oversight and that the author should have asserted their right to receive earlier the written judgement. The Committee considers that the responsibility for the delay of 45 months lies with the judicial authorities of Jamaica. This responsibility is neither dependent on a request for production by the accused in a trial nor is non-fulfillment of this responsibility excused by the absence of a request from the accused...

13.5 In the absence of a written judgement of the Court of Appeal, the authors were not able to proceed to appeal before the Privy Council, thus entailing a violation of article 14, paragraph 3 (c), and article 14, paragraph 5. In reaching this conclusion it matters not that in the event the Privy Council affirmed the conviction of the authors. The Committee notes that in all cases, and especially in capital cases, accused persons are entitled to trial and appeal without undue delay, whatever the outcome of those judicial proceedings turns out to be.

...

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

> ...
> (b) Article 14, paragraph 3 (c) in conjunction with paragraph 5, because the authors were not tried without undue delay.

15. It is the view of the Committee that, in capital punishment cases, States parties have an imperative duty to observe rigorously all the guarantees for a fair trial set out in article 14 of the Covenant. Although in this case article 6 is not directly at issue, in that capital punishment is not *per se* unlawful under the Covenant, it should not be imposed in circumstances where there have been violations by the State party of any of its obligations under the Covenant. The Committee is of the view that the victims of the violations of articles 14, paragraph 3 (c), and 7 are entitled to a remedy; the necessary prerequisite in the particular circumstances is the commutation of the sentence.

- *Bolaños v. Ecuador* (238/1987), ICCPR, A/44/40 (26 July 1989) 246 at paras. 8.3 and 9.

...

8.3 With respect to the prohibition of arbitrary arrest or detention contained in article 9 of the Covenant, the Committee observes that although the State party has indicated that the author was suspected of involvement in the murder of Ivan Egas it has not explained why it was deemed necessary to keep him under detention for five years prior to his indictment in December 1987. In this connection the Committee notes that article 9, paragraph 3, of the

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Covenant provides that anyone arrested on a criminal charge "shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial...". The Committee further observes that article 9, paragraph 5, of the Covenant provides that "anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation".

...

9. The Human Rights Committee...is of the view that the facts of this case disclose violations of article 9, paragraphs 1 and 3, because Mr. Floresmilo Bolaños was deprived of liberty contrary to the laws of Ecuador and not tried within a reasonable time...

- *Morael v. France* (207/1986), ICCPR, A/44/40 (28 July 1989) 210 at para. 9.4.

...

9.4 At issue is the application of the third paragraph of the article of the Bankruptcy Law of 13 July 1967 that established a presumption of fault on the part of managers of companies placed under judicial supervision, by requiring them to prove that they had devoted all due energy and diligence to the management of the company's affairs, failing which they could be held liable for the company's losses...With respect to the author's assertion that his case was not heard within a reasonable time, the Committee is of the opinion that, in the circumstances and given the complexity of a bankruptcy case, the time taken by the domestic courts to deal with it cannot be considered excessive.

- *Torres v. Finland* (291/1988), ICCPR, A/45/40 vol. II (2 April 1990) 96 (CCPR/C/38/D/291/1988) at paras. 7.2 and 7.3.

...

7.2 ...[T]he Committee was taken note of the State party's contention that the author could have appealed the detention orders of 7 October, 3 December 1987 and 5 January 1988 pursuant to section 32 of the Aliens Act to the Ministry of the Interior. In the Committee's opinion, this possibility, while providing for some measure of protection and review of the legality of detention, does not satisfy the requirements of article 9, paragraph 4, which envisages that the legality of detention will be determined by a court so as to ensure a higher degree of objectivity and independence in such control. The Committee further notes that while the author was detained under order of the police, he could not have the lawfulness of his detention reviewed by a court. Review by a court of law was possible only when, after seven days, the detention was confirmed by order of the Minister. As no challenge could have been made until the second week of detention, the author's detention from 8 to 15 October 1987 and from 5 to 20 January 1988 violated the requirement of article 9 paragraph

4, of the Covenant that a detained person be able " to take proceedings before a court in order that the court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful" (emphasis added).

7.3 ...[T]he Committee emphasizes that, as a matter of principle, the adjudication of a case by any court of law should take place as expeditiously as possible. This does not mean, however, that precise deadlines for the handing down of judgments may be set which, if not observed, would necessarily justify the conclusion that a decision was not reached "without delay". Rather, the question of whether a decision was reached without delay must be assessed on a case by case basis. The Committee notes that almost three months passed between the filing of the author's appeal, under the Aliens Act, against the decision of the Ministry of the Interior and the decision of the Supreme Administrative Court. This period is in principle too extended, but as the Committee does not know the reasons for the judgment being issued only on 4 March 1988, it makes no finding under article 9, paragraph 4 of the Covenant.

- *Kelly v. Jamaica* (253/1987), ICCPR, A/46/40 (8 April 1991) 241 (CCPR/C/41/D/253/1987) at paras. 5.6, 5.8, 5.11, 5.12, 6 and Individual Opinion by Mr. Bertil Wennergren, 252.

...

5.6 In respect of the allegations pertaining to article 9, paragraphs 3 and 4, the State party has not contested that the author was detained for five weeks before he was brought before a judge or judicial officer entitled to decide on the lawfulness of his detention. The delay of over one month violates the requirement, in article 9, paragraph 3, that anyone arrested in a criminal charge shall be brought "promptly" before a judge or other officer authorized by law to exercise judicial power. The Committee considers it to be an aggravating circumstance that, throughout this period, the author was denied access to legal representation and any contact with his family. As a result, his right under article 9, paragraph 4, was also violated, since he was not in due time afforded the opportunity to obtain, on his own initiative, a decision by the court on the lawfulness of his detention.

...

5.8 Article 14, paragraph 3(a), requires that any individual under criminal charges shall be informed promptly and in detail of the nature and the charges against him. The requirement of prompt information, however, only applies once the individual has been formally charged with a criminal offence. It does not apply to those remanded in custody pending the result of police investigations; the latter situation is covered by article 9, paragraph 2, of the Covenant...

...

5.11 With respect to the claim of "undue delay" in the proceedings against the author, two issues arise. The author contends that his right, under article 14, paragraph 3 (c), to be tried

without "undue delay" was violated because almost 18 months elapsed between his arrest and the opening of the trial. While the Committee reaffirms, as it did in its general comment on article 14, that all stages of the judicial proceeding should take place without undue delay, it cannot conclude that a lapse of a year and a half between the arrest and the start of the trial constituted "undue delay", as there is no suggestion that pre-trial investigations could have been concluded earlier, or that the author complained in this respect to the authorities.

5.12 However, because of the absence of a written judgement of the Court of Appeal, the author has, for almost five years since the dismissal of his appeal...been unable effectively to petition the Judicial Committee of the Privy Council...This in the Committee's opinion, entails a violation of article 14, paragraph 3(c), and article 14, paragraph 5. The Committee reaffirms that in all cases, and in particular in capital cases, the accused is entitled to trial and appeal proceedings without undue delay, whatever the outcome of these judicial proceedings may turn out to be. e/

...

6. The Human Rights Committee...is of the view that the facts...disclose violations of articles...9, paragraphs 2 to 4...of the Covenant.

...

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Notes

...

e/ See , for example, the final views of the Committee in Communications Nos. 210/1986 and 225/1987, para. 13.5, (Earl Pratt and Ivan Morgan), adopted on 6 April 1989.

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Individual Opinion by Mr. Bertil Wennergren

I concur in the views expressed in the Committee's decision. However, in my opinion, the arguments in paragraph 5.6 should be expanded.

Anyone deprived of his liberty by arrest or detention shall, according to article 9, paragraph 4, of the Covenant, be entitled to take proceedings before a court. In addition, article 9, paragraph 3, ensures that anyone arrested or detained on criminal charges shall be brought before a judge or other officer authorized by law to exercise judicial power. A similar right is contained in article 5 of the European Convention on Human Rights, which is applicable to the "lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence, or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so."

The author was arrested and taken into custody on 20 August, 1981; he was detained

incommunicado. On 15 September 1981 he was charged with murder; only one week later he was brought before a judge.

While article 9, paragraph 1, of the Covenant covers all forms of deprivation of liberty by arrest or detention, the scope of application of paragraph 3 is limited to arrests and detentions "on a criminal charge". It would appear that the State party interprets this provision in the sense that the obligation of the authorities to bring the detainee before a judge or judicial officer does not arise until a formal criminal charge has been served to him. It is, however, abundantly clear from the *travaux préparatoires* that the formula "on a criminal charge" was meant to cover as broad a scope of application as the corresponding provision in the European Convention. All types of arrest and detention in the course of crime prevention are therefore covered by the provision, whether it is preventive detention, detention pending investigation or detention pending trial...

It should be noted that the words "shall be brought promptly" reflect the original form of *habeus corpus*...and order the authorities to bring a detainee before a judge or judicial officer as soon as possible, independently of the latter's express wishes in this respect. The word "promptly" does not permit a delay of more than two to three days. As the author was not brought before a judge until about 5 weeks had passed since his detention, the violation of article 9, paragraph 3 of the Covenant is flagrant. The fact that the author was held *incommunicado* until he was formally charged deprived him of his right, under article 9, paragraph 4, to file an application if his own for judicial review if his detention by a court. Accordingly, this provision was also violated.

See also:

- *Collins v. Jamaica* (356/1989), ICCPR, A/48/40 vol. II (25 March 1993) 85 (CCPR/C/47/D/356/1989) at para. 8.3.

- *Fillastre v. Bolivia* (336/1988), ICCPR, A/47/40 (5 November 1991) 294 (CCPR/C/43/D/336/1988) at paras. 6.4-6.6 and 7.

...

6.4 As to the alleged violation of article 9, paragraphs 2 and 3, the Committee observes that the author has stated in general terms that her husband and Mr. Bizouarn were held in custody for ten days before being informed of the charges against them, and that they were not brought promptly before a judge or other officer authorized by law to exercise judicial power. It remains unclear from the State party's submission whether the accused were indeed brought before a judge or judicial officer between their arrest, on 3 September 1987, and 12 September 1987, the date of their indictment and placement under detention, pursuant to article 194 of the Bolivian Code of Criminal Procedure...The pertinent factor in this case is

that both Mr. Fillastre and Mr. Bizouarn allegedly were held in custody for ten days before being brought before any judicial instance and without being informed of the charges against them. Accordingly, while not unsympathetic to the State party's claim that budgetary constraints may cause impediments to the proper administration of justice in Bolivia, the Committee concludes that the right of Messrs. Fillastre and Bizouarn under article 9, paragraphs 2 and 3, have not been observed.

6.5 Under article 9, paragraph 3, anyone arrested or detained on a criminal charge "shall be entitled to trial within a reasonable time...". What constitutes "reasonable time" is a matter of assessment for each particular case. The lack of adequate budgetary appropriations for the administration of criminal justice alluded to by the State party does not justify unreasonable delays in the adjudication of criminal cases. Nor does the fact that investigations into a criminal case are, in their essence, carried out by way of written proceedings, justify such delays. In the present case, the Committee has not been informed that a decision at first instance had been reached some four years after the victims' arrest. Considerations of evidence-gathering do not justify such prolonged detention. The Committee concludes that there has been, in this respect, a violation of article 9, paragraph 3.

6.6 The author has further alleged that her husband and Mr. Bizouarn have not been tried, at first instance, for a period of time that she considers unreasonably prolonged. Under article 14, paragraph 3(c), the victims have the right to "be tried without undue delay". The arguments advanced by the State party in respect of article 9, paragraph 3, cannot serve to justify undue delays in the judicial proceedings. While the accused were indicted on several criminal charges under the Bolivian Criminal Code on 12 September 1987, the determination of these charges had not resulted in a judgment, at first instance, nearly four years later; the State party has not shown that the complexity of the case was such as to justify this delay. The Committee concludes that this delay violated the victims' right under article 14, paragraph 3(c).

7. The Human Rights Committee...finds that the facts before it reveal a violation of articles 9, paragraphs 2 and 3, and 14, paragraph 3(c), of the Covenant.

- *Wolf v. Panama* (289/1988), ICCPR, A/47/40 (26 March 1992) 277 at para. 6.4.

...
6.4 With respect to the author's right, under article 14, paragraph 3 (c), to be tried without unreasonable delay, the Committee...observes that the allegations of fraud may be complex and that the author has not shown that the facts did not necessitate prolonged proceedings.

LEGAL RIGHTS - CRIMINAL - Protection Against Undue Delay

- *Campbell v. Jamaica* (248/1987), ICCPR, A/47/40 (30 March 1992) 232 at paras. 6.3, 6.4, 6.8 and 7.

...

6.3 In respect of the allegations pertaining to article 9, paragraphs 1 to 3, the State party has not contested that the author was detained for three months before he was formally charged with murder, and that throughout the period from 12 December 1984 to 12 March 1985 he had no access to legal representation. The Committee does not consider that the author's arrest was arbitrary within the meaning of article 9, paragraph 1, as he was apprehended on suspicion of having committed a specified criminal offence. However, the Committee finds that the author was not "promptly" informed of the charges against him: one of the most important reasons for the requirement of "prompt" information on a criminal charge is to enable a detained individual to request a prompt decision on the lawfulness of his or her detention by a competent judicial authority. A delay from 12 December 1984 to 26 January 1985 does not meet the requirements of article 9, paragraph 2.

6.4 The Committee further considers that the delay from 12 December 1984 to 26 January 1985 in the present case between Mr. Campbell's arrest and his presentation to a judge violates the principle, in article 9, paragraph 3, that anyone arrested on a criminal charge shall be brought "promptly" before a judge or other officer authorized by law to exercise judicial power. The Committee considers to be an aggravating factor that the author had no access to legal representation from December 1984 to March 1985. This means, in the author's case that his right under article 9, paragraph 4, was also violated, since he was not in due time afforded the opportunity to obtain, on his own initiative, a decision by a court on the lawfulness of his detention.

...

6.8 With respect to the claim of "undue delay" in the proceedings against the author, the Committee does not consider that a delay of 10 months between conviction and the dismissal of the appeal, resulted in "undue delay(s)" within the meaning of article 14, paragraph 3(c), of the Covenant. The Committee is...unable to conclude that the conduct of the appeal jeopardized the author's chances of an effective appeal to the Judicial Committee of the Privy Council, in violation of article 14, paragraph 5. In this context, the Committee notes that the Court of Appeal produced a written judgement within one month after dismissing the appeal; it also lacks evidence that such delays as were experienced by counsel in obtaining a copy of the written judgment must be attributed to the State party.

...

7. The Human Rights Committee...is of the view that the facts before it disclose violations of articles...paragraphs 2 to 4; and 14, paragraph 3 (d), of the Covenant.

- *Barrett and Sutcliffe v. Jamaica* (270/1988 and 271/1988), ICCPR, A/47/40 (30 March

1992) 246 at para. 8.4.

...
8.4 The authors have claimed a violation of article 7 on account of their prolonged detention on death row. The Committee starts by noting that this question was not placed before the Jamaican courts, nor before the Judicial Committee of the Privy Council. It further reiterates that prolonged judicial proceedings do not *per se* constitute cruel, inhuman and degrading treatment, even if they may be a source of mental strain and tension for detained persons. This also applies to appeal and review proceedings in cases involving capital punishment, although an assessment of the particular circumstances of each case would be called for. In States whose judicial system provides for a review of criminal convictions and sentences, an element of delay between the lawful imposition of a sentence of death and the exhaustion of available remedies is inherent in the review of the sentence; thus, even prolonged periods of detention under a severe custodial regime on death row cannot generally be considered to constitute cruel, inhuman or degrading treatment if the convicted person is merely availing himself of appellate remedies. A delay of 10 years between the judgement of the Court of Appeal and that of the Judicial Committee of the Privy Council is disturbingly long. However, the evidence before the Committee indicates that the Court of Appeal rapidly produced its written judgement and that the ensuing delay in petitioning the Judicial Committee is largely attributable to the authors.

For dissenting opinion in this context, see Barrett and Sutcliffe v. Jamaica (270/1988 and 271/1988), ICCPR, A/47/40 (30 March 1992) 246 at Individual Opinion by Ms. Christine Chanet, 252.

- *González del Río v. Peru* (263/1987), ICCPR, A/48/40 vol. II (28 October 1992) 17 (CCPR/C/46/D/263/1987) at para. 5.3.

...
5.3 Article 12, paragraph 2, protects an individual's right to leave any country, including his own. The author claims that because of the arrest warrant still pending, he is prevented from leaving Peruvian territory. Pursuant to paragraph 3 of article 12, the right to leave any country may be restricted, primarily, on grounds of national security and public order (*ordre public*). The Committee considers that pending judicial proceedings may justify restrictions on an individual's right to leave his country. But where the judicial proceedings are unduly delayed, a constraint upon the right to leave the country is thus not justified. In this case, the restriction on Mr. González' freedom to leave Peru has been in force for seven years, and the date of its termination remains uncertain. The Committee considers that this situation violates the author's rights under article 12, paragraph 2; in this context, it observes that the violation of the author's rights under article 12 may be linked to the violation of his right,

under article 14, to a fair trial.

- *Martin v. Jamaica* (317/1988), ICCPR, A/48/40 vol. II (24 March 1993) 57 (CCPR/C/47/D/317/1988) at para. 12.4.

...
12.4 The author...alleges that his trial suffered from undue delay and that he was denied the right to have his conviction and sentence reviewed by a higher tribunal. The Committee observes that the author was convicted and sentenced by the Circuit Court of Kingston on 17 February 1981 and that his appeal was dismissed by the Court of Appeal on 11 November 1981. The Committee notes that the subsequent delay in obtaining a hearing before the Judicial Committee of the Privy Council, which dismissed special leave to appeal on 11 July 1988, is primarily attributable to the author, who did not file his petition to the Judicial Committee until after a warrant for his execution had been issued in 1988, six and a half years after the Court of Appeal's judgement. The Committee therefore concludes that the facts before it do not disclose a violation of article 14, paragraphs 3 (c) and 5, of the Covenant.

- *Smith v. Jamaica* (282/1988), ICCPR, A/48/40 vol. II (31 March 1993) 28 (CCPR/C/47/D/282/1988) at para. 10.5.

...
10.5 ...Article 14, paragraph 5, of the Covenant guarantees the right of convicted persons to have the conviction and sentence reviewed "by a higher tribunal according to law". e/ For the effective exercise of this right, a convicted person must have the opportunity to obtain, within a reasonable time, access to duly reasoned judgements, for every available instance of appeal. The Committee observes that the Judicial Committee of the Privy Council dismissed the author's first petition for special leave to appeal because of the absence of a written judgement of the Jamaican Court of Appeal. It further observes that over four years after the dismissal of the author's appeal in September 1984 and his petitions for leave to appeal by the Judicial Committee in February and December 1987, no reasoned judgement had been issued, which once more deprived the author of the possibility to effectively petition the Judicial Committee. The Committee therefore finds that Mr. Smith's rights under article 14, paragraph 3(c) and article 14, paragraph 5, of the Covenant, have been

violated.

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Notes

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e/ See Communication No. 230/1987 (*R. Henry v. Jamaica*), views adopted on 1 November 1991, para. 8.4.

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See also:

- *Henry v. Jamaica* (230/1987), ICCPR, A/47/40 (1 November 1991) 210.
- *Hamilton v. Jamaica* (333/1988), ICCPR, A/49/40 vol. II (23 March 1994) 37 (CCPR/C/50/D/333/1988) at paras. 8.3 and 9.1.

- *Kalenga v. Zambia* (326/1988), ICCPR, A/48/40 vol. II (27 July 1993) 68 (CCPR/C/48/D/326/1988) at para. 6.3.

...

6.3 The Committee is of the opinion that the author's right, under article 9, paragraph 2, to be promptly informed about the reasons for his arrest and of the charges against him, has been violated, as it took the State party authorities almost one month to so inform him. Similarly, the Committee finds a violation of article 9, paragraph 3, as the material before it reveals that the author was not brought promptly before a judge or other officer authorized by law to exercise judicial power...

- *Berry v. Jamaica* (330/1988), ICCPR, A/49/40 vol. II (7 April 1994) 20 (CCPR/C/50/D/330/1988) at para. 11.1.

...

11.1 In respect of the allegations pertaining to article 9, paragraphs 3 and 4, the State party has not contested that the author was detained for two and a half months before he was brought before a judge or judicial officer authorized to decide on the lawfulness of his detention. Instead, the State party has confined itself to the contention that, during his detention, the author could have applied to the courts for a writ of *habeas corpus*. The Committee notes, however, the author's claim, which remains unchallenged, that throughout this period he had no access to legal representation. The Committee considers that a delay of over two months violates the requirement, in article 9, paragraph 3, that anyone arrested on a criminal charge shall be brought "promptly" before a judge or other officer authorized by law to exercise judicial power. In the circumstances, the Committee concludes that the author's right under article 9, paragraph 4, was also violated, since he was not, in due time,

afforded the opportunity to obtain, on his own initiative, a decision by a court on the lawfulness of his detention.

- *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. 5.2 and 5.3.

...
5.2 ...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...After his arrest, Mr. Bozize was not brought promptly before a judge or other officer authorized by law to exercise judicial power, was denied access to counsel, and was not, in due time, afforded the opportunity to obtain a decision by a court on the lawfulness of his arrest and detention. The Committee finds that the above amounts to violations by the State party of articles 7, 9, and 10 in the case.

5.3 The Committee notes that although Mr. Bozize has not yet been tried, his right to a fair trial has been violated; in particular, his right to be tried within a "reasonable time" under article 14, paragraph 3 (c), has not been respected, as he does not appear to have been tried at first instance after over four years of detention.

- *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. 6.5.

...
6.5 As to the author's allegation that he was arbitrarily arrested and detained between 16 August 1988 and 1 March 1990, the Committee notes that the State party has not contested this claim. It further notes that the author was not given any explanations for the reasons of his arrest and detention, except that the President of the Republic had ordered both, that he was not brought promptly before a judge or other officer authorized by law to exercise judicial power, and that he was unable to seek the judicial determination, without delay, of the lawfulness of his detention. On the basis of the information before it, the Committee finds a violation of article 9, paragraphs 1, 2 and 4. On the same basis, the Committee concludes, however, that there has been no violation of article 9, paragraph 5, as it does not appear that the author has in fact claimed compensation for unlawful arrest or detention. Nor is the Committee able to make a finding in respect of article 9, paragraph 3, as it remains unclear whether the author was in fact detained on specific criminal charges within the meaning of this provision.

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See also:

- *Bahamonde v. Equatorial Guinea* (468/1991), ICCPR, A/49/40 vol. II (20 October 1993) 183 (CCPR/C/49/D/468/1991) at paras. 2.1 and 9.1.

- *Champagnie v. Jamaica* (445/1991), ICCPR, A/49/40 vol. II (18 July 1994) 136 (CCPR/C/51/D/445/1991) at paras. 7.2-7.4 and 9.

...

7.2 The question before the Committee is whether the delay in the issuing and the inadequacy of the written judgment of the Court of Appeal of Jamaica deprived the authors of their right, under article 14, paragraph 3 (c), to be tried without undue delay, and of their right, under article 14, paragraph 5, to have conviction and sentence reviewed by a higher tribunal according to law. The Committee recalls that article 14, paragraph 3 (c), and article 14, paragraph 5, must be read together, so that the right to review of conviction and sentence must be made available without delay. b/ In this connection, the Committee refers to its earlier jurisprudence c/ and reaffirms that under article 14, paragraph 5, a convicted person is entitled to have, within reasonable time, access to written judgments, duly reasoned, for all instances of appeal in order to enjoy the effective exercise of the right to have conviction and sentence reviewed by a higher tribunal according to law.

7.3 As regards the case before it, the Committee notes that the Court of Appeal dismissed the authors' appeal on 10 June 1981, but did not issue a written judgment until 17 July 1986, i.e. over five years later. Furthermore, it appears from the information before the Committee, which has remained uncontested, that it took another four years before the written judgment was made available to leading counsel in London, who was only then able to give his opinion on the merits of a petition for special leave to appeal to the Judicial Committee of the Privy Council. The Committee has also noted that, because of the considerable lapse of time that elapsed between the hearing of the appeal and delivery of the reasons for judgment, the Court of Appeal was unable to rely on its memory of the hearing of the appeal and had to confine its reasons to such notes as were made during the hearing of the appeal. In the circumstances, the Committee finds that it cannot be said that the authors benefitted from a proper review of their conviction and sentence, nor from timely access to the reasons for judgment, which would have enabled them to effectively exercise their right of appeal at all instances. The Committee therefore concludes that the rights of the authors under article 14, paragraphs 3 (c) and 5, of the Covenant, have been violated.

7.4 The Committee is of the opinion that the imposition of a sentence of death upon conclusion of a trial in which the provisions of the Covenant have not been respected constitutes, if no further appeal against the sentence is possible, a violation of article 6 of the Covenant. As the Committee noted in its General Comment 6 (16), the provision that a sentence of death may be imposed only in accordance with the law and not contrary to the

provisions of the Covenant implies that "the procedural guarantees therein prescribed must be observed, including the right to a fair hearing by an independent tribunal, the presumption of innocence, the minimum guarantees for the defence, and the right to review of conviction and sentence by a higher tribunal". d/ In the present case, since the final sentence of death was passed without due respect for the requirements for a fair trial set out in article 14, paragraphs 3 (c) and 5, there has accordingly also been a violation of article 6 of the Covenant.

...

9. In capital punishment cases, the obligation of States parties to observe rigorously all the guarantees for a fair trial set out in article 14 of the Covenant admits of no exception. The failure to provide Messrs. Champagnie, Palmer and Chisholm with an effective right to appeal without undue delay in accordance with article 14, paragraphs 3 (c) and 5, of the Covenant, means that they did not receive a fair trial within the meaning of the Covenant. Consequently, they are entitled, under article 2, paragraph 3 (a), of the Covenant, to an effective remedy. The Committee is of the view that in the circumstances of the case, this entails their release. The State party is under an obligation to ensure that similar violations do not occur in the future.

Notes

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b/ See Official Records of the General Assembly, Forty-seventh Session, Supplement No. 40 (A/44/40), annex X.F, Communications Nos. 210/1986 and 225/1987 (*Earl Pratt and Ivan Morgan v. Jamaica*), adopted on 6 April 1989, paras. 13.3-13.5.

c/ *Ibid*., Forty-seventh Session, Supplement No. 40 (A/47/40), annexes IX.B and J, Communications Nos. 230/1987 (*Raphael Henry v. Jamaica*) and 283/1988 (*Aston Little v. Jamaica*), views adopted on 1 November 1991; and ibid., Forth-eighth Session, Supplement No. 40 (A/48/40), annex XII.K, Communication No. 320/1988 (*Victor Francis v. Jamaica*), views adopted on 24 March 1993.

d/ *Ibid*., Thirty-seventh Session, Supplement No. 40 (A/37/40) , annex V, General Comment 6 (16), para. 7.

See also:

- *Currie v. Jamaica* (377/1989), ICCPR, A/49/40 vol. II (29 March 1994) 73 (CCPR/C/50/D/377/1989) at para. 13.5.
- *Reid v. Jamaica* (355/1989), ICCPR, A/49/40 vol. II (8 July 1994) 59 (CCPR/C/51/D/355/1989) at para. 14.4.

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- *Koné v. Senegal* (386/1989), ICCPR, A/50/40 vol. II (21 October 1994) 1 (CCPR/C/52/D/386/1989) at para. 8.7.

...
8.7 A delay of four years and four months during which the author was kept in custody (considerably more taking into account that the author's guilt or innocence had not yet been determined at the time of his provisional release on 9 May 1986) cannot be deemed compatible with article 9, paragraph 3, in the absence of special circumstances justifying such delay, such as that there were, or had been, impediments to the investigations attributable to the accused or to his representative. No such circumstances are discernible in the present case. Accordingly, the author's detention was incompatible with article 9, paragraph 3. This conclusion is supported by the fact that the charges against the author in 1982 and in 1988 were identical, whereas the duration of the judicial process on each occasion differed considerably.

- *Shalto v. Trinidad and Tobago* (447/1991), ICCPR, A/50/40 vol. II (4 April 1995) 17 (CCPR/C/53/D/447/1991) at para. 7.2.

...
7.2 The Committee notes that the information before it shows that the Court of Appeal, on 23 March 1983, quashed the author's conviction for murder and ordered a retrial, which started on 20 January 1987 and at the conclusion of which he was found guilty of murder. The author remained in detention throughout this period. The Committee recalls that article 14, paragraph 3(c), of the Covenant prescribes that anyone charged with a criminal offence has the right to be tried without undue delay, and that article 9, paragraph 3, provides further that anyone detained on a criminal charge shall be entitled to trial within a reasonable time or release. The Committee concludes that a delay of almost four years between the judgement of the Court of Appeal and the beginning of the retrial, a period during which the author was kept in detention, cannot be deemed compatible with the provisions of article 9, paragraph 3, and article 14, paragraph 3(c), of the Covenant, in the absence of any explanations from the State party justifying the delay.

- *Fei v. Colombia* (514/1992), ICCPR, A/50/40 vol. II (4 April 1995) 77 (CCPR/C/53/D/514/1992) at para. 8.4.

...
8.4 The concept of a "fair trial" within the meaning of article 14, paragraph 1...includes other elements. Among these, as the Committee has had the opportunity to point out, 24/ are the respect for the principles of equality of arms, of adversary proceedings and of expeditious

proceedings. In the present case, the Committee is not satisfied that the requirement of equality of arms and of expeditious procedure have been met. It is noteworthy that every court action instituted by the author took several years to adjudicate - and difficulties in communication with the author, who does not reside in the State party's territory, cannot account for such delays, as she had secured legal representation in Colombia. The State party has failed to explain these delays. On the other hand, actions instituted by the author's ex-husband and by or on behalf of her children were heard and determined considerably more expeditiously. As the Committee has noted in its admissibility decision, the very nature of custody proceedings or proceedings concerning access of a divorced parent to his children requires that the issues complained of be adjudicated expeditiously. In the Committee's opinion, given the delays in the determination of the author's actions, this has not been the case.

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24/ Views on Communication No. 203/1986 (*Muñoz v. Peru*), para. 11.3; and Communication No. 207/1986 (*Morael v. France*), para. 9.3.

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- *Barroso v. Panama* (473/1991), ICCPR, A/50/40 vol. II (19 July 1995) 41 (CCPR/C/54/D/473/1991) at para. 8.5.

...

8.5 The Committee considers that a delay of over three and a half years between indictment and trial in the present case cannot be explained exclusively by a complex factual situation and protracted investigations. In cases involving serious charges such as homicide or murder, and where the accused is denied bail by the court, the accused must be tried in as expeditious a manner as possible. The burden of proof that there are other factors which might have justified the delays in the present case lies with the State party. As the State party has not replied to the Committee's request for further clarifications on this issue, the Committee has no choice but to conclude that no such other factors did in fact exist, and that Mr. del Cid was not tried without "undue delay", contrary to article 14, paragraph 3(c), of the Covenant.

- *Francis v. Jamaica* (606/1994), ICCPR, A/50/40 vol. II (25 July 1995) 130 (CCPR/C/54/D/606/1994) at paras. 9.1-9.3.

...

9.1 The Committee must determine whether the author's treatment in prison, particularly

during the nearly 12 years that he spent on death row following his conviction on 26 January 1981 until the commutation of his death sentence on 29 December 1992 entailed violations of articles 7 and 10 of the Covenant. With regard to the "death row phenomenon", the Committee reaffirms its well established jurisprudence that prolonged delays in the execution of a sentence of death do not *per se* constitute cruel, inhuman or degrading treatment. On the other hand, each case must be considered on its own merits, bearing in mind the imputability of delays in the administration of justice on the State party, the specific conditions of imprisonment in the particular penitentiary and their psychological impact on the person concerned.

9.2 In the instant case, the Committee finds that the failure of the Jamaican Court of Appeal to issue a written judgment over a period of more than 13 years, despite repeated requests on Mr. Francis' behalf, must be attributed to the State party. Whereas the psychological tension created by prolonged detention on death row may affect persons in different degrees, the evidence before the Committee in this case, including the author's confused and incoherent correspondence with the Committee, indicates that his mental health seriously deteriorated during incarceration on death row. Taking into consideration the author's description of the prison conditions, including his allegations about regular beatings inflicted upon him by warders, as well as the ridicule and strain to which he was subjected during the five days he spent in the death cell awaiting execution in February 1988, which the State party has not effectively contested, the Committee concludes that these circumstances reveal a violation of Jamaica's obligations under articles 7 and 10, paragraph 1, of the Covenant.

9.3 With regard to the author's allegations of violations of article 14 of the Covenant, the Committee finds that the inordinate delay in issuing a note of oral judgment in his case entailed of violation of article 14, paragraphs 3(c) and 5, of the Covenant, although it appears that the delay did not ultimately prejudice the author's appeal to the Judicial Committee of the Privy Council...

- *Stephens v. Jamaica* (373/1989), ICCPR, A/51/40 vol. II (18 October 1995) 1 (CCPR/C/55/D/373/1989) at paras. 9.5-9.8.

...
9.5 The author has alleged a violation of article 9(2), because he was not informed of the reasons for his arrest promptly. However, it is uncontested that Mr. Stephens was fully aware of the reasons for which he was detained, as he had surrendered himself to the police. The Committee further does not consider that the nature of the charges against the author were not conveyed "promptly" to him. The trial transcript reveals that the police officer in charge of the investigation, a detective inspector from the parish of Westmoreland, cautioned Mr. Stephens as soon as possible after learning that the latter was kept in custody at the

Montego Bay Police Station (pp. 54-55 of trial transcript). In the circumstances, the Committee finds no violation of article 9, paragraph 2.

9.6 As to the alleged violation of article 9(3), it remains unclear on which exact day the author was brought before a judge or other officer authorized to exercise judicial power. In any event, on the basis of the material available to the Committee, this could only have been after 2 March 1983, i.e. more than eight days after Mr. Stephens was taken into custody. While the meaning of the term "promptly" in article 9(3) must be determined on a case by case basis, the Committee recalls its General Comment on article 9 i/ and its jurisprudence under the Optional Protocol, pursuant to which delays should not exceed a few days. A delay exceeding eight days in the present case cannot be deemed compatible with article 9, paragraph 3.

9.7 With respect to the alleged violation of article 9(4), it should be noted that the author did not himself apply for *habeas corpus*. He could have, after being informed on 2 March 1983 that he was suspected of having murdered Mr. Lawrence, requested a prompt decision on the lawfulness of his detention. There is no evidence that he or his legal representative did do so. It cannot, therefore, be concluded that Mr. Stephens was denied the opportunity to have the lawfulness of his detention reviewed in court without delay.

...

9.8 Finally, the author has alleged a violation of article 14, paragraphs 3(c) and (5), on account of the delay between his trial and his appeal. In this context, the Committee notes that during the preparation of the author's petition for special leave to appeal to the Judicial Committee of the Privy Council by a London lawyer, Mr. Stephens' legal aid representative for the trial was requested repeatedly but unsuccessfully to explain the delays between trial and the hearing of the appeal in December 1986. While a delay of almost two years and 10 months between trial and appeal in a capital case is regrettable and a matter of concern, the Committee cannot, on the basis of the material before it, conclude that this delay was primarily attributable to the State party, rather than to the author.

Notes

...

i/ [See Official Records of the General Assembly,] Thirty-seventh Session, Supplement No. 40 (A/37/40), annex V, General Comment No. 8 (16), para. 2.

See also:

- *Bennett v. Jamaica* (590/1994), ICCPR, A/54/40 vol. II (25 March 1999) 12 (CCPR/C/65/D/590/1994) at paras. 10.2-10.4.

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- *Seerattan v. Trinidad and Tobago* (434/1990), ICCPR, A/51/40 vol. II (26 October 1995) 25 (CCPR/C/55/D/434/1990) at para.7.2.

...
7.2 The Committee notes that the information before it shows that the author was arrested on 27 December 1982, that he was released on bail on 29 August 1983 after the preliminary examination of the case had been concluded, that he was re-arrested on 18 September 1984, that the trial against him commenced on 6 March 1986 and that he was convicted and sentenced to death on 11 March 1986. Although it is not clear from the material before the Committee whether there were one or two preliminary enquiries, or whether the original committal was for manslaughter or murder, the Committee considers that, in the circumstances of the instant case, the period of over three years between the author's initial arrest and the trial against him does, in the absence of any explanations from the State party justifying the delay, amount to a violation of article 14, paragraph 3(c), of the Covenant.

- *Wright and Harvey v. Jamaica* (459/1991), ICCPR, A/51/40 vol. II (27 October 1995) 35 (CCPR/C/55/D/459/1991) at para. 10.3.

...
10.3 The Committee notes that the first trial against the authors ended on 29 July 1983 with a hung jury and that a retrial was ordered. It appears from the file that a trial date was set for 22 February 1984 and that the trial was postponed, because the accused Wright was no longer in custody. Although Mr. Harvey remained available for trial and regular hearings were being held throughout and trial dates were set on several occasions, the retrial did not start until 26 April 1988, 22 months after Mr. Wright's rearrest. The Committee finds that in the circumstances of the instant case, such a delay cannot be deemed compatible with the provisions of article 14, paragraph 3(c), of the Covenant.

- *Lubuto v. Zambia* (390/1990), ICCPR, A/51/40 vol. II (31 October 1995) 11 (CCPR/C/55/D/390/1990) at paras. 7.3 and 9.

...
7.3 The Committee has noted the State party's explanations concerning the delay in the trial proceedings against the author. The Committee acknowledges the difficult economic situation of the State party, but wishes to emphasize that the rights set forth in the Covenant constitute minimum standards which all States parties have agreed to observe. Article 14, paragraph 3(c), states that all accused shall be entitled to be tried without delay, and this requirement applies equally to the right of review of conviction and sentence guaranteed by article 14, paragraph 5. The Committee considers that the period of eight years between the

author's arrest in February 1980 and the final decision of the Supreme Court, dismissing his appeal, in February 1988, is incompatible with the requirements of article 14, paragraph 3(c).

...

9. The Committee is of the view that Mr. Lubuto is entitled, under article 2, paragraph 3(a), of the Covenant to an appropriate and effective remedy, entailing a commutation of sentence.

- *Grant v. Jamaica* (597/1994), ICCPR, A/51/40 vol. II (22 March 1996) 206 (CCPR/C/56/D/597/1994) at para. 8.2.

...

8.2 As regards the author's claim under article 9, paragraph 3, the Committee notes that it is not clear from the information before it when the author was first brought before a judge or other officer authorized by law to exercise judicial power. It is uncontested, however, that the author, when he was seen by the investigating officer seven days after his arrest, had not yet been brought before a judge, nor was he brought before a judge that day. Accordingly, the Committee concludes that the period between the author's arrest and his being brought before a judge was too long and constitutes a violation of article 9, paragraph 3, of the Covenant and, to the extent that this prevented the author from access to court to have the lawfulness of his detention determined, of article 9, paragraph 4.

See also:

- *Motta v. Uruguay* (R.2/11), ICCPR, A/35/40 (29 July 1980) 132 at paras. 13 and 16.
- *Marshall v. Jamaica* (730/1996), ICCPR, A/54/40 vol. II (3 November 1998) 228 (CCPR/C/64/D/730/1996) at para. 6.1.

- *E. Johnson v. Jamaica* (588/1994), ICCPR, A/51/40 vol. II (22 March 1996) 174 (CCPR/C/56/D/588/1994) at paras. 8.1-8.5, 8.8, 8.9 and 9.

...

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...under articles 7 and 10...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 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 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. This 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.

...

8.8 The author has alleged a violation of article 14, paragraphs 3 (c) and 5, because of an unreasonably long delay of 51 months between his conviction and the dismissal of his appeal. The State party has promised to investigate the reasons for this delay but failed to forward to the Committee its findings. In particular, it has not shown that the delay was attributable to the author or to his legal representative. Rather, author's counsel has provided information which indicates that the author sought actively to pursue his appeal, and that responsibility for the delay in hearing the appeal must be attributed to the State party. In the Committee's opinion, a delay of four years and three months in hearing an appeal in a capital

case is, barring exceptional circumstances, unreasonably long and incompatible with article 14, paragraph 3 (c), of the Covenant. No exceptional circumstances which would justify the delay are discernible in the present case. Accordingly, there has been a violation of article 14, paragraphs 3 (c) and 5, inasmuch as the delay in making the trial transcript available to the author prevented him from having his appeal determined expeditiously.

8.9 The Committee reiterates that the imposition of a sentence of death upon conclusion of a trial in which the provisions of the Covenant have not been respected, and which could no longer be remedied by appeal, constitutes a violation of article 6 of the Covenant. As the Committee noted in its General Comment 6 [16], the provision that a sentence of death may be imposed only in accordance with the law and not contrary to the provisions of the Covenant implies that "the procedural guarantees therein prescribed must be observed ...". Since the final sentence of death in the instant case was passed without having met the requirements for a fair trial set out in article 14, it must be concluded that the right protected by article 6 of the Covenant has been violated.

9. The Human Rights Committee...is of the view that the facts before it disclose violations of article 14, paragraphs 3 (c) and 5, and consequently of article 6, of the Covenant.

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Notes

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d/ [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).

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For dissenting opinions in this context, see E. Johnson v. Jamaica (588/1994), ICCPR, A/51/40 vol. II (22 March 1996) 174 (CCPR/C/56/D/588/1994) at Individual Opinion by Christine Chanet, 183, Individual Opinion by Prafullachandra Natwarlal Bhagwati, Marco Tulio Bruni Celli, Fausto Pocar and Julio Prado Vallejo, 186 and Individual Opinion by Francisco José Aguilar Urbina, 187.

See also:

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

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- *Edwards v. Jamaica* (529/1993), ICCPR, A/52/40 vol. II (28 July 1997) 28 (CCPR/C/60/D/529/1993) at para. 8.2.
- *Shaw v. Jamaica* (704/1996), ICCPR, A/53/40 vol. II (2 April 1998) 164 (CCPR/C/62/D/704/1996) at para. 7.2.
- *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.
- *Campbell v. Jamaica* (618/1995), ICCPR, A/54/40 vol. II (20 October 1998) 78 (CCPR/C/64/D/618/1995) at para. 7.1.

- *Kulomin v. Hungary* (521/1992), ICCPR, A/51/40 vol. II (22 March 1996) 73 (CCPR/C/50/D/521/1992) at paras. 11.2 and 11.3.

...

11.2 The Committee has taken note of the State party's argument that the question whether the author was, after arrest, promptly brought before a judge or other officer authorized by law to exercise judicial power, is inadmissible *ratione temporis*. The Committee observes, however, that article 9(3), first sentence, is intended to bring the detention of a person charged with a criminal offense under judicial control. A failure to do so at the beginning of someone's detention, would thus lead to a continuing violation of article 9(3), until cured. The author's pre-trial detention continued until he was brought before the Court in May 1989. The Committee is therefore not precluded *ratione temporis* to examine the question whether his detention was in accordance with article 9(3).

11.3 The Committee notes that, after his arrest on 20 August 1988, the author's pre-trial detention was ordered and subsequently renewed on several occasions by the public prosecutor, until the author was brought before a judge on 29 May 1989. The Committee considers that it is inherent to the proper exercise of judicial power, that it be exercised by an authority which is independent, objective and impartial in relation to the issues dealt with. In the circumstances of the instant case, the Committee is not satisfied that the public prosecutor could be regarded as having the institutional objectivity and impartiality necessary to be considered an "officer authorized to exercise judicial power" within the meaning of article 9(3).

For dissenting opinion in this context, see Kulomin v. Hungary (521/1992), ICCPR, A/51/40 vol. II (22 March 1996) 73 (CCPR/C/50/D/521/1992) at Individual Opinion by Nisuke Ando, 83.

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- *Fuenzalida v. Ecuador* (480/1991), ICCPR, A/51/50 vol. II (12 July 1996) 50 (CCPR/C/57/D/480/1991) at para. 9.6.

...
9.6 With regard to the information submitted by the author concerning delays in the judicial proceedings, in particular the fact that his appeal was not dealt with in the period provided for by law, and that, after waiting more than two and a half years for a decision on his appeal, he had to abandon this recourse in order to obtain conditional release, the Committee notes that the State party has not offered any explanation or sent copies of the relevant decisions. Referring to its prior jurisprudence, the Committee reiterates that, in accordance with article 14, paragraph 3 (c), of the Covenant, the State party has to ensure that there is no undue delay in the proceedings. The State party has not submitted any information that would justify the delays. The Committee concludes that there has been a violation of article 14, paragraph 3 (c), as well as of article 14, paragraph 5, since the author was obliged to abandon his appeal in exchange for conditional release.

- *Henry and Douglas v. Jamaica* (571/1994), ICCPR, A/51/40 vol. II (25 July 1996) 155 (CCPR/C/57/D/571/1994) at paras. 9.3, 9.4 and 11.

...
9.3 With respect to the claim of "undue delay" in the judicial proceedings against the authors, two issues arise. The authors contend that their right, under articles 9, paragraph 3 and 14, paragraph 3 (c), to be tried without "undue delay", was violated because two years and six months elapsed between their arrest and the opening of the trial. The Committee reaffirms as it did in its General Comment No 6 [16] on article 14, that all stages of the judicial proceedings should take place without undue delay, and concludes that a lapse of 30 months between arrest and the start of the trial constituted in itself undue delay, and cannot be deemed compatible with the provisions of article 9, paragraph 3, and 14, paragraph 3 (c), of the Covenant, in the absence of any explanation from the State party justifying the delay or as to why the pre-trial investigations could not have been concluded earlier.

9.4 Regarding the delay in the hearing of the appeal, and bearing in mind that this is a capital case, the Committee notes that a delay of 3 years and four and a half months between the conclusion of the trial on 13 June 1983 and the dismissal of the authors' appeal on 31 October 1986, is incompatible with the provisions of the Covenant, in the absence of any explanation from the State party justifying the delay; the mere affirmation that the delay was not excessive does not suffice. The Committee accordingly concludes that there has been a violation of article 14, paragraphs 5 *juncto* 3 (c), of the Covenant.
...
11. In capital punishment cases, the obligation of States parties to observe rigorously all

guarantees for a fair trial set out in article 14 of the Covenant admits no exceptions. The delays in the proceeding constitute a violation of article 14 paragraphs 3 (c), and 5 *juncto* 3 (c) of the Covenant; thus Eustace Henry and Everald Douglas did not receive a fair trial within the meaning of the Covenant...

See also:

- *Reece v. Jamaica* (796/1998), ICCPR, A/58/40 vol. II (14 July 2003) 61 (CCPR/C/78/D/796/1998) at para 7.5.

- *Hill v. Spain* (526/1993), ICCPR, A/52/40 vol. II (2 April 1997) 5 (CCPR/C/59/D/526/1993) at para. 12.4.

  ...
  12.4 The authors were arrested on 15 July 1985 and formally charged on 19 July 1985. Their trial did not start until November 1986, and their appeal was not disposed of until July 1988. Only a minor part of this delay can be attributed to the authors' decision to change their lawyers. The State party has argued that the delay was due "to the complexities of the case" but has provided no information showing the nature of the alleged complexities. Having examined all the information available to it, the Committee fails to see in which respect this case could be regarded as complex. The sole witness was the eyewitness who gave evidence at the hearing in July 1985, and there is no indication that any further investigation was required after that hearing was completed. In these circumstances, the Committee finds that the State party violated the authors' right, under article 14, paragraph 3(c), to be tried without undue delay.

- *Steadman v. Jamaica* (528/1993), ICCPR, A/52/40 vol. II (2 April 1997) 22 (CCPR/C/59/D/528/1993) at para. 10.1.

  ...
  10.1 The author has claimed that the delay in bringing him to trial, a period of more than 27 months (from his arrest on 22 July 1983 to the beginning of the trial on 9 December 1985) during which he remained in detention, is in violation of articles 9, paragraph 3, and 14, paragraph 3(c). The Committee notes that the author has stated that the preliminary enquiry against him was held in August 1983 and that the State party has not provided any information as to why it was adjourned or why the trial did not start until 26 months later.

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In the absence of any specific grounds from the State party, as to why the trial only started 26 months after the adjournment of the preliminary enquiry, the Committee is of the opinion that the delay in the instant case was contrary to the State party's obligation to bring an accused to trial without undue delay.

- *Williams v. Jamaica* (561/1993), ICCPR, A/52/40 vol. II (8 April 1997) 147 (CCPR/C/59/D/561/1993) at paras. 9.2 and 9.4.

...

9.2 Article 14, paragraph 3(a), gives the right to everyone charged with a criminal offence to be informed "promptly and in detail in a language which he understands of the nature and cause of the charge against him". The author contends that he was detained for six weeks before he was charged with the offence for which he was later convicted. For the purposes of article 14, paragraph 3(a), detailed information about the charges against the accused must not be provided immediately upon arrest, but with the beginning of the preliminary investigation or the setting of some other hearing which gives rise to a clear official suspicion against the accused. 35/ While the file does not reveal on what specific date the preliminary hearing in the case took place, it transpires from the material before the Committee that Mr. Williams has been informed of the reasons for his arrest and the charges against him by the time the preliminary hearing started. In the circumstances of the case, the Committee cannot conclude that Mr Williams was not informed of the charges against him promptly and in accordance with the requirements of article 14, paragraph 3(a), of the Covenant.

...

9.4 The author has claimed a violation of article 14, paragraph 3(c), because of "undue delays" in the criminal proceedings and a delay exceeding two years between arrest and trial. The State party has, in its submission on the merits, simply argued that a preliminary inquiry was held during the period of pre-trial detention, and that there is no evidence that the delay was prejudicial to the author. By rejecting the author's allegation in general terms, the State party has failed to discharge the burden of proof that the delays between arrest and trial in the instant case was compatible with article 14, paragraph 3(c); it would have been incumbent upon the State party to demonstrate that the particular circumstances of the case justified prolonged pre-trial detention. The Committee concludes that in the circumstances of the instant case, there has been a violation of article 14, paragraph 3(c).

Notes

...

35/ See the Committee's General Comment 13[21] of 12 April 1984, para. 8.

See also:

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- *Desmond Taylor v. Jamaica* (705/1996), ICCPR, A/53/40 vol. II (2 April 1998) 174 (CCPR/C/62/D/705/1996) at para. 7.1.

- *Blaine v. Jamaica* (696/1996), ICCPR, A/52/40 vol. II (17 July 1997) 216 (CCPR/C/60/D/696/1996) at para. 8.1.

  ...
  8.1 The author has claimed that he was not formally charged until after two weeks after his arrest, although the police testified at trial that there was enough evidence on the basis of which he could have been charged. The Committee observes that it appears from the trial transcript that, during cross-examination, Superintendent Johnson testified that the author was not charged before 21 July, because the witnesses did not know his correct name, and therefore an identification parade was held on 21 July 1994 to allow for the author's identification by the witnesses. After the witnesses had identified the author, he was formally charged. In the circumstances, the Committee finds that the facts before it do not disclose a violation of articles 9, paragraph 2, and 14, paragraph 3 (a).

- *Lewis v. Jamaica* (708/1996), ICCPR, A/52/40 vol. II (17 July 1997) 244 (CCPR/C/60/D/708/1996) at para. 8.1.

  ...
  8.1 The author has argued that the 23 months' delay between his arrest and trial was unduly long and constitutes a violation of articles 9, paragraph 3, and 14, paragraph 3 (c), of the Covenant. Article 9, paragraph 3, entitles an arrested person to trial within a reasonable time or to release. The Committee notes that the arguments forwarded by the State party do not give an adequate explanation why the author, if not released on bail, was not brought to trial for 23 months. The Committee is of the view that in the context of article 9, paragraph 3, and in the absence of any satisfactory explanation for the delay by the State party, a delay of 23 months during which the author was in detention is unreasonable and therefore constitutes a violation of this provision. The Committee does not, in the circumstances, consider it necessary to consider the question of violation of article 14, paragraph 3 (c).

For dissenting opinions in this context, see Lewis v. Jamaica (708/1996), ICCPR, A/52/40 vol. II (17 July 1997) 244 (CCPR/C/60/D/708/1996) at Individual Opinion by Lord Colville, 253, Individual Opinion by Nisuke Ando, 254, Individual Opinion by Rajsoomer Lallah, 254, and Individual Opinion by Martin Scheinin (dissenting in part), 255.

See also:

- *Neptune v. Trinidad and Tobago* (523/1992), ICCPR, A/51/40 vol. II (16 July 1996) 84

(CCPR/C/57/D/523/1992) at para. 9.2.

- *Shaw v. Jamaica* (704/1996), ICCPR, A/53/40 vol. II (2 April 1998) 164 (CCPR/C/62/D/704/1996) at para. 7.4.
- *Smart v. Trinidad and Tobago* (672/1995), ICCPR, A/53/40 vol. II (29 July 1998) 142 (CCPR/C/63/D/672/1995) at para. 10.2.

- *McLawrence v. Jamaica* (702/1996), ICCPR, A/52/40 vol. II (18 July 1997) 225 (CCPR/C/60/D/702/1996) at paras. 5.5-5.7 and 5.11.

...

5.5 ...There is no indication, in the instant case, that Mr. McLawrence was arrested on grounds not established by law. He has argued, however, that he was not promptly informed of the reasons for his arrest, in violation of article 9, paragraph 2. The State party has refuted this claim in general terms, in that the author must show that he did not know the reasons for his arrest; it is, however, not sufficient for the State party simply to reject the author's allegations as unsubstantiated or untrue. In the absence of any State party information to the effect that the author was promptly informed of the reasons for his arrest, the Committee must rely on Mr. McLawrence's statement that he was only apprised of the charges for his arrest when he was first taken to the preliminary hearing, which was almost three weeks after the arrest. This delay is incompatible with article 9, paragraph 2.

5.6 Concerning the alleged violation of article 9, paragraph 3, it is apparent that the author was first brought before a judge or other officer authorized to exercise judicial power on 20 July 1991, i.e. one week after being taken into custody. The State party has not addressed the allegations under article 9, paragraphs 3 and 4, but rather situated them in the context of delays in the trial process. While the meaning of the term "promptly" in article 9, paragraph 3, must be determined on a case-by-case basis, the Committee recalls its General Comment on article 9 74/ and its jurisprudence under the Optional Protocol, pursuant to which delays should not exceed a few days. 75/ A delay of one week in a capital case cannot be deemed compatible with article 9, paragraph 3. In the same context, the Committee considers that pre-trial detention of over 16 months in the author's case constitutes, in the absence of satisfactory explanations from the State party or other justification discernible from the file, a violation of his right, under article 9, paragraph 3, to be tried "within reasonable time" or to be released.

5.7 With respect to the alleged violation of article 9, paragraph 4, it is uncontested that the author did not himself apply for *habeas corpus*. He further claims that he was never informed of this entitlement, and that he had no access to legal representation during the preliminary enquiry. The State party categorically maintains that he was informed of his right to legal representation on the occasion of his first court appearances. On the basis of

the material before it, the Committee considers that the author could have requested a review of the lawfulness of his detention when he was taken to the preliminary hearing in his case, where he was informed of the reasons for his arrest. It cannot, therefore, be concluded that Mr. McLawrence was denied the opportunity to have the lawfulness of his detention reviewed in court without delay.

...

5.11 The author has claimed violations of article 14, paragraphs 3 (c) and 5, on account of "undue delays" of the criminal proceedings in his case. The Committee notes that the State party itself admits that a delay of 31 months between trial and dismissal of the appeal is "longer than is desirable", but does not otherwise justify this delay. In the circumstances, the Committee concludes that a delay of 31 months between conviction and appeal constitutes a violation of the author's right, under article 14, paragraph 3 (c), to have his proceedings conducted without undue delay. The Committee observes that in the absence of any State party justification, this finding would be made in similar circumstances in other cases.

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Notes

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74/ General Comment 8 [16] of 27 July 1982, para. 2.

75/ See Views on Communication No. 373/1989 (*Lennon Stephens v. Jamaica*), adopted 18 October 1995, para. 9.6.

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See also:

- *Whyte v. Jamaica* (732/1997), ICCPR, A/53/40 vol. II (27 July 1998) 195 (CCPR/C/63/D/732/1997) at para 9.1 and Individual Opinion (dissenting) by Mr. Martin Scheinan, 204.

- *P. Taylor v. Jamaica* (707/1996), ICCPR, A/52/40 vol. II (18 July 1997) 234 (CCPR/C/60/D/707/1996) at paras. 8.3, 8.4 and Individual Opinion by Nisuke Ando, 243.

...

8.3 The author has claimed that he was not charged for 29 days, nor was he promptly brought before a judge. In the instant case, the author was kept in detention for 26 days, was released and later arrested and held in detention for three days before being charged and brought before a judicial authority; the Committee notes that the State party itself concedes that there was a delay of 26 days and that this delay is undesirable, though denying that either this period or a further three days might constitute a violation of the Covenant. In the circumstances, the Committee, and notwithstanding the State party's arguments, finds that to detain the author for a period of 26 days without charge was a violation of article 9,

paragraph 2, of the Covenant. The failure of the State party to bring the author before the Court during the 26 days of detention and not until three days after his re-arrest was a violation of article 9, paragraph 3.

8.4 As regards the author's claim that he was not tried without undue delay because of the unreasonably long period, 28 months, between arrest and trial, the Committee is of the opinion that a delay of two years and four months between arrest and trial, during which time the author was held in detention was a violation of his right to be tried within a reasonable time or to be released. The period in question is also such as to amount to a violation of the author's right to be tried without undue delay. The Committee therefore finds that there has been a violation of articles 9, paragraph 3, and 14, paragraph 3 (c).

...

Individual Opinion by Nisuke Ando

I am not dissenting from the Committee's Views, but I would like to point to the following similarities of this communication to Communication No. 708/1996, *Neville Lewis v. Jamaica* (see the two individual opinions appended to the latter):

> (1) the author in both the cases has co-accused and there was a confrontation between the author and the co-accused, each asserting different versions of facts;
>
> (2) the delay between the author's arrest and trial was 26-28 months in the instant case and 23 months in case No. 708/1996; and
>
> (3) in both the cases, the State party argues that a preliminary enquiry took place during the respective period.

Taking these similarities into account and maintaining consistency of evaluation of relevant facts in both the cases, I am unable to persuade myself to conclude that the delay of 26-28 months between the author's arrest and trial in this case is entirely attributable to the State party and constitutes a violation of article 9, paragraph 3 (see paragraph 8.4).

- *Elahie v. Trinidad v. Tobago* (533/1993), ICCPR, A/52/40 vol. II (28 July 1997) 34 (CCPR/C/60/D/533/1993) at para. 8.2.

...

8.2 The Committee notes that the information before it shows that the author was arrested on 6 July 1986, that shortly after the preliminary enquiry began, the magistrate to whom the case was assigned was suspended and that the author was not brought before a new

magistrate until 22 February 1988. He was committed to stand trial on 25 May 1988. A constitutional motion was filed, on 1 November 1990; resulting in the author's indictment being quashed and a new preliminary enquiry being ordered, on 19 March 1991. The author was convicted of manslaughter on 25 March 1994. This chronology reveals that the author was in detention for 7 years and 8 months before being sentenced on a plea of guilty of manslaughter. The author received a sentence of four years of imprisonment with hard labour which would appear to have been taken into account the time he had already served. Nevertheless, the Committee considers that, a period of 7 years and 8 months between the author's arrest and the start of the trial against him, does in the absence of any adequate explanations from the State party which would explain the delay, amount to a violation of articles 9, paragraph 3, and 14, paragraph 3 (c), of the Covenant, since the trial against a person kept in detention was neither instituted nor completed within a reasonable time and since there were undue delays in the trial itself.

- *Richards v. Jamaica* (639/1995), ICCPR, A/52/40 vol. II (28 July 1997) 183 (CCPR/C/60/D/639/1995) at para. 8.2.

...
8.2 The authors have argued that a delay of nearly two years between arrest and trial and a further delay of 30 months between trial and appeal, was unduly long and constitutes a violation of articles 9, paragraph 3, and 14, paragraph 3 (c), of the Covenant. Article 9, paragraph 3, entitles an arrested person to trial within a reasonable time or to release. The Committee notes that the arguments forwarded by the State party do not address the question why the authors, if not released on bail, were not brought to trial for nearly two years. The Committee is of the view that in the context of article 9, paragraph 3, and in the absence of any satisfactory explanation for the delay by the State party, a delay of nearly two years during which the authors were in detention, is unreasonable and therefore constitutes a violation of this provision. With respect to the delay in hearing the authors' appeal and bearing in mind that this is a capital case, the Committee notes that a delay of 30 months between the conclusion of the trial and the dismissal of the authors' appeal is incompatible with the provisions of the Covenant, in the absence of any explanation from the State party justifying the delay; the mere affirmation that the delay was not excessive does not suffice. The Committee accordingly concludes that there has been a violation of articles 9, paragraph 3 and 14, paragraph 3 (c), of the Covenant.

See also:

- *Thomas v. Jamaica* (532/1993), ICCPR, A/53/40 vol. II (3 November 1997) 1 (CCPR/C/61/D/532/1993) at para. 6.2.

LEGAL RIGHTS - CRIMINAL - Protection Against Undue Delay

- *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. 7.11.

...
7.11 Counsel finally claims a violation of article 14, paragraph 3(c), because of the aggregate delays between the authors' arrest in 1987, their conviction after two re-trials in December 1992, and the dismissal of their appeal in the summer of 1994. The Committee notes that the delays are not entirely attributable to the State party, since the authors themselves requested adjournments. Nevertheless, the Committee considers that the delay of two years between the decision by the Court of Appeal to order a retrial and the outcome of the retrial, is such as to constitute a violation of article 14, paragraph 3(c).

- *McTaggart v. Jamaica* (749/1997), ICCPR, A/53/40 vol. II (31 March 1998) 221 (CCPR/C/62/D/749/1997) at paras. 3.1, 8.1 and 8.2.

...
3.1 On 18 April 1994, the author was sent back from Canada, and arrested on arrival in Jamaica. He appeared before the Gun Court on 26 April 1994. Counsel alleges that it was not until 11 May when he appeared before the Home Circuit Court, being first taken to the Gun Court again, that he was informed of the charges against him for the first time 1/. This is said to be in violation of article 9, paragraph 2, of the Covenant.
...
8.1 Article 9, paragraph 2, of the Covenant gives the right to everyone arrested to know the reasons for his arrest and to be promptly informed of the charges against him. Mr. McTaggart contends that he was not informed of the charges against him until he appeared before the Circuit Court on 11 May 1994, and that this was the first time he knew of the reasons for his arrest. The Committee notes from the material before it, submitted by the author's counsel, that Mr McTaggart saw a lawyer within the same week he was arrested, it was therefore highly unlikely that neither the author nor his Jamaican counsel were aware of the reasons for his arrest. In these circumstances and on the basis of the information before it the Committee concludes that there has been no violation of article 9, paragraph 2.

8.2 With regard to the author's allegation of excessive delay in the proceedings, the Committee notes that there was a delay of 12 months between the author's arrest, after his return from Canada, and his trial. While such a delay between arrest and trial in a capital case may not be desirable, the Committee does not on the basis of the material before it,

conclude that there has been a violation of articles 9, paragraph 3, and 14, paragraph 3 (a).

For dissenting opinion in this context, see McTaggart v. Jamaica (749/1997), ICCPR, A/53/40 vol. II (31 March 1998) 221 (CCPR/C/62/D/749/1997) at Individual Opinion by Mr. Martin Scheinin (partly dissenting), 230.

- *Jones v. Jamaica* (585/1984), ICCPR, A/53/40 vol. II (6 April 1998) 45 (CCPR/C/62/D/585/1984) at paras. 9.2 and 9.3.

  ...
  9.2 The Committee has noted the State party's assertion that the author was informed in general terms of the charge against him upon arrest. This contrasts with the author's claim that he was unaware of even the general nature of the charge against him for ten weeks after his arrest. The Committee considers that the material before it does not justify the finding of a violation of article 9, paragraph 2.

  9.3 As to article 9, paragraph 3, the State states the author was promptly brought before a magistrate and refers in this context to the fact that a preliminary hearing was conducted prior to the trial. This does not invalidate the author's claim (corroborated by evidence given by a police officer at the trial) that he was not brought before a judge until ten weeks after arrest. The Committee finds that this delay is not compatible with the requirements of article 9, paragraph 3, of the Covenant.

- *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. 18.4.

  ...
  18.4 Mr. Tsiklauri has claimed that he was arrested illegally in August 1992 without a warrant and that he was not shown a warrant for his arrest until after he had been in detention for a year. The State party has denied this allegation, stating that he was arrested in August 1993, but it does not address the claim in detail or provide any records. In the absence of information provided by the State party as to when the arrest warrant was presented to Mr. Tsiklauri and when he was first formally charged, and in the absence of an answer to the author's claim that he had been in custody for one year before the warrant was issued, the Committee considers that due weight must be given to the author's allegation. Consequently, the Committee finds that article 9, paragraph 2, has been violated in Mr. Tsiklauri's case.

LEGAL RIGHTS - CRIMINAL - Protection Against Undue Delay

- *Morrison v. Jamaica* (635/1995), ICCPR, A/53/40 vol. II (27 July 1998) 113 (CCPR/C/63/D/635/1995) at paras. 21.2, 21.3 and 22.3.

...

21.2 The author has alleged that he was not informed of the charges against him until three or four weeks after his arrest. The Committee notes that the State party has replied that there is no evidence in substantiation of the complaint. The Committee finds that this general refutation by the State party is not sufficient to disprove the author's claim. In the absence of any specific information from the State party on which date the author was charged with the offence, the Committee considers that the author's allegation is substantiated. The Committee finds that a delay of three or four weeks in charging the author is in violation of article 9, paragraphs 2 and 3, of the Covenant.

21.3 The Committee notes that the author was arrested on 30 December 1988 and that the trial against him began on 23 July 1990, a year and a half later. The Committee finds that such a delay in bringing an accused to trial is a matter of concern, but is of the opinion that it does not amount to a violation of articles 9, paragraph 3, since he was detained on a murder charge, and 14, paragraph 3(c), because the preliminary enquiry took place during that period.

...

22.3 When the author was first informed of the charges against him concerning the murder of Mr. Hunter, he was in detention in connection with the murder of Ms. Baugh-Dujon. He was subsequently convicted of this later murder, before his trial in the Hunter case began. As the author was lawfully being detained in the Baugh-Dujon case, he had no right to be released in the Hunter case. Article 9 was therefore not violated. However, the trial in the Hunter case did not take place for two and a half years after he was first charged with the Hunter murder. In the absence of an explanation by the State party for this delay, the Committee finds that the delay amounted to a violation of the author's right under article 14, paragraph 3 (c) of the Covenant, to be tried without undue delay.

For dissenting opinion in this context, see Morrison v. Jamaica (635/1995), ICCPR, A/53/40 vol. II (27 July 1998) 113 (CCPR/C/63/D/635/1995) at Individual Opinion by Ms. Cecilia Medina Quiroga (dissenting), 126 and Individual Opinion (partly dissenting) by Mr. Justice P.N. Bhagwati, 127.

- *Chadee et al. v. Trinidad and Tobago* (813/1998), ICCPR, A/53/40 vol. II (29 July 1998) 242 (CCPR/C/63/D/813/1998) at para. 10.2.

...

10.2 With regard to the authors' additional claim that their appeal has been expedited in

order to ensure their execution, in violation of articles 6, 7, and 14 of the Covenant, the Committee has taken note of the statistics provided by both counsel and the State party in this respect. In this context, the Committee recalls that the State party is under an obligation, under article 14 (3)(c) and (5) of the Covenant, to ensure that appeals are heard without undue delay. The Committee should nevertheless examine whether the period of time between conviction and the hearing of the appeal is sufficient for the defence to prepare the appeal. After having examined the information before it, the Committee considers that it has not been shown that the period of time in the instant case was insufficient to prepare the appeal by defence counsel. The Committee concludes therefore that the facts before it do not show that articles 6, 7 and 14 have been violated in this respect.

- *Perkins v. Jamaica* (733/1997), ICCPR, A/53/40 vol. II (30 July 1998) 205 (CCPR/C/63/D/733/1997) at para. 11.3.

...
11.3 The Committee notes that the trial against the author started in December 1995, one year and nine months after his arrest. Article 9, paragraph 3, entitles an arrested person to trial within a reasonable time or release. In the absence of a satisfactory explanation from the State party why the author, even if he could not be released on bail, was not brought to trial within a year and nine months, such a delay is unreasonable and constitutes a violation of article 9, paragraph 3, because he was remanded in custody...

- *Leslie v. Jamaica* (564/1993), ICCPR, A/53/40 vol. II (31 July 1998) 21 (CCPR/C/63/D/564/1993) at para. 9.3.

...
9.3 The author has claimed a violation of article 14, paragraph 3 (c), on account of the undue delay in bringing him to trial 29 months after arrest. The Committee notes that the State party itself admits that a delay of 29 months between arrest and trial "is longer than desirable", but contends that there has been no violation of the Covenant, because a preliminary enquiry took place in that time. The Committee is of the view that the mere affirmation that a delay does not constitute a violation is not sufficient explanation. Therefore, the Committee finds that 29 months to bring an accused to trial does not comply with the minimum guarantees required by article 14. Accordingly, it finds that there has been a violation of article 14 paragraph 3 (c).

See also:

- *Finn v. Jamaica* (617/1995), ICCPR, A/53/40 vol. II (31 July 1998) 78 (CCPR/C/63/D/617/1995) at para. 9.4.

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- *Daley v. Jamaica* (750/1997), ICCPR, A/53/40 vol. II (31 July 1998) 235 (CCPR/C/63/D/750/1997) at paras. 7.1 and 7.4.

...
7.1 The author has alleged that he was not informed of the charges against him until six weeks after his arrest. The Committee notes that the State party has replied that even if he was not formally charged, he was made aware of the charges against him. At his second trial (October 1995) the author himself testified that the two policemen who arrested him told him that "they were taking me for the death of Neville Burnett on the 24th of November 1988". However, the State party's reply implies an acknowledgment that the author was not brought before a judge or judicial officer until after six weeks of detention. The Committee refers to its jurisprudence 3/ under the Optional Protocol, according to which delays in bringing an arrested person before a judge should not exceed a few days. 4/ A delay of six weeks cannot be deemed compatible with the requirements of article 9, paragraph 3.
...
7.4 Counsel has claimed that the delay between the author's first conviction and the hearing of his appeal, a period of 2 years and 7 months, constitutes a violation of articles 9, paragraph 3, and 14, paragraph 3(c). The State party has acknowledged that such a delay is undesirable, but has not offered any explanation justifying the delay. In the circumstances, the Committee finds that the length of the delay is in violation of article 14(3) (c), in conjunction with article 14 (5), of the Covenant.

_____

Notes

...
3/ See *inter alia* the Committee's Views in cases Nos. 702/1996 (*Clifford McLawrence v. Jamaica*), adopted on 18 July 1997, paragraph 5.6, and 704/1996 (*Steve Shaw v. Jamaica*) adopted on 2 April 1998, paragraph 7.3.

4/ See also General Comment 8 (16) of 27 July 1982, para. 2.

_____

- *Pennant v. Jamaica* (647/1995), ICCPR, A/54/40 vol. II (20 October 1998) 118 (CCPR/C/64/D/647/1995) at paras. 8.1 and 8.2.

...
8.1 Article 9, paragraph 2, of the Covenant gives the right to everyone arrested to know the reasons for his arrest and to be promptly informed of the charges against him. The author states that he went to the police station of his own accord on 1 May, 1983 and informed the

officer in charge of his involvement in the death of Stephens. He was detained, transferred to another police-station and formally arrested and charged three days later. In these circumstances, when it must have been absolutely clear to the author that his detention and subsequent arrest were for involvement in the death of Stephens, the Committee cannot conclude that the author's right to be informed of the reasons for his arrest was violated. Furthermore, the author was formally charged with the murder of Stephens three days after first being detained, following what must have been an initial investigation. The duty to be promptly informed of the charges against one, as opposed to the reason for one's arrest, cannot arise until such charges have been determined. In the present case, it does not seem that a period of three days from the time of detention until formal charge of the author, amounted to a violation of his right to be promptly informed of the charges against him.

8.2 With regard to the author's claim under articles 9, paragraphs 3 and 4, and 14, paragraph 3 (a), the Committee notes that it is uncontested that the author was only first brought before a judge or other officer authorized by law to exercise judicial power one month after his arrest. It also notes that the State party has conceded that this period is undesirably long. Accordingly, the Committee concludes that the period between the author's arrest and his being brought before a judge was too long and constitutes a violation of article 9, paragraph 3, of the Covenant and, to the extent that this prevented the author from access to court to have the lawfulness of his detention determined, of article 9, paragraph 4.

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

...
7.2 Article 9, paragraph 2, of the Covenant gives the right to everyone arrested to know the reasons for his arrest and to be promptly informed of the charges against him. Article 9, paragraph 3, gives anyone arrested or detained on a criminal charge the right to promptly be brought before a competent judicial authority. The author contends that he was not informed of the reasons for his arrest until two weeks after he was first arrested, and that it took a further two weeks before he was brought before a magistrate. The author claims to have been detained at the Ocho Rios Police Lock-Up in May 1982, and that he was later transferred to the Admiral Town Police Station in Kingston before he on 31 May 1982 was taken to Spanish Town Lock-Up where he was officially charged with the murder. The author claims that he was originally detained at least 14 days before he was officially charged. The State party denies that the author during this period was unaware of the general reasons for his arrest. However, the State party does not deny that from the arrest of the author at least 14 days passed before he was brought before a magistrate. According to the State party, part of the reason for the delay was the transfer of the author from Oche Rhos Police Lock-Up to Spanish Town Lock-Up. In the circumstances, and notwithstanding the State party's

arguments, the Committee finds that to detain the author for a period of 14 days before bringing him before a competent judicial authority constitutes a violation of article 9, paragraph 3, 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 paras. 8.2, 8.5 and 8.7.

...

8.2 The author has claimed that he was not informed of the reasons for his arrest, and that he only learnt about the charge against him when he first appeared before the judge at the preliminary hearing. From the trial transcript it appears that the police testified that he was cautioned on 7 May 1984, nine days after having been taken into custody. The State party has not addressed the author's claim. It is also undisputed that the author was not brought before a judge or judicial officer until some date after 7 May 1984. The Committee considers that a delay of nine days before informing a person who is arrested of the charges against him constitutes a violation of article 9, paragraph 2. The Committee further considers that the delay in bringing the author before a judge or judicial officer constitutes a violation of the requirement of article 9, paragraph 3.

...

8.5 The Committee notes that the author's appeal was heard on 6 July 1987, two years and four months after his conviction, that, according to the State party, the written judgement was issued on 23 March 1989, and that the author did not receive a copy until 11 July 1990, almost three years after the hearing of the appeal. The Committee refers to its prior jurisprudence 64/ and reaffirms that under article 14, paragraph 5, a convicted person is entitled to have, within reasonable time, access to written judgements, duly reasoned, for all instances of appeal in order to enjoy the effective exercise of the right to have conviction and sentence reviewed by a higher tribunal according to law and without undue delay. The Committee is of the opinion that the delay in hearing the appeal and in issuing a written judgement by the court of appeal and in providing the author with a copy, constitutes a violation of article 14, paragraphs 3(c) and 5.

...

8.7 The Committee considers that the imposition of a sentence of death upon conclusion of a trial in which the provisions of the Covenant have not been respected, constitutes a violation of article 6 of the Covenant if no further appeal against the death sentence is possible. In Mr. Morrison's case, the final sentence of death was passed without having met the requirements of a fair trial as set out in article 14 of the Covenant. It must therefore be concluded that the right protected under article 6, paragraph 2, has also been violated.

Notes

...

64/ See for example, the Committee's views in Communication Nos.230/1987: *Raphael Henry v. Jamaica*, and 283/1988, *Aston Little v. Jamaica*, both views adopted at the Committee's 43rd session.

See also:

- *Shaw v. Jamaica* (704/1996), ICCPR, A/53/40 vol. II (2 April 1998) 164 (CCPR/C/62/D/704/1996) at para. 7.3.

- *Brown v. Jamaica* (775/1997), ICCPR, A/54/40 vol. II (23 March 1999) 260 (CCPR/C/65/D/775/1997) at para. 6.11.

...

6.11 The author has complained about the length of the criminal procedure in his case, and the State party has explained that the delay was caused by the ordering of a retrial. The Committee notes that the author was arrested on 15 November 1991, and that the first trial against him occurred in October 1993, 23 months after his arrest. The Committee finds that, in the absence of a satisfactory explanation by the State party, a delay of 23 months in bringing the author to trial, considering that he was kept in detention, constitutes, in the circumstances of the instant case, a violation of the right contained in article 9, paragraph 3 of the Covenant to be entitled to trial within a reasonable time or release, as well as of article 14, paragraph 3(c). In respect to the alleged other delays in the criminal process, the Committee notes that the author's retrial was scheduled to begin on 23 November 1994, four months after the Court of Appeal's judgement, but that it was adjourned on several occasions upon request of the defence. In the circumstances, the Committee finds that the delay of one year and nine months between the Court of Appeal's judgement and the beginning of the retrial cannot be solely attributed to the State party and that it does not disclose a violation of the Covenant.

- *S. Thomas v. Jamaica* (614/1995), ICCPR, A/54/40 vol. II (31 March 1999) 62 (CCPR/C/65/D/614/1995) at paras. 9.5 and 9.6.

...

9.5 The author has claimed that the period of 23 months from his conviction to the hearing of his appeal constitutes a breach of article 14, paragraph 3 (c), and 5, of the Covenant. The Committee reiterates that all guarantees under article 14 of the Covenant should be strictly observed in any criminal procedure, particularly in capital cases, and notes with regard to the period of 23 months between trial and appeal that the State party has conceded that such a delay is undesirable, but that it has not offered any further explanation. In the absence of any

circumstances justifying the delay, the Committee finds that with regard to this period there has been a violation of article 14, paragraph 3 (c), in conjunction with paragraph 5, of the Covenant.

9.6 However, with regard to the period of nearly fourteen months which lapsed from the author's arrest (27 February 1989) to his trial (23 to 25 April 1999), the Committee notes that the State party has not addressed the issue, nonetheless it considers that this delay does not in the overall circumstances of the case constitute a violation of article 9, paragraph 3.

See also:

- *Neptune v. Trinidad and Tobago* (523/1992), ICCPR, A/51/40 vol. II (16 July 1996) 84 (CCPR/C/57/D/523/1992) at para. 9.3.
- *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. 7.4.

- *Leehong v. Jamaica* (613/1995), ICCPR, A/54/40 vol. II (13 July 1999) 52 (CCPR/C/66/D/613/1995) at para. 9.5.

...

9.5 The author has claimed a violation of article 9, paragraph 3, in as much as he was not brought before a magistrate after his arrest on 22 December 1988. It was only on 31 March 1989 that he was brought before the Magistrates Division of the Gun Court. There was thus a delay of more than three months before he was produced before a judicial authority. The Committee notes that the State party has admitted the delay of more than 3 months between the date of arrest and the date he was brought before a judicial authority, but has offered no explanation for this delay and merely contended that there has been no violation of the Covenant. The Committee is of the view that mere assertion that the delay does not constitute a violation is not sufficient explanation. The Committee therefore finds that 3 months to bring an accused before a magistrate does not comply with the minimum guarantees required by the Covenant. Consequently, and in the circumstance of the case the Committee finds that there has been a violation of article 9, paragraph 3 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 para. 8.3.

...

8.3 With regard to the State party's challenge of a violation of articles 9 paragraph 2 and 14 paragraph 3 (a) in that the author was not promptly informed of the charges against him counsel reiterates that the author was not aware at the time of his arrest on 22 December

1988, of the charges against him. In particular, he claims that the Jamaican police did not inform the author of the fact of, or the reasons for his arrest but merely notified him that he would have to take part in an identification parade. The author was finally made aware of the charges against him only on 31 March 1989, over three months after his violent apprehension. Counsel points out that the State party has not addressed the fact that the charges made against the author on 22 December were dropped and that it was not until 31 March 1989 that he was told that he was being charged with the murder (of Mr. Wiggan) for which he was later tried.

- *Brown and Parish v. Jamaica* (665/1995), ICCPR, A/54/40 vol. II (29 July 1999) 157 (CCPR/C/66/D/665/1995) at paras. 9.4 and 9.5.

...
9.4 The authors have claimed to be victims of a violation of article 14, paragraph 3(c), both in regard of the trial and the appeal, as the trial was not held until 31 months after the arrest of the authors and the appeal was not decided until 28 months after the trial. With regard to the first period, the Committee found that it should be examined on the merits also under article 9, paragraph 3.

9.5 The Committee reiterates that all guarantees under article 14 of the Covenant should be strictly observed in any criminal procedure, and notes that the State party has merely argued that a preliminary hearing was held during the period which lapsed before the trial commenced and that neither this period nor the period before the appeal amounts to violations of the said provisions, without offering any further explanation. In the absence of any circumstances justifying these delays, the Committee finds that there has been a violation of articles 9, paragraph 3, and 14, paragraph 3(c), with regard to the first period, and article 14, paragraph 3(c), in conjunction with article 14, paragraph 5, with regard to the second period.

- *Freemantle v. Jamaica* (625/1995), ICCPR, A/55/40 vol. II (24 March 2000) 11 at paras. 7.4, 7.5 and Individual Opinion by Eckart Klein (concurring), 21.

...
7.4 The author has claimed a violation of article 9, paragraph 3, of the Covenant since there was a delay of 4 days between the time of his arrest and the time when he was brought before a judicial authority. The Committee notes that the State party has not addressed this issue specifically but has simply pointed out in general terms that the author was aware of the reasons for his arrest. The Committee reiterates its position that the delay between the arrest

of an accused and the time before he is brought before a judicial authority should not exceed a few days. In the absence of a justification for a delay of four days before bringing the author to a judicial authority the Committee finds that this delay constitutes a violation of article 9, paragraph 3, of the Covenant.

7.5 The author also has claimed a violation of article 9, paragraphs 2 and 4, since he was not promptly informed of the charges against him at the time of his arrest. Article 9, paragraph 2, of the Covenant gives the right to everyone arrested to know the reasons for his arrest and to be promptly informed of the charges against him. Counsel contends that the author was not informed of the charges against him until four days after his arrest. The Committee notes the State party's contention that the author was aware of the reasons for his arrest in general terms even if the formal charges for murder were only laid against him four days after his arrest. It also notes information provided by counsel where in an affidavit signed by the author on 4 May 1988, he states he was arrested and charged with murder on 1 September 1985. Furthermore, the Committee notes that this issue was not brought to the attention of the Courts in Jamaica. On the basis of the information before it the Committee concludes that the author was aware of the reasons for his arrest and consequently there has been no violation of the Covenant in this respect. The Committee has not found any facts that substantiate a violation of article 9, paragraph 4.

Individual Opinion by Eckart Klein

I think the Committee should have expressly spelled out that the author is entitled, apart from other possible appropriate remedies, to compensation according to article 9, paragraph 5, of the Covenant. A person like the author who has been arrested, but not promptly brought before a judge according to article 9, paragraph, 3 of the Covenant (see paragraph 7.4 of the present Views), is unlawfully detained. His right to compensation is therefore a consequence of the violation of his right under article 9.

- *Arredondo v. Peru* (688/1996), ICCPR, A/55/40 vol. II (27 July 2000) 51 at paras. 2.1, 2.5, 2.6, 10.6 and 12.

...
2.1 Ms. Arredondo had been arrested for the first time on 29 March 1985 (Case No. 1), in Lima...She had been acquitted of the charges and released after two trials, for which judgements were passed in August 1986 and November 1987.
...
2.5 Case No. 1, for which she had been tried in 1985, was reopened in November 1995 before a "faceless court" and she was sentenced to 15 years' imprisonment on 21 July 1997 (File No. 98-93).

2.6 Appeals were lodged in all three proceedings, twice by Ms. Arredondo on being convicted and once by the prosecution. The author acknowledges that domestic remedies have not been exhausted with respect to the criminal proceedings against her mother. She considers, however, that the proceedings have been unduly prolonged.

...

10.6 As for the delays in the legal process, in violation of article 14, paragraph 3 (c), the Committee notes that the State party acknowledges a delay and that, despite instructions said to have been given to decide the case, the appeal on the reopened case remains unresolved. Given that the reopening, by the prosecution in 1995 of Ms. Arredondo's second acquittal of 1987, involves such unacceptable delays, the Committee finds that this constitutes a violation of article 14, paragraph 3 (c), of the Covenant.

...

12. ...[T]he State party is under an obligation to provide Ms. Arredondo with an effective remedy. The Committee considers that Ms. Arredondo should be released and adequately compensated. The State party is under an obligation to ensure that similar violations do not occur in the future.

- *Paraga v. Croatia* (727/1996), ICCPR, A/56/40 vol. II (4 April 2001) 58 at paras. 2.4, 2.5, 9.7 and 10.

...

2.4 On 22 November 1991, Mr. Paraga was arrested after a police ambush, on charges of planning to overthrow the Government. He was kept in detention until 18 December 1991, when his release was ordered after the High Court found that there was insufficient evidence in support of the charge. The author alleges a violation of article 9, paragraph 1 and 5, in this connection. He also claims that the president of the High Court was dismissed from his functions after having ruled in his favour.

2.5 ...On 21 April 1992, the author was summoned for having called the President of the Republic a dictator. Mr. Paraga claims that these events constitute a violation of article 19 of the Covenant, since the measures against him were aimed at restricting his freedom of expression.

...

9.7 The Committee observes, that the charges brought against Mr. Paraga in November 1991 and the slander charges brought against him in April 1992 raise the issue of undue delay (article 14, paragraph 3 (c) of the Covenant). The Committee is of the view that this issue

is admissible as the proceedings were not terminated until two and a half years and three years, respectively, after the entry into force of the Optional Protocol in respect of the State party. The Committee notes that both procedures took seven years altogether to be finalized, and observes that the State party, although it has provided information on the course of the proceedings, has not given any explanation on why the procedures in relation to these charges took so long and has provided no special reasons that could justify the delay. The Committee considers, therefore, that the author was not given a trial "without undue delay", within the meaning of article 14, paragraph 3 (c) of the Covenant.

...

10. The Human Rights Committee...is of the view that the facts as found by the Committee reveal a violation by Croatia of article 14, paragraph 3 (c).

- *Sextus v. Trinidad and Tobago* (818/1998), ICCPR, A/56/40 vol. II (16 July 2001) 111 at paras. 2.1-2.3, 7.2, 7.3, 8 and 9.

...

2.1 On 21 September 1988, the author was arrested on suspicion of murdering his mother-in-law on the same day...

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...

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.

...

7.2 As to the claim of unreasonable pre-trial delay, the Committee recalls its jurisprudence that "[i]n cases involving serious charges such as homicide or murder, and where the accused is denied bail by the court, the accused must be tried in as expeditious a manner as possible".23/ In the present case, where the author was arrested on the day of the offence, charged with murder and held until trial, and where the factual evidence was straightforward and apparently required little police investigation, the Committee considers that substantial reasons must be shown to justify a 22-month delay until trial. The State party points only to general problems and instabilities following a coup attempt, and acknowledges delays that ensued. In the circumstances, the Committee concludes that the author's rights under article 9, paragraph 3 and article 14, paragraph 3 (c), have been violated.

7.3 As to the claim of a delay of over four years and seven months between conviction and the judgment on appeal, the Committee also recalls its jurisprudence that the rights contained in article 14, paragraphs 3 (c) and 5, read together, confer a right to a review of a decision at trial without delay.24/ In Johnson v. Jamaica,25/ the Committee established that, barring exceptional circumstances, a delay of four years and three months was unreasonably prolonged. In the present case, the State party has pointed again simply to the general situation, and implicitly accepted the excessiveness of the delay by explaining remedial measures taken to ensure appeals are now disposed of within a year. Accordingly, the Committee finds a violation of article 14, paragraphs 3 (c) and 5.

...

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.

9. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide Mr. Sextus with an effective remedy, including adequate compensation...

_____

Notes

...

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.

...

23/ *Barroso v. Panama* (Communication 473/1991, at 8.5).

24/ *Lubuto v. Zambia* (Communication 390/1990) and *Neptune v. Trinidad and Tobago* (Communication 523/1992).

25/ Communication 588/1994.

_____

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 para. 6.3.

- *Cagas v. Philippines* (788/1997), ICCPR, A/57/40 vol. II (23 October 2001) 131 (CCPR/C/73/D/788/1997) at paras. 2.6, 2.7, 3.4, 7.3, 7.4, 8 and 9.

...

2.6 The authors were arrested on 26, 29 and 30 June 1992, on suspicion of murder (the so-

called Libmanan massacre)...

2.7 On 14 August 1992, the authors appeared in Court and were ordered detained until the trial. On 11 November 1992, the authors filed a petition for bail and on 1 December 1992, they filed a motion to quash the arrest warrants. On 22 October 1993, the regional Trial Court refused to grant bail. On 12 October 1994, the Court of Appeals in Manila confirmed the Trial Court Order of 22 October 1993. A motion for reconsideration of the Court of Appeals' decision was dismissed on 20 February 1995. On 21 August 1995, the Supreme Court dismissed the authors' appeal against the Court of Appeals' decision.
...
3.4 Although not expressly invoked by the authors, the facts as submitted raise issues under articles 9 (3) and 14 (3) of the Covenant in relation to the time that the authors have spent in pre-trial detention...
...
7.3 With regard to the allegation of violation of article 14 (2), on account of the denial of bail, the Committee finds that this denial did not a priori affect the right of the authors to be presumed innocent. Nevertheless, the Committee is of the opinion that the excessive period of preventive detention, exceeding nine years, does affect the right to be presumed innocent and therefore reveals a violation of article 14 (2).

7.4 With regard to the issues raised under articles 9 (3) and 14 (3) of the Covenant, the Committee notes that, at the time of the submission of the communication, the authors had been detained for a period of more than four years, and had not yet been tried. The Committee further notes that, at the time of the adoption of the Committee's Views, the authors appear to have been detained without trial for a period in excess of nine years, which would seriously affect the fairness of the trial. Recalling its General Comment 8 according to which "pre-trial detention should be an exception and as short as possible", and noting that the State party has not provided any explanation justifying such a long delay, the Committee considers that the period of pre-trial detention constitutes in the present case an unreasonable delay. The Committee therefore concludes that the facts before it reveal a violation of article 9 (3) of the Covenant. Furthermore, recalling the State party's obligation to ensure that an accused person be tried without undue delay, the Committee finds that the facts before it also reveal a violation of article 14 (3) (c) of the Covenant.
...
8. The Human Rights Committee...is of the view that the facts before it disclose a violation of articles 9 (3), 14 (2) and 14 (3) (c) 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 authors with an effective remedy, which shall entail adequate compensation for the time they have spent unlawfully in detention. The State party is also under an obligation to ensure that the authors be tried promptly with all the guarantees set

forth in article 14 or, if this is not possible, released.

- *Boodlal Sooklal v. Trinidad and Tobago* (928/2000), ICCPR, A/57/40 vol. II (25 October 2001) 264 (CCPR/C/73/D/928/2000) at paras. 2.1, 2.2, 4.7-4.9, 5 and 6.

...
2.1 In May 1989, the author was arrested and charged with the offences of sexual intercourse and serious indecency with minors. Following a preliminary inquiry in June 1992, he was released on bail on 27 July 1992. The author was held in custody from the time of his arrest to his release on bail, over three years after his arrest.

2.2 In February 1997, the author was tried in the High Court, where he pleaded not guilty... He was convicted and sentenced to 12 strokes with the birch, as well as 50 years of concurrent sentences, equivalent to a sentence of 20 years after remission.
...
4.7 The Committee notes counsel's contention that the State party has violated article 9, paragraph 3, as the author was held in detention for an unreasonable time prior to his trial. The State party did not provide any justification for the author's detention and its duration. The Committee notes that the author spent three years in detention prior to release on bail and considers, therefore, that the State party has violated article 9, paragraph 3, of the Covenant.

4.8 As to counsel's contention that the State party has violated article 14, paragraph 3 (c), as the author's trial was not held within a reasonable time after he was charged, the Committee notes that the author waited for a period of seven years and nine months from the time of his arrest to the date of his trial. The State party has provided no justification for this delay. In the circumstances, the Committee considers that this is an excessive period of time and, therefore, that the State party has violated article 14, paragraph 3 (c), of the Covenant.

4.9 The Committee notes counsel's contention that, because of the delay of seven years and nine months from the date of the author's arrest to his trial, the witnesses could not have been expected to testify accurately to events alleged to have taken place nine years previously, and that the fairness of the trial was seriously prejudiced. As it appears from the file that issues related to the credibility and assessment of the evidence were addressed by the High Court, the Committee takes the view that the effect of the delay on the credibility of the witnesses testimonies does not give rise to a finding of a violation of the Covenant that would be separate from the conclusion reached above under article 14, paragraph 3 (c).
...
5. The Human Rights Committee...is of the view that the facts as found by the Committee reveal violations by Trinidad and Tobago of articles 9, paragraph 3, 14, paragraph 3 (c) and

(d), and article 7 of the Covenant.

6. Pursuant to article 2, paragraph 3 (a), of the Covenant, the author is entitled to an effective remedy entailing compensation and the opportunity to lodge a new appeal, or should this no longer be possible, to due consideration of granting him early release. The State party is under an obligation to ensure that similar violations do not occur in the future. If the corporal punishment imposed on the author has not been executed, the State party is under an obligation not to execute the sentence.

- *Sahadeo v. Guyana* (728/1996), ICCPR, A/57/40 vol. II (1 November 2001) 81 (CCPR/C/73/D/728/1996) at paras. 2.1, 2.2, 9.2, 10 and 11.

...
2.1 On 18 September 1985, Mr. Terrence Sahadeo, a friend called Mutez Ali, and the latter's girlfriend, Shireen Khan, were arrested in Berbice, Guyana, for the murder of one Roshanene Kassim committed earlier the same day.

2.2 The author states that Mr. Sahadeo and his co-accused were convicted and sentenced to death on 8 November 1989, four years and two months after their arrest. Apparently, two prior trials, in June 1988 and February 1989, had been aborted. On appeal, heard in 1992, a retrial was ordered. On 26 May 1994, Mr. Sahadeo and his co-accused were again convicted and sentenced to death. In 1996, their appeal was dismissed and the sentence confirmed.
...
9.2 With regard to the length of the proceedings, the Committee notes that the alleged victim was arrested on 18 September 1985 and remained in detention until he was first convicted and sentenced to death on 8 November 1989, four years and two months after his arrest. The Committee recalls that article 9, paragraph 3, of the Covenant entitles an arrested person to trial within a reasonable time or to release. Paragraph 3 (c) of article 14 provides that the accused shall be tried without undue delay. The Committee recalls that, if criminal charges are brought in cases of custody and pre-trial detention, the full protection of article 9, paragraph 3, as well as article 14, must be granted. With respect to the alleged other delays in the criminal process, the Committee notes that Mr. Sahadeo's appeal was heard from the end of April to the beginning of May 1992 and, upon retrial, the alleged victim was again convicted and sentenced to death on 26 May 1994, two years and one month after the judgment of the Court of Appeal. In 1996, the appeal against that decision was dismissed and the sentence confirmed. The Committee finds that, in the absence of a satisfactory explanation by the State party or other justification discernible from the file, the detention of the author awaiting trial constitutes a violation of article 9, paragraph 3, of the Covenant and a further separate violation of article 14, paragraph 3 (c).
...

LEGAL RIGHTS - CRIMINAL - Protection Against Undue Delay

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

11. The Committee is of the view that Mr. Sahadeo is entitled, under article 2, paragraph 3 (a), to an effective remedy, in view of the prolonged pretrial detention in violation of article 9, paragraph 3, and the delay in the subsequent trial, in violation of article 14, paragraph 3 (c), entailing a commutation of the sentence of death and compensation under article 9, paragraph 5, of the Covenant. The State party is under an obligation to take appropriate measures to ensure that similar violations do not occur in the future.

- *Ashby v. Trinidad and Tobago* (580/1994), ICCPR, A/57/40 vol. II (21 March 2002) 12 (CCPR/C/74/D/580/1994) at paras. 10.5, 11 and 12.

...

10.5 Counsel...claims undue delay in the adjudication of Mr. Ashby's appeal. The Committee notes that the Port-of-Spain Assize Court found Mr. Ashby guilty of murder and sentenced him to death on 20 July 1989 and that the Court of Appeals affirmed the sentence on 20 January 1994. Mr. Ashby remained in detention during this time. The Committee notes the State party's explanation concerning the delay in the appeals proceedings against Mr. Ashby. The Committee finds that the State party did not submit that the delay in proceedings was dependent on any action by the accused nor was the non-fulfilment of this responsibility excused by the complexity of the case. Inadequate staffing or general administrative backlog is not sufficient justification in this regard.7/ In the absence of any satisfactory explanation from the State party, the Committee considers that the delay of some four and a half years was not compatible with the requirements of article 14, paragraphs 3 (c) and 5, of the Covenant.

...

11. The Human Rights Committee...is of the view that the facts before it disclose violations of articles 6, paragraphs 1 and 2 and 14, paragraphs 3 (c) and 5, of the Covenant.

...

12. Under article 2, paragraph 3, of the Covenant, Mr. Ashby would have been entitled to an effective remedy including, first and foremost, the preservation of his life. Adequate compensation must be granted to his surviving family.

Notes

...

7/ Communication No. 390/1990, *Lubuto v. Zambia*, para 7.3.

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- *Gutiérrez Vivanco v. Peru* (678/1996), ICCPR, A/57/40 vol. II (26 March 2002) 46 (CCPR/C/74/D/678/1996) at paras. 2.2, 2.6, 2.8, 7.2, 8 and 9.

...
2.2 On 27 August 1992, the author was arrested at the home of Luisa Mercedes Machaco Rojas, his fiancée. While he was in her house, the police arrived with his fiancée, and both were arrested and taken in a police van to the offices of the National Directorate against Terrorism (DINCOTE)....
...
2.6 On 17 June 1994, the Special Terrorism Division of the Lima High Court sentenced the author to 20 years' imprisonment; this sentence was subsequently confirmed by the Supreme Court of Justice on 28 February 1995...
...
2.8 The author's mother, representing her son, lodged an application for judicial review of the facts with the Supreme Court in 1996. This court's proceedings were written and there were no public or private hearings. The application was dismissed on 21 April 1999.5/
...
7.2 With regard to the author's claim that there was a violation of article 14 (3) (c), the Committee considers that the State party has confined itself to maintaining that the said delay ought to have been complained of in the national courts and has not succeeded in demonstrating why, in the circumstances of the case, no decision was taken on the application for review until 1999; that application had been made in 1996. The Committee accordingly considers that there has been a violation of article 14 (3) (c).

8. The Human Rights Committee...is of the view that the facts which have been set forth constitute violations of article 14 (1) and (3) (c), of the Covenant.

9. Under article 2 (3) (a) of the Covenant, the State party has the obligation to provide an effective remedy, including compensation, to Mr. José Luis Gutiérrez Vivanco. In addition, the State party has the obligation to ensure that similar violations do not occur in the future.

_____

Notes

...
5/ It should be pointed out that at the time when the author submitted his communication to the Human Rights Committee no decision had yet been taken on the application for review.

_____

- *Wanza v. Trinidad and Tobago* (683/1996), ICCPR, A/57/40 vol. II (26 March 2002) 55 (CCPR/C/74/D/683/1996) at paras. 3.4, 7.3, 9.4, 10 and 11.

LEGAL RIGHTS - CRIMINAL - Protection Against Undue Delay

...

3.4 Counsel alleges a violation of article 14, paragraph 3 (c), *juncto* paragraph 5, because of the Court of Appeal's failure to hear Mr. Wanza's appeal within a reasonable time: it is submitted that a delay of almost five years for adjudicating an appeal against conviction and sentence in a capital case is wholly unacceptable. Reference is made to General Comment 13[21] of the Human Rights Committee.

...

7.3 With regard to the alleged delay in hearing the appeal, the State party argues that the period between the conviction and the hearing of the appeal was not unreasonable in the circumstances prevailing in the country at that time (following an attempted *coup d'état*). There had been an increase in the crime rate putting great pressure on the courts and leading to a backlog of cases. Difficulties were also experienced in the speedy preparation of a complete and accurate court record, causing delays. Since then, procedural reforms have been carried out to avoid such delays. Financial and other resources have been allocated to the judiciary and additional judges have been appointed both to the High Court and to the Court of Appeal. A computer aided transcription unit has been put in place to ensure the availability of a complete and accurate court record with the minimum of delay. As a result, appeals are now heard within one year of the conviction.

...

9.4 With regard to the delay of almost five years between the author's conviction and the determination of his appeal, the Committee has noted the State party's explanations in particular its statement that it has taken steps to remedy the situation. Nevertheless, the Committee wishes to emphasize that the rights set forth in the Covenant constitute minimum standards which all States parties have agreed to observe.5/ Article 14, paragraph 3(c), states that all accused shall be entitled to be tried without delay, and this requirement applies equally to the right of review of conviction and sentence guaranteed by article 14, paragraph 5. The Committee considers that the period of almost five years between the author's conviction in February 1989 and the judgement of the Court of Appeal, dismissing his appeal, in January 1994, is incompatible with the requirements of article 14, paragraph 3(c) *juncto* article 14, paragraph 5 of the Covenant.

10. 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 (c) *juncto* paragraph 5, of the Covenant.

11. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide Mr. Wanza with an effective remedy, which includes consideration of early release.

Notes

...

5/ See the Committee's Views in *Lubuto v. Zambia*, CCPR/C/55/D/390/1990, adopted on

31 October 1995, para. 7.3. See also the Committee's Views in *Sextus v. Trinidad & Tobago*, CCPR/C/72/D/818/1998, Views adopted on 16 July 2001, para. 7.3.

- *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. 3.2, 7.5, 7.6, 8 and 9.

...

3.2 The author claims to be a victim of a violation of article 14, paragraphs 3(c) and 5, on the ground of undue delays in the proceedings. He recalls that it took 1) 21 months from the date on which the author was charged until the beginning of his first trial, 2) 38 months from the conviction until the hearing of his appeal, 3) 21 months from the decision of the Court of Appeal to allow his appeal until the beginning of the re-trial, 4) 27 months from the second conviction to the hearing of the second appeal, and 5) 26 months from the hearing of the second appeal until the reasoned judgement of the Court of Appeal was delivered. Counsel argues that there is no reasonable excuse as to why the re-trial took place some six years after the offence and why the Court of Appeal took a further four years and four months to determine the matter, and submits that the State party must bear the responsibility for this delay.

...

7.5 In connection with counsel's claim that the length of judicial proceedings in his case amounted to a violation of article 14, paragraphs 3(c)and 5, the Committee notes that more than ten years passed from the time of the author's trial to the date of the dismissal of his petition for special leave to appeal by the Judicial Committee of the Privy Council. It considers that the delays invoked by counsel (see paragraph 3.2 above), in particular the delays in judicial proceedings after the ordering of a re-trial, i.e. over six years from the ordering of the re-trial in early 1992 to the dismissal of the second appeal in March 1998, were 'unreasonable' within the meaning of article 14, paragraphs 3(c) and 5, read together. Accordingly, the Committee concludes to a violation of these provisions.

7.6 The author has alleged violations of articles 9, paragraphs 2 and 3, because he was not charged until five days after his arrest, and not brought before a judge until six days after arrest. It is uncontested that the author was not formally charged until 9 February 1987 and not brought before a magistrate until 10 February 1987. While the meaning of the term "promptly" in paragraphs 2 and 3 of article 9 must be determined on a case by case basis, the Committee recalls its jurisprudence under the Optional Protocol pursuant to which delays should not exceed a few days. While the information before the Committee does not enable it to determine whether Mr. Kennedy was "promptly" informed of the charges against him, the Committee considers that in any event he was not brought "promptly" before a judge, in violation of article 9, paragraph 3.

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...
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.

- *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. 2.1, 9.2-9.4, 10 and 11.

...
2.1 On 28 May 1988, the author was detained by the police and taken to hospital. On 31 May 1988 he was discharged from the hospital and on 2 June 1988 he was formally charged with the murder of his cousin "Lucky" Teesdale on 27 May 1988. After a trial, which started on 6 October 1989, the author was convicted and sentenced to death on 2 November 1989 by the San Fernando Assizes Court. He applied for leave to appeal against conviction and sentence. The Court of Appeal of Trinidad and Tobago dismissed the author's appeal on 22 March 1994, with reasons given on 26 October 1994. On 13 March 1995, the Judicial Committee of the Privy Council dismissed his petition for special leave to appeal. On 8 March 1996, a warrant for execution on 13 March was read out to the author. On 11 March, the author filed a constitutional motion to the High Court against the execution; the High Court granted a stay of execution. The Attorney General withdrew the case from the High Court and presented it before the Advisory Committee on the Power of Pardon. On 26 June, the author was informed that the President had commuted his death sentence to 75 years imprisonment with hard labour. It is submitted that all domestic remedies have been exhausted.
...
9.2 Concerning the warrant for the author's execution after he had spent over six years on death row, the Committee reaffirms its jurisprudence that prolonged delays in the execution of a sentence of death do not, *per se*, constitute cruel, inhuman or degrading treatment. The Committee, therefore, finds that the facts before it, in the absence of further compelling circumstances, do not disclose a violation of article 7 of the Covenant.

9.3 With regard to the delays in bringing the author to trial, the Committee notes that the author was detained on 28 May 1988 and formally charged with murder on 2 June 1988. His trial began on 6 October 1989 and he was sentenced to death on 2 November 1989. Under

article 9, paragraph 3, of the Covenant anyone arrested or detained on a criminal charge shall be entitled to trial within a reasonable time. It appears from the transcript of the trial before the San Fernando Assize Court that all evidence for the case of the prosecution was gathered by 1 June 1988 and no further investigations were carried out. The Committee is of the view that in the context of article 9, paragraph 3, in the specific circumstances of the present case and in the absence of any explanation for the delay by the State party, the length of time that the author was in pre-trial detention is unreasonable and, therefore, constitutes a violation of this provision.

9.4 With regard to the delays in hearing the author's appeal, the Committee notes that he was convicted on 2 November 1989 and that his appeal was dismissed on 22 March 1994. The Committee recalls that all stages of the procedure must take place 'without undue delay' within the meaning of article 14, paragraph 3 (c). Furthermore, the Committee recalls its previous jurisprudence that article 14, paragraph 3 (c), should be strictly observed in any criminal procedure. In the absence of an explanation by the State party, the Committee, therefore, finds that a delay of four years and five months between the conviction and the dismissal of his appeal constitutes a violation of article 14, paragraph 3 (c), of the Covenant in this regard.

...

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.

- *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. 6.2 and 6.3.

...

6.2 The Committee notes that the author was held in detention for a period of two years and nine months prior to his trial and reaffirms its constant jurisprudence that all stages of judicial proceedings should take place without undue delay. The Committee concludes that a period of 33 months between arrest and trial constituted undue delay, and cannot be deemed compatible with the provisions of article 9, paragraph 3, of the Covenant, in the absence of any explanation from the State party justifying the delay or explaining why the pre-trial investigations could not have been concluded earlier and why the author was detained throughout this period without trial. The Committee therefore finds that there has

been a violation of article 9, paragraph 3, of the Covenant.

6.3. The Committee finds that the delay in bringing the author to trial, in the absence of any explanation from the State party, entailed a violation of article 14, paragraph 3(c) of the Covenant.

- *Rogerson v. Australia* (802/1998), ICCPR, A/57/40 vol. II (3 April 2002) 150 (CCPR/C/74/805/1998) at paras. 9.3 and 11.

...
9.3 The Committee notes the author's claim that the procedure at the Northern Territory Court of Appeals on contempt of court violated his right to a fair hearing provided for in article 14, paragraph 3 (c), of the Covenant, because it delivered its decision with delay. The Committee notes that the Court heard the appeal of the author from 22 to 24 March 1993. The Committee notes further that the two puisne judges delivered their draft decisions on 28 April and 27 July 1993, respectively; on 17 March 1995, the Court dismissed the author's case. The State party has not explained what happened in the author's case between these dates, notwithstanding the existence of a case management system. The Committee finds that in the circumstances of the present case a delay of almost two years to deliver the final decision violates the right of the author to be tried without undue delay as provided for in article 14, paragraph 3 (c), of the Covenant.
...
11. The Committee considers that its finding of a violation of the rights of the author under article 14, paragraph 3 (c), of the Covenant constitutes sufficient remedy.

- *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, 2.2, 2.4, 5.4 and 5.5.

...
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/

...

2.4 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.

...

5.4 As to the claim of unreasonable pre-trial delay, the Committee recalls its jurisprudence that "[i]n cases involving serious charges such as homicide or murder, and where the accused is denied bail by the court, the accused must be tried in as expeditious a manner as possible".13/ In the present case, where the factual evidence was straightforward and apparently required little police investigation, the Committee considers that very exceptional reasons must be shown to justify delays of four years and three months, and three years and five months, respectively, until trial. In the absence of any justification advanced by the State party for these delays, the Committee concludes that the author's rights under article 9, paragraph 3, and article 14, paragraph 3 (c), of the Covenant have been violated.

5.5 As to the claim of a delay of four years and three months between conviction and the judgement on appeal, the Committee notes that the authors lodged their application for leave to appeal in November 1994, and that the Court disposed of the appeal some five months later in March 1995. In the absence of any argument by the authors that responsibility for the delay in lodging the appeal could be imputed to the State party, the Committee is unable to find that there has been a violation of article 14, paragraphs 3 (c) and 5, of the Covenant.

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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.

...

13/ *Barroso v. Panama* (Communication 473/1991, at 8.5).

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- *Borisenco v. Hungary* (852/1999), ICCPR, A/58/40 vol. II (14 October 2002) 119 (CCPR/C/76/D/852/1999) at para. 7.4.

...

7.4 With regard to the claim of a violation of article 9, paragraph 3, the Committee notes that the author was detained for three days before being brought before a judicial officer. In the absence of an explanation from the State party on the necessity to detain the author for this period, the Committee finds a violation of article 9, paragraph 3 of the Covenant.

For dissenting opinions in this context, see Borisenco v. Hungary (852/1999), ICCPR, A/58/40 vol. II (14 October 2002) 119 (CCPR/C/76/D/852/1999) at Individual Opinion by Mr. Nisuke Ando, 127, and Individual Opinion by Mr. P. N. Bhagwati, 128.

- *Hendricks v. Guyana* (838/1998), ICCPR, A/58/40 vol. II (28 October 2002) 113 (CCPR/C/76/D/838/1998) at paras. 2.1, 2.2, 6.3, 7 and 8.

...

2.1 The author, who was suspected of having murdered, on 12 December 1992, his three step-children aged 2, 4 and 7, was arrested on 13 December 1992 in West Bank Demerara, Guyana.

2.2 On 5 February 1996, the author was sentenced to death by hanging by a trial court in West Demerara County. On 4 July 1997, the Court of Appeal confirmed his sentence.

...

6.3 With regard to the issues raised under articles 9, paragraph 3, and 14, paragraph 3 (c) of the Covenant, the Committee notes that the author was tried more than three years after he was arrested. Recalling its General Comment 8, according to which "pre-trial detention should be an exception and as short as possible", and noting that the State party has not provided any explanation justifying such a long delay, the Committee considers that the period of pre-trial detention constitutes in the present case an unreasonable delay. The Committee therefore concludes that the facts before it reveal a violation of article 9, paragraph 3, of the Covenant. Furthermore, recalling the State party's obligation to ensure that an accused person be tried without undue delay, the Committee finds that the facts before it also reveal a violation of article 14, paragraph 3 (c), 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 and 14, paragraph 3 (c), (d) and (e) and consequently of article 6 of the International Covenant on Civil and Political Rights.

8. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including commutation of sentence. The State party is also under an obligation to prevent similar violations in the

future.

- *Zheludkov v. Ukraine* (726/1996), ICCPR, A/58/40 vol. II (29 October 2002) 12 (CCPR/C/76/D/726/1996) at paras. 2, 8.2, 8.3, 9 and 10.

...

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.

...

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.

8.3 The Committee notes the information provided by the State party to the effect that, after Mr. Zheludkov's arrest on 4 September 1992 on suspicion of having participated in a rape, his detention was extended by approval of the competent prosecutor in the Novoazosk district on 7 September 1992, and that he was charged on 14 September 1992 - within the legally prescribed 10-days period. It also notes the author's allegations that her son was not informed of the precise charges against him until he had been in detention for 50 days and that he was not brought before a judge or any other official empowered by law to exercise judicial functions during this period. The State party has not contested that Mr. Zheludkov was not brought promptly before a judge after he was arrested on a criminal charge, but has stated that he was placed in pre-trial detention by decision of the procurator (*prokuror*). The State party has not provided sufficient information, showing that the procurator has the institutional objectivity and impartiality necessary to be considered an "officer authorized to exercise judicial power" within the meaning of article 9, paragraph 3 of the Covenant. The Committee therefore concludes that the State party violated the author's rights under paragraph 3 of article 9 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.

LEGAL RIGHTS - CRIMINAL - Protection Against Undue Delay

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. The State party should take effective measures to ensure that similar violations do not recur in the future, especially by taking immediate steps to ensure that the decisions concerning the extension of custody are taken by an authority, having the institutional objectivity and impartiality necessary to be considered an "officer authorized to exercise judicial power" within the meaning of article 9, paragraph 3 of the Covenant.

- *Ruiz Agudo v. Spain* (864/1999), ICCPR, A/58/40 vol. II (31 October 2002) 134 (CCPR/C/76/D/864/1999) at paras. 2.1-2.3, 9.1, 10 and 11.

...
2.1 From 1971 to 1983, Alfonso Ruiz Agudo held the post of Director of the Caja Rural Provincial in the small town of Cehegín (Murcia), where he was responsible for customer relations. In the period from 1981 to 1983, 75 fictitious loan policies, which duplicated an equal number of real loans, were transacted in the office of the Cehegín bank. In other words, there were bank customers who signed blank loan forms that were later completed in duplicate.

2.2 The Caja Rural Provincial was taken over by the Caja de Ahorros de Murcia, and both banks appeared in the criminal proceedings opened against Alfonso Ruiz Agudo and others as private complainant or injured party. Alfonso Ruiz Agudo's counsel immediately asked for the original files of the accounts, which the author kept at the Cehegín bank and where, according to the complainant, the money from the fictitious loans was deposited, to be produced at the proceedings. According to the author of the communication, these files would have shown that the money went not to Alfonso Ruiz Agudo but to other persons. The bank submitted a computerized version of the files.

2.3 Counsel maintains that, although proceedings were initiated against his client in 1983, no judgement was handed down until 1994. The judgement was eventually passed by the judge of the No. 1 Criminal Court of Murcia, sentencing the author to a custodial penalty of two years, four months and one day of ordinary imprisonment with a fine for an offence of fraud, and to a further identical penalty for the offence of falsifying a commercial document.
...
9.1 The Human Rights Committee has considered the present communication in the light of all written information made available to it by the parties, in accordance with article 5, paragraph 1, of the Optional Protocol. The Committee notes that the State party has expressly confirmed that the trial of Alfonso Ruiz Agudo was excessively long, and that this was stated in the domestic legal remedies; however, the State party has given no explanation to justify such a delay. The Committee recalls its position as reflected in its General Comment on

article 14, which provides that all stages of judicial proceedings must take place without undue delay and that, to make this right effective, a procedure must be available to ensure that this applies in all instances. The Committee considers that, in the present case, a delay of 11 years in the judicial process at first instance and of more than 13 years until the rejection of the appeal violates the author's right under article 14, paragraph 3 (c), of the Covenant, to be tried without undue delay. 2/ The Committee further considers that the mere possibility of obtaining compensation after, and independently of, a trial that was unduly prolonged does not constitute an effective remedy.

...

10. The Human Rights Committee...is of the view that the facts before it constitute violations by Spain of article 14, paragraph 3 (c), of the Covenant.

11. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party has the obligation to provide an effective remedy, including compensation for the excessive length of the trial. The State party should adopt effective measures to prevent proceedings from being unduly prolonged and to ensure that individuals are not obliged to initiate a new judicial action to claim compensation.

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Notes

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2/ See, for example, communications No. 614/1995, *Samuel Thomas v. Jamaica*; No. 676/1996, *Yasseen and Thomas v. Republic of Guyana*; and No. 526/1993, *Hill and Hill v. Spain*.

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- *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. 2.1, 2.2 and 6.2.

...

2.1 On 17 March 1986, the author was arrested for murder alleged to have been committed on 28 February 1986 and was subsequently charged with murder. Following a Preliminary Enquiry conducted before a Magistrate's Court, the trial took place before the High Court of Justice of San Fernando between 22 June 1988 and 4 July 1988, and the author was convicted of murder and sentenced to death. On 4 January 1994, the death sentence was commuted to life imprisonment for the rest of his "natural life".

2.2 On 26 April 1994, the Court of Appeal of the Republic of Trinidad and Tobago dismissed his appeal against his conviction and sentence. The author was represented by

court-appointed counsel during his trial and appeal. On 21 March 1997, the author lodged a petition for special leave to appeal to the Judicial Committee of the Privy Council in London. Leave was granted. The appeal was heard but was dismissed on 17 December 1998.

...

6.2 As to the claim of unreasonable pre-trial delay, the Committee observes that the relevant dates, for the purpose of determining the length of the delay in the author's case, are the dates between the author's arrest and trial and not, as the author claims, between the date of the alleged crime, that is to say the date of the murder, and the date of the author's trial. In this regard, the Committee observes that, although there appears to be some confusion in the explanations provided by the author's counsel as to the date of the author's arrest, it is abundantly clear from the trial transcript that the author was arrested on 17 March 1986 and not 17 March 1988...Consequently, the Committee considers that a delay of 2 years and 3 months between the author's arrest and his trial, which has remained unexplained by the State party, constitutes a violation of the author's right under article 9, paragraph 3, of the Covenant to be tried within a reasonable time or to release, subject however to conditions, and equally of the author's right under article 14, paragraph 3 (c), of the Covenant to be tried without undue delay.

- *Gómez Casafranca v. Peru* (981/2001), ICCPR, A/58/40 vol. II (22 July 2003) 278 (CCPR/C/78/D/981/2001) at paras. 2.1, 2.5-2.7, 7.3, 8 and 9.

...

2.1 The victim was a student at the Faculty of Dentistry of the Inca Garcilaso de la Vega University, and also worked in the family restaurant. On 3 October 1986 he was arrested in a building near to his home, where he had gone to clean up after being stopped at gunpoint by the police. The arrest was made without any arrest warrant, and without the detainee having been arrested in flagrante delicto; he was taken to the offices of DIRCOTE,1/ where he was locked in the cells while the police made inquiries.

...

2.5 In the oral proceedings, the judges confined themselves to questioning the alleged victim on the basis of the contentions in the police report, without taking into account events at the pre-trial stage. On 22 December 1988 Lima Seventh Correctional Court acquitted him, declaring him innocent of the charges brought against him.

2.6 The Office of the Attorney-General applied for annulment of the judgement, which was declared void on 11 April 1997 by the faceless Supreme Court. The Court held that the facts had not been properly determined or the evidence properly verified.

2.7 On 11 September 1997 the police arrested Mr. Ricardo Ernesto Gómez Casafranca at his home for an appearance at further oral proceedings based on the same charges; this time,

on 30 January 1998, he was sentenced to 25 years' imprisonment by the Special Criminal Counter-Terrorism Division. The sentence was confirmed by the Supreme Court on 18 September 1998.

...

7.3 Regarding the author's claims under article 14, the Committee takes note of the fact that Mr. Gómez Casafranca was, after first acquitted in 1988, ordered for retrial by a "faceless" Chamber of the Supreme Court. This alone raises issues under article 14, paragraphs 1 and 2. Taking into account that Mr. Gómez Casafranca was convicted after retrial in 1998, the Committee takes the view that whatever measures were taken by the Special Criminal Counter-Terrorism Chamber to guarantee Mr. Gómez Casafranca's presumption of innocence, the delay of some 12 years after the original events and 10 years after the first trial resulted in a violation of the author's right, under article 14, paragraph 3(c), to be tried without undue delay. In the circumstances of the case, the Committee concludes that there was a violation of article 14 of the right to a fair trial taken as a whole.

...

8. The Human Rights Committee...is of the view that the facts as found by the Committee constitute violations of articles 7; 9, paragraphs 1 and 3; 14 and 15 of the Covenant.

9. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to release Mr. Gómez Casafranca and pay him appropriate compensation. The State party is also under an obligation to ensure that similar violations do not occur in future.

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Notes

1/ Department of Counter-Terrorism.

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- *Jan Filipovich v. Lithuania* (875/1999), ICCPR, A/58/40 vol. II (4 August 2003) 145 (CCPR/C/78/D/875/1999) at paras. 2.1, 2.2, 7.1 and 9.

...

2.1 On 3 September 1991, the author and Mr. N. Zhuk got into a fight, following which Mr. Zhuk was found unconscious and taken to the hospital, where he was not operated on until 5 September and died that same day. According to the author, the causes of death were trauma to the abdominal cavity and peritonitis, which developed because of the delay in operating on Mr. Zhuk.

2.2 The preliminary investigation began in September 1991. The author was convicted of premeditated murder by the Vilnius District Court on 16 January 1996.1/ The author

appealed the decision in the same Court, which dismissed the appeal on 13 March 1996. On 2 May 1996, the Criminal Division of the Lithuanian Supreme Court rejected the author's application for judicial review. Subsequently, on 1 July 1996, the Vice-President of the Supreme Court and the Attorney-General of Lithuania refused to submit an application for judicial review.

...

7.1 As to the author's allegations that the trial went on for too long, since the investigation began in September 1991 and the court of first instance convicted him on 1 January 1996, the Committee takes note of the State party's arguments that the duration of the proceedings should be calculated as from the entry into force of the Covenant and the Protocol for Lithuania on 20 February 1992. The Committee nevertheless notes that, although the investigation began before the entry into force, the proceedings continued until 1996. The Committee also takes note of the fact that the State party has not given any explanation of the reason why four years and four months elapsed between the start of the investigation and the conviction in first instance. Considering that the investigation ended, according to the information available to the Committee, following the report by the forensic medical commission and that the case was not so complex as to justify a delay of four years and four months, or three years and 2 months after the preparation of the forensic medical report, the Committee concludes that there was a violation of article 14, paragraph 3 (c).

...

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 compensation. The State party is also under an obligation to ensure that similar violations do not occur in future.

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Notes

1/ Article 104 of the Criminal Code.

...

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- *Martinez Muñoz v. Spain* (1006/2001), ICCPR, A/59/40 vol. II (30 October 2003)198 (CCPR/C/79/D/1006/2001) at paras. 7.1 and 7.2.

...

7.1 The author claims that there were undue delays in his trial, since almost five years elapsed between the date of the incident and the hearing. The Committee notes that the circumstances of the case involved a flagrant offence, and that the evidence required little police investigation and, as the author points out, the low level of complexity of the proceedings did not justify the delay. The Committee recalls its constant jurisprudence that exceptional reasons must be shown to justify delays - in this case, five years - until trial. In

the absence of any justification advanced by the State party for the delay, the Committee concludes that there has been a violation of article 14, paragraph 3 (c), of the Covenant.

7.2 In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including adequate compensation. The State party is also under an obligation to take the necessary measures to ensure that similar violations do not occur in the future.

For dissenting opinion in this context, *see Martinez Muñoz v. Spain* (1006/2001), ICCPR, A/59/40 vol. II (30 October 2003) 198 (CCPR/C/79/D/1006/2001) at Individual Opinion by Mr. Nisuke Ando, Mr. Maxwell Yalden, Mrs. Ruth Wedgwood and Mr. Roman Wieruszewski, 206.

- *Kurbanova v. Tajikistan* (1096/2002), ICCPR, A/59/40 vol. II (6 November 2003) 354 (CCPR/C/79/D/1096/2002) at paras. 2.1, 2.2, 3.1, 3.5, 7.2, 7.3, 8 and 9.

...

2.1 According to the author, Mr. Kurbanov went to the police on 5 May 2001 to testify as a witness. He was detained for seven days in the building of the Criminal Investigation Department of the Ministry of the Interior, where according to the author he was tortured. Only on 12 May 2001, a formal criminal charge of fraud was made against him, an arrest warrant was issued for him, and he was transferred to an investigation detention centre. He was forced to sign a declaration that he renounced the assistance of a lawyer.

2.2 On 9 June 2001, a criminal investigation was opened in relation to the triple murder of Firuz and Fayz Ashurov and D. Ortikov, which had occurred in Dushanbe on 29 April 2001. In addition to the initial fraud charge, the author's son was, on 30 July 2001, charged with the murders and with illegal possession of firearms2/. The author claims that her son was tortured before he accepted to write down his confession under duress; during her visits, she noted scars on her son's neck and head, and as well as broken ribs. She adds that one of the torturers - investigation officer Rakhimov - was charged in August 2001 with having received bribes and with abuse of power in 13 other cases also related to the use of torture; he was later sentenced to 5 years and 6 months of imprisonment.

...

3.1 The author claims that her son was detained for seven days without arrest warrant. During this time, he was unable to see his family or a lawyer. The fact that her son was illegally arrested and detained for one week without being promptly informed of the charges against him, constitutes, according to the author, a violation of article 9, paragraphs 1 and 2, of the Covenant.

...

3.5 The author also claims that according to the case file, a lawyer assisted her son as of 20

June 2001, but in fact she hired a lawyer for her son only in July 2001. She adds that the lawyer visited her son only two or three times during the investigation, and this was always in the presence of an investigator. After the judgement, her son was unable to see the lawyer and benefit from his assistance. According to the author, the lawyer failed to appeal for cassation. Her son had no opportunity to consult the court's judgement, as no interpreter was provided to him. Mr. Kurbanov prepared a cassation appeal himself, but this was denied, because the deadline for filing the appeal had passed. The author's own cassation appeal was denied on the ground that she was not a party to the criminal case. The extraordinary appeal proceedings which her son availed himself of with the assistance of his lawyer were unsuccessful; they do not, according to author, provide an effective means of judicial protection. Article 14, paragraph 5, of the Covenant allegedly was violated because the author's son was deprived of his right to appeal.

...

7.2 The Committee has taken note of the author's claim that her son was detained on a Saturday (5 May 2001), and detained for seven days without a charge. To support her claim, she provides a copy of the police register which displays a record entered on 7 May 2001 relating to her son's arrest, allegedly for fraud. She filed a complaint about the allegedly illegal detention of her son with the Office of the Procurator General on the same day. Furthermore, the Committee notes that according to the judgement of 2 November 2001 by the Military Chamber of the Supreme Court, the author was detained on 5 May 2001. This information is not refuted by the State party's contention that an arrest warrant was issued on 12 May 2001. In the absence of any further explanations from the State party, the Committee concludes that Mr. Kurbanov was detained for seven days without an arrest warrant and without being brought before a judge. The Committee concludes that his rights under article 9, paragraphs 2 and 3, of the Covenant have been violated.

7.3 Furthermore, the documents submitted by the State party show that Mr. Kurbanov was, after being detained since 5 May 2001 on other grounds, informed on 11 June 2001 that he was suspected of the killings of 29 April 2001 but charged with these crimes only on 30 July 2001. During his detention from 5 May 2001 onwards, he was, except for the last week starting on 23 July 2001, without the assistance of a lawyer. The Committee takes the view that the delay in presenting the charges to the detained author and in securing him legal assistance affected the possibilities of Mr. Kurbanov to defend himself, in a manner that constitutes a violation of article 14, paragraph 3 (a), of the Covenant.

...

8. The Human Rights Committee...is of the view that the facts before it disclose a violation of the rights of Mr. Kurbanov under article 7, article 9, paragraphs 2 and 3, article 10, article 14, paragraph 1 and paragraph 3 (a) and (g), and of article 6 of the Covenant.

9. Under article 2, paragraph 3 (a), of the Covenant, the author's son is entitled to an effective remedy entailing compensation and a new trial before an ordinary court and with

all the guarantees of article 14, or, should this not be possible, release. The State party is under an obligation to take measures to prevent similar violations in the future.

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Notes

...

2/ It transpires from documents later submitted by the State party that the author's son was on 11 June 2001 initially informed that he was suspected of the murders.

...

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- *Lobban v. Jamaica* (797/1998), ICCPR, A/59/40 vol. II (16 March 2004) 15 at paras. 8.3, 9 and 10.

...

8.3 The author has claimed a violation of article 9, paragraph 3, of the Covenant, on account of a delay of 11 days between the time of his arrest and the time when he was brought before a judge or judicial officers. After its investigation, the State party did not refute that the author was detained for 11 days, though denying that this delay constitutes a violation of the Covenant. In the absence of any plausible justification for a delay of 11 days between arrest and production of the author before a judge or judicial officer, the Committee finds that this delay constituted a violation of article 9, paragraph 3, 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.

- *Ahani v. Canada* (1051/2002), ICCPR, A/59/40 vol. II (29 March 2004) 260 at paras. 2.1, 2.2, 10.2-10.4 and 11.

...

2.1 On 14 October 1991, the author arrived in Canada from Iran and claimed protection under the Convention on the Status of Refugees and its Protocol, based on his political opinion and membership in a particular social group. He contended, on various occasions, (i) that he had been beaten by members of the Islamic Revolutionary Committee in Iran for being intoxicated, (ii) that his return to Iran would endanger his life due to his knowledge of Iranian covert operations and personnel, knowledge which he had acquired as a forced

conscript in the foreign assassins branch of the Iranian Foreign Ministry, (iii) that he had been jailed for four years as a result of refusing to carry out a drug raid which was in fact a raid on the home of an Iranian dissident, with women and children, in Pakistan, and (iv) that he had been released after pretending to repent. On 1 April 1992, the Immigration and Refugee Board determined that the author was a Convention refugee based on his political opinion and membership in a particular social group.

2.2 On 17 June 1993, the Solicitor-General of Canada and the Minister of Employment and Immigration, having considered security intelligence reports stating that the author was trained to be an assassin by the Iranian Ministry of Intelligence and Security ("MIS"), both certified, under section 40 (1) of the *Immigration Act* ("the Act"), that they were of the opinion that the author was inadmissible to Canada under section 19 (1) of the Act as there were reasonable grounds to believe that he would engage in terrorism, that he was a member of an organization that would engage in terrorism and that he had engaged in terrorism. On the same date, the certificate was filed with the Federal Court, while the author was served with a copy of the certificate and, pursuant to section 40 (1) (2) (b) of the Act, he was taken into mandatory detention, where he remained until his deportation nine years later.

...

10.2 As to the claims under article 9 concerning arbitrary detention and lack of access to court, the Committee notes the author's argument that his detention pursuant to the security certificate as well as his continued detention until deportation was in violation of this article. The Committee observes that, while the author was mandatorily taken into detention upon issuance of the security certificate, under the State party's law the Federal Court is to promptly, that is within a week, examine the certificate and its evidentiary foundation in order to determine its "reasonableness". In the event that the certificate is determined not to be reasonable, the person named in the certificate is released. The Committee observes, consistent with its earlier jurisprudence, that detention on the basis of a security certification by two Ministers on national security grounds does not result *ipso facto* in arbitrary detention, contrary to article 9, paragraph 1. However, given that an individual detained under a security certificate has neither been convicted of any crime nor sentenced to a term of imprisonment, an individual must have appropriate access, in terms of article 9, paragraph 4, to judicial review of the detention, that is to say, review of the substantive justification of detention, as well as sufficiently frequent review.

10.3 As to the alleged violation of article 9, paragraph 4, the Committee is prepared to accept that a "reasonableness" hearing in Federal Court promptly after the commencement of mandatory detention on the basis of a Ministers' security certificate is, in principle, sufficient judicial review of the justification for detention to satisfy the requirements of article 9, paragraph 4, of the Covenant. The Committee observes, however, that when judicial proceedings that include the determination of the lawfulness of detention become prolonged the issue arises whether the judicial decision is made "without delay" as required

by the provision, unless the State party sees to it that interim judicial authorization is sought separately for the detention. In the author's case, no such separate authorization existed although his mandatory detention until the resolution of the "reasonableness" hearing lasted 4 years and 10 months. Although a substantial part of that delay can be attributed to the author who chose to contest the constitutionality of the security certification procedure instead of proceeding directly to the "reasonableness" hearing before the Federal Court, the latter procedure included hearings and lasted nine and half months after the final resolution of the constitutional issue on 3 July 1997. This delay alone is in the Committee's view too long in respect of the Covenant requirement of judicial determination of the lawfulness of detention without delay. Consequently, there has been a violation of the author's rights under article 9, paragraph 4, of the Covenant.

10.4 As to the author's later detention, after the issuance of a deportation order in August 1998, for a period of 120 days before becoming eligible to apply for release, the Committee is of the view that such a period of detention in the author's case was sufficiently proximate to a judicial decision of the Federal Court to be considered authorized by a court and therefore not in violation of article 9, paragraph 4.

...

11. The Human Rights Committee...is of the view that the facts as found by the Committee reveal violations by Canada of article 9, paragraph 4, and article 13, in conjunction with article 7, of the Covenant. The Committee reiterates its conclusion that the State party breached its obligations under the Optional Protocol by deporting the author before the Committee's determination of his claim.

For dissenting opinions in this context, see Ahani v. Canada (1051/2002), ICCPR, A/59/40 vol. II (29 March 2004) 260 at Individual opinion of Mr. Nisuke Ando, 280 and Individual Opinion of Sir Nigel Rodley, Mr. Roman Wieruszewski and Mr. Ivan Shearer, 282.

- *Smirnova v. Russian Federation* (712/1996), ICCPR, A/59/40 vol. II (5 July 2004) 1 at paras. 2.3-2.5, 10.1, 10.4, 11 and 12.

...

2.3 According to the author, her arrest and detention were unlawful because she was taken into custody after the expiration of the designated period for the completion of a preliminary investigation. She explains that under Russian criminal procedure, a suspect can be arrested only pursuant to an official investigation. In the author's case the investigation began on 5 February 1993 and expired on 5 April 1993, pursuant to article 133(1) of the Code of

Criminal Procedure. Article 133 (4) of the Code allows for a one-month extension of suspended and resumed investigations. Pursuant to this article, the preliminary investigation in the author's case was extended six times, three of which illegally, as acknowledged by the Municipal Prosecutor.

2.4 On 27 August 1995, the author submitted a complaint to the police investigator contesting the legality of her arrest and detention pursuant to article 220(1) of the Code of Criminal Procedure. The investigator did not refer the complaint to the Tver inter-municipal Court until 1 September 1995, in violation of the requirement that such complaints be submitted to a court within one day. The author states that the Court dismissed the complaint on 13 September 1995 without having heard any argument from the parties, on the ground that it was not competent to review the legality of the arrest and detention since the investigation in the case had been completed. Yet this was the basis of the author's claim that her arrest had been unlawful. The author submits that the Court should have heard her case, because in reality the investigation had been extended and was ongoing, albeit, as the author contends, unlawfully. The author was unable to appeal against the decision of the Court, as article 331 of the Code of Criminal Procedure did not allow for an appeal against a decision in relation to a claim brought under article 220.

2.5 The author states that, as of the date of her first communication, no trial date had been set and that the Court had announced that her case would not be scheduled until September 1996. According to the author, this constituted a violation of article 223 of the Code of Criminal Procedure, which guarantees the designation of a trial date within 14 days of the commencement of an action in Court.

...

10.1 With regard to the author's claim that she was denied access to a Court to challenge the lawfulness of her detention on 27 August 1995, the Committee notes that the State party, in its observations dated 23 November 2000, refers only to the fact that the author's complaint about the lawfulness of her detention dated 27 August 1995 reached the Tver inter-municipal Court in Moscow on 1 September 1995 (although it was not considered until 13 September), and that the judge declined to entertain it. It transpires from the submissions that the trial judge did not entertain the complaint on the basis that the investigation had been completed, and that therefore the Court was not competent to hear the author's petition. The right of a person deprived of her liberty to take proceedings before a court to challenge the lawfulness of her detention is a substantive right, and entails more than the right to file a petition - it contemplates a right for a proper review by a court of the lawfulness of the detention. Accordingly, the Committee finds a violation by the State party of article 9 (4). Similarly, given that the decision of the judge not to entertain the author's petition on 13 September was made *ex parte*, the Committee is of the view that the author was not brought promptly before a judge, in violation of article 9 (3). In this regard, the Committee notes with concern the State party's submission of 29 March 1999 that its criminal procedure laws, at least at

that time, made no provision for a person in police custody to be brought before a judge or other judicial officer.

10.4 In relation to the author's claim that she was not tried without undue delay, the Committee notes that it has to limit its examination to the period between the initiation of criminal proceedings against the author in February 1993 and the date of her communication to the Committee on 19 June 1996...This period exceeds three years. However, the author has not contested the submission of the State party that she had evaded the authorities for much of this time. In these circumstances, the Committee considers that there has not been a violation of article 14 (3) (c) 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.

- *Nazarov v. Uzbekistan* (911/2000), ICCPR, A/59/40 vol. II (6 July 2004) 91 at para. 6.2.

...

6.2 In relation to article 9 (3), the author notes that his arrest was confirmed by the relevant authority on 31 December 1997, five days after his detention, however it does not appear that the confirmation of the arrest involved the author being brought before a judge or other authorized judicial officer. In any event, the Committee does not consider that a period of five days could be considered "prompt" for the purpose of article 9 (3) 2/. Accordingly, in the absence of an explanation from the State party, the Committee considers that the communication discloses a violation of article 9 (3) by the State party.

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Notes

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2/ See for example communication No. 852/1999, *Borisenko v. Hungary*, 14 October 2002, where the Committee considered that a three-day period was not "prompt".

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- *Nallaratnam v. Sri Lanka* (1033/2001), ICCPR, A/59/40 vol. II (21 July 2004) 246 at paras. 7.3, 7.5 and 7.6.

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...
7.3 As to the delay between conviction and the final dismissal of the author's appeal by the Supreme Court (29 September 1995 to 28 January 2000) in case No. 6825/1994, which has remained unexplained by the State party, the Committee notes...that more than two years of this period, from 3 January 1998 to 28 January 2000, relate to the time after the entry into force of the Optional Protocol. The Committee recalls its jurisprudence that the rights contained in article 14, paragraphs 3 (c), and 5, read together, confer a right to review of a decision at trial without delay 16/. In the circumstances, the Committee considers that the delay in the instant case violates the author's right to review without delay and consequently finds a violation of article 14, paragraphs 3 (c), and 5 of the Covenant.
...
7.5 The Human Rights Committee...is of the view that the facts before it disclose violations of articles 14, paragraphs 1, 2, 3, (c), and 14, paragraph (g), read together with articles 2, paragraph 3, and 7 of the Covenant.

7.6 In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective and appropriate remedy, including release or retrial and compensation. The State party is under an obligation to avoid similar violations in the future...

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Notes

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16/ *Lubuto v. Zambia*, case No. 390/1990, Views adopted on 31 October 1995; *Neptune v. Trinidad and Tobago*, case No. 523/1992, Views adopted on 16 July 1996; *Sam Thomas v. Jamaica*, case No. 614/95, Views adopted on 31 March 1999; *Clifford McLawrence v. Jamaica*, case No. 702/96, Views adopted on 18 July 1997; *Johnson v. Jamaica*, case No. 588/1994, Views adopted on 22 March 1996.

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- *Kankanamge v. Sri Lanka* (909/2000), ICCPR, A/59/40 vol. II (29 July 2004) 71 at paras. 2.1, 2.2, 9.2, 9.4, 10 and 11.

...
2.1 The author is a journalist and editor of the newspaper "Ravaya". Since 1993, he has been indicted several times for allegedly having defamed ministers and high-level officials of the police and other departments, in articles and reports published in his newspaper. He claims that these indictments were indiscriminately and arbitrarily transmitted by the

Attorney-General to Sri Lanka's High Court, without proper assessment of the facts as required under Sri Lankan legislation, and that they were designed to harass him. As a result of these prosecutions, the author has been intimidated, his freedom of expression restricted and the publication of his newspaper obstructed.

2.2 At the time of the submission of the communication, three indictments against the author, dated 26 June 1996 (case No. 7962/96), 31 March 1997 (case No. 8650/07), and 30 September 1997 (case No. 9128/97), were pending before the High Court.

...

9.2 On the merits, the Committee first notes that, according to the material submitted by the parties, three indictments were served on the author on 26 June 1996, 31 March 1997 and 30 September 1997 respectively. At the time of the final submissions made by the parties, none of these indictments had been finally adjudicated by the High Court. The indictments were thus pending for a period of several years from the entry into force of the Optional Protocol. In the absence of any explanation by the State party that would justify the procedural delays and although the author has not raised such a claim in his initial communication, the Committee, consistent with its previous jurisprudence, is of the opinion that the proceedings have been unreasonably prolonged, and are therefore in violation of article 14, paragraph 3 (c), of the Covenant.

...

9.4 So far as a violation of article 19 is concerned, the Committee considers that the indictments against Mr. Kankanamge all related to articles in which he allegedly defamed high State party officials and are directly attributable to the exercise of his profession of journalist and, therefore, to the exercise of his right to freedom of expression. Having regard to the nature of the author's profession and in the circumstances of the present case, including the fact that previous indictments against the author were either withdrawn or discontinued, the Committee considers that to keep pending, in violation of article 14, paragraph 3 (c), the indictments for the criminal offence of defamation for a period of several years after the entry into force of the Optional Protocol for the State party left the author in a situation of uncertainty and intimidation, despite the author's efforts to have them terminated, and thus had a chilling effect which unduly restricted the author's exercise of his right to freedom of expression. The Committee concludes that the facts before it reveal a violation of article 19 of the Covenant, read together with article 2(3).

...

10. The Human Rights Committee...is of the view that the facts before it disclose a violation of article 14, paragraph 3 (c), and article 19 read together with article 2 (3) of the International Covenant on Civil and Political Rights.

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

future.

- *Girjadat Siewpersaud et al. v. Trinidad and Tobago* (938/2000), ICCPR, A/59/40 vol. II (29 July 2004) 132 at paras. 6.1, 6.2, 7 and 8.

...
6.1 With regard to the authors' claims under article 9, paragraph 3, the Committee notes the authors were arrested in April 1985, that their trial began on 4 January 1988, and that the authors were kept in pre-trial detention throughout this period. That their pre-trial detention lasted 34 months is uncontested. The Committee recalls that pursuant to article 9, paragraph 3, anyone arrested or detained on a criminal charge shall be entitled to trial within a reasonable time or to release. What period constitutes a "reasonable time" within the meaning of article 9, paragraph 3, must be assessed on a case-by-case basis. A delay of almost three years, during which the authors were kept in custody cannot be deemed compatible with article 9, paragraph 3, in the absence of special circumstances justifying such delay. The Committee finds that, in the absence of any explanation from the State party, a delay of over 34 months in bringing the author to trial is incompatible with article 9, paragraph 3.

6.2 As to the claim of a delay of 4 years and 10 months between conviction and dismissal of the appeal, counsel has invoked article 9, paragraph 3, but as the issues raised clearly relate to article 14, paragraph 3 (c)a and 5, the Committee will examine them under that article. The Committee considers that a delay of 4 years and 10 months between the conclusion of the trial on 19 January 1988 and the dismissal of the authors' appeal on 29 March 1993 is incompatible with the provisions of the Covenant, in the absence of any explanation from the State party justifying the delay. The Committee accordingly concludes that there has been a violation of article 14, paragraph 5 in conjunction with paragraph 3 (c), 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.

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- *Khomidov v. Tajikistan* (1117/2002), ICCPR, A/59/40 vol. II (29 July 2004) 363 at paras. 6.3, 7 and 8.

...
6.3 The author has claimed that her son was detained for one month, during which time he was not informed of the charges against him, and that her son's detention was illegal, in that he was not brought promptly before a judge or other official officer authorized by law to exercise judicial power to review the legality of his detention. In the absence of any State party observations, due weight must be given to the author's allegations. Accordingly, the Committee considers that the facts before it disclose a violation of article 9, paragraphs 1 and 2, of the Covenant.
...
7. The Human Rights Committee...is of the view that the facts before it disclose a violation of articles 7; 9, paragraphs 1 and 2; 14, paragraphs 1, and 3 (b), (e) and (g), read together with article 6, 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. Khomidov with an effective remedy, entailing commutation of his sentence to death, a compensation, and a new trial with all the guarantees of article 14, or, should this not be possible, release. The State party is under an obligation to take measures to prevent similar violations in the future.

- *Marques v. Angola* (1128/2002), ICCPR, A/60/40 vol. II (29 March 2005) 181 at paras. 2.3, 2.4, 2.6, 5.4, 6.2-6.4, 7 and 8.

...
2.3 On 16 October 1999, the author was arrested at gunpoint by 20 armed members of the Rapid Intervention Police and DNIC officers at his home in Luanda, without being informed about the reasons for his arrest. He was brought to the Operational Police Unit, where he was held for seven hours and questioned before being handed over to DNIC investigators, who questioned him for five hours. He was then formally arrested, though not charged, by the deputy public prosecutor of DNIC.

2.4 From 16 to 26 October 1999, the author was held *incommunicado* at the high security Central Forensic Laboratory (CFL) in Luanda, where he was denied access to his lawyer and family and was intimidated by prison officials, who asked him to sign documents disclaiming responsibility of the CFL or the Angolan Government for eventual death or any injuries sustained by him during detention, which he refused to do. He was not informed of the reasons for his arrest. On arrival at the CFL, the chief investigator merely stated that he was being held as a UNITA (National Union for the Total Independence of Angola) prisoner.

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...

2.6 On 25 November 1999, the author was released from prison on bail and informed of the charges against him for the first time. Together with the director, A. S., and the chief editor, A.J.F., of *Agora*, he was charged with "materially and continuously committ[ing] the crimes characteristic of defamation and slander against His Excellency the President of the Republic and the Attorney General of the Republic…by arts. 44, 46 all of Law no 22/91 of June 15 (the Press Law) with aggravating circumstances 1, 2, 10, 20, 21 and 25, all of articles 34 of the Penal Code." The terms of bail obliged the author "not to leave the country" and "not to engage in certain activities that are punishable by the offence committed and that create the risk that new violations may be perpetrated - Art 270 of the Penal Code". Several requests by the author for clarification of these terms were unsuccessful.

...

5.4 Insofar as the author claims that he was not apprised of the formal charges against him until 40 days after his arrest, the Committee recalls that article 14, paragraph 3 (a), of the Covenant does not apply to the period of remand in custody pending the result of police investigations,13/ but requires that an individual be informed promptly and in detail of the charge against him, as soon as the charge is first made by a competent authority. Although the author was formally charged on 25 November 1999, that is, one week after the indictment had been "approved" by the prosecution, he did not raise this delay on appeal. The Committee therefore concludes that this part of the communication is inadmissible under article 5, paragraph 2 (b), of the Optional Protocol.

...

6.2 The Committee notes the author's uncontested claim that he was not informed of the reasons for his arrest and that he was charged only on 25 November 1999, 40 days after his arrest on 16 October 1999. It considers that the chief investigator's statement, on 16 October 1999, that the author was held as a UNITA prisoner, did not meet the requirements of article 9, paragraph 2. In the circumstances, the Committee concludes that there has been a violation of article 9, paragraph 2.

6.3 As regards the author's claim that he was not brought before a judge during the 40 days of detention, the Committee recalls that the right to be brought "promptly" before a judicial authority implies that delays must not exceed a few days, and that *incommunicado* detention as such may violate article 9, paragraph 3.17/ It takes note of the author's argument that his 10-day *incommunicado* detention, without access to a lawyer, adversely affected his right to be brought before a judge, and concludes that the facts before it disclose a violation of article 9, paragraph 3. In view of this finding, the Committee need not pronounce itself on the alleged violation of article 14, paragraph 3(b).

6.4 As to the author's claim that, rather than being detained in custody for 40 days, he should have been released pending trial, in the absence of a risk of flight, the Committee notes that the author was not charged until 25 November 1999, when he was also released

from custody. He was therefore not "awaiting" trial within the meaning of article 9, paragraph 3, before that date. Moreover, he was not brought before a judicial authority before that date, which could have determined whether there was a lawful reason to extend his detention. The Committee therefore considers that the illegality of the author's 40-day detention, without access to a judge, is subsumed by the violations of article 9, paragraphs 1 and 3, first sentence, and that no issue of prolonged pretrial detention arises under article 9, paragraph 3, second sentence.

...

7. The Human Rights Committee...is of the view that the facts before it reveal violations of article 9, paragraphs 1, 2, 3 and 4, and of articles 12 and 19 of the Covenant.

8. In accordance with article 2, paragraph 3, of the Covenant, the author is entitled to an effective remedy, including compensation for his arbitrary arrest and detention, as well as for the violations of his rights under articles 12 and 19 of the Covenant. The State party is under an obligation to take measures to prevent similar violations in the future.

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Notes

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13/ See communication No. 253/1987, *Kelly v. Jamaica*, Views adopted on 8 April 1991, para. 5.8.

...

17/ Communication No. 277/1988, *Terán Jijón v. Ecuador*, Views adopted on 26 March 1992, at para. 5.3.

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- *Rouse v. The Philippines* (1089/2002), ICCPR, A/60/40 vol. II (25 July 2005) 123 at para. 7.4.

...

7.4 In relation to the alleged undue delays in the proceedings, the Committee notes that the Supreme Court delivered its judgement of 10 February 2003, that is over 41 months after the appeal was lodged on 3 September 1999, complemented by appeal briefs, the last of which is dated 25 May 2000. There was thus a delay of two years and eight months between the last appeal brief and the Supreme Court's judgement. Altogether, there was a delay of six and a half years between the author's arrest and the judgement of the Supreme Court. On the strength of the material before the Committee, these delays cannot be attributed to the author's appeals. In the absence of any pertinent explanation from the State party, the Committee concludes that there has been a violation of article 14, paragraph 3(c).