TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

III. JURISPRUDENCE

ICCPR

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

...

9 ... (e)

(i) Luis María Bazzano Ambrosini was arrested on 3 April 1975 on the charge of complicity in "assistance to subversive association". Although his arrest had taken place before the coming into force of the International Covenant on Civil and Political Rights and of the Optional Protocol thereto, on 23 March 1976, his detention without trial continued after that date. 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. As a result of the maltreatment received; he has suffered permanent injury, as evidenced by the fact that one of his legs is several centimetres shorter than the other. In his double quality as former Deputy and as an accused tried for a political offence, he was deprived of all his political rights...

...

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 Maria Bazzano Ambrosini,

of article 7 and article 10 (1), because he was detained under conditions seriously detrimental to his health...

(ii) with respect to Jose Luis Massera,

of article 7 and article 10 (1), because during his detention he was tortured as a result of which he suffered permanent physical damage...

- *Perdomo v. Uruguay* (R.2/8), ICCPR, A/35/40 (3 April 1980) 111 at paras. 14(i), 14(ii), 15 and 16.

...

14. The Committee therefore 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. Throughout his period of detention and during his trial he had no effective access to legal assistance. Although he had served his sentence on 2 February 1979, he was not released until 1 July 1979. His present state of physical and mental ill-health for which no other explanation has been offered by the Uruguayan Government, confirms the allegations of ill-treatment which he suffered while under detention.

(ii) Beatriz Weismann de Lanza was arrested for investigation on 17 February 1976 and detained under the prompt security measures, as stated by the Government. She was kept *incommunicado* for many months. 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 judge at which time her offence was

> deemed to be purged by the period spent in custody pending trial. She was, however, kept in detention until 11 February 1979. Throughout her period of detention and during her trial she had no effective access to legal assistance. With regard to her allegations that during her detention she was subjected to ill-treatment and to physical and mental torture, she states that she complained to the military Judge, but there is no evidence that her complaints have been investigated.

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

...[I]t appears from the above findings of the Committee (para. 14) that various guarantees of due process have not been effectively observed, and that a number of quite specific allegations of ill-treatment and torture have only been deemed by the Government "not worthy of any further comment". In its decision of 26 October 1979 concerning case No. R.2/9, the Committee has emphasized that denials of a general character do not suffice. Specific responses and pertinent evidence (including copies of the relevant decisions of the courts and findings of any investigations which have taken place into the validity of the complaints made) in reply to the contentions of the author of a communication are required. The Government did not furnish the Committee with such information. Consequently, the Committee cannot but draw appropriate conclusions on the basis of the information before it.

...

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

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

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

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See also:

- *Ramírez v. Uruguay* (R.1/4), ICCPR, A/35/40 (23 July 1980) 121 at paras. 15, 17 and 18.
- *De Bouton v. Uruguay* (R.9/37), ICCPR, A/36/40 (27 March 1981) 143 at paras. 10-13.
- *Izquierdo v. Uruguay* (R.18/73), ICCPR, A/37/40 (1 April 1982) 179 at paras. 7.8, 7.9 and 9.

- *Motta v. Uruguay* (R.2/11), ICCPR, A/35/40 (29 July 1980) 132 at paras. 14-16.

...

14. As regards the serious allegations of ill treatment and torture claimed by Mr. Grille Motta to have continued for about 50 days after his arrest on 7 February 1976, the Committee notes that it follows from this account that such treatment continued after 23 March 1976 (the date of the entry into force of the Covenant and the Optional Protocol for Uruguay). Furthermore, in his communication of 25 April 1977, which was transmitted by the Committee to the Uruguayan Government, Mr. Grille Motta named some of the officers of the Uruguayan Police who he stated were responsible. The State party has adduced no evidence that these allegations have been duly investigated in accordance with the laws to which it drew attention in its submission of 9 October 1979 in case No. 9/1977. A refutation of these allegations in general terms is not sufficient. The State party should have investigated the allegations in accordance with its laws and its obligations under the Covenant and the Optional Protocol and brought to justice those found to be responsible.

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

16. The Human Rights Committee acting under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights is of the view that these facts, in so far as they have occurred after 23 March 1976 (the date on which the Covenant entered into force in respect of Uruguay), disclose violations of the Covenant, in particular:

> of Articles 7 and 10 (1), on the basis of evidence of torture and inhuman treatment, which has not been duly investigated by the Uruguayan

Government and which is therefore unrefuted...

- *Weinberger v. Uruguay* (R.7/28), ICCPR, A/36/40 (29 October 1980) 114 at paras. 12 and 16.

...

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

...

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

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

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

...

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

...

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

- *Burgos v. Uruguay* (R.12/52), ICCPR, A/36/40 (29 July 1981) 176 at paras. 2.3,10.2, 11.3, 11.6, and 13.

...

2.3 The author asserts that her husband was subjected to torture and ill-treatment as a consequence of which he suffered a broken jawbone and perforation of the eardrums. In substantiation of her allegations the author furnishes detailed testimony submitted by six ex-detainees who were held, together with Mr. López Burgos, in some of the secret detention places in Argentina and Uruguay, and who were later released...Some of these witnesses describe the arrest of Mr. López Burgos and other Uruguayan refugees at a bar in Buenos Aires on 13 July 1976; on this occasion his lower jaw was allegedly broken by a blow with the butt of a revolver; he and the others were then taken to a house where he was interrogated, physically beaten and tortured. Some of the witnesses could identify several Uruguayan officers...The witnesses assert that Mr. López Burgos was kept hanging for hours with his arms behind him, that he was given electric shocks, thrown on the floor, covered with chains that were connected with electric current, kept naked and wet; these tortures allegedly continued for ten days until Lopez Burgos and several others were blindfolded and taken by truck to a military base adjacent to the Buenos Aires airport; they were then flown by an Uruguayan plane to the Base Aérea Militar No. 1, adjacent to the Uruguayan National Airport at Carrasco, near Montevideo. Interrogation continued, accompanied by beatings and electric shocks; one witness alleges that in the course of one of these interrogations the fractured jaw of Mr. López Burgos was injured further. The witnesses describe how Mr. López Burgos and 13 others were transported to a chalet on Shangrilá Beach and that all 14 were officially arrested there on 23 October 1976 and that the press was informed that "subversives" had been surprised at the chalet while conspiring. Four of the witnesses further assert that López Burgos and several others were forced under threats to sign false statements which were subsequently used in the legal proceedings against them and to refrain from seeking any legal counsel other than Colonel Mario Rodriquez. Another witness adds that all the arrested, including Mónica Soliño and Inés Quadros, whose parents are attorneys, were forced to name "*ex officio*" defence attorneys.

...

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. López Burgos was treated for a broken jaw in a military hospital from 5 February to 7 May 1977.

...

11.3 As regards the allegations of ill-treatment and torture, the Committee notes that the author has submitted detailed testimony from six ex-detainees who were held, together with López Burgos, in some of the secret detention places in Argentina and Uruguay. The Committee notes further that the names of five Uruguayan officers allegedly responsible for or personally involved in the ill-treatment are given. The State party should have investigated the allegations in accordance with its laws and its obligations under the Covenant and the Optional Protocol. As regards the fracture of the jaw, the Committee notes that the witness testimony submitted by the author indicates that the fracture occurred upon the arrest of López Burgos on 13 July 1976 in Buenos Aires, when he was physically beaten. The State party's explanation that the jaw was broken in the course of athletic activities in the prison seems to contradict the State party's earlier statement that the injury occurred prior to his "*reclusión*". The State party's submission of 14 December 1979 uses "*reclusión*" initially to mean imprisonment, e.g. "*Establecimiento Militar de reclusion*". The term reappears six lines later in the same document in connexion with "*Antecedentes personales anteriores a su reclusión*". The Committee is inclined to believe that "*reclusión*" in this context means imprisonment and not hospitalization as contended by the State party in its submission of 5 May 1981. At any rate, the State party's references to a medical report cannot be regarded as a sufficient refutation of the allegations of mistreatment and torture.

...

11.6 The Committee has considered whether acts and treatment, which are *prima facie* not in conformity with the Covenant, could for any reasons be justified under the Covenant in the circumstances of the case. The Government of Uruguay has referred to provisions, in Uruguayan law, of prompt security measures. However, 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 in relation thereto. 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 the communication discloses violations of the Covenant, in particular:

> of article 7 because of the treatment (including torture) suffered by López Burgos at the hands of Uruguayan military officers in the period from July to October 1976 both in Argentina and Uruguay...

- *Setelich/Sendic v. Uruguay* (R.14/63), ICCPR, A/37/40 (28 October 1981) 114 at paras. 16.1, 16.2 and 20.

...

16.1 Events prior to the entry into force of the Covenant: Raúl Sendic Antonaccio, a main founder of the *Movimiento de Liberacion Nacional* (MLN) - Tupamaros, was arrested in Uruguay on 7 August 1970. On 6 September 1971, he escaped from prison, and on 1 September 1972 he was re-arrested after having been seriously wounded. Since 1973 he has been considered as a "hostage", meaning that he is liable to be killed at the first sign of action by his organization, MLN (T).

Between 1973 and 1976, he was held in five penal institutions and subjected in all of them to mistreatment (solitary confinement, lack of food and harassment). In one of them, in 1974, as a result of a severe beating by the guards, he developed a hernia.

16.2 Events subsequent to the entry into force of the Covenant: In September 1976, he was transferred to the barracks of Ingenieros in the city of Paso de los Toros. There, from February to May 1978, or for the space of three months, he was subjected to torture ("*plantónes*", beatings, lack of food). On 28 November 1979 (date of the author's initial communication), his whereabouts were unknown. He is now detained in the *Regimiento-Pablo Galarza No. 2*, Department of Durazno, in an underground cell. His present state of health is very poor (because of his hernia, he can take only liquids and is unable to walk without help) and he is not being given the medical attention it requires. In July 1980, he was sentenced to 30 years' imprisonment plus 15 years of special security measures.

...

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

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

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- *Gonzalez v. Uruguay* (R.2/10), ICCPR, A/37/40 (29 March 1982) 122 at paras. 1.2 and 15.

...

1.2 The authors of the communication state that their father was arrested in Montevideo on 21 October 1975 without any formal charges brought against him. Although the fact of his arrest and the place of his imprisonment were not made public, the writers claim that from information provided by eye-witnesses arrested at the same time and subsequently released, it can be affirmed that their father was first detained in a private house and afterwards at the *Battalon de Infanteria No.3*. There he was allegedly subjected to beatings and electric shocks, forced to remain standing for a total than 400 hours, and strung up for long periods, although shortly before his arrest he had undergone a heart operation which...made it necessary for him to observe very strict rules regarding work, diet and medication. On 14 December 1975 he was transferred to the *Batallon de Artilleria No.5*, where he remained handcuffed, hooded and in absolute solitary confinement. He was later moved to the Libertad prison. He was detained under the "prompt security measures" and was not brought before a judge until over 16 months after his arrest, when he was ordered to be tried, allegedly on no other charge than that of his public and well-known trade union and political militancy. He has been deprived of his political rights under *Acta Institutional No.4* of 1 September 1976.

...

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

...

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

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

...

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

depends on information exclusively in the hands of the State party, the Committee may consider such allegations as substantiated in the absence of satisfactory evidence and explanations to the contrary submitted by the State party.

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

14. It is therefore the Committee's view that the information before it reveals breaches of articles 7, 9 and 10(1)...

- *Masiotti v. Uruguay* (R.6/25), ICCPR, A/37/40 (26 July 1982) 187 at paras. 11 and 13.

...
11. Carmen Amendold Massiotti was arrested in Montevideo on 8 March 1975, kept *incommunicado* until 12 September that year and subjected to severe torture. On 17 April 1975 she was brought before a military judge. On 12 September she was again brought before a military judge and tried for “assistance to illegal association” and “contempt for the armed forces”. Until 1 August 1977 she served her sentence at the women's prison "*Ex Escuela Naval Dr. Carlos Nery*". During the rainy period the water was 5 to 10 cm deep on the floor of the cells. In three of the cells, each measuring 4m by 5m, 35 prisoners were kept. The prison had no open courtyard and the prisoners were kept indoors under artificial light all day. On 1 August 1977 Carmen Amendola Massiotti was transferred to Punta Rieles prison. There she was kept in a hut measuring 5m by 10m. The place was overcrowded with 100 prisoners and the sanitary conditions were insufficient. She was subjected to hard labour and the food was very poor. The prisoners were constantly subjected to interrogations, harassment and severe punishment. Despite having served her sentence on 9 November 1977, she was kept in detention until 11 or 12 December 1977 when the choice was offered to her of either remaining in detention or leaving the country. She opted for the latter and obtained political asylum in the Netherlands.
...
13. The Human Rights Committee...is of the view that the facts as found by the Committee, in so far as they continued or occurred after 23 March 1976 (the date on which the Covenant and the Optional Protocol entered into force for Uruguay) disclose the following violations

of the International Covenant on Civil and Political Rights,

In the case of Carmen Amendola Massiotti:

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

- *Marais v. Madagascar* (49/1979) (R.12/49), ICCPR, A/38/40 (24 March 1983) 141 at paras. 17.4, 18.2 and 19.

...
17.4 In December 1979, Dave Marais was transferred from the Antananarivo Prison to a cell measuring lm by 2m in the basement of the political police prison at Ambohibao and has been held *incommunicado* ever since, except for two brief transfers to Antananarivo for trial proceedings.
...
18.2 With regard to the burden of proof, the Committee has already established in its views in other cases (e.g., R. 7/30) that the said burden cannot rest on the author of the communication alone, especially considering that the author and the State party do not always have equal access to the evidence and that frequently the State party alone has access to relevant information. It is implicit in article 4 (2) of the Optional Protocol that the State party has the duty to investigate in good faith all allegations of violation of the Covenant made against it and its authorities, and to furnish to the Committee the information available to it.
...
19. The Human Rights Committee...is of the view that the communication discloses violations of the Covenant, in particular,

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

- *Estrella v. Uruguay* (74/1980) (R.18/74), ICCPR, A/38/40 (29 March 1983) 150 at paras. 8.3- 8.5, 9.1, 9.2 and 10.

...
8.3 On 15 December 1977, at a time when the author was about to leave Uruguay, he and his friend, Luis Bracony, were kidnapped at his home in Montevideo by some 15 strongly armed individuals in civilian clothes. They were brought blindfolded to a place where he

recognized the voices of Raquel Odasso and Luisana Olivera. There the author was subjected to severe physical and psychological torture, including the threat that the author's hands would be cut off by an electric saw, in an effort to force him to admit subversive activities. This ill-treatment had lasting effects, particularly to his arms and hands.

8.4 On 23 December 1977, the author was transferred to a military barracks, probably of Batallon 13, where he continued to be subjected to ill-treatment. In particular, he was threatened with death and he was denied medical attention. On 20 January 1978 he was taken to Libertad prison. He spent the first 10 days in solitary confinement in a cell which was a kind of cage in a section known as "*La Isla*". He remained imprisoned at Libertad until 13 February 1980.

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

...

9.1 ...[T]he Committee is in a position to conclude that the conditions of imprisonment to which Miguel Angel Estrella was subjected at Libertad Prison were inhuman...

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

...

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

> ...
> of article 7, because Miguel Angel Estrella was subjected to torture during the first days of his detention (15-23 December 1977);
> ...
> of article 17 read in conjunction with article 10(1), because of the extent to

which his correspondence was censored and restricted at Libertad prison...

- *Vasilskis v. Uruguay* (80/1980) (R.20/80), ICCPR, A/38/40 (31 March 1983) 173 at paras. 2.6, 2.7, 9.3, 10.4 and 11.

...

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

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

...

9.3 Events subsequent to the entry into force of the Covenant: Judgement was pronounced by the court of first instance on 14 December 1977. She was sentenced to 28 years of rigorous imprisonment and 9 to 12 years of precautionary detention. The trial on appeal took place in May 1980 and the sentence was raised to 30 years and 5 to 10 additional years of precautionary detention (*medidas eliminatives de seguridad*). The Military Court appointed Colonel Otto Gilomen as defence counsel, although he was not a lawyer. The trial took place in secrecy and not even the closest relatives of the accused were present.

...

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

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

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

See also:

- *Larrosa v. Uruguay* (88/1981) (R.22/88), ICCPR, A/38/40 (29 March 1983) 180 at paras. 10.2, 10.3, 11.3, 11.5 and 12.

- *Quinteros v. Uruguay* (107/1981) (R.24/107), ICCPR, A/38/40 (21 July 1983) 216 at paras. 1.5, 11, 12.3, and 13-16.

TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

...

1.5 ...Christina Marquet Navarro...states that she personally knew Elena Quinteros...[S]he could see Elena Quinteros' state of health was extremely poor "as a result of the brutal torture to which she had been and was being subjected daily"...

...

11. ...In cases where the author has submitted to the Committee allegations supported by substantial witness testimony, as in this case, and where further clarification of the case depends on information exclusively in the hands of the State party, the Committee may consider such allegations as substantiated in the absence of satisfactory evidence and explanations to the contrary submitted by the State party.

...

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

...

13. It is, therefore, the Committee's view that the information before it reveals breaches of articles 7, 9 and 10 (1) of the International Covenant on Civil and Political Rights.

14. With regard to the violations alleged by the author on her own behalf, the Committee notes that, the statement of the author that she was in Uruguay at the time of the incident regarding her daughter, was not contradicted by the State party. The Committee understands the anguish and stress caused to the mother by the disappearance of her daughter and by the continuing uncertainty concerning her fate and whereabouts. The author has the right to know what has happened to her daughter. In these respects, she too is a victim of the violations of the Covenant suffered by her daughter in particular, of article 7.

15. The Human Rights Committee reiterates that the Government of Uruguay has a duty to conduct a full investigation into the matter. There is no evidence that this has been done.

16. The Human Rights Committee, acting under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights, therefore concludes that responsibility for the disappearance of Elena Quinteros falls on the authorities of Uruguay and that, consequently, the Government of Uruguay should take immediate and effective steps (a) to establish what has happened to Elena Quinteros since 28 June 1976, and secure her release; (b) to bring to justice any persons found to be responsible for her disappearance and ill-treatment; (c) to pay compensation for the wrongs suffered; and (d) to ensure that similar violations do not occur in the future.

TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

- *Viana v. Uruguay* (110/1981) (R.25/110), ICCPR, A/39/40 (29 March 1984) 169 at paras. 2.7, 13.2, 14 and 15.

...

