



**International covenant
on civil and political
rights**

Distr.
RESTRICTED*

CCPR/C/90/D/1365/2005
29 August 2007

Original: ENGLISH

HUMAN RIGHTS COMMITTEE

Ninetieth session

9 – 27 July 2007

DECISION

Communication No. 1365/2005

<u>Submitted by:</u>	Souleymane Camara (not represented by counsel)
<u>Alleged victim:</u>	The author
<u>State party:</u>	Canada
<u>Date of communication:</u>	25 May 2004 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 22 February 2005 (not issued in document form)
<u>Date of adoption of decision:</u>	24 July 2007

* Made public by decision of the Human Rights Committee.

Subject matter: Ill-treatment of detainee

Procedural issues: Admissibility

Substantive issues: Torture or cruel, inhuman or degrading treatment or punishment

Articles of the Covenant: 2, 7, 9, 10, 14, 16, 17

Articles of the Optional Protocol: 2, 5, paragraph 2 (b)

[ANNEX]

ANNEX

DECISION OF THE HUMAN RIGHTS COMMITTEE UNDER
THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT
ON CIVIL AND POLITICAL RIGHTS

Ninetieth session

concerning

Communication No. 1365/2005**

Submitted by: Souleymane Camara (not represented by counsel)
Alleged victim: The author
State party: Canada
Date of communication: 25 May 2004 (initial submission)

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

Meeting on 24 July 2007

Adopts the following:

DECISION ON ADMISSIBILITY

1. The author of the communication is Mr. Souleymane Camara, a national of Mali where he is currently residing. He claims to be a victim of violations by Canada¹ of articles 2; 7; 9; 10; 14; 16; and 17, of the International Covenant on Civil and Political Rights. He is not represented by counsel.

The facts as presented by the author

2.1 On or about 10 June 2002, the author was arrested and taken to the South Division Edmonton Police Station, where he was asked to sign a document, failing which he would be detained. He alleges that he did not know why he was arrested and what the document in

** The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Yuji Iwasawa, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley and Mr. Ivan Shearer.

¹ The Covenant and the Optional Protocol to the Covenant both entered into force for the State party on 19 May 1976.

question was. When he refused to sign it, he was placed in a cell, where he was repeatedly asked whether he had changed his mind. When he told the police to stop harassing him, several officers “attacked” him physically, forcing him to the floor, as a result of which he hurt his head and knee. He was then taken to the Downtown Division of the Edmonton Police Station, where his request for medical attention and tablets for a headache were repeatedly denied. The next day, he was brought before a judge who set a date for a hearing². He had an interpreter. The following day a Justice of the Peace ordered his release.

2.2 On or about 12 June 2002, the author was arrested and detained at the South Division Edmonton Police Station for the second time. He allegedly was not informed of the reason for his arrest. One of the officers, assuming that he was from Rwanda or the Congo, allegedly stated that his people were all “paranoid killers”. The author was told in French to undress. When he corrected the police officer’s French, the latter became angry and undressed him, while he was filmed. The author was released after three days, and after posting bail. On 24 September 2002, he was arrested again and released after a few hours³. On 24 December 2002, he complained to the Edmonton Police Service about his treatment on 10 and 12 June 2002. The author alleges that the Crown Office allegedly offered to drop the charges against him, if he agreed to withdraw his charges against the officers of the Edmonton Police Service. He claims that he rejected this deal.

2.3 On 21 August 2003, the Acting Chief of Police informed the author that, following an investigation, his allegations against the police officers, had been dismissed as “not sustained” on all counts. On 4 and 25 September 2003, the author was informed that the rest of his complaints were dismissed, as they had not been sustained or had been withdrawn by the author.

2.4 The author was arrested again on 23 April 2003 and detained at the Edmonton Remand Centre until 9 September 2003. When he complained about the poor quality and insufficient quantity of food at the Centre, the institution’s doctors recommended that a special diet should be provided to him. From 20 May to 6 June 2003, the author alleges to have been denied [sufficient] water and food. He eventually received a special diet from 7 June 2003.

2.5 On 24 May 2003, two of the guards forced the author to undress, while three female inmates and five female guards looked on. On 9, 14 and 19 July 2003, he was allegedly “pepper-sprayed” by guards, locked in a dark and cold cell, handcuffed, blindfolded and forced to walk backwards while his ankles were chained. During the last incident, two guards forced him to lie down on the floor, stood on his back, pulled his ears and bent his wrists until they bled. The author complains that his letters were opened and that on three occasions during his detention, he was attacked by convicted inmates, who injured him twice.⁴

2.6 The author subsequently complained to the Ombudsman. On 2 and 14 July 2003, he was advised that the alleged denial of sufficient water and food would be investigated, while his alleged assault by prison guards was outside the competence of the Ombudsman’s Office as it related to a criminal offence. On 29 July 2003, the author was informed that the investigation would be extended to his allegation that the Director of the Remand Centre did not allow him to

² The author does not say why he was brought before the Court and of what he was charged.

³ He does not say why he was arrested.

⁴ No further details are provided on these alleged assaults.

complain to the police. On 17 September 2003, the Ombudsman closed the file, having established that the author was not denied an adequate diet, but had refused to eat because he wanted a special diet, which was eventually provided to him. He also found that the author had been allowed to complain to the police.

2.7 On 9 September 2003, the author was deported from Canada to Mali⁵. Following his deportation, he appealed the results of the investigation by the Edmonton Police Service (para.2.3) to the Alberta Law Enforcement Review Board. By letter of 13 November 2003, the Board advised him that appellants, as well as the police officers concerned, are required to attend the Board hearing to testify under oath. On the basis of such testimony, the Board would issue a written decision. On 26 May 2004, the Board reminded the author of the procedural requirement to attend his hearing. On the basis of e-mail correspondence with the author, the Board presumed that he was presently unable to appear before the Board and concluded that it was unable to review the matter. On 7 July 2004, the author replied that the reason for his deportation was precisely to obstruct the judicial process by preventing him from pursuing his charges against the police officers. He requested the Board to review his case on the basis of the files available with the Canadian judicial and police authorities. The Board did not act on this request and refused to review his complaint on the basis of a file he sent from Mali.

The complaint

3.1 The author claims that his ill-treatment by the police at the Downtown Division and South Division of the Edmonton Police Station and Remand Service (paras. 2.1, 2.2, 2.4 and 2.5), including the denial of [sufficient] food and water, amounts to a violation of article 7 of the Covenant. In addition, he claims that the Edmonton Police Service failed to investigate his complaints impartially and independently.

3.2 The author also claims that his repeated arrests, without being informed of the reasons, were arbitrary and in breach of article 9, and that the opening of his letters, the ridicule to which he was subjected by female staff when he was in a state of undress, violated article 17.

3.3 The author further claims that his deportation on 9 September 2003, one week before his court hearing, scheduled for 18 September 2003, was planned to deny him his right to equal access to the courts to pursue his charges against the police officers.

3.4 As regards domestic remedies, the author submits that upon return to Mali he met with the Canadian Consul, on 17 September 2003, who advised him that he was not eligible for re-entry into Canada and would, therefore, be unable to attend any court hearings.

State party's submission on admissibility and merits and the author's comments thereon

4.1 On 19 August 2005, the State party contested the admissibility, merits and the facts as presented by the author. It provides detailed information, which it had submitted, on 24 February 2004, to the Special Rapporteur on Torture in response to similar allegations submitted to him. On the facts, the State party submits that the author is a citizen of Mali who entered Canada on a student visa on 11 October 1997, which authorised him to remain until 31 August 2000. On 5

⁵ The author does not say why he was so deported.

December 2000, it was noted that he had overstayed his visa and that he was in Canada without authorization. On 12 December 2000, his student visa was reinstated and he was authorized to remain until 30 April 2002.

4.2 On 10 June 2002, the author was arrested for the alleged assault of his roommate the day before. He was taken to the South Division Edmonton Police Station, where he was charged with assault. After his transfer to the Downtown Division Edmonton Police Station, he was released the next day by a Justice of the Peace by way of recognizance, on various conditions, including the condition that he avoid contact with the complainant of the assault. The author subsequently breached the recognizance on three occasions for which he was arrested on 12 June, and 2 December 2002 and subsequently released. In the meantime, on 18 September 2002, the author's request for an extension of his student visa was refused, as he had failed to appear at the scheduled interview.

4.3 On 2 April 2003, the trial on the assault charge was heard in French, at the author's request, and the judgement was reserved. On 23 April 2003, the author was arrested on four new charges: two relating to defacing of a mosque and two to breaching bail conditions by allegedly contacting the complainant of the original assault. He remained in detention as he could not meet bail. On 25 April 2003, he was arrested by immigration authorities and detained in immigration detention on the basis of a Detention Order, as it was considered unlikely that he would appear for further proceedings. On 27 June 2003, the author was found guilty of the assault and received a suspended sentence of 12 months' probation.

4.4 On 30 July 2003, in light of the author's conviction and proof that he was not a Canadian citizen, a Deportation Order was issued against him. He did not apply for judicial review of the order, but did apply for a Pre-Removal Risk Assessment, without giving any reason why he might require protection from being returned to Mali. On 15 August 2003, it was determined that he was not in need of protection. He did not seek leave to apply for judicial review of this decision either. According to the State party, when foreign nationals are ready for removal but criminal charges remain pending against them, immigration officers review the nature of the charges. If the charges are not serious, the Crown Prosecutor's office may consider staying charges for deportation purposes. As the remaining charges in this case were not considered of a serious nature, the author was deported on 9 September 2003, and the pending charges against him were subsequently stayed by the court on 18 September 2003. The State party denies that the prosecutor in charge of the author's case offered to drop the remaining charges against him in exchange for the author's withdrawal of his complaints against members of the Edmonton Police Service.

4.5 On admissibility, the State party submits that the author has not sufficiently substantiated his allegations of violations under articles 7 and 10, paragraph 1. His allegations are uncorroborated and contradicted by documentary evidence. On 10 June 2002, after being taken to the South Division Police station, he was initially cooperative. The arresting officer tried to release him from custody with an Appearance Notice, on the basis of which an accused may be released from custody. Although the content of the Note was explained in both English and French, the author refused to sign it and refused to attend court on the date specified.

4.6 Due to the author's insistence that he would not attend court, the arresting officer decided to bring him before a Justice of the Peace and requested that he be released on conditions. For this purpose, he had to be transferred to the Downtown Division. He was held there in a cell while awaiting transportation. When the arresting officer was closing the door of the cell, the author tried to escape. For this reason, the officer in question considered that he should be searched and requested the assistance of four other officers. Despite repeated requests to cooperate in a search, the author refused to comply. Two officers handcuffed him, with his hands behind his back. He was then placed on his stomach and searched. No more force was used than was necessary to control the author. A sergeant watched the search and considered that it was conducted properly. The subsequent investigation determined that the author had a minor abrasion to his knee, which did not need medical attention. As for his alleged headache, the policy of the Edmonton Police Service is only to provide prescribed medication to prisoners held in temporary holding facilities. His headache was not considered to be an emergency requiring medical assistance.

4.7 The author's complaint was investigated by the Internal Affairs Section of the Edmonton Police Service, which indicated that the complaint related to one particular officer who participated in the restraint and search. The investigation indicated that, due to the absence of definitive evidence to either prove or disprove the allegation, the complaint was "not sustained". The State party submits that in the circumstances of the case, the action taken by the officers was reasonable, proportionate and not an excessive use of force. The author did not complain of being hit or physically abused nor did he exhibit injuries that could be attributed to physical abuse. The State party adds that it investigated the author's allegations as expeditiously and thoroughly as possible.

4.8 As to his claim that he was denied sufficient food and water, between 19 May and 9 June 2003, the State party submits that, on 23 April 2003, the author was medically examined after admission to the remand centre. He requested a pork-free diet for religious reasons, which was approved. On 20 May 2003, a correctional officer interviewed the author with respect to his refusal to eat his supper, as the records indicated that he had missed three consecutive meals. The author replied that he was not eating as he was not hungry. Pursuant to standard procedure, he was transferred to the infirmary to be monitored for food and fluid intake on a 24-hour basis. The author specified that he would eat the following types of food: French bread for breakfast, no bread for lunch and supper and rice, chicken, fish, beef, vegetables, potatoes and fruit. The State party explains that the menu at the Edmonton Remand Centre is developed by a dietician on the basis of established nutritional guidelines. The same menu is used for all inmates, with exceptions for medical or religious requirements. The author continued to refuse meals, stating that he would only eat what he had specifically requested. The records indicate that he was offered food and fluids at every meal. Special food items were approved for him on 29 May, but he only drank a nutritional supplement and ate sporadically during this time. As he complained about the size of the meals, from 4 June his portions were doubled to encourage him to eat. The State party submits that at no time during the period in question did the author complain about being "denied food and water". While it is well documented that he did not eat many meals, it is clear that this was his own choice. Due to his refusal to eat, substantial efforts were made to monitor his physical and mental health and to encourage him to eat.

4.9 As to the complaint of alleged “assaults” by guards on 9, 14 and 19 June 2003, the State party submits that this complaint is unsubstantiated, as the author has failed to provide the minimum amount of detail requested. Nevertheless, it submits that the records suggest the following. On 10 June 2003, the author was admitted to the health unit for observation, as he had missed three consecutive meals. There is no indication of any other incident involving the author on this day or on 14 June. However, the author may have been mistaken about the date as, on 15 June 2003, the record indicates that he had to be restrained after spitting at the cell camera and threatening staff. He managed to wiggle out of a belly chain and, as staff attempted to retrieve the chain, he waved it around and refused to comply with instructions. He was warned that Oeoresin Capsicum spray (OC Spray) would be administered if he did not comply with directions. As he refused to comply, the spray was used and he was placed in handcuffs. He was immediately decontaminated and examined by a duty nurse, who noted that there were no medical concerns. The State party submits that the use of the OC Spray (an organic, non-chemical product colloquially known as “pepper spray”) was measured, proportional and reasonable in response to the author’s behaviour and in full compliance with the guidelines and limitations on its use imposed by policy documents.⁶ The police investigated this incident and determined that there was insufficient evidence to support criminal charges against any of the Remand Centre staff.

4.10 The State party refers to another recorded incident on 9 June 2003. At 10.00 am, the author created a disturbance by banging and kicking his cell door and demanding his breakfast. His behaviour continued despite being told that breakfast was served at 11.00 am on the weekend. As a result, the Emergency Response team arrived to remove him from the unit. They asked him to kneel on his bunk to be handcuffed. He refused and was warned three times that if he did not comply, OC Spray would be administered. It was subsequently administered and when it took effect, he was handcuffed and examined by a nurse. According to the State party, the author complained about this incident to the police, which, following an investigation, concluded that there was insufficient evidence to support criminal charges. The use of the spray was justified, reasonable, and was neither arbitrary nor excessive.

4.11 As to the allegation that, on 24 May 2003, the author was seen in a state of undress by female staff, the State party notes that there are no records of any complaint made to the Director of the Remand Centre by the author concerning this alleged incident, despite prior advice from the Ombudsman that he should do so before involving the Ombudsman himself. The State party submits that this complaint is inadmissible for non-exhaustion of domestic remedies. In the alternative, it is unsubstantiated for purpose of admissibility. The records indicate that the author created the conditions of undress by stripping himself of the security clothing that he was requested to wear while housed on Unit 2D (a mental health unit). He wrapped himself in a security blanket instead. During the night of 23 to 24 May, he covered up the lens of the camera in his unit, after which he was temporarily taken to another unit. Upon being returned to his cell, he began ripping up his blanket to cover the camera. The blanket was therefore removed from him. On 25 May, he removed the mattress cover from his bed and began “wearing it”. Later that day, his blanket was returned but he still refused to wear the security clothing. While it is possible that the author was seen in a state of undress by female staff or inmates, this was a result of his own actions and not a deliberate attempt to degrade or humiliate him by the guards.

⁶ The State party has provided a number of provincial policy documents on the use of this spray.

4.12 As to the complaint that the author's arrests were arbitrary, the State party submits that the Internal Affairs Section of the Edmonton Police Service investigated both allegations and found that with respect to the first arrest, the allegation was unfounded, as the author had been informed of the reasons for his arrest in English and French. As to the second arrest, after speaking with the investigating officer, the author decided not to proceed with it. In addition, the author never complained in domestic proceedings that he was not informed of the reasons for his arrest. Thus, the State party submits these complaints are inadmissible on grounds of non-substantiation and non-exhaustion of domestic remedies.

4.13 As to the claims under article 14 that the author's deportation was "planned" to prevent him testifying against members of the police service, the State party submits that the author's complaints against the police and remand staff are administrative in nature and thus not "suits at law" within the meaning of article 14, paragraph 1. In the alternative, this claim is insufficiently substantiated. At the time of his deportation, the author's complaints had already been investigated and he had been informed of the findings with respect to two of the allegations. While his claim suggests that he intended to testify about the alleged police abuses in court, he could previously have done so at the trial of his assault charge, which had taken place on 2 April 2003. Criminal courts have an inherent power to stay or dismiss charges where police conduct merits punishment. In the event that the author's complaint is based on his apparent inability to pursue his appeal to the Law Enforcement Review Board, the State party submits that the author had been informed by the Board, in its 13 November 2003 letter, that he was required personally to attend the hearing, so as to give evidence under oath. He could have requested the Board to make alternative arrangements in the specific circumstances of the case to proceed with the appeal despite his inability personally to attend, or he could have attempted to apply for judicial review of the Board's decision to terminate consideration of his appeal.

4.14 As to his claims under articles 14, paragraph 1, and 16 the State party submits that, as the author has not indicated how these rights have been violated, these claims are inadmissible on grounds of non-substantiation. As to his claim, under article 17, that his letters were opened, the State party submits that, as there are no records to indicate that the author ever complained to the Director of the Remand Centre, this claim is inadmissible for non-exhaustion. In the alternative, it submits that the opening of prisoners' correspondence is authorized and strictly limited by provincial legislation and subject to detailed policy controls.⁷ With respect to the claim of a violation of the same article on the grounds that he was seen in a state of undress by female staff and inmates, the State party refers to the facts as set out above. As to the claim under article 2, the State party submits that article 2, paragraph 3, does not recognize an independent right to a remedy, and is thus incompatible with the provisions of the Covenant.

5. In his comments of 21 July 2006 on the State party's submission, the author disputes the facts as presented by it and reiterates his initial claims.

⁷ It refers to the Committee jurisprudence (Case no. 74/1980, *Estrella v. Uruguay*, Views adopted on 29 March 1983, para. 9.2) recognizing the legitimacy of measures of control over prisoner's correspondence, and considers this complaint non-substantiated.

Issues and proceedings before the Committee

Consideration of admissibility

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

The Committee notes that each of the author's claims is disputed by the State party, which has provided substantial information to explain every incident alleged to have violated his rights. Other than denying the State party's version of all the events, the author has failed to corroborate or provide any evidence, medical or otherwise, of the ill-treatment he is alleged to have suffered at the hands of the State party's police authorities. The Committee also notes that the majority of these claims, in particular those concerning physical abuse and denial of adequate food and water were investigated either by the Ombudsman or the Edmonton Police Service, which found that none of the claims were substantiated. The author claims that these bodies were neither impartial nor independent but does not explain on what grounds he makes this claim. The fact that an investigation does not find for the complainant does not in itself demonstrate a lack of independence on the part of the investigating body. According to the State party, the claims which were not investigated were either not advanced at all by the author before any domestic authority, or were not made to the relevant authority (arbitrary arrest, state of undress and letter opening). The author does not dispute this as to the complaint that the author was deported to prevent his testifying before a court, the Committee notes that the author has not explained what proceedings before which court was scheduled for hearing at the time of his deportation. This complaint is therefore inadmissible for non-substantiation.

6.2 For all of the aforementioned reasons, the Committee finds that the author has failed to substantiate any of his claims, for purpose of admissibility, and that additionally he has failed to exhaust domestic remedies with respect to his claims relating to the alleged arbitrary arrests, the forced removal of clothing and the opening of his letters. Thus, the communication is inadmissible under article 2; and article 5, paragraph 2 (b), of the Optional Protocol.

7. The Human Rights Committee therefore decides:

- (a) That the communication is inadmissible under article 2, and article 5, paragraph 2 (b), of the Optional Protocol;
- (b) That this decision shall be communicated to the State party and to the author.

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