2.7 The author alleges that in 1976 he was subjected to psychiatric experiments (giving the name of the doctor) and that for three years, against his will, he was injected with tranquilizers every two weeks. He alleges in this connection that in May 1976 when he put up resistance to the injections, Captain X (name is given) ordered a group of soldiers to subdue him forcibly in order to inject the drug and that he was subsequently held *incommunicado* in a punishment cell for 45 days. He further claims, without providing any detail, that on 14 and 15 April 1977 he was interrogated and subjected to torture at Libertad prison, that on 22 November 1978 he was again subjected to torture (giving the names of his torturers in both instances), that he started a hunger strike protesting against this ill-treatment and that in retaliation he was held *incommunicado* in a punishment cell for 45 days without any medical attention. He claims that in April 1980 he was again held *incommunicado* because he had spoken with members of the International Red Cross visiting Libertad prison. The author lists the names of several Uruguayan officials who allegedly practised torture.

...

13.2 Antonio Viana Acosta was seized by a joint Uruguayan-Argentinian commando on 24 February 1974 at his home in Buenos Aires, Argentina, and was flown on 4 April 1974 to Uruguay, where he was detained in custody. He was subsequently held at various places of detention in Uruguay until 23 December 1974 when he was taken to Libertad prison where he remained until his release from prison on 13 February 1981. On 26 April 1976 he was taken before a military tribunal of first instance where he replied to a questionnaire prepared by his defence lawyer in the presence of a judge. He was thereafter taken back to Libertad prison and held *incommunicado* for several weeks. He was charged with subversive association and sentenced by the military tribunal of first instance to seven years' imprisonment. On 18 April 1977, Antonio Viana Acosta was brought before the Supreme Military Tribunal where new charges were brought against him. He was forced to accept a military *ex-officio* counsel, Colonel Otto Gilomen, although a civilian defence lawyer, Jose Korsenak Fuks, was ready to take up his defence. He was sentenced to 14 years' imprisonment. On three occasions, one starting in May 1976, one in November 1978 and one in April 1980, he was held *incommunicado* in a punishment cell. He was released from detention on 13 February 1981. On 14 April 1981 he left Uruguay.

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

Committee, unsubstantiated. Nevertheless, the information before the Committee evidences that Antonio Viana Acosta was subjected to inhuman treatment.

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

> - articles 7 and 10 (1) because Antonio Viana Acosta was subjected to inhuman treatment...

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

...

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

11. In formulating its views the Human Rights Committee also takes into account the failure of the State party to furnish any information and clarifications necessary for the Committee to facilitate its tasks. In the circumstances, due weight must be given to the authors' allegation. It is implicit in article 4 (2) of the Optional Protocol that the State party has the duty to investigate in good faith all allegations of violation of the Covenant made against it and its authorities, and to furnish to the Committee the information available to it. In no circumstances should a State party fail to duly investigate and to properly inform the Committee of its investigation of allegations of ill-treatment when the person or persons allegedly responsible for the ill-treatment are identified by the author of a communication.

TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

The Committee notes with concern that, in spite of its repeated requests and reminders and in spite of the State party's obligation under article 4 (2) of the Optional Protocol, no submission whatever has been received from the State party in the present case.

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

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

...

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

- *M. F. v. The Netherlands* (173/1984), ICCPR, A/40/40 (2 November 1984) 213 at paras. 2.1, 2.2 and 4.

...

2.1 The author states that after political persecution and detention in Chile, he left the country on 26 July 1980 on a valid passport and flew to Spain, where he resided until March 1981, when he traveled to Belgium and subsequently to Den Helder, in the Netherlands. On 1 June 1981, he filed an application for political asylum in the Netherlands. On 15 September 1982, his requests for a residence permit and refugee status were turned down by administrative decree on the grounds that he had not belonged to an opposition party, had been able to leave Chile without objection from the authorities, and has sojourned in Spain and Belgium prior to entering the Netherlands. The author's lawyer appealed against the administrative decree on 22 October 1982, contending that the author had been a member of a resistance group and that the Chilean Government had a practice of inducing "undesirable elements" to leave the country. On 16 June 1983, a hearing took place before a Standing Consultative Committee for Alien Affairs of the Ministry of Justice, and on 16 September 1983, the Deputy Minister of Justice by administrative decree rejected the request for asylum. An appeal was lodged against the decree on 14 October 1983, before an "independent judge" (name of court not given), but it appears that this procedure has not been concluded. The Deputy Minister of Justice, bypassing the appeal, ordered the expulsion of the author by 3 November 1983 at the latest. Thereupon, the author initiated a separate court procedure

against the State of the Netherlands, seeking an injunction against the expulsion order, at least until the appeal was decided. On 17 January 1984, in an interim judgement, the president of the Court in The Hague stated that the author did not qualify for refugee status. On 15 March 1984, the Court ruled that the author's submission that he suffered from a mental illness and that this should be considered in his favour did not constitute a ground barring expulsion. Therefore, on 29 March 1984, the Deputy Minister of Justice instructed the local police to expel the author, stipulating that an appeal against the judgement of the president of the Court could not delay the process of expulsion. A further appeal against the judgement of 15 March 1984 was lodged on 24 May 1984 at a Superior Court in the Hague. It appears that this appeal is still pending.

2.2 The author claims that the following provisions of the International Covenant on Civil and Political Rights have been violated...article 7, because the author's expulsion would now constitute cruel and inhuman treatment...

...

4. A thorough examination of the communication has not revealed any facts in substantiation of the author's claim that he is a victim of a breach by the State party of any rights protected by the Covenant. In particular, it emerges from the author's own submission that he was given ample opportunity in formal proceedings, including oral hearings, to present his case for sojourn in the Netherlands. The Committee, accordingly, concludes that the author has no claim under article 2 of the Optional Protocol.

- *Wight v. Madagascar* (115/1982), ICCPR, A/40/40 (1 April 1985) 171 at paras. 15.2 and 17.

...

15.2 John Wight, a South African national, was the pilot of a private South African aircraft which, *en route* to Mauritius, made an emergency landing in Madagascar on 18 January 1977. A passenger on the plane, Dave Marais, Jr., a South African national, another passenger, Ed Lappeman, a national of the United States of America, and John Wight were tried and sentenced to five years' imprisonment and a fine for overflying the country without authority and thereby endangering the external security of Madagascar. On 19 August 1978, while serving his sentence, John Wight escaped from the Antananarivo Central Prison, was subsequently apprehended, tried on charges of prison-breaking and, on 15 May 1981, sentenced to an additional two years' imprisonment. After his recapture in September 1978, John Wight was kept in a solitary room at the political police prison at Ambohibao (DGID), chained to a bed spring on the floor, with minimal clothing and severe rationing of food, for a period of 3 1/2 months. During this period and until July 1979 (10 months) he was held *incommunicado*. He was then held from July 1979 to November 1981 in a prison at Manjakandriana where conditions were better. In November 1981 he was again transferred

to the DGID prison where he was kept *incommunicado* in a basement cell measuring 2 m by 11/2 m in inhuman conditions for a period of one month. In January 1982, he was moved from the basement cell to a room measuring 3 m by 3 m, which he shared with Dave Marais until their release. Although they were not allowed out of the room for the first 18 months of this period, John Wight acknowledges that the conditions were otherwise satisfactory and the treatment good. They were now allowed for the first time since their arrest to correspond with their families. John Wight and Dave Marais were released in February 1984 upon completion of their prison sentences.

...

17. 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, with respect to:

> - article 7 and article 10, paragraph 1, because of the inhuman conditions in which John Wight was at times held in prison in Madagascar...

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

...

9.2 Hiber Conteris was arrested without a warrant by the Security Police on 2 December 1976, at the Carrasco airport, Montevideo, and taken to the intelligence service headquarters in the city. He was later transferred to different military establishments, including the establishment known as "*El Infierno*" and the Sixth Cavalry Headquarters. From 2 December 1976 to 4 March 1977, he was held *incommunicado*, and his relatives were not informed of his place of detention. During this period Mr. Conteris was subjected to extreme ill-treatment and forced to sign a confession. On 4 March 1977, when his daughter was allowed to see him for the first time after his arrest, she witnessed that his physical condition was very poor and that he had lost 20 kilos of weight. Since that time he was kept at Libertad Prison under harsh and, at times, degrading conditions, including repeated solitary confinements. The remedy of *habeas corpus* was not available to Hiber Conteris...

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

> - of article 7, because of the severe ill-treatment which Hiber Conteris suffered during the first three months of detention and the harsh and, at times, degrading conditions of his detention since then...

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

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

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

> Article 7, because Lucia Arzuada Gilboa was subjected to torture and to cruel and degrading treatment in the period between 15 and 30 June 1983...

- *Cariboni v. Uruguay* (159/1983), ICCPR, A/43/40 (27 October 1987) 184 at paras. 9.2 and 10.

...
9.2 Raúl Cariboni was arrested on 23 March 1973, charged with "subversive association" and "attempts against the Constitution in the degree of conspiracy, followed by preparatory acts". He was forced to make a confession, which was later used as evidence in the military penal proceedings against him...From 4 to 11 April 1976, he was subjected to torture for the purpose of extracting information with regard to his ideological convictions, political and trade-union activities. His treatment during detention at Infantry Battalion No. 4 and at Liberated prison was inhuman and degrading.
...
10. The Human Rights Committee...is of the view that the facts as found by the Committee, in so far as they occurred after 23 March 1976...disclose violations of the International Covenant on Civil and Political Rights, particularly of:

> Article 7, because Raúl Cariboni was subjected to torture and inhuman and degrading treatment...

- *Miango v. Zaire* (194/1985), ICCPR, A/43/40 (27 October 1987) 218 at paras. 8.2, 10 and 11.

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...

8.2 Mr. Jean Miango Muiyo, a Zairian citizen, was kidnapped and taken to the military camp at *Kokolo, Kinshasa*, on 20 or 21 June 1985. There, he was subjected to torture by members of the armed forces (forces armies zairoises ((FAZ)). Later, he was seen in a precarious physical condition by a friend of the family at Mama Yemo Hospital in Kinshasa. The author's relatives were unable to locate the victim alive; they were, however, taken to the hospital morgue to identify the victim's body. Contrary to the report of the traffic police, the victim did not succumb to the consequences of a road accident he allegedly suffered on 18 June 1985, but died as the result of traumatic wounds probably caused by a blunt instrument. This conclusion is buttressed by a report from a forensic physician dated 11 July 1985, which states that the victim's death seems to have been the result of the use of violence and not of a road accident. The author's family has requested the Office of the Public Prosecutor to conduct an inquiry into the death of Mr. Miango Muiyo, in particular asking that the military officer who delivered the victim to the hospital be summoned for questioning. This officer, however, with the consent of his superiors, has refused to be questioned.

...

10. The Human Rights Committee...is of the view that these facts disclose a violation of articles 6 and 7, paragraph 1, of the Covenant. Bearing in mind the gravity of these violations the Committee does not find it necessary to consider whether other provisions of the Covenant have been violated.

11. The Committee therefore urges the State party to take effective steps (a) to investigate the circumstances of the death of Jean Miango Muiyo, (b) to bring to justice any person found to be responsible for his death, and (c) to pay compensation to his family.

- *Herrera Rubio v. Colombia* (161/1983), ICCPR, A/43/40 (2 November 1987) 190 at paras. 10.2, 10.4, 10.5 and 11.

...

10.2 Joaquin Herrera Rubio was arrested on 17 March 1981 by members of the Colombian armed forces on suspicion of being a "*guerrillero*". He claims that he was tortured ("submarine", "hanging" and beatings) by Colombian military authorities who also threatened him that unless he signed a confession his parents would be killed...With respect to the author's allegations of torture, the State party contends that they are not credible in view of the fact that three months elapsed from the time of the alleged ill-treatment before the author's complaint was brought to the attention of the Court.

...

10.4 With regard to the author's allegations of torture, the Committee notes that the author

has given a very detailed description of the ill-treatment to which he was subjected and has provided the names of members of the armed forces allegedly responsible. In this connection, the Committee observes that the initial investigations conducted by the State party may have been concluded prematurely and that further investigations were called for in the light of the author's submission of 4 October 1986 and the Working Group's request of 18 December 1986 for more precise information.

10.5 With regard to the burden of proof, the Committee has already established in other cases (for example, Nos. 30/1978 and 85/1981) a/ that this cannot rest alone on the author of the communications, especially considering that the author and the State party do not always have equal access to the evidence and that frequently the State party alone has access to relevant information. In the circumstances, due weight must be given to the authors' allegations. It is implicit in article 4, paragraph 2, of the Optional Protocol that the State party has the duty to investigate in good faith all allegations of violation of the Covenant made against it and its authorities, and to furnish to the Committee the information available to it. In no circumstances should a State party fall to investigate fully allegations of ill-treatment when the person or persons allegedly responsible for the ill-treatment are identified by the author of a communication. The State party has in this matter provided no precise information and reports, *inter alia*, on the questioning of military officials accused of maltreatment of prisoners, or on the questioning of their superiors.

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

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

Notes

...

a/ Official Records of the General Assembly, Forty-second Session, Supplement No. 40 (A/42/40), annex VIII, sect. B to D.

- *Peñarietta v. Bolivia* (176/1984), ICCPR, A/43/40 (2 November 1987) 199 at paras. 15.2 and 16.

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...
15.2 Walter Lafuente Penarrieta, Miguel Rodriguez Candia, Oscar Ruiz Caceres and Julio Cesar Toro Dorado were arrested on 24 October 1983 near Luribay by members of the Bolivian armed forces on suspicion of being "*guerrilleros*". During the first 15 days of detention they were subjected to torture and ill-treatment and kept *incommunicado* for 44 days. They were held under inhuman prison conditions, in solitary confinement in very small, humid cells, and were denied proper medical attention...
...
16. The Human Rights Committee...is of the view that the facts as found by the Committee disclose violations of the Covenant with respect to:

> ...
> article 7, because Walter Lafuente Penarrieta, Miguel Rodriguez Candia, Oscar Ruiz Caceres and Julio Cesar Toro Dorado were subjected to torture and inhuman treatment...

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

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

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

- *Acosta v. Uruguay* (162/1983), ICCPR, A/44/40 (25 October 1988) 183 at paras. 10.2-10.5

and 11.

...

10.2 The authors' allegations concerning ill-treatment and torture, and the consequences thereof, are basically the following:

> (a) Mr. Berterretche Acosta's mother alleges in the initial letter that her son was subjected to torture at the time he was detained for the first time, from January to February 1976. She also states that her son was held *incommunicado* for 40 days from the time he was arrested for the second time, on 7 September 1977...
>
> (b) In his comments on the State party's submission of 28 August 1984, Mr. Berterretche Acosta observes that no reference is made in the State party's submission "to the fact that from the time I was first captured and during the interrogations leading to my indictment, I was subjected to physical abuse such as beatings, stringing up, asphyxiation, electric shocks and long periods of forced standing in the cold without anything to drink or eat"...
>
> (c) As to alleged psychological torture carried out at Libertad prison, Mr. Berterretche Acosta refers to the events on 7 September 1981, at which time he was told that he had been granted freedom, and the subsequent explanation given to his family "that there had been a mistake"...
>
> (d) As to the consequences of his treatment while in detention, Mr. Berterretche further observes in his comments on the State party's submission 28 August 1984: "The fact is obviously concealed that I am suffering from nervous hypertension, which is of a serious nature because of its extreme disability and which is also inadequately controlled. Also concealed is the cardiac problem which has developed since I was tortured"...

...

10.3 The Committee observes in this connection, firstly, that the allegations concerning the treatment of Mr. Berterretche Acosta in January and February 1976 fall outside its competence, as they relate to a period of time prior to the entry into force of the Covenant on 23 March 1976. Secondly, the Committee observes that Berterretche Acosta's allegations of physical abuse, contained in the comments received from him in July 1985, are to some extent unclear. As to when the alleged torture took place he employs the language "from the time I was first captured and following the interrogations leading to my indictment". Read in context, however, and that Mr. Berterretche Acosta was not charged at the time he was held in activity in January and February 1976, it can be assumed that the allegations refer to

the period of time from his second arrest, on 7 September 1977, until he was indicted. Mr. Berterretche Acosta does not explain when he was indicted, but from the court records subsequently provided by the State party...[I]t transpires that he was indicted on 17 October 1977. This corresponds to the period of 40 days, during which Mr. Berterretche Acosta was allegedly held *incommunicado*...

10.4 In formulating its views, the Human Rights Committee notes that the State party has not offered any explanations or statements concerning the treatment Mr. Berterretche Acosta from 7 September to 17 October 1977 and the circumstances of his detention during that time. Although his description of what allegedly happened is very brief, it is implicit in article 4, paragraph 2, of the Optional Protocol that the State party has a duty to investigate such allegations good faith and to inform the Committee of the results. The Committee further notes that the State party has offered no comments in respect of the alleged conditions of detention at Libertad prison and the consequences thereof...In the circumstances, due weight must be given to the authors' allegations.

10.5 The Committee has taken account of the change of Government in Uruguay on 1 March 1985 and the enactment of special legislation aimed at the restoration of rights of victims of the previous military regime. The Committee is also fully aware of the other relevant aspects of the legal situation prevailing now in Uruguay, but it remains convinced that there is no basis to exonerate the State party from its obligation under article 2 of the Covenant to ensure that any person whose rights or freedoms have been violated shall have an effective remedy, and to assure that the competent authorities shall enforce such remedies.

11. The Human Rights Committee...is the view that the events of this case...disclose violations...of:

> Article 7, because Omar Berterretche Acosta was subjected to torture and to cruel, inhuman and degrading treatment and punishment...

- *Pratt and Morgan v. Jamaica* (210/1986 and 225/1987), ICCPR, A/44/40 (6 April 1989) 222 at paras. 13.6, 13.7, 14 and 15.

...
13.6 There are two issues concerning article 7 before the Committee: the first is whether the excessive delays in judicial proceedings constituted not only a violation of article 14, but "cruel, inhuman and degrading treatment". The possibility that such a delay as occurred in this case could constitute cruel and inhuman treatment was referred to by the Privy Council. In principle prolonged judicial proceedings do not *per se* constitute cruel, inhuman or

degrading treatment even if they can be a source of mental strain for the convicted prisoners. However, the situation could be otherwise in cases involving capital punishment as an assessment of the circumstances of each case would be necessary. In the present cases the Committee does not find that the authors have sufficiently substantiated their claim that delay in judicial proceedings constituted for them cruel, inhuman and degrading treatment under article 7.

13.7 The second issue under article 7 concerns the issue of warrants for executing and the notification of the stay of execution. The issue of a warrant for execution necessarily causes intense anguish to the individual concerned. In the authors' case, death warrants were issued twice by the Governor General, first on 13 February 1987 and again on 23 February 1988. It is uncontested that the decision to grant a first stay of execution, taken at noon on 23 February 1987, was not notified to the authors until 45 minutes before the scheduled time of the execution on 24 February 1987. The Committee considers that a delay of close to 20 hours from the time the stay of execution was granted to the time the authors were removed from their death cell constitutes cruel and inhuman treatment within the meaning of article 7.

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:

> (a) Article 7, because Mr. Pratt and Mr. Morgan were not notified of a stay of execution granted them on 23 February 1987 until 45 minutes before their scheduled execution on 24 February 1987...

...

15. ...The Committee is of the view that 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.

- *Vuolanne v. Finland* (265/1987), ICCPR, A/44/40 (7 April 1989) 249 at paras. 2.6 and 9.2.

...

2.6 Concerning his military confinement, the author considers it "evident that Finnish military confinement in the form of close arrest imposed in a disciplinary procedure is a deprivation of liberty covered by the concepts 'arrest and detention' in article 9, paragraph 4, of the Covenant". He states that his punishment was enforced in two parts, during which he was locked in a cell of 2 x 3 metres with a tiny window, furnished only with a camp bed, a small table, a chair and a dim electric light. He was only allowed out of his cell for purposes of eating, going to the toilet and to take fresh air for half an hour daily. He was prohibited from talking to other detained persons and from making any noise in his cell. He claims that the

isolation was almost total. He also states that in order to lessen his distress, he wrote personal notes about his relations with persons close to him, and that these notes were taken away from him one night by the guards, who read them to each other. Only after he asked for a meeting with various officers were his papers returned to him.

...

9.2 The Committee recalls that article 7 prohibits torture and cruel or other inhuman or degrading treatment. It observes that the assessment of what constitutes inhuman or degrading treatment falling within the meaning of article 7 depends on all the circumstances of the case, such as the duration and the manner of the treatment, its physical or mental effects as well as the sex, age and state of health of the victim. A thorough examination of the present communication has not disclosed any facts in support of the author's allegations that he is a victim of a violation of his rights set forth in article 7. In no case was severe pain or suffering, whether physical or mental, inflicted upon Antii Vuolanne by or at the instigation of a public official; nor does it appear that the solitary confinement to which the author was subjected, having regard to its strictness, duration and the end pursued, produced any adverse physical or mental effects on him. Furthermore, it has not been established that Mr. Vuolanne suffered any humiliation or that his dignity was interfered with apart from the embarrassment inherent in the disciplinary measure to which he was subjected. In this connection, the Committee expresses the view that for punishment to be degrading, the humiliation or debasement involved must exceed a particular level and must, in any event, entail other elements beyond the mere fact of deprivation of liberty. Furthermore, the Committee finds that the facts before it do not substantiate the allegation that during his detention Mr. Vuolanne was treated without humanity or without respect for the inherent dignity of the person, as required under article 10, paragraph 1, of the Covenant.

- *Birindwa and Tshisekedi v. Zaire* (241 and 242/1987), ICCPR, A/45/40 vol. II (2 November 1989) 77 at paras. 12.2, 12.4 and 13(b).

...

12.2 ...Upon his return to Zaire in mid-January 1988, Mr. Tshisekedi sought to organize a manifestation which met with the disapproval of the State authorities. On 17 January 1988 he was arrested an subjected to inhuman treatment, in that he was deprived of food and drink for several days and was placed in a high-security cell...

...

12.4 ...It is implicit in article 4, paragraph 2, of the Optional Protocol that States parties have a duty to investigate in good faith all the allegations of violations of the Covenant made against them and their authorities, and to furnish to the Committee all the information available to them. In the communications under consideration, the information provided by the State party addresses only some of the aspects of the allegations made by Mr. Tshisekedi

and Mr. Birindwa. The Committee takes the opportunity to reiterate that while partial and incomplete information provided by States parties may assist in the examination of communications, it does not satisfy the requirement of article 4, paragraph 2, of the Optional Protocol. In the circumstances, due weight must be given to the authors' allegations.

...

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

...

(b) in respect of Etienne Tshisekedi wa Malumba:

> of article 7, because he was subjected to inhuman treatment, in that he was deprived of food and drink for four days after his arrest on 17 January 1988 and was subsequently kept interned under unacceptable sanitary conditions...

- *Reid v. Jamaica* (250/1987), ICCPR, A/45/40 vol. II (20 July 1990) 85 at para. 11.6.

...

11.6 As to the allegations that the delays in the execution of the sentence passed on the author amount to a violation of article 7 of the Covenant, and that the author's execution after the delays encountered would amount to an arbitrary deprivation of life, the Committee reaffirms its earlier jurisprudence pursuant to which prolonged judicial proceedings do not *per se* constitute cruel, inhuman or degrading treatment even if they can be a source of mental strain for convicted prisoners. However, the situation my be different in cases involving capital punishment, although an assessment of the circumstances of each case would be necessary. c/ In the present case the Committee does not find that the author has sufficiently substantiated his claim that delay in judicial proceedings constituted for him cruel, inhuman and degrading treatment under article 7.

Notes

...

c/ See Communication Nos. 210/1986 and 225/1987 (*Earl Pratt and Ivan Morgan v. Jamaica*), final Views adopted 6 April 1989, para. 13.6.

- *Kelly v. Jamaica* (253/1987), ICCPR, A/46/40 (8 April 1991) 241 (CCPR/C/41/D/253/1987) at paras. 2.4 and 5.5.

...

2.4 The author challenged the prosecution's contention that his statement...had been a voluntary one. In an unsworn statement from the dock, he claimed to have been beaten by the police, who had tried to force him to confess to the crime. He affirms that the police tried to have him sign a "*blanko*" confession, and that he withstood the beatings and refused to sign any papers presented to him. He further maintains that he never made a statement to the police and that he knows nothing about the circumstances of Mr. Jamieson's death.

...

5.5 ...[T]he Committee notes that the wording of article 14, paragraph 3(g) - i.e., that no one shall "be compelled to testify against himself or to confess guilt" - must be understood in terms of the absence of any direct or indirect physical or psychological pressure from the investigating authorities on the accused, with a view to obtaining a confession of guilt. *A fortiori*, it is unacceptable to treat an accused person in a manner contrary to article 7 of the Covenant in order to extract a confession. It is...the Committee's duty to ascertain whether the author has sufficiently substantiated his allegation, notwithstanding the State party's failure to address it. After careful consideration of this material...the Committee is unable to conclude that the investigating officers forced the author to confess his guilt, in violation of articles 7 and 14, paragraph 3 (g).

- *García v. Ecuador* (319/1988), ICCPR, A/47/40 (5 November 1991) 290 (CCPR/C/43/D/319/1988) at paras. 2.1, 2.2, 5.2, 6.1 and 6.2.

...

2.1 The author lived in the United States of America for 13 years until 1982, when he returned to Bogotá, Colombia, where he resided until July 1987. On 22 July 1987, he travelled to Guayaquil, Ecuador, with his wife. At around 5 p.m. the same day, while walking with his wife in the reception area of the Oro Verde Hotel, they were surrounded by 10 armed men, reportedly Ecuadorian police officers acting on behalf of Interpol and the United States Drug Enforcement Agency (D.E.A.), who forced them into a vehicle waiting in front of the hotel. He adds that he asked an Ecuadorian police colonel whether the Ecuadorian police (*Policía Nacional Ecuatoriana*) had any information about him; he was told that the police merely executed an "order" coming from the Embassy of the United States. After a trip of approximately one hour, they arrived at what appeared to be a private residence, where Mr. Cañón was separated from his wife.

2.2 He claims to have been subjected to ill-treatment, which included the rubbing of salt water into his nasal passages. He spent the night handcuffed to a table and a chair, without being given as much as a glass of water. At approximately 8 a.m. the next morning, he was

taken to the airport of Guayaquil, where two individuals, who had participated in his "abduction" the previous day, identified themselves as agents of the Drug Enforcement Agency and informed him that he would be flown to the United States on the basis of an arrest warrant issued against him in 1982.

...

5.2 As to the merits, the Human Rights Committee notes that the State party does not seek to refute the author's allegations, in so far as they relate to articles 7, 9 and 13 of the Covenant, and that it concedes that the author's removal from Ecuadorian jurisdiction suffered from irregularities.

6.1 The Human Rights Committee...finds that the facts before it reveal violations of articles 7, 9 and 13 of the Covenant.

6.2 In accordance with the provisions of article 2 of the Covenant, the State party is under an obligation to take measures to remedy the violations suffered by Mr. Cañón García. In this connection, the Committee has taken note of the State party's assurance that it is investigating the author's claims and the circumstances leading to his expulsion from Ecuador, with a view to prosecuting those held responsible for the violations of his rights.

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

...

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

For dissenting opinion in this context, see Jijón v. Ecuador (277/1988), ICCPR, A/47/40 (26 March 1992) 261 at Individual Opinion by Mr. Bertil Wennergren (dissenting in part), 266.

- *Prince v. Jamaica* (269/1987), ICCPR, A/47/40 (30 March 1992) 242 at paras. 2.3 and 8.3.

TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

...

2.3 The author alleges that during pretrial detention he was severely beaten by the arresting police officers, to whom he refused to make a statement; this allegation was before the Court of first instance, but was rejected. The author's girlfriend, who he claims would have been able to provide an alibi and corroborate his evidence, reportedly did not testify on his behalf because of threats against her life. The author himself allegedly also received threats prior to his trial; during the trial he did not disclose the identity of the murderer for fear of his family's and his own life.

...

8.3 With respect to the alleged violation of article 7 of the Covenant, the Committee notes that the author's claim has not been contested by the State party. Notwithstanding, it is the Committee's duty to ascertain whether the author has substantiated his allegation. After careful examination of the information before it, and taking into account that the author's allegation was before a jury during the trial, the Committee concluded that the author has failed to substantiate his claim that he is a victim of a violation by the State party of article 7 of the Covenant.

- *Barrett and Sutcliffe v. Jamaica* (270/1988 and 271/1988), ICCPR, A/47/40 (30 March 1992) 246 at paras. 8.4-8.6 and 9.

...

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.

TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

8.5 Concerning the allegations of ill-treatment during detention and on death row, the Committee deems it appropriate to distinguish between the individual claims put forth by the authors. While Mr. Barrett has made claims that might raise issues under articles 7 and 10, paragraph 1, of the Covenant, in particular concerning alleged solitary confinement at the Ocho Rios police station, the Committee considers that these have not been further substantiated and finds no violation of article 7 or article 10, paragraph 1.

8.6 Mr. Sutcliffe has alleged that he was subjected to beatings in the course of the preliminary investigation, and that he suffered serious injuries at the hand of prison officers. He submits that he unsuccessfully tried to seize the prison authorities and the Parliamentary Ombudsman of his complaint in respect of ill-treatment on death row, and that, far from investigating the matter, prison officers have urged him not to pursue the matter further. Concerning the first allegation, the author's contention that he was placed on the identification parade in "a battered state" has not been further substantiated; moreover, it transpires from the judgement of the Court of Appeal that the author's allegation was before the jury during the trial in July 1978. In that respect, therefore, the Committee cannot conclude that a violation of articles 7 or 10 has occurred. As to alleged ill-treatment in November 1986, however, the author's claim is better substantiated and has not been refuted by the State party. The Committee considers that the fact of having first been beaten unconscious and then left without medical attention for almost one day, in spite of a fractured arm and other injuries, amounts to cruel and inhuman treatment within the meaning of article 7 and, therefore, also entails a violation of article 10, paragraph 1. In the Committee's view, it is an aggravating factor that the author was later warned against further pursuing his complaint about the matter to the judicial authorities. The State party's offer, made in January 1992, that is over five years after the event, to investigate the claim "out of humanitarian considerations" does not change anything in this respect.

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

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 (dissenting in part), 252.

See also:

- *Simms v. Jamaica* (541/1993), ICCPR, A/50/40 vol. II (3 April 1995) 164 (CCPR/C/53/D/541/1993) at para. 6.5.

TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

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

...

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

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

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

...

8.5 Concerning the author's claim of ill-treatment during pretrial detention and on death row, the Committee deems it appropriate to distinguish between the various allegations. Concerning the claim of ill-treatment during pretrial detention, the Committee notes that this has not been further substantiated. Other considerations apply to the claims relating to the author's treatment in November 1986 and January 1988, which have not been refuted by the State party. In the absence of such detailed refutation, the Committee considers that the physical abuse inflicted on the author on 20 November 1986, the mock execution set up by prison warders and the denial of adequate medical care after the injuries sustained in the

aborted escape attempt of January 1988 constitute cruel and inhuman treatment within the meaning of article 7 and, therefore, also entail a violation of article 10, paragraph 1, of the Covenant, which requires that detained persons be treated with respect for their human dignity.

- *Martin v. Jamaica* (317/1988), ICCPR, A/48/40 vol. II (24 March 1993) 57 (CCPR/C/47/D/317/1988) at para. 12.3.

...
12.3 The author further alleges that the delay of 17 days between the issuing of the warrant for his execution and its stay, during which time he was detained in a special cell, constitutes a violation of article 7 of the Covenant. The Committee observes that, after the warrant had been issued, a stay of execution was requested, on the grounds that counsel would prepare a petition for leave to appeal to the Judicial Committee of the Privy Council. This stay of execution was subsequently granted. Nothing in the information before the Committee indicates that the applicable procedures were not duly followed, or that the author continued to be detained in the special cell after the stay of execution had been granted. The Committee therefore finds that the facts before it do not disclose a violation of article 7 of the Covenant.

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

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

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

...
9.2 The author has alleged that he suffered beatings and injuries at the hand of prison officers

during an incident on 29 May 1990. This claim has not been refuted by the State party, which has confined itself to the mere statement that the claim is being investigated and that, in the circumstances, it would be inappropriate for the Committee to make a finding on the merits.

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

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

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

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

reportedly filed against him are contradictory, but nevertheless concur in that some of them were dismissed by the State party. The dismissal of these charges, however, casts doubt on the facts as presented in the report dated 20 November 1991. Lastly, concerning the allegation that the author was left naked in his cell for two weeks, the Committee has no more specific information available to it than the claims of the author and the denials of the State party.

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

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

- *Kindler v. Canada* (470/1991), ICCPR, A/48/40 vol. II (30 July 1993) 138 (CCPR/C/48/D/470/1991) at paras.15.1-15.3, 16 and Individual Opinion by Mr. Kurt Herndl and Mr. Waleed Sadi (concurring), 154 at paras. 8 and 9.

...

15.1 As regards the author's claims that Canada violated article 7 of the Covenant, this provision must be read in the light of other provisions of the Covenant, including article 6, paragraph 2, which does not prohibit the imposition of the death penalty in certain limited circumstances. Accordingly, capital punishment as such, within the parameters of article 6, paragraph 2, does not *per se* violate article 7.

15.2 As to whether the "death row phenomenon" associated with capital punishment, constitutes a violation of article 7, the Committee recalls its jurisprudence to the effect that "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." l/ The Committee has indicated that the facts and the circumstances of each case need to be examined to see whether an issue under article 7 arises.

15.3 In determining whether, in a particular case, the imposition of capital punishment could

constitute a violation of article 7, the Committee will have regard to the relevant personal factors regarding the author, the specific conditions of detention on death row, and whether the proposed method of execution is particularly abhorrent. In this context the Committee has had careful regard to the judgment given by the European Court of Human Rights in the *Soering v. United Kingdom* case m/. It notes that important facts leading to the judgment of the European Court are distinguishable on material points from the facts in the present case. In particular, the facts differ as to the age and mental state of the offender, and the conditions on death row in the respective prison systems. The author's counsel made no specific submissions on prison conditions in Pennsylvania, or about the possibility or the effects of prolonged delay in the execution of sentence; nor was any submission made about the specific method of execution. The Committee has also noted in the *Soering* case that, in contrast to the present case, there was a simultaneous request for extradition by a State where the death penalty would not be imposed.

16. Accordingly, the Committee concludes that the facts as submitted in the instant case do not reveal a violation of article 6 of the Covenant by Canada. The Committee also concludes that the facts of the case do not reveal a violation of article 7 of the Covenant by Canada.
...

Notes

...

l/ *Howard Martin v. Jamaica*, No. 317/1988, Views adopted on 24 March 1993, para. 12.2.

m/ European Court of Human Rights, judgement of 7 July 1989.

Individual Opinion by Mr. Kurt Herndl and Mr. Waleed Sadi

...

8. As for the issues that may allegedly arise under article 7 of the Covenant, we agree with the Committee's reference to its jurisprudence in the views on communications Nos. 210/1986 and 225/1987 (*Earl Pratt and Ivan Morgan v. Jamaica*) and Nos. 270 and 271/1988 (*Barrett and Sutcliffe v. Jamaica*), in which the Committee decided that the so-called 'death row phenomenon' does not *per se* constitute cruel, inhuman and degrading treatment, even if prolonged judicial proceedings can be a source of mental strain for the convicted prisoners. In this connection it is important to note that the prolonged periods of detention on death row are a result of the convicted person's recourse to appellate remedies. In the instant case the author has not submitted any arguments that would justify the Committee's departure from its established jurisprudence.

9. A second issue allegedly arising under article 7 is whether the method of execution - in the

State of Pennsylvania by lethal injection -could be deemed as constituting cruel, inhuman or degrading treatment. Of course, any and every form of capital punishment can be seen as entailing a denial of human dignity; any and every form of execution can be perceived as cruel and degrading. But, since capital punishment is not prohibited by the Covenant, article 7 must be interpreted in the light of article 6, and cannot be invoked against it. The only conceivable exception would be if the method of execution were deliberately cruel. There is, however, no indication that execution by lethal injection inflicts more pain or suffering than other accepted methods of execution. Thus, the author has not made a *prima facie* case that execution by lethal injection may raise an issue under article 7.

- *Thomas v. Jamaica* (321/1988), ICCPR, A/49/40 vol. II (19 October 1993) 1 (CCPR/C/49/D/321/1993) at paras. 9.2 and 11.

...
9.2 It remains uncontested that, on 9 July 1988, the author was assaulted by soldiers and warders, who beat him with rifle butts, as a result of which he sustained injuries in his chest, his back, his left hip and his lower abdomen, for which he did not receive medical treatment. The Committee considers that these claims have been substantiated and that the facts before the Committee amount to degrading treatment within the meaning of article 7 of the International Covenant on Civil and Political Rights and also entail a violation of article 10, paragraph 1, of the Covenant.
...
11. The Committee is of the view that Mr. Maurice Thomas, a victim of a violation of articles 7 and 10 the International Covenant on Civil and Political Rights, is entitled, under article 2, paragraph 3(a), of the Covenant, to an effective remedy, including appropriate compensation. The State party is under an obligation to investigate the allegations made by the author with a view to instituting as appropriate criminal or other procedures against those found responsible and to take such other measures as may be necessary to prevent similar violations from occurring in the future.

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

...
5.3 As to the treatment to which the author was subjected between 8 p.m. on 1 May 1989 and the early morning hours of 2 May 1989, it has remained uncontested that Mr. Kanana remained strapped to the concrete floor of his cell for close to four hours, and that he was

thereafter subjected to acts of torture for several more hours. The Committee observes in this context that Mr. Kanana has provided photographic evidence of the consequences of this treatment. In the circumstances, the Committee concludes that the author has substantiated his claim that he was subjected to torture and cruel and inhuman treatment, in violation of article 7 of the Covenant, and that he was not treated with respect for the inherent dignity of his person, in violation of article 10, paragraph 1.

- *Ng v. Canada* (469/1991), ICCPR, A/49/40 vol. II (5 November 1993) 189 (CCPR/C/48/D/469/1991) at paras. 6.2, 13.5, 14.1, 14.2,16.1-16.5, 17 and Individual Opinion by Mr. Bertil Wennergren (concurring in part), 209.

...

6.2 ...Article 2 of the Covenant requires States parties to guarantee the rights of persons within their jurisdiction. If a person is lawfully expelled or extradited, the State party concerned will not generally have responsibility under the Covenant for any violations of that person's rights that may later occur in the other jurisdiction. In that sense a State party clearly is not required to guarantee the rights of persons within another jurisdiction. However, if a State party takes a decision relating to a person within its jurisdiction, and the necessary and foreseeable consequence is that that person's rights under the Covenant will be violated in another jurisdiction, the State party itself may be in violation of the Covenant. That follows from the fact that a State party's duty under article 2 of the Covenant would be negated by the handing over of a person to another State (whether a State party to the Covenant or not) where treatment contrary to the Covenant is certain or is the very purpose of the handing over. For example, a State party would itself be in violation of the Covenant if it handed over a person to another State in circumstances in which it was foreseeable that torture would take place. The foreseeability of the consequence would mean that there was a present violation by the State party, even though the consequence would not occur until later on.

...

13.5 It remains for the Committee to examine the author's claim that he is a "victim" within the meaning of the Optional Protocol because he was extradited to California on capital charges pending trial, without the assurances provided for in Article 6 of the Extradition Treaty between Canada and the United States. In this connection, it is to be recalled...that (a) California had sought the author's extradition on charges which, if proven, carry the death penalty; (b) the United States requested Mr. Ng's extradition on those capital charges; (c) the extradition warrant documents the existence of a *prima facie* case against the author; (d) United States prosecutors involved in the case have stated that they would ask for the death penalty to be imposed; and (e) the State of California, when intervening before the Supreme Court of Canada, did not disavow the prosecutors' position. The Committee considers that these facts raise questions with regard to the scope of articles 6 and 7, in relation to which,

on issues of admissibility alone, the Committee's jurisprudence is not dispositive. As indicated in the case of *Kindler v. Canada*, m/ only an examination on the merits of the claims will enable the Committee to pronounce itself on the scope of these articles and to clarify the applicability of the Covenant and Optional Protocol to cases concerning extradition to face the death penalty.

...

14.1 Before addressing the merits of the communication, the Committee observes that what is at issue is not whether Mr. Ng's rights have been or are likely to be violated by the United States, which is not a State party to the Optional Protocol, but whether by extraditing Mr. Ng to the United States, Canada exposed him to a real risk of a violation of his rights under the Covenant. States parties to the Covenant will also frequently be parties to bilateral treaty obligations, including those under extradition treaties. A State party to the Covenant must ensure that it carries out all its other legal commitments in a manner consistent with the Covenant. The starting point for consideration of this issue must be the State party's obligation, under article 2, paragraph 1, of the Covenant, namely, to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant. The right to life is the most essential of these rights.

14.2 If a State party extradites a person within its jurisdiction in such circumstances that as a result there is a real risk that his or her rights under the Covenant will be violated in another jurisdiction, the State party itself may be in violation of the Covenant.

...

16.1 In determining whether, in a particular case, the imposition of capital punishment constitutes a violation of article 7, the Committee will have regard to the relevant personal factors regarding the author, the specific conditions of detention on death row, and whether the proposed method of execution is particularly abhorrent...The Committee begins by noting that whereas article 6, paragraph 2, allows for the imposition of the death penalty under certain limited circumstances, any method of execution provided for by law must be designed in such a way as to avoid conflict with article 7.

16.2 The Committee is aware that, by definition, every execution of a sentence of death may be considered to constitute cruel and inhuman treatment within the meaning of article 7 of the Covenant; on the other hand, article 6, paragraph 2, permits the imposition of capital punishment for the most serious crimes. Nonetheless, the Committee reaffirms, as it did in its General Comment 20[44] on article 7 of the Covenant that, when imposing capital punishment, the execution of the sentence "...must be carried out in such a way as to cause the least possible physical and mental suffering". n/

16.3 In the present case, the author has provided detailed information that execution by gas asphyxiation may cause prolonged suffering and agony and does not result in death as swiftly

as possible, as asphyxiation by cyanide gas may take over 10 minutes. The State party had the opportunity to refute these allegations on the facts; it has failed to do so. Rather, the State party has confined itself to arguing that in the absence of a norm of international law which expressly prohibits asphyxiation by cyanide gas, "it would be interfering to an unwarranted degree with the internal laws and practices of the United States to refuse to extradite a fugitive to face the possible imposition of the death penalty by cyanide gas asphyxiation".

16.4 In the instant case and on the basis of the information before it, the Committee concludes that execution by gas asphyxiation, should the death penalty be imposed on the author, would not meet the test of "least possible physical and mental suffering", and constitutes cruel and inhuman treatment, in violation of article 7 of the Covenant. Accordingly, Canada, which could reasonably foresee that Mr. Ng, if sentenced to death, would be executed in a way that amounts to a violation of article 7, failed to comply with its obligations under the Covenant, by extraditing Mr. Ng without having sought and received assurances that he would not be executed.

16.5 The Committee need not pronounce itself on the compatibility with article 7 of methods of execution other than that which is at issue in this case.

17. The Human Rights Committee, acting under article 5, paragraph 4, of the International Covenant on Civil and Political Rights, is of the view that the facts as found by the Committee reveal a violation by Canada of article 7 of the Covenant.

Notes

...

m/ See Communication No. 470/1991, Views adopted on 30 July 1993, para. 12.3.

n/ Official Records of the General Assembly, Forty-seventh Session, Supplement No. 40 (A/47/40), annex VI.A, General Comment 20(44), para. 6.

Individual Opinion by Mr. Bertil Wennergren

...

I do share the Committee's views, formulated in paragraphs 16.1 to 16.5, that Canada failed to comply with its obligations under the Covenant by extraditing Mr. Ng to the United States, where, if sentenced to death, he would be executed by means of a method that amounts to a violation of article 7. In my view, article 2 of the Covenant obliged Canada not merely to seek assurances that Mr. Ng would not be subjected to the execution of a death sentence but also, if it decided none the less to extradite Mr. Ng without such assurances, as was the case,

to at least secure assurances that he would not be subjected to the execution of the death sentence by cyanide gas asphyxiation.

...

By definition, every type of deprivation of an individual's life is inhuman. In practice, however, some methods have by common agreement been considered as acceptable methods of execution. Asphyxiation by gas is definitely not to be found among them. There remain, however, divergent opinions on this subject. On 21 April 1992, the Supreme Court of the United States denied an individual a stay of execution by gas asphyxiation in California by a seven-to-two vote. One of the dissenting justices, Justice John Paul Stevens, wrote:

> "The barbaric use of cyanide gas in the Holocaust, the development of cyanide agents as chemical weapons, our contemporary understanding of execution by lethal gas and the development of less cruel methods of execution all demonstrate that execution by cyanide gas is unnecessarily cruel. In light of all we know about the extreme and unnecessary pain inflicted by execution by cyanide gas."

Justice Stevens found that the individual's claim had merit. In my view, the above summarizes in a very convincing way why gas asphyxiation must be considered as a cruel and unusual punishment that amounts to a violation of article 7. What is more, the State of California, in August 1992, enacted a statute law that enables an individual under sentence of death to choose lethal injection as the method of execution, in lieu of the gas chamber. The statute law went into effect on 1 January 1993. Two executions by lethal gas had taken place during 1992, approximately one year after the extradition of Mr. Ng. By amending its legislation in the way described above, the State of California joined 22 other States in the United States. The purpose of the legislative amendment was not, however, to eliminate an allegedly cruel and unusual punishment, but to forestall last-minute appeals by condemned prisoners who might argue that execution by lethal gas constitutes such punishment. Not that I consider execution by lethal injection acceptable either from a point of view of humanity, but - at least - it does not stand out as an unnecessarily cruel and inhumane method of execution, as does gas asphyxiation. Canada failed to fulfil its obligation to protect Mr. Ng against cruel and inhuman punishment by extraditing him to the United States (the State of California), where he might be subjected to such punishment. And Canada did so without seeking and obtaining assurances of his non-execution by means of the only method of execution that existed in the State of California at the material time of extradition.

For dissenting opinions in this context, see Ng v. Canada (469/1991), ICCPR, A/49/40 vol. II (5 November 1993) 189 (CCPR/C/48/D/469/1991) at Individual Opinion by Mr. Fausto Pocar (dissenting in part), 208, Individual Opinion by Messrs. A. Mavrommatis and W. Sadi, 209, Individual Opinion by Mr. Rajsoomer Lallah, 209, Individual Opinion by Mr. Kurt Herndl, 210 at

paras. 1-21, Individual Opinion by Mr. Nisuke Ando, 215, Individual Opinion by Mr.Fancisco José Aguilar Urbina, 216 at para. 11 and Individual Opinion by Ms. Christine Chanet, 220.

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

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

- *Berry v. Jamaica* (330/1988), ICCPR, A/49/40 vol. II (7 April 1994) 20 (CCPR/C/50/D/330/1988) at paras. 11.7, 11.8 and 13.

  ...
  11.7 As to the claim under article 14, paragraph 3 (g), *juncto* article 7, the Committee recalls that the wording of article 14, paragraph 3 (g), that no one shall be "compelled to testify against himself or to confess guilt", must be understood in terms of the absence of any direct or indirect physical or psychological pressure from the investigating authorities on the accused with a view to obtaining a confession of guilt. *A fortiori*, it is unacceptable to treat an accused person in a manner contrary to article 7 of the Covenant in order to extract a confession. The Committee notes that, in the present case, the author claims that the investigating officer, N.W., threatened to shoot him and forced him to sign a prepared statement; this claim has not been contested by the State party. On the other hand, the Committee notes that N.W. testified during the trial that the author had made his statement after police cautioning. The Committee observes that, in order to reconcile these different versions, the written depositions made and used during the preliminary hearing were required. The Committee further observes that counsel has requested the State party, on several occasions, to make available to him the transcript of the author's preliminary hearing, including the depositions of witnesses, and that finally, after several reminders, he was informed by the judicial authorities that they were unable to locate them. These allegations have not been denied by the State party and therefore due weight must be given to the author's claims. In this respect, therefore, the Committee finds a violation of article 14, paragraph 3 (g), *juncto* article 7, of the Covenant.

11.8 With regard to the claim that Mr. Berry's prolonged stay and the conditions of detention on death row constitute cruel, inhuman or degrading treatment, the Committee notes that these issues have not been further substantiated. The Committee recalls its jurisprudence that authors must substantiate allegations of violations of their Covenant rights under the Optional Protocol; mere affirmations unbuttressed by substantiating evidence do not suffice. In this case, the author has failed to show that he is the victim of a violation by the State party of article 7 of the Covenant on account of his prolonged detention on death row.

13. The Human Rights Committee...finds that the facts before it disclose violations of articles...14, paragraph 3 (g) *juncto* article 7, of the Covenant.

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

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

- *Hylton v. Jamaica* (407/1990), ICCPR, A/49/40 vol. II (8 July 1994) 79 (CCPR/C/51/D/407/1990) at paras. 2.6-2.8, 9.2 and 9.3.

...
2.6 The author further states that, on 9 September 1989, warders of St. Catherine District Prison beat one P.L. to death in his cell. Those responsible for his death were not prosecuted. Since the incident, the two co-defendants of P.L. allegedly received death threats from warders. a/ On 28 May 1990, after being subjected for two weeks to a special regime of detention (only one or two meals per day, some days without water or the possibility to empty slop pails, as well as detention *incommunicado*), the ordinary prisoners of the "New

Hall" block of the prison forced open their cells and began to protest for food, water and better treatment. The inmates of death row joined the protest at around 10:30 to 11:00 a.m. The warders were then sent away from the death row section and the army was called in. At the soldiers' request, the death row inmates returned to their cells. The warders then returned and began to search all the cells. The author alleges that, during this search, many inmates of the "Gibralta" death row section, including himself, were severely beaten by the warders.

2.7 As a result, three inmates died, among others the author's co-defendant, D.W.; other inmates were seriously injured (injuries reportedly included fractured jaws and skulls). Since the death of D.W., the author and his other co-defendant, I.C., have allegedly repeatedly been threatened with death by warders. The author adds that the warders allegedly told death row inmates that "since the State party was not prepared to hang them 'they would devise' other ways of decreasing the death row population".

2.8 On 30 May 1990, the author complained to the Parliamentary Ombudsman about repeated violence in the prison, and requested an investigation into the killing of the four inmates, as well as into the continued threats and ill-treatment by the prison warders. By letter of 27 June 1990, the Ombudsman acknowledged the receipt of the complaint, promising that it would receive prompt attention. The author has not received any subsequent reply on the substance of his complaint.

...

9.2 With regard to the author's claims under articles 7 and 10 of the Covenant, the Committee notes that the State party has confined itself to indicating that the riots which occurred at St. Catherine District Prison on 9 September 1989 are being investigated, that the author was interviewed by investigating officers and that he gave a statement on 12 February 1992. It has not addressed the author's claims in respect of the events at St. Catherine District Prison that occurred on 28 May 1990, nor has it addressed the author's claims concerning death threats received from prison warders. Article 4, paragraph 2, of the Optional Protocol, however, enjoins the State party to investigate thoroughly, in good faith and within the imparted deadlines, all the allegations of violations of the Covenant made against it, and to make available to the Committee all the information at its disposal.

9.3 The author alleges that he was severely beaten by prison warders during a search of the cells of the death row section at St. Catherine District Prison on 28 May 1990. He claims that since the death of one of his co-defendants, who died as a result of the violence, he has repeatedly been threatened with death by warders, and that the amount of threats increased after those responsible for the death of three inmates were indicted. He further claims that he continues to suffer from psychological torture by the warders, in particular after his case was classified as a capital case in January 1993. These claims have not been refuted by the State party. Furthermore, since the State party has confined itself to the general observation

that an investigation was initiated by the Ministry of National Security and Justice into the prison disturbances which occurred at St. Catherine District Prison on 9 September 1989, the Committee remains uninformed whether the threats and ill-treatment to which the author himself allegedly was, and remains, subjected, are also under investigation. In the absence of further information on such investigations, and taking into account that such investigations as have been undertaken do not appear to have been concluded four and a half years after the events, due weight must be given to the author's allegations to the extent that they have been substantiated. Taking into account the detailed description of the events by the author and in view of the lack of information from the State party, the Committee considers that the threats and the ill-treatment to which Mr. Dwayne Hylton has been subjected by the prison warders amount to cruel and inhuman treatment within the meaning of article 7, and also entail a violation of article 10, paragraph 1, of the Covenant.

Notes

a/ One of P.L.'s co-defendants, N.P., submitted a communication to the Human Rights Committee; Communication No. 404/1990, declared inadmissible on 5 April 1993, during the Committee's 47th session (see Official Records of the General Assembly, Forty-eighth Session, Supplement No. 40 (A/48/40), annex XIII.D).

- *Mika Miha v. Equatorial Guinea* (414/1990), ICCPR, A/49/40 vol. II (8 July 1994) 96 (CCPR/C/51/D/414/1990) at para. 6.4.

...

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

- *Mojica v. Dominican Republic* (449/1991), ICCPR, A/49/40 vol. II (15 July 1994) 142 (CCPR/C/51/D/449/1991) at paras. 2.1, 2.2 and 5.7.

TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

...
2.1 The author is a well-known labour leader. His son, Rafael Mojica, a dock worker in the port of Santo Domingo, was last seen by his family in the evening of 5 May 1990. Between 8 p.m. and 1 a.m., he was seen by others at the restaurant "El Aplauso" in the neighbourhood of the Arrimo Portuario union, with which he was associated. Witnesses affirm that he then boarded a taxi in which other, unidentified, men were travelling.

2.2 The author contends that during the weeks prior to his son's disappearance, Rafael Mojica had received death threats from some military officers of the *Dirección de Bienes Nacionales*, in particular from Captain Manuel de Jesus Morel and two of the latter's assistants, known under their sobriquets of "Martin" and "Brinquito". They allegedly threatened him because of his presumed communist inclinations.
...
5.7 The circumstances surrounding Rafael Mojica's disappearance, including the threats made against him, give rise to a strong inference that he was tortured or subjected to cruel and inhuman treatment. Nothing has been submitted to the Committee by the State party to dispel or counter this inference. Aware of the nature of enforced or involuntary disappearances in many countries, the Committee feels confident to conclude that the disappearance of persons is inseparably linked to treatment that amounts to a violation of article 7.

- *Rodríguez v. Uruguay* (322/1988), ICCPR, A/49/40 vol. II (19 July 1994) 5 (CCPR/C/51/D/322/1988) at paras. 2.1, 2.2, 12.1-12.4, 13 and 14.

...
2.1 In June 1983, the Uruguayan police arrested the author and his wife, together with several other individuals. The author was taken by plainclothes policemen to the headquarters of the secret police (*Dirección Nacional de Información e Inteligencia*), where he allegedly was kept handcuffed for several hours, tied to a chair and with his head hooded. He was allegedly forced to stand naked, still handcuffed, and buckets of cold water were poured over him. The next day, he allegedly was forced to lie naked on a metal bedframe; his arms and legs were tied to the frame and electric charges were applied (*picana eléctrica*) to his eyelids, nose and genitals. Another method of ill-treatment consisted in coiling wire around fingers and genitals and applying electric current to the wire (*magneto*); at the same time, buckets of dirty water were poured over him. Subsequently, he allegedly was suspended by his arms, and electric shocks were applied to his fingers. This treatment continued for a week, after which the author was relocated to another cell; there he remained *incomunicado* for another week. On 24 June, he was brought before a military judge and

indicted on unspecified charges. He remained detained at the "Libertad Prison" until 27 December 1984.

2.2 ...[T]he Parliament...enacted, on 22 December 1986, Law No. 15,848, the Limitations Act or Law of Expiry (*Ley de Caducidad*) which effectively provided for the immediate end of judicial investigation into such matters and made impossible the pursuit of this category of crimes committed during the years of military rule.

...

12.1 With regard to the merits of the communication, the Committee notes that the State party has not disputed the author's allegations that he was subjected to torture by the authorities of the then military regime in Uruguay. Bearing in mind that the author's allegations are substantiated, the Committee finds that the facts as submitted sustain a finding that the military regime in Uruguay violated article 7 of the Covenant. In this context the Committee notes that, although the Optional Protocol lays down a procedure for the examination of individual communications, the State party has not addressed the issues raised by the author as a victim of torture nor submitted any information concerning an investigation into the author's allegations of torture. Instead, the State party has limited itself to justify, in general terms, the Uruguayan Government's decision to adopt an amnesty law.

12.2 As to the appropriate remedy that the author may claim pursuant to article 2, paragraph 3, of the Covenant, the Committee finds that the adoption of Law No. 15,848 and subsequent practice in Uruguay have rendered the realization of the author's right to an adequate remedy extremely difficult.

12.3 The Committee cannot agree with the State party that it has no obligation to investigate violations of Covenant rights by a prior regime, especially when these include crimes as serious as torture. Article 2, paragraph 3(a) of the Covenant clearly stipulates that each State party undertakes "to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity". In this context the Committee refers to its General Comment No. 20 on article 7, d/ which provides that allegations of torture must be fully investigated by the State:

> "Article 7 should be read in conjunction with article 2, paragraph 3...The right to lodge complaints against maltreatment prohibited by article 7 must be recognized in the domestic law. Complaints must be investigated promptly and impartially by competent authorities so as to make the remedy effective."
>
> "The Committee has noted that some States have granted amnesty in respect of acts of torture. Amnesties are generally incompatible with the duty of

> States to investigate such acts; to guarantee freedom from such acts within their jurisdiction; and to ensure that they do not occur in the future. States may not deprive individuals of the right to an effective remedy, including compensation and such full rehabilitation as may be possible."

The State party has suggested that the author may still conduct private investigations into his torture. The Committee finds that the responsibility for investigations falls under the State party's obligation to grant an effective remedy. Having examined the specific circumstances of this case, the Committee finds that the author has not had an effective remedy.

12.4 The Committee moreover reaffirms its position that amnesties for gross violations of human rights and legislation such as the Law No. 15,848, *Ley de Caducidad de la Pretensión Punitiva del Estado* are incompatible with the obligations of the State party under the Covenant. The Committee notes with deep concern that the adoption of this law effectively excludes in a number of cases the possibility of investigation into past human rights abuses and thereby prevents the State party from discharging its responsibility to provide effective remedies to the victims of those abuses. Moreover, the Committee is concerned that, in adopting this law, the State party has contributed to an atmosphere of impunity which may undermine the democratic order and give rise to further grave human rights violations. e/

...

13. The Human Rights Committee...is of the view that the facts before it disclose a violation of article 7, in connection with article 2, paragraph 3, of the Covenant.

14. The Committee is of the view that Mr. Hugo Rodríguez is entitled, under article 2, paragraph 3 (a), of the Covenant, to an effective remedy. It urges the State party to take effective measures (a) to carry out an official investigation into the author's allegations of torture, in order to identify the persons responsible for torture and ill-treatment and to enable the author to seek civil redress; (b) to grant appropriate compensation to Mr. Rodríguez; and (c) to ensure that similar violations do not occur in the future.

Notes

...

d/ Adopted at the Committee's forty-fourth session, in 1992; see Official Records of the General Assembly, Forty-seventh Session, Supplement No. 40 (A/47/40), annex VI.A.

e/ See the comments of the Committee on Uruguay's third periodic report under article 40 of the Covenant, adopted on 8 April 1993, Official Records of the General Assembly, Forty-eighth session, Supplement No. 40 (A/48/40), chap. III.

TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

- *Zelaya v. Nicaragua* (328/1988), ICCPR, A/49/40 vol. II (20 July 1994) 12 (CCPR/C/51/D/328/1988) at paras. 10.5, 10.6 and 11.

...

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

10.6 The Committee considers violations of articles 7 and 10, paragraph 1, of the Covenant to be extremely serious, and requiring prompt investigation by States parties to the Covenant. In this context, the Committee refers to its General Comment No. 20 on article 7, b/ which reads in part:

> "Article 7 should be read in conjunction with article 2, paragraph 3...The right to lodge complaints against maltreatment prohibited by article 7 must be recognized in the domestic law. Complaints must be investigated promptly and impartially by competent authorities so as to make the remedy effective"...States may not deprive individuals of the right to an effective remedy, including compensation and such full rehabilitation as may be possible."

In this respect, the State party has indicated that the author may institute actions before the Nicaraguan courts. Notwithstanding the possible viability of this avenue of redress, the Committee finds that the responsibility for investigations falls under the State party's obligation to grant an effective remedy.

11. The Human Rights Committee...is of the view that the facts before it disclose violations of articles 7...[and] 10, paragraph 1...of the Covenant.

Notes

...

b/ Adopted at the Committee's forty-fourth session, in 1992; see Official Records of the General Assembly, Forty-seventh Session, Supplement No. 40 (A/47/40), annex VI.A, paras. 14 and 15.

TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

- *Mukong v. Cameroon* (458/1991), ICCPR, A/49/40 vol. II (21 July 1994) 171 (CCPR/C/51/D/458/1991) at paras. 9.1-9.4.

...

9.1 The author has contended that the conditions of his detention in 1988 and 1990 amount to a violation of article 7, in particular because of insalubrious conditions of detention facilities, overcrowding of a cell at the first police district of Yaoundé, deprivation of food and of clothing, and death threats and *incommunicado* detention at the camp of the brigade mobile mixte at Douala. The State party has replied that the burden of proof for these allegations lies with the author, and that as far as conditions of detention are concerned, they are a factor of the underdevelopment of Cameroon.

9.2 The Committee does not accept the State party's views. As it has held on previous occasions, the burden of proof cannot rest alone with the author of a communication, especially considering that the author and the State party do not always have equal access to the evidence and that frequently the State party alone has access to the relevant information. b/ Mr. Mukong has provided detailed information about the treatment he was subjected to; in the circumstances, it was incumbent upon the State party to refute the allegations in detail, rather than shifting the burden of proof to the author.

9.3 As to the conditions of detention in general, the Committee observes that certain minimum standards regarding the conditions of detention must be observed regardless of a State party's level of development. These include, in accordance with rules 10, 12, 17, 19 and 20 of the Standard Minimum Rules for the Treatment of Prisoners, c/ minimum floor space and cubic content of air for each prisoner, adequate sanitary facilities, clothing which shall be in no manner degrading or humiliating, provision of a separate bed and provision of food of nutritional value adequate for health and strength. It should be noted that these are minimum requirements which the Committee considers should always be observed, even if economic or budgetary considerations may make compliance with these obligations difficult. It transpires from the file that these requirements were not met during the author's detention in the summer of 1988 and in February/March 1990.

9.4 The Committee further notes that quite apart from the general conditions of detention, the author has been singled out for exceptionally harsh and degrading treatment. Thus, he was kept detained *incommunicado*, was threatened with torture and death and intimidated, deprived of food, and kept locked in his cell for several days on end without the possibility of recreation. In this context, the Committee recalls its General Comment 20 (44) which recommends that States parties should make provision against *incommunicado* detention and notes that total isolation of a detained or imprisoned person may amount to acts prohibited

by article 7. d/ In view of the above, the Committee finds that Mr. Mukong has been subjected to cruel, inhuman and degrading treatment, in violation of article 7 of the Covenant.

Notes

...

b/ See Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 40 (A/37/40), annex X, Communication No. 30/1978 (*Bleier v. Uruguay*), Views adopted on 29 March 1982, para. 13.3.

c/ Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council in its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977; see Human Rights: A Compilation of International Instruments (United Nations publication, Sales No. 88.XIV.1), chap. G, sect. 30.

d/ See Official Records of the General Assembly, Forty-seventh Session, Supplement No. 40 (A/47/40), annex X, annex VI.A, General Comment 20 (44).

- *Cox v. Canada* (539/1993), ICCPR, A/50/40 vol. II (31 October 1994) 105 (CCPR/C/52/D/539/1993) at paras. 17.1-17.3, 18 and Individual Opinion by Messrs. Kurt Herndl and Waleed Sadi (concurring), 121.

...

17.1 The Committee has further considered whether in the specific circumstances of this case, being held on death row would constitute a violation of Mr. Cox's rights under article 7 of the Covenant. While confinement on death row is necessarily stressful, no specific factors relating to Mr. Cox's mental condition have been brought to the attention of the Committee. The Committee notes also that Canada has submitted specific information about the current state of prisons in Pennsylvania, in particular with regard to the facilities housing inmates under sentence of death, which would not appear to violate article 7 of the Covenant.

17.2 As to the period of detention on death row in reference to article 7, the Committee notes that Mr. Cox has not yet been convicted nor sentenced, and that the trial of the two accomplices in the murders of which Mr. Cox is also charged did not end with sentences of death but rather of life imprisonment. Under the jurisprudence of the Committee Views in Communications Nos. 210/1986 and 225/1987, *Earl Pratt and Ivan Morgan v. Jamaica*, para. 13.6; No. 250/1987, *Carlton Reid v. Jamaica*, para. 11.6; Nos. 270/1988 and 271/1988, *Randolph Barrett and Clyde Sutcliffe v. Jamaica*, para. 8.4; No. 274/1988, *Loxley Griffith v. Jamaica*, para. 7.4; No. 317/1988, *Howard Martin v. Jamaica*, para. 12.1; No. 470/1991, *Kindler v. Canada*, para. 15.2., on the one hand, every person confined to death row must be afforded the opportunity to pursue all possibilities of appeal, and, on the other hand, the State party must ensure that the possibilities for appeal are made available to the condemned prisoner within a reasonable time. Canada has submitted specific information showing that persons under sentence of death in the state of Pennsylvania are given every opportunity to avail themselves of several appeal instances, as well as opportunities to seek pardon or clemency. The author has not adduced evidence to show that these procedures are not made available within a reasonable time, or that there are unreasonable delays which would be imputable to the State. In these circumstances, the Committee finds that the extradition of Mr. Cox to the United States would not entail a violation of article 7 of the Covenant.

17.3 With regard to the method of execution, the Committee has already had the opportunity of examining the Kindler case, in which the potential judicial execution by lethal injection was not found to be in violation of article 7 of the Covenant.

...

18. The Committee...finds that the facts before it do not sustain a finding that the extradition of Mr. Cox to face trial for a capital offence in the United States would constitute a violation by Canada of any provision of the International Covenant on Civil and Political Rights.

...

Individual Opinion by Messrs. Kurt Herndl and Waleed Sadi

We concur with the Committee's finding that the facts of the instant case do not reveal a violation of either article 6 or 7 of the Covenant.

...[W]e would like to submit the following considerations on the scope of articles 6 and 7 of the Covenant and their application in the case of Mr. Keith Cox.

...

Article 7

The Committee has pronounced itself in numerous cases on the issue of the "death row phenomenon" and has held that "prolonged judicial proceedings do not *per se* constitute

cruel, inhuman and degrading treatment, even if they can be a source of mental strain for the convicted persons." 39/ We concur with the Committee's reaffirmation and elaboration of this holding in the instant decision. Furthermore we consider that prolonged imprisonment under sentence of death could raise an issue under article 7 of the Covenant if the prolongation were unreasonable and attributable primarily to the State, as when the State is responsible for delays in the handling of the appeals or fails to issue necessary documents or written judgments. However, in the specific circumstances of the Cox case, we agree that the author has not shown that, if he were sentenced to death, his detention on death row would be unreasonably prolonged for reasons imputable to the State.

We further believe that imposing rigid time limits for the conclusion of all appeals and requests for clemency is dangerous and may actually work against the person on death row by accelerating the execution of the sentence of death. It is generally in the interest of the petitioner to remain alive for as long as possible. Indeed, while avenues of appeal remain open, there is hope, and most petitioners will avail themselves of these possibilities, even if doing so entails continued uncertainty. This is a dilemma inherent in the administration of justice within all those societies that have not yet abolished capital punishment.

Notes

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39/ Views on Communication No. 210/1986 and Communication No. 225/1987 (*Earl Pratt and Ivan Morgan v. Jamaica*) adopted on 6 April 1989, para.13.6. This holding has been reaffirmed in some ten subsequent cases, including Communication No. 270/1988 and Communication No. 271/1988 (*Randolph Barrett and Clyde Sutcliffe v. Jamaica*), adopted on 30 March 1992, para. 8.4, and Communication No. 470/1991 (*Kindler v. Canada*), adopted on 30 July 1993, paragraph 15.2.

For dissenting opinions in this context, see Cox v. Canada (539/1993), ICCPR, A/50/40 vol. II (31 October 1994) 105 (CCPR/C/52/D/539/1993) at Individual Opinion by Mrs. Rosalyn Higgins and Messrs. Laurel Francis, Kurt Herndl, Andreas Mavrommatis, Birame Ndiaye and Waleed Sadi, 119, Individual Opinion by Mrs. Elizabeth Evatt, 120, Individual Opinion by Mr. Tamar Ban (dissenting in part), 124, Individual Opinion by Messrs. Francisco José Aguilar Urbina and Fausto Pocar, 126 and Individual Opinion by Mr. Bertil Wennergren, 129.

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

...

11.6 With regard to the authors' allegations about maltreatment on death row, the Committee notes that the State party has indicated that it would investigate the allegations, but that the results of the investigations have not been transmitted to the Committee. Due weight must therefore be given to the authors' allegations, to the extent that they are substantiated. The Committee notes that the authors have mentioned specific incidents, in May 1990 and May 1993, during which they were assaulted by prison warders or soldiers and, moreover, that Andrew Peart has been receiving death threats. In the Committee's view this amounts to cruel treatment within the meaning of article 7 of the Covenant and also entails a violation of article 10, paragraph 1.

- *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 and 9.2.

...

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.

TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

- *Stephens v. Jamaica* (373/1989), ICCPR, A/51/40 vol. II (18 October 1995) 1 (CCPR/C/55/D/373/1989) at paras. 9.2-9.4.

...

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

9.3 The Committee has noted counsel's argument that the eight years and 10 months Mr. Stephens spent on death row amounted to inhuman and degrading treatment within the meaning of article 7. It is fully aware of the *ratio decidendi* of the judgment of the Judicial Committee of the Privy Council of 2 November 1993 in the case of *Pratt and Morgan*, which has been adduced by counsel, and has taken note of the State party's reply in this respect.

9.4 In the absence of special circumstances, none of which are discernible in the present case, the Committee reaffirms its jurisprudence that prolonged judicial proceedings do not *per se* constitute cruel, inhuman and degrading treatment, and that, in capital cases, even prolonged periods of detention on death row cannot generally be considered to constitute cruel, inhuman or degrading treatment. h/ In the instant case, a little over five years passed between the author's conviction and the dismissal of his petition for special leave to appeal by the Judicial Committee; he spent another three years and nine months on death row before his sentence was commuted to life imprisonment under the Offences against the Person (Amendment) Act of 1992. Since the author was, at that time, still availing himself of remedies, the Committee does not consider that this delay constituted a violation of article 7 of the Covenant.

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h/ [See Official Records of the General Assembly,] Forty-seventh Session, Supplement No. 40 (A/47/40), annex IX.F, Communications Nos. 270/1988 and 271/1988 (*Barrett and Sutcliffe v. Jamaica*), Views adopted on 30 March 1992, para. 8.4.

- *Bautista v. Colombia* (563/1993), ICCPR, A/51/40 vol. II (27 October 1995) 132 (CCPR/C/55/D563/1993) at para. 8.4.

...
8.4 As to the claim under article 7, the Committee has noted the conclusions contained in Resolution No. 13 of 5 July 1995 and in the judgement of the Administrative Tribunal of Cundinamarca of 22 June 1995, to the effect that Nydia Bautista was subjected to torture prior to her assassination. Given the findings of these decisions and the circumstances of Ms. Bautista's abduction, the Committee concludes that Nydia Bautista was tortured after her disappearance, in violation of article 7.

- *Lubuto v. Zambia* (390/1990), ICCPR, A/51/40 vol. II (31 October 1995) 11 (CCPR/C/55/D/390/1990) at para. 7.4.

...
7.4 As regards the author's claim that he was heavily beaten and tortured upon arrest, the Committee notes that this allegation was before the judge who rejected it on the basis of the evidence. The Committee considers that the information before it is not sufficient to establish a violation of article 7 in the author's case.

- *Chaplin v. Jamaica* (596/1994), ICCPR, A/51/40 vol. II (2 November 1995) 197 (CCPR/C/55/D/596/1994) at para. 8.1.

...
8.1 The Committee has noted counsel's argument that the six years Mr. Chaplin spent on death row amounted to inhuman and degrading treatment within the meaning of article 7. The Committee is fully aware of the *ratio decidendi* of the judgement of the Judicial Committee of the Privy Council of 2 November 1993 in the case of *Pratt and Morgan*, which has been adduced by counsel, and has taken note of the State party's reply in this respect. In the absence of special circumstances, such as procedural delays imputable to the State party, the Committee reaffirms its jurisprudence that prolonged judicial proceedings do not *per se* constitute cruel, inhuman and degrading treatment, and that, in capital cases, even prolonged

periods of detention on death row cannot generally be considered to constitute cruel, inhuman or degrading treatment. h/ In the instant case the Committee does not consider that the length of the author's detention on death row constituted a violation of article 7 of the Covenant.

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h/ [See Official Records of the General Assembly,] Forty-seventh Session, Supplement No. 40 (A/47/40), annex IX.F, Communications Nos. 270/1988 and 271/1988 (*Barrett and Sutcliffe v. Jamaica*), Views adopted on 30 March 1992, paras. 9.3 and 9.4.

- *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 and 8.7.

...

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.

...

8.7 Regarding the claim under articles 7 and 14, paragraph 3 (g) - i.e. that the author was beaten during police interrogation with a view to extracting a confession of guilt - the Committee reiterates that the wording of article 14, paragraph 3 (g), namely that no one shall "be compelled to testify against himself or to confess guilt", must be understood in terms of the absence of any direct or indirect physical or psychological pressure from the investigating authorities on the accused, with a view to obtaining a confession of guilt. e/ Although the author's claim has not been refuted by the State party, which promised to investigate the allegation but failed to forward its findings to the Committee, the Committee observes that the author's contention was challenged by the prosecution during the trial and his confession statement admitted by the judge. The Committee recalls that it must consider allegations of violations of the Covenant in the light of all the written information made available to it by the parties (art. 5, para. 1, of the Optional Protocol); in the instant case, this material includes the trial transcript. The latter reveals that the author's allegation was thoroughly examined by the court in a *voir dire*, 28 pages of the trial transcript being devoted to this issue, and that his statement was subsequently admitted by the judge after careful weighing of the evidence; similarly, the jury concluded to the voluntariness of the statement, thereby endorsing the judge's ruling that the author had not been ill-treated. There is no element in the file which allows the Committee to question the decision of the judge and the jury. It must further be noted that on appeal, author's counsel accepted the voluntariness of Mr. Johnson's statement and used it to secure a reduction of the charge against his client from murder to manslaughter. On the basis of the above, the Committee concludes that there has been no violation of articles 7 and 14, paragraph 3 (g).

Notes

TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

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

e/ [See Official Records of the General Assembly,] Forty-seventh Session, Supplement No. 40 (A/47/40), annex IX.D, Communication No. 248/1987 (Campbell v. Jamaica), Views adopted on 30 March 1992, para. 6.7.

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:

- *Morrison and Graham v. Jamaica* (461/1991), ICCPR, A/51/40 vol. II (25 March 1996) 43 (CCPR/C/52/D/461/1991) at para. 10.3.
- *La Vende v. Trinidad and Tobago* (554/1993), ICCPR, A/53/40 vol. II (29 October 1997) 8 (CCPR/C/61/D/554/1993) at paras. 5.2-5.7.
- *Bickeroo v. Trinidad and Tobago* (555/1993), ICCPR, A/53/40 vol. II (29 October 1997) 15 (CCPR/C/61/D/555/1993) at paras. 5.2-5.7.
- *Daley v. Jamaica* (750/1997), ICCPR, A/53/40 vol. II (31 July 1998) 235 (CCPR/C/63/D/750/1997) at para. 7.6.
- *Forbes v. Jamaica* (649/1995), ICCPR, A/54/40 vol. II (20 October 1998) 127 at para. 7.4.
- *Amore v. Jamaica* (634/1995), ICCPR, A/54/40 vol. II (23 March 1999) 281 at para. 6.3.
- *Gonzalez v. Trinidad and Tobago* (673/1995), ICCPR, A/54/40 vol. II (23 March 1999) 305 at para. 5.3.

- *Celis Laureano v. Peru* (540/1993), ICCPR, A/51/40 vol. II (25 March 1996) 108 (CCPR/C/56/D/540/1993) at para. 8.5.

...

8.5 With regard to the claim under article 7, the Committee recalls that Ms. Laureano disappeared and had no contact with her family or, on the basis of the information available to the Committee, with the outside world. In the circumstances, the Committee concludes

that the abduction and disappearance of the victim and prevention of contact with her family and with the outside world constitute cruel and inhuman treatment, in violation of article 7, *juncto* article 2, paragraph 1, of the Covenant.

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

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

9.4 The file does not, however, reveal any evidence that the incident in which the author suffered a bullet wound was investigated by the court. The accompanying medical report neither states nor suggests how the wound might have occurred. Given the information submitted by the author and the lack of investigation of the serious incident in which the author was wounded, the Committee concludes that there has been a violation of articles 7 and 10 of the Covenant.

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

...
8.3 The author has complained about appalling conditions of detention and harassment at the Carrera Convict Prison. The State party has only refuted this allegation in general terms; on the other hand, the author has failed to provide details of the treatment he was subjected to, other than by reference to conditions of detention that affected all inmates equally. On the basis of the material before it, the Committee concludes that there has been no violation of article 7. However, to convey to the author the prerogative of mercy would not be exercised and his early release denied because of his human rights complaints reveals a lack of humanity and amounts to treatment that fails to respect the author's dignity, in violation of article 10, paragraph 1.

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

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

...

8. The Committee must determine whether the length of time the author spent on death row - seven years - amounts to a violation of articles 7 and 10, paragraph 1, of the Covenant. Counsel has claimed a violation of these provisions merely by reference to the length of time Mr. Hylton was confined to death row. It remains the Committee's jurisprudence that detention on death row for a specific time does not violate articles 7 and 10, paragraph 1, of the Covenant, in the absence of further compelling circumstances. The Committee refers in this context to its Views on Communication No. 588/1994, [see Communication No. 588/1994 (*Errol Johnson v. Jamaica*), adopted on 22 March 1996, paras. 8.2 to 8.5.] in which it explained and clarified its jurisprudence on the issue of the death row phenomenon. In the Committee's opinion, neither the author nor his counsel have shown the existence of further compelling circumstances beyond the length of detention on death row. While a period of detention on death row of seven years is a matter of concern, the Committee concludes that this delay does not *per se* constitute a violation of articles 7 and 10, paragraph 1.

For dissenting opinion in this context, see Hylton v. Jamaica (600/1994), ICCPR, A/51/40 vol. II (16 July 1996) 224 (CCPR/C/57/D/600/1994) at Individual Opinion by Francisco José Aguilar Urbina (dissenting in part), 230.

See also:

- *Sterling v. Jamaica* (598/1994), ICCPR, A/51/40 vol. II (22 July 1996) 214 (CCPR/C/57/D/598/1994) at para. 8.1.
- *Henry v. Jamaica* (610/1995), ICCPR, A/54/40 vol. II (20 October 1998) 45 (CCPR/C/64/D/610/1995) at para. 7.3.
- *Pennant v. Jamaica* (647/1995), ICCPR, A/54/40 vol. II (20 October 1998) 118

(CCPR/C/64/D/647/1995) at para. 8.5.

- *Lewis v. Jamaica* (527/1993), ICCPR, A/51/40 vol. II (18 July 1996) 89 (CCPR/C/57/D/527/1993) at paras. 2.4, 6.9 and 10.2.

...

2.4 During the trial, the author made an unsworn statement from the dock. He testified that he had been elsewhere at the time of the murder and that he had been ill-treated by the police during the interrogation at Montego Bay Police Station. He alleged that, on 25 October 1985, he had been kicked, beaten and threatened with a gun and that one of the officers hit him in his side with a big lock about 10 times. The same officer then ordered him to put his finger on the edge of a desk and struck it with a gun until his finger burst; he was then ordered to use his socks to tie up his finger and to wipe off the blood. The author further claimed that, on 28 October 1985, he was again brought to the C.I.B. office for interrogation. All the officers on duty participated in beating him and one of them struck him in the face with a piece of a mirror. He was then brought back to his cell where a weight was tied to his testicles. When he regained consciousness, he was told to sign a paper, which he refused to do in the absence of a Justice of the Peace. He was then allegedly subjected to electric shocks applied to his ears; after this treatment, he signed the paper.

...

6.9 In so far as the author claimed that his prolonged detention on death row amounted to a violation of article 7 of the Covenant, the Committee reiterated its prior jurisprudence that lengthy detention on death row does not *per se* constitute cruel, inhuman or degrading treatment in violation of article 7 of the Covenant. b/ The Committee observed that the author had not substantiated, for purposes of admissibility, any specific circumstances of his case that would raise an issue under article 7 of the Covenant in this respect. This part of the communication was, therefore, inadmissible under article 2 of the Optional Protocol.

...

10.2 With respect to the alleged violation of articles 7 and 14, paragraph 3 (g), of the Covenant, the Committee notes from the trial documents that the issue was before the jury during the trial, that the jury rejected the author's allegations, and that the matter was not raised on appeal. In the circumstances, the Committee concludes that the information before it does not justify a finding of a violation of articles 7 and 14, paragraph 3 (g), of the Covenant.

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b/ [Official Records of the General Assembly] Forty-fourth Session, Supplement No. 40 (A/44/40). annex X.F, Communications Nos. 210/1986 and 225/1987 (*Pratt and Morgan v. Jamaica*), Views adopted on 6 April 1989, para. 13.6; *Ibid*., Forty-seventh Session, Supplement No. 40 (A/47/40), annex IX.F, Communications Nos. 270/1988 and 271/1988 (*Barrett and Sutcliffe v. Jamaica*), Views adopted on 30 March 1992, para. 8.4; and *ibid*., Forty-eighth Session, Supplement No. 40 (A/48/40), vol. II, annex XII.U, Communication No. 470/1991 (*Kindler v. Canada*), Views adopted on 30 July 1993, para. 6.4.

For dissenting opinion in this context, see Lewis v. Jamaica (527/1993), ICCPR, A/51/40 vol. II (18 July 1996) 89 (CCPR/C/57/D/527/1993) at Individual Opinion by Francisco José Aguilar Urbina (dissenting in part), 97.

See also:

- *Simms v. Jamaica* (541/1993), ICCPR, A/50/40 vol. II (3 April 1995) 164 (CCPR/C/53/D/541/1993) at para. 6.5.
- *Rogers v. Jamaica* (494/1992), ICCPR, A/50/40 (4 April 1995) 149 (CCPR/C/53/D/494/1992) at para. 6.2.
- *McLawrence v. Jamaica* (702/1996), ICCPR, A/52/40 vol. II (18 July 1997) 225 (CCPR/C/60/D/702/1996) at paras. 5.3 and 5.4.
- *Henry v. Jamaica* (610/1995), ICCPR, A/54/40 vol. II (20 October 1998) 45 (CCPR/C/64/D/610/1995) at para. 7.3.
- *Brown v. Jamaica* (775/1997), ICCPR, A/54/40 vol. II (23 March 1999) 260 (CCPR/C/65/D/775/1997) at para. 6.4.

- *Spence v. Jamaica* (599/1994), ICCPR, A/51/40 vol. II (18 July 1996) 219 (CCPR/C/57/D/599/1994) at paras. 7.1 and 7.2.

...

7.1 The first issue to be determined is whether the period of time the author spent on death row, i.e. approximately six and a half years, amounts to a violation of articles 7 and 10, paragraph 1. The Committee refers to its established jurisprudence that prolonged detention on death row does not, *per se*, amount to cruel, inhuman and degrading treatment in the absence of further compelling circumstances. That there are no "further compelling circumstances" in the instant case has been confirmed by counsel herself, who has argued that the delay (i.e. Mr. Spence's confinement to death row for over six years) should be deemed in itself sufficient to constitute a violation of articles 7 and 10, paragraph 1. Accordingly, the Committee finds no violation of these provisions on this count. Similar conclusions apply to

the allegation that the author's conditions of detention violated articles 7 and 10, paragraph 1, as counsel has not substantiated this claim other than by submitting documents of a general nature.

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

For dissenting opinion in this context, see Spence v. Jamaica (599/1994), ICCPR, A/51/40 vol. II (18 July 1996) 219 (CCPR/C/57/D/599/1994) at Individual Opinion by Francisco José Aguilar Urbina (dissenting in part), 223.

- *Sterling v. Jamaica* (598/1994), ICCPR, A/51/40 vol. II (22 July 1996) 214 (CCPR/C/57/D/598/1994) at paras. 2.2, 2.3 and 8.2.

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

2.3 The author informed the prison authorities that he had been beaten, and was told to write to the Parliamentary Ombudsman. He did not do so, for fear of reprisals. On 8 December

1993, author's counsel wrote to the Parliamentary Ombudsman, informing him of the author's beating and requested that the matter be investigated. A reminder was sent on 17 August 1994, but no reply has been received.

...

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

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

...

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

- *Adams v. Jamaica* (607/1994), ICCPR, A/52/40 vol. II (30 October 1996) 163 (CCPR/58/D/607/1994) at paras. 3.7, 8.1 and 8.2.

TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

...

3.7 ...The author claims that he spent about six months in custody on a shooting charge before being charged for murder. After his arrest, he was first detained at the Spanish Town Police Station, and then transferred to the Hunts Bay Police Station. He claims that, there, he "sustained beatings to my back, chest, neck and foot bottom by policemen...who led these beatings on me which caused me to pass blood in my urine and damage to my nerves. I was beaten over a two week period, twice daily. I was denied visitors or medical treatment by the police...

...

8.1 With regard to the author's claim that the length of his detention on death row amounts to a violation of articles 7 and 10 of the Covenant, the Committee refers to its prior jurisprudence that detention on death row does not *per se* constitute cruel, inhuman or degrading treatment in violation of article 7 of the Covenant, in the absence of some further compelling circumstances. 47/ The Committee observes that the author has not shown how the length of his detention on death row affected him as to raise an issue under articles 7 and 10 of the Covenant. While it would be desirable for appeal proceedings to be conducted as expeditiously as possible, in the circumstances of the present case, the Committee concludes that a delay of three years and seven months does not constitute a violation of articles 7 and 10, paragraph 1.

8.2 With regard to the author's allegation that he was ill-treated, the Committee considers that there are two separate issues, the ill-treatment the author suffered during pre-trial detention and later at St. Catherine District Prison. With respect to the ill-treatment during pre-trial detention the Committee notes that the State party has not denied the ill-treatment but has simply stated that the author received medical attention. With regard to the author's alleged ill-treatment at St. Catherine District Prison, the Committee notes that the author has made very precise allegations, which he documented in complaints to the Parliamentary Ombudsman of Jamaica and to the Jamaica Council for Human Rights. The State party has promised to investigate these claims, but has failed to forward to the Committee its findings, almost ten months after promising to do so. In the circumstances, the Committee finds that the author's claims concerning the treatment he was subjected to both during pre-trial detention and at St. Catherine's prison have been substantiated and concludes that articles 7 and 10, paragraph 1, of the Covenant have been violated.

Notes

...

47/ See Committee's Views on Communication No. 588/1994 (*Errol Johnson v. Jamaica*), adopted on 22 March 1996, paras. 8.2 to 8.5.

TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

- *Canepa v. Canada* (558/1993), ICCPR, A/52/40 vol. II (3 April 1997) 115 (CCPR/C/59/D/558/1993) at paras. 3.2 and 11.2.

...

3.2 On 7 June 1994, counsel to the author informed the Committee that, on 6 June 1994, the author was removed from Canada to Rome, Italy. According to counsel, the author had been informed of the date and time of his removal a few hours before the removal was to take place. This made it impossible for him to get his belongings and money from his family, allegedly contrary to normal procedure...It is submitted that the author's mental health will deteriorate if he is to stay in Italy, a country with which he is not familiar and where he feels isolated, and that this will cause him irreparable harm.

...

11.2 The author has claimed that his removal from Canada constituted a violation of article 7 of the Covenant, since the separation of his family amounts to cruel, inhuman and degrading treatment. On the basis of the material before it, the Committee is of the opinion that the facts of the instant case are not of such a nature as to raise an issue under article 7 of the Covenant. The Committee concludes that there has been no violation of article 7 of the Covenant in the instant case.

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

...

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

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

other medical treatment afterwards.

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

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

...
8.2 As regards the author's claim that he was beaten in order to make him sign a confession, the Committee notes that this claim was put before the judge and the jury at trial, who rejected it. The Committee further notes that the author, in his statement from the dock during the trial, did not make any allusion to having been beaten by the police. Although the matter was raised on appeal, counsel did not pursue it and the Court found no merit in it. The Committee concludes that the information before it does not justify the finding of a violation of articles 7 and 10 of the Covenant.

- *Edwards v. Jamaica* (529/1993), ICCPR, A/52/40 vol. II (28 July 1997) 28 (CCPR/C/60/D/529/1993) at paras. 8.2 and 8.3.

...
8.2 The Committee must determine whether the length of time the author spent on death row - 11 years and 1 month - amounts to a violation of articles 7 and 10 paragraph 1, of the Covenant. Counsel has claimed a violation of these provisions by reference to the length of time Mr. Edwards was confined to death row. It remains the Committee's jurisprudence that detention on death row for a specific time does not violate articles 7 and 10, paragraph 1, in the absence of some further compelling circumstances. The Committee refers in this context, to its Views on Communication No 588/1994 6/ in which it explained and clarified its jurisprudence on this issue. In the Committee's opinion, neither the author nor his counsel have shown the existence of further compelling circumstances beyond the length of detention on death row. While a period of detention on death row 7/ of over eleven years is a matter of serious concern, the Committee concludes that length of time does not *per se* constitute a violation of articles 7 and 10, paragraph 1.

8.3 With regard to the conditions of detention at St. Catherine's District Prison, the Committee notes that in his original communication the author made specific allegations, in respect of the deplorable conditions of detention. He alleged that he was held for the period of 10 years alone in a cell measuring 6 feet by 14 feet, let out only for three and half hours a day, was provided with no recreational facilities and received no books. The State party made no attempt to refute these specific allegations. In these circumstances, the Committee takes the allegations as proven. It finds that holding a prisoner in such conditions of detention constitutes not only a violation article 10, paragraph 1, but, because of the length of time in which the author was kept in these conditions, also a violation of article 7.

Notes

...

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

7/ During the period the author remained on death row (1984-1992) until the Offences Against the Persons (Amendment) Act, was enacted, the State party observed various moratoriums on executions.

- *A. R. J. v. Australia* (692/1996), ICCPR, A/52/40 vol. II (28 July 1997) 205 (CCPR/C/60/D/692/1996) at para. 6.14.

...

6.14 ...The Committee does not take lightly the possibility that if retried and resentenced in Iran, the author might be exposed to a sentence of between 20 and 74 lashes. But the risk of such treatment must be real, i.e. be the necessary and foreseeable consequence of deportation to Iran. According to the information provided by the State party, there is no evidence of any actual intention on the part of Iran to prosecute the author. On the contrary, the State party has presented detailed information on a number of similar deportation cases in which no prosecution was initiated in Iran. Therefore, the State party's argument that it is extremely unlikely that Iranian citizens who already have served sentences for drug-related sentences abroad would be re-tried and re-sentenced is sufficient to form a basis for the Committee's assessment on the foreseeability of treatment that would violate article 7. Furthermore, treatment of the author contrary to article 7 is unlikely on the basis of precedents of other deportation cases referred to by the State party. These considerations justify the conclusion that the author's deportation to Iran would not expose him to the

necessary and foreseeable consequence of treatment contrary to article 7 of the Covenant; accordingly, Australia would not be in violation of article 7 by deporting Mr. J..

- *Arhuacos v. Colombia* (612/1995), ICCPR, A/52/40 vol. II (29 July 1997) 173 (CCPR/C/60/D/612/1995) at paras. 8.4 and 8.5.

...
8.4 As to the claim under article 7 in respect of the three indigenous leaders, the Committee has noted the results of the autopsies, and also the death certificates, which revealed that the indigenous leaders had been tortured prior to being shot in the head. Given the circumstances of the abduction of Mr. Luis Napoleón Torres Crespo, Mr. Angel María Torres Arroyo and Mr. Antonio Hugues Chaparro Torres, together with the results of the autopsies and the lack of information from the State party on that point, the Committee concludes that Mr. Luis Napoleón Torres Crespo, Mr. Angel María Torres Arroyo and Mr. Antonio Hugues Chaparro Torres were tortured after their disappearance, in violation of article 7.

8.5 As to the Villafañe brothers' claim under article 7, the Committee has noted the conclusions contained in the decision of 27 April 1992, to the effect that the brothers were subjected to ill-treatment by soldiers from the No. 2 Artillery Battalion "*La Popa*", including being blindfolded and dunked in a canal. The Committee concludes that José Vicente and Amado Villafañe were tortured, in violation of article 7 of the Covenant.

- *Singh v. Canada* (761/1997), ICCPR, A/52/40 vol. II (29 July 1997) 348 (CCPR/C/60/D/761/1997) at paras. 3.5, 4.3 and 5.

...
3.5 ...[T]he author claims that the State party's failure to provide social security to himself and his dependent children, while he is unable to sustain his family as a consequence of his forced withdrawal from the University, constitutes inhuman and degrading treatment, in violation of article 7 of the Covenant.
...
4.3 ...[T]he Committee considers that the non-provision of social security services to the author or his family after his withdrawal from the University of Western Ontario raises no issues under article 7.
...
5. The Human Rights Committee therefore decides that:

(a) The communication is inadmissible...

TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

- *La Vende v. Trinidad and Tobago* (554/1993), ICCPR, A/53/40 vol. II (29 October 1997) 8 (CCPR/C/61/D/554/1993) at para. 5.7.

  ...
  5.7 In this case, counsel has not alleged the existence of circumstances, over and above the mere length of detention, which would have turned the author's detention on death row at the State Prison into a violation of articles 7 and 10, paragraph 1. As the Committee must, under article 5, paragraph 1 of the Optional Protocol, consider the communication in the light of all the information of the parties, the Committee cannot, in the absence of information on additional factors, conclude that there has been a violation of these provisions.

For dissenting opinions in this context, see La Vende v. Trinidad and Tobago (554/1993), ICCPR, A/53/40 vol. II (29 October 1997) 8 (CCPR/C/61/D/554/1993) at Individual Opinion by Fausto Pocar, Mr. Prafullachandra N. Bhagwati, Ms. Christine Chanet, Ms. Pilar Gaitan de Pombo and Mr. Julio Prado Vallejo and Mr. Maxwell Yalden, 14.

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

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

  6.5 In the instant case, the material before the Committee indicates that the author's mental condition seriously deteriorated during his incarceration on death row. This conclusion is buttressed by the correspondence addressed to the Committee on the author's behalf by other inmates on death row, and by the report prepared by Dr. Irons on his examination of the author on 14 March 1992...On the other hand, the State party, which had promised to investigate the author's state of mental health and to forward its findings to the Committee,

has failed to do so, more than two years after its submission. Finally, it is not apparent that the psychiatric examination which had been scheduled for the author in September 1994 by the State party's Department of Correctional Services has been carried out since that date. All these factors justify the conclusion that the author did not receive any or received inadequate medical treatment for his mental condition while detained on death row. This situation constitutes a violation of articles 7 and 10, paragraph 1, of the Covenant, since the author was subjected to inhuman treatment and was not treated with respect for the inherent dignity of his person.

Notes

...

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

- *Young v. Jamaica* (615/1995), ICCPR, A/53/40 vol. II (4 November 1997) 69 (CCPR/C/61/D/615/1995) at para. 5.2.

...

5.2 Counsel claims that Mr. Young is a victim of violation of article 7, in that he was subjected to ill-treatment by prison warders, including assault and repeated soaking of his bedding. The State party has not replied to this allegation, although it had an opportunity to do so. In the circumstances, the Committee concludes that Mr. Young was subjected to degrading treatment, in violation of article 7.

- *G. T. v. Australia* (706/1996), ICCPR, A/53/40 vol. II (4 November 1997) 184 (CCPR/C/61/D/706/1996) at paras. 8.4 and 8.6.

...

8.4 In cases like the present case, a real risk is to be deducted from the intent of the country to which the persons concerned is to be deported, as well as from the pattern of conduct shown by the country in similar cases...Although the Committee considers that the "assurances" given by the Malaysian Government do not as such preclude the possibility of T.'s prosecution for exporting or possessing drugs, nothing in the information before the Committee points to any intention on the part of the Malaysian authorities to prosecute T. The State party itself has made investigations into the possibility of the imposition of the death sentence for T. and has been informed that in similar cases no prosecution has occurred. In the circumstances, it cannot be concluded that it is a foreseeable and necessary

consequence of T.'s deportation that he will be tried, convicted and sentenced to death.

...

8.6 In assessing whether the author could be exposed to a real risk of a violation of article 7 of the Covenant, because he might be subjected to caning, considerations similar to those detailed above in paragraph 8.4 apply. The information before the Committee does not indicate that any treatment in violation of article 7 of the Covenant is the foreseeable and necessary consequence of T.'s deportation from Australia. The Committee concludes that Australia would not violate its obligations under article 7 of the Covenant if it deports T. to Malaysia.

For dissenting opinion in this context, see G. T. v. Australia (706/1996), ICCPR, A/53/40 vol. II (4 November 1997) 184 (CCPR/C/61/D/706/1996) at Individual Opinion by Martin Scheinin, 193.

- *Polay Campos v. Peru* (577/1994), ICCPR, A/53/40 vol. II (6 November 1997) 36 at paras. 8.5-8.7.

...

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

...

8.6 As to the detention of Victor Polay Campos at Callao, it transpires from the file that he was denied visits by family and relatives for one year following his conviction, i.e. until 3 April 1994. Furthermore, he was unable to receive and to send correspondence. The latter information is corroborated by a letter dated 14 September 1993 from the International Committee of the Red Cross to the author, which indicates that letters from Mr. Polay Campos' family could not be delivered by Red Cross delegates during a visit to him on 22 July 1993, since delivery and exchange of correspondence were still prohibited. In the Committee's opinion, this total isolation of Mr. Polay Campos for a period of a year and the restrictions placed on correspondence between him and his family constitute inhuman treatment within the meaning of article 7 and are inconsistent with the standards of human

treatment required under article 10, paragraph 1, of the Covenant.

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

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

...

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

See also:

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

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

...

TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

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

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

- *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) at para. 18.6.

...

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

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

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

...
8.2 The Committee has noted the State party's argument that investigations into the allegations of ill-treatment of Mr. Chung have not substantiated his version of beatings and ill-treatment sustained while on death row. It observes that the State party has not indicated whether a formal report on the result of these investigations was issued, nor who investigated the claim and when it was investigated. On the other hand, Mr. Chung has given a detailed account of the beatings he sustained at the hand of warders in 1989. The Committee recalls that a State party is under the obligation to investigate seriously allegations of violations of the Covenant made under the Optional Protocol procedure. 3/ This entails forwarding the outcome of the investigations to the Committee, in detail and without undue delay. In the absence of a detailed reply from the State party, due weight must be given to the author's allegations. The Committee finds that the ill-treatment described by the author constitutes a violation of articles 7 and 10, paragraph 1, of the Covenant.

Notes

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

- *Deidrick v. Jamaica* (619/1995), ICCPR, A/53/40 vol. II (9 April 1998) 87 (CCPR/C/62/D/619/1995) at para. 9.3.

TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

...

9.3 With regard to the deplorable conditions of detention at St. Catherine's District Prison, the Committee notes that author's counsel has made precise allegations, related thereto, i.e that the author is locked-up in his cell 23 hours a day, no mattress or bedding are provided, that there is lack of artificial light and no integral sanitation, inadequate medical services, deplorable food and no recreational facilities etc. All of this has not been contested by the State party, except in a general manner saying that these conditions affect all prisoners. In the Committee's opinion, the conditions described above, which affect the author directly are such as to violate his right to be treated with humanity and with respect for the inherent dignity of the human person, and are therefore contrary to the Covenant. It finds that holding a prisoner in such conditions of detention constitutes inhuman treatment in violation of article 10, paragraph 1, and of article 7.

- *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.

- *Leslie v. Jamaica* (564/1993), ICCPR, A/53/40 vol. II (31 July 1998) 21 (CCPR/C/63/D/564/1993) at paras. 3.1-3.8 and 9.2.

...

3.1 With regard to articles 7 and 10, paragraph 1, of the Covenant, counsel forwards a statement taken from the author at St. Catherine District Prison on 28 January 1993. This states that, on 15 November 1987, while held at the Hunts Bay Police Station, the author was hit on the chest by the investigating officer (name given). Furthermore, the author claims that, throughout his detention at Hunts Bay Police Station (from 14 to 20 November 1987),

he was held in a cell measuring 2 by 4 metres together with five to six other persons. He was not allowed to wash himself and was only permitted to leave the cell in order to fetch drinking water. He was further denied recreational facilities.

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

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

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

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

3.6 By letter of 9 June 1993, the author submits that, on 5 June 1993 at 12:28 p.m., he was harassed by a warder, one M., reportedly because he had complained to the Ombudsman and to "the Human Rights Office" about the treatment by warders. M. allegedly hit the author

on his knee with a baton, and when the author held on to the baton, M. drew a knife. He alleges that M. was about to use the knife but that it fell from his hand. The author then reported the incident to the officer-in-charge of the Section, who referred him to the Prison Superintendent; the latter allegedly refused to see him. The author further alleges that, on 4 May 1993, a warder stuck a finger in his eye and that he was kicked several times as he lay on the floor. The same warder subjected him to further physical and verbal abuse on 23, 24, 29 and 30 September 1993. On 30 September the author's room was searched and 200 dollars removed, which have not been returned.

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

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

...

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

- *Finn v. Jamaica* (617/1995), ICCPR, A/53/40 vol. II (31 July 1998) 78

(CCPR/C/63/D/617/1995) at paras. 3.2 and 9.2.

...

3.2 ...[C]ounsel refers to a questionnaire completed by the author for the purpose of his communication to the Human Rights Committee, in which he describes, *inter alia*, the circumstances of his arrest and detention by the police. In this context, he claims the following: "Rainy. Curfew 5:00 - 5:30 a.m. Soldiers and police. I was in bed [...] and taken on the road where I joined several other men, who were lying face down on the road. I was ordered to lay face down with the other men. Next. From this scene to the police lock up...I was beaten. Abusive language was used. Threats were made, and against my life. I was ill for quite some time. No medical treatment was given. I made complaints to the high authority at the police station, but my complaint fell on deaf ears; and I was further abused. I also made complaints to my lawyer". It is submitted that the treatment the author was subjected to by the police, and the subsequent lack of medical treatment, is in violation of articles 7 and 10, paragraph 1, of the Covenant, as well as of articles 24, 25 and 26 of the Standard Minimum Rules for the Treatment of Prisoners. It is further submitted that the author has made all reasonable efforts to seek redress for the ill treatment suffered by complaining to the police authorities and to his lawyer, and that he therefore has fulfilled the requirements of article 5, paragraph 2(b), of the Optional Protocol, in respect of this claim.

...

9.2 With regard to the author's complaints of ill-treatment while in police detention, the Committee notes that author has made very precise allegations relating to the incident in which he was beaten (see paragraph 3.2 *supra*). It notes the State party's contention that if despite the issue being put to defence counsel nothing was done, it must mean that the author was not truly ill. The Committee reiterates its jurisprudence where it has held that it is insufficient for the State party to simply say that there has been no breach of the Covenant. Consequently, the Committee finds that in the circumstances where the State party has not provided any evidence in respect of the investigation it alleges to have carried out, due weight must be given to the author's allegations. Accordingly, the Committee finds that there has been a violation of articles 7 and 10, paragraph 1, of the Covenant.

- *C. Johnson v. Jamaica* (592/1994), ICCPR, A/54/40 vol. II (20 October 1998) 20 (CCPR/C/64/D/592/1994) at paras. 10.3-10.5, 12 and Individual Opinion by David Kretzmer (concurring), 29.

...

10.3 With regard to the author's death sentence, the Committee notes that the State party has not challenged the authenticity of the birth certificate presented by the author, and has not refuted that the author was under eighteen years of age when the crime for which he was

convicted was committed. As a consequence, the imposition of the death sentence upon the author constituted a violation of article 6, paragraph 5, of the Covenant.

10.4 In the circumstances, since the author of this communication was sentenced to death in violation of article 6 (5) of the Covenant, and the imposition of the death sentence upon him was thus void *ab initio*, his detention on death row constituted a violation of article 7 of the Covenant.

10.5 With regard to the author's claim that he was subjected to ill-treatment on 4 May 1993, the Committee notes that the author has given detailed information, and that the State party's investigation has not refuted the author's allegation. On the basis of the information before it, the Committee finds that the author's claim that he has been subjected to ill-treatment on 4 May 1993 has been substantiated and that there has been a violation of article 7 of the Covenant.

...

12. Under article 2, paragraph 3(a), of the Covenant, Clive Johnson is entitled to an effective remedy. In view of the fact that the author was a minor when he was arrested and that he has spent almost thirteen years in detention, more than seven of which on death row, the Committee recommends the author's immediate release. The State party is under the obligation to ensure that similar violations do not occur in the future.

...

Individual Opinion by David Kretzmer

I concur in the view of the Committee that holding the author on death row in this case amounted to cruel and inhuman punishment. However, since the Committee has consistently held in the past that the time on death row does not of itself amount to a violation of article 7, I think is important to set out the grounds for the different result in this case.

The Committee's view that the mere length of time spent on death row by a person sentenced to death does not amount to cruel and inhuman punishment rests on the notion that holding otherwise would imply that a State party could avoid violating the Covenant by executing a condemned person. As the Covenant strongly suggests that abolition of the death penalty is desirable, the Committee could not accept an interpretation of the Covenant the implication of which was that the Covenant would be violated if a State party refrained from executing a person, but not if it executed him.

This view of the Committee obviously holds only when imposing and carrying out the death sentence are not of themselves a violation of the Covenant. The logic behind the view does not apply when the State party would violate the Covenant by imposing and carrying out the death sentence. In such a case the violation involved in imposing the death penalty is

compounded by holding the condemned person on death row, during which time he suffers from the anxiety over his pending execution. This detention on death row may certainly amount to cruel and inhuman punishment, especially when that detention lasts longer than necessary for the domestic legal proceedings required to correct the error involved in imposing the death sentence. In the present case, as the Committee has held in paragraph 10.4, imposition of the death penalty was inconsistent with the State party's obligation under article 6, paragraph 5 of the Covenant. The author subsequently spent almost eight years on death row, before his sentence was commuted to life imprisonment following reclassification of his offence as non-capital. In these circumstances the detention of the author on death row amounted to cruel and inhuman punishment, in violation of article 7 of the Covenant.

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

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

- *Pennant v. Jamaica* (647/1995), ICCPR, A/54/40 vol. II (20 October 1998) 118 (CCPR/C/64/D/647/1995) at paras. 8.3, 8.6 and 10.

...
8.3 With respect to the author's claim that he was beaten while in police custody and did not receive medical treatment until the committing magistrate ordered the police to take him to hospital, the State party has alleged that this complaint was vague and requested that counsel provide a copy of the letter sent to the author's counsel in Jamaica, requesting confirmation of the said incident. The Committee notes that despite having sent this letter to the State party on 15 March 1996 and the State party's promise to investigate the incident once it was clear which event counsel had confirmed, no information has been received. The Committee

consequently considers that due weight must be given to the author's complaint to the extent to which it has been substantiated and accordingly, finds that the treatment the author received at the hands of the police while in detention is in violation of articles 7 and 10, paragraph 1, of the Covenant.

...

8.6 With regard to the claim made by counsel that the author was placed in a death cell for two weeks after a warrant of execution was read to him. The Committee notes the State party's contention that it is to be expected that this would cause the author "some anxiety", and that the time spent there was because efforts were "presumably" being made to have his execution stayed. The Committee considers that in the absence of a detailed explanation by the State party as to the reasons for the author's two weeks stay in a death cell, this cannot be deemed to be compatible with the provisions of the Covenant, to be treated with humanity. Consequently, the Committee finds that article 7 of the Covenant has been breached.

...

10. Pursuant to article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide Mr. Pennant with an effective remedy, entailing compensation for the ill-treatment received and early release, especially in view of the fact that the author was already eligible for parol in December of 1996.

Notes

...

44/ See Committee's Views on communication No. 588/1994 (*Errol Johnson v. Jamaica*) adopted on 22 March 1996).

- *Forbes v. Jamaica* (649/1995), ICCPR, A/54/40 vol. II (20 October 1998) 127 at para. 7.3.

...

7.3 As to the author's claim that he is a victim of a violation of articles 7 and 10, paragraph 1, on the ground that he was severely beaten by two police officers while at Spanish Town Lock-Up, the Committee notes both that the author has not given any medical evidence of such an occurrence, and that he has failed to bring these allegations to the attention of his former lawyers and the courts. The author has explained that this failure was due partly to the lapse of time from the occurrence until he obtained counsel, and partly to the fear of reprisals. The Committee notes, however, that the author in his statement of 8 September 1994 claims that the beatings occurred in July of 1982, and that he in his letter of 7 September 1993 claims that he had contact with his counsel, Mr. Robert Pickersgill, several

times before the preliminary hearings started in August 1982. Subsequently, there does not appear to have been much of a lapse of time from the alleged beatings until the author obtained contact with his lawyer. The Committee also notes that the author soon after the alleged beatings was moved from Spanish Town Lock-Up to the General Penitentiary, and therefore any fear of reprisal should have been reduced. In these circumstances, on the basis of the information before it, the Committee concludes that the author has not substantiated his claim and, accordingly, there is no basis for finding a violation of articles 7 or 10 on the ground of beatings. Consequently, the Committee also finds that there is no basis for finding a violation of articles 7 and 10 on the ground of inadequate medical treatment during the author's detention at Spanish Town Police Lock-Up.

- *Colin Johnson v. Jamaica* (653/1995), ICCPR, A/54/40 vol. II (20 October 1998) 135 (CCPR/C/64/D/653/1995) at paras. 8.1 and 10.

...

8.1 The Committee must determine whether the length of the author's detention on death row, over seven years, under allegedly deplorable circumstances, at St. Catherine district Prison, violated article 7 of the Covenant. 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, paragraph 1, of the Covenant in the absence of some further compelling circumstances. The author has related two incidents which occurred on 20 November 1986 and 28 May 1990, where he was beaten by warders and lack of medical treatment as well as threats to his life, which he documented in complaints to his counsel in Jamaica, the prison superintendent, the Parliamentary Ombudsman of Jamaica and to the Jamaica Council for Human Rights. The State party has promised to investigate these claims, but has failed to forward to the Committee its findings, almost two years after promising to do so. In these circumstances, in the absence of any information from the State party, the Committee finds a violation of article 7 of the Covenant.

...

10. Pursuant to article 2, paragraph 3 (a), of the Covenant, the State party is under the obligation to provide the author with an effective remedy including compensation. The Committee urges the State party to take effective measures to carry out an official investigation into the beating by wardens with a view to identify the perpetrators and punish them accordingly, and to ensure that similar violations do not occur in the future.

- *Morrison v. Jamaica* (663/1995), ICCPR, A/54/40 vol. II (3 November 1998) 148 (CCPR/C/64/D/663/1995) at para. 8.3.

TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

...

8.3 As to the author's claims that he was beaten by the police and that he was not kept segregated from convicted prisoners during his pre-trial detention between 29 April 1984 and the trial, the Committee notes that the State party has not denied the allegation but has pointed to the author's duty to provide specific details, including the place of detention. Although such information was provided in counsel's submission of 21 February 1996, communicated to the State party on 19 March 1996, no additional comments have been received from the State party. In the circumstances, due weight must be given to the author's allegations. The Committee finds that the beatings constituted a violation of the author's rights under article 7 and that the lack of segregation from convicted prisoners violated article 10, paragraph 2(a).

- *Henry v. Trinidad and Tobago* (752/1997), ICCPR, A/54/40 vol. II (3 November 1998) 238 (CCPR/C/64/D/752/1997) at para. 7.1.

...

7.1 With regard to the incident on 3 May 1988, during which the author was beaten on the head, the Committee notes that the State party has provided information that the use of force by the prison officer was necessary in self-defence. The author has challenged this information, and referred to the fact that he had not been charged with any offence in this connection. The Committee notes that from the information made available by the parties, it appears that the reason given by the State party to explain the force used over Mr. Henry, namely self-defence, was examined in the procedure before the Superintendent of Prisons in order to determine whether the author had committed an assault against the prison officer, and subsequently rejected, since the charge against the author was dismissed. In light of the above and considering that the State party has failed to inform the Committee about the outcome of the investigation of the author's complaint against the prison officer, the Committee finds that the State party has failed to show that the use of force on the author was necessary. Consequently, this constitutes a violation of article 7 of the Covenant.

- *Brown v. Jamaica* (775/1997), ICCPR, A/54/40 vol. II (23 March 1999) 260 (CCPR/C/65/D/775/1997) at paras. 6.12 and 6.13.

...

6.12 With regard to counsel's argument that the author's detention on death row constitutes cruel and inhuman treatment, in particular because he was moved away from death row after nine months, only to be returned after a year and nine months, after his retrial, the Committee refers to its jurisprudence 130/ that detention on death row for a specific period of time does not *per se* violate the Covenant, in the absence of further compelling circumstances. The

Committee does not consider the fact that the author was placed back on death row after his retrial a compelling circumstance which would render the detention on death row cruel or inhuman. The Committee is thus of the opinion that the period of the author's detention on death row as of itself does not constitute a violation of the Covenant.

6.13 The author has, however, also complained about the circumstances of his detention at St. Catherine's District Prison, which have not been addressed by the State party. In particular, he has stated that he is locked up in his cell for 23 hours a day, that he has no mattress or other bedding, no adequate sanitation, ventilation or electric lighting, and that he is denied exercise as well as medical treatment, adequate nutrition and clean drinking water. The author has also claimed that his belongings, including an asthma pump and other medication, were destroyed by the warders in March 1997, and that he has been denied prompt assistance in case of an asthma-attack. Although the State party has promised to investigate certain of these claims, the Committee notes with concern that the results of the State party's investigation have never been communicated. In the circumstances, due weight must be given to the author's uncontested allegations to the extent that they are substantiated. The Committee finds that the above constitute violations of articles 7 and 10, paragraph 1, of the Covenant.

Notes

...

130/ See Communication No. 558/1994 (*Errol Johnson v. Jamaica*), Views adopted on 22 March 1996).

For dissenting opinion in this context, see Brown v. Jamaica (775/1997), ICCPR, A/54/40 vol. II (23 March 1999) 260 (CCPR/C/65/D/775/1997) at Individual Opinion by Hipólito Solari Yrigoyen (dissenting in part), 270.

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

...

7.5 As to Mr. Stewart's claim of a violation of articles 7 and 10, paragraph 1, on the ground of the conditions of detention, including lack of medical treatment, at St. Catherine's District Prison, the Committee notes that Mr. Stewart has made specific allegations. He states that the sanitary conditions of the prison are dreadful, that the quality and quantity of the food is

grossly inadequate and that he has been denied access to non-legal mail. Furthermore, he states that he has been subjected to inadequate medical attention, which has caused the loss of his sight in one eye. The State party has not refuted these specific allegations, and has not, in spite of its explicit promise and the principle in article 4, paragraph 2, of the Optional Protocol, forwarded results of the investigation announced in 1996 into the author's allegations that he was denied medical attention. The Committee finds that these circumstances disclose a violation of articles 7 and 10, paragraph 1, of the Covenant.

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

...

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

...

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

- *Bailey v. Jamaica* (709/1996), ICCPR, A/54/40 vol. II (21 July 1999) 185 (CCPR/C/66/D/709/1996) at paras. 6.5 and 7.6.

...

6.5 The author has claimed that he has been held on death row in appalling conditions in violation of articles 7 and 10, paragraph 1. The Committee notes that the State party has not addressed this issue. However, the author has neither provided any details in relation to the

conditions of detention he is subjected to, nor has he ever complained about this to the relevant authorities. In the circumstances of the case, the Committee recalls the general requirement that an author must substantiate that he is a victim of the alleged violation. In the instant case, the Committee therefore finds that the communication is inadmissible for non-substantiation under article 2 of the Optional Protocol. Similarly, the Committee finds that the author's claim that he has been ill-treated and brutalized since his arrest, is inadmissible under the same provision for lack of substantiation.

...

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

For dissenting opinion in this context, see Bailey v. Jamaica (709/1996), ICCPR, A/54/40 vol. II (21 July 1999) 185 (CCPR/C/66/D/709/1996) at Individual Opinion by Hipólito Solari Yrigoyen (dissenting in part), 194.

- *Gallimore v. Jamaica* (680/1996), ICCPR, A/54/40 vol. II (23 July 1999) 170 (CCPR/C/66/D/680/1996) at paras. 7.1 and 7.3.

...

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

detention are in violation of articles 7 and 10, paragraph 1, of the Covenant.

...

7.3 With regard to the alleged violation of articles 7 and 10, paragraph 1, on the ground that the time the author spent on death row (5 years) and the non-parole period of 15 years...set by the judge together amount to cruel and inhuman punishment, the Committee recalls its constant jurisprudence that the period of time spent on death row does not *per se* constitute a violation of article 7. As to whether the combined effect of the five years on death row and the non-parole period of 15 years amounts to cruel and inhuman punishment, bearing in mind the nature of the offence, the Committee finds that there has been no violation of articles 7 and 10 in this regard.

For dissenting opinion in this context, see Gallimore v. Jamaica (680/1996), ICCPR, A/54/40 vol. II (23 July 1999) 170 (CCPR/C/66/D/680/1996) at Individual Opinion by Hipólito Solari Yrigoyen (dissenting in part), 179.

- *Osbourne v. Jamaica* (759/1997), ICCPR, A/55/40 vol. II (15 March 2000) 133 at paras. 9.1, 9.2 and 11.

...

9.1 The author has claimed that the use of the tamarind switch constitutes cruel, inhuman and degrading punishment, and that the imposition of the sentence violated his rights under article 7 of the Covenant. The State party has contested the claim by stating that the domestic legislation governing such corporal punishment is protected from unconstitutionality by section 26 of the Constitution of Jamaica. The Committee points out, however, that the constitutionality of the sentence is not sufficient to secure compliance also with the Covenant. The permissibility of the sentence under domestic law cannot be invoked as justification under the Covenant. Irrespective of the nature of the crime that is to be punished, however brutal it may be, it is the firm opinion of the Committee that corporal punishment constitutes cruel, inhuman and degrading treatment or punishment contrary to article 7 of the Covenant. The Committee finds that by imposing a sentence of whipping with the tamarind switch, the State party has violated the author's rights under article 7.

9.2 With regard to the author's claim that, on 13 December 1997, he was beaten severely by three warders of the General Penitentiary in Kingston, the Committee notes that the State party in its investigations of the allegations found that the warders had not exercised more force than that which was necessary to ascertain whether the author was in possession of a knife. Furthermore, the State party has provided the Committee with copies of medical reports which contain no mention of the injuries which the author claims to have sustained as a result of the alleged beatings. Based on the material before it, the Committee therefore

cannot find a violation of the Covenant on this ground.

...

11. ...[T]he State party is under an obligation to provide Mr. Osbourne with an effective remedy, and should compensate him for the violation. The State party is also under an obligation to refrain from carrying out the sentence of whipping upon Mr. Osbourne. The State party should ensure that similar violations do not occur in the future by repealing the legislative provisions that allow for corporal punishment.

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

...

3.3 As to alleged violations of articles 7 and 10, the author recalls that on 28 May 1990, he and other inmates broke out of their cells because they had not been allowed to exercise and slop up. The disturbances spread to other parts of the prison. Inmates were asked to return to the cells and complied, but subsequently, warders took the author from his cell, took off his clothes, searched him and started to beat him with a piece of metal. He sustained injuries to head, knee, stomach and eyes, having been beaten for about five minutes. He was then left in his cell unattended, without medical attention. Only at midnight was he taken to the hospital for treatment; he received stitches to the head and was discharged. Even after the event, and investigations into the actions of some warders, the author contends that he continued to be subjected to constant verbal intimidation and abuse. On 16 June 1990, the Jamaica Council for Human Rights wrote to London counsel, noting that the author was "badly battered as a result of the disturbances in the prison at the end of last month", and submitted a complaint before the Jamaican authorities on the author's behalf.

...

7.2 With regard to the author's complaints of ill-treatment while in detention at St. Catherine's District Prison, the Committee notes that the author has made very precise allegations, relating to the incidents where he was beaten (paragraph 3.3 supra). The Committee notes the State party's information, that an enquiry had taken place to investigate the 1990 disturbances in which three prisoners had died, and that the author gave evidence at that enquiry. It also notes the information provided in the further submission whereby the State party contended that at the interview with the author, carried out by the Ministry, he had been unable to provide sufficient information on the names of the persons who had beaten him and those names that he had provided were of persons who either no longer worked in the prison or had retired. The State party, consequently, considered that no meaningful investigation could be carried out. The Committee considers that the fact that the perpetrators no longer work in the prison, in no way absolves the State party from its obligations to ensure the enjoyment of Covenant rights. The Committee notes that no

investigation was undertaken by the State party in 1990 after the Jamaica Council for Human Rights had submitted a complaint, to the authorities on the author's behalf. In the absence of any refutation by the State party due weight should be given to the author's allegations. In these circumstances the author's right not to be subjected to degrading treatment but to be treated with humanity and with respect for the inherent dignity of the human person, were not respected in violation of articles 7 and 10, paragraph 1.

- *Robinson v. Jamaica* (731/1996), ICCPR, A/55/40 vol. II (29 March 2000) 116 at paras. 9.3, 10.3, 10.4, 12 and Individual Opinion by Louis Henkin (concurring), 132.

...

9.3 As to the claim that the author's detention on death row from 1992 to 1997 constitutes cruel, inhuman or degrading treatment, the Committee reiterates its constant jurisprudence 12/ that detention on death row for any specific period of time does not per se constitute a violation of articles 7 and 10, paragraph 1, of the Covenant, in absence of further compelling circumstances. As neither the author nor his counsel have adduced any such circumstances, the Committee finds this part of the communication inadmissible under article 2 of the Optional Protocol...

...

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

10.4 The author has alleged that articles 7 and 10, paragraph 1, were violated also because of "continuing uncertainty" with regard to the non-parole period to be served by the author. The Committee notes that there appears to be agreement between the parties that upon the commutation of the author's sentence, he is subject to a non-parole period of seven years. Neither of the parties have, however, provided the Committee with a copy of a decision to this effect. The Committee notes that the State party claims that there is no uncertainty as to when this period begins to run, but that it does not in fact explicitly state on which date the period began to run in the author's case. However, based on the cited legislation and the State party's explanation, it does seem clear that when it is not otherwise decided, the non-parole period does not start to run any later than on the date of his commutation. The

Committee cannot see that any uncertainty the author may experience as to whether the period started to run on that date or at any time prior to that, can constitute cruel, inhuman or degrading treatment or punishment in violation of the Covenant.

...

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

Notes

...

12/ See, *inter alia*, the Committee's Views on communication No. 588/1994, *Errol Johnson v. Jamaica*, adopted on 22 March 1996.

Individual Opinion by Louis Henkin

I concur in the conclusion of the Committee (paragraph 9.3) that, according to the jurisprudence of the Committee as formulated in previous cases, the circumstances of this case do not constitute a violation by the State party of article 7 of the Covenant.

Like several of my colleagues, I continue to be troubled by the Committee's formulation of the relevant principles, but do not consider the present case to be an appropriate vehicle for re-examining and reformulating them.

- *Thompson v. Saint Vincent and the Grenadines* (806/1998), ICCPR, A/56/40 vol. II (18 October 2000) 93 at paras. 2.1, 3.1, 3.2, 8.2-8.4, 9 and 10.

...

2.1 The author was arrested on 19 December 1993 and charged with the murder of D'Andre Olliviere, a four-year old girl who had disappeared the day before. The High Court (Criminal Division) convicted him as charged and sentenced him to death on 21 June 1995. His appeal was dismissed on 15 January 1996...

...

3.1 Counsel claims that the imposition of the sentence of death in the author's case constitutes cruel and unusual punishment, because under the law of St. Vincent the death sentence is the mandatory sentence for murder. He also points out that no criteria exist for the exercise of the power of pardon, nor has the convicted person the opportunity to make any comments on any information which the Governor-General may have received in this respect.1/ In this context, counsel argues that the death sentence should be reserved for the

most serious of crimes and that a sentence which is indifferently imposed in every category of capital murder fails to retain a proportionate relationship between the circumstances of the actual crime and the offender and the punishment. It therefore becomes cruel and unusual punishment. He argues therefore that it constitutes a violation of article 7 of the Covenant.

3.2 The above is also said to constitute a violation of article 26 of the Covenant, since the mandatory nature of the death sentence does not allow the judge to impose a lesser sentence taking into account any mitigating circumstances. Furthermore, considering that the sentence is mandatory, the discretion at the stage of the exercise of the prerogative of mercy violates the principle of equality before the law.

...

8.2 Counsel has claimed that the mandatory nature of the death sentence and its application in the author's case, constitutes a violation of articles 6 (1), 7 and 26 of the Covenant. The State party has replied that the death sentence is only mandatory for murder, which is the most serious crime under the law, and that this in itself means that it is a proportionate sentence. The Committee notes that the mandatory imposition of the death penalty under the laws of the State party is based solely upon the category of crime for which the offender is found guilty, without regard to the defendant's personal circumstances or the circumstances of the particular offence. The death penalty is mandatory in all cases of "murder" (intentional acts of violence resulting in the death of a person). The Committee considers that such a system of mandatory capital punishment would deprive the author of the most fundamental of rights, the right to life, without considering whether this exceptional form of punishment is appropriate in the circumstances of his or her case. The existence of a right to seek pardon or commutation, as required by article 6, paragraph 4, of the Covenant, does not secure adequate protection to the right to life, as these discretionary measures by the executive are subject to a wide range of other considerations compared to appropriate judicial review of all aspects of a criminal case. The Committee finds that the carrying out of the death penalty in the author's case would constitute an arbitrary deprivation of his life in violation or article 6, paragraph 1, of the Covenant.

8.3 The Committee is of the opinion that counsel's arguments related to the mandatory nature of the death penalty, based on articles 6 (2), 7, 14 (5) and 26 of the Covenant do not raise issues that would be separate from the above finding of a violation of article 6 (1).

8.4 The author has claimed that his conditions of detention are in violation of articles 7 and 10 (1) of the Covenant, and the State party has denied this claim in general terms and has referred to the judgement by the High Court, which rejected the author's claim. The Committee considers that, although it is in principle for the domestic courts of the State party to evaluate facts and evidence in a particular case, it is for the Committee to examine whether or not the facts as established by the Court constitute a violation of the Covenant. In this

respect, the Committee notes that the author had claimed before the High Court that he was confined in a small cell, that he had been provided only with a blanket and a slop pail, that he slept on the floor, that an electric light was on day and night, and that he was allowed out of the cell into the yard one hour a day. The author has further alleged that he does not get any sunlight, and that he is at present detained in a moist and dark cell. The State party has not contested these claims. The Committee finds that the author's conditions of detention constitute a violation of article 10 (1) of the Covenant. Insofar as the author means to claim that the fact that he was taken to the gallows after a warrant for his execution had been issued and that he was removed only fifteen minutes before the scheduled execution constituted cruel, inhuman or degrading treatment, the Committee notes that nothing before the Committee indicates that the author was not removed from the gallows immediately after the stay of execution had been granted. The Committee therefore finds that the facts before it do not disclose a violation of article 7 of the Covenant in this respect.

9. The Human Rights Committee ... is of the view that the facts before it disclose a violation of articles 6 (1) and 10 (1) of the Covenant.

10. Under article 2, paragraph 3 (a), of the Covenant, the State party is under the obligation to provide Mr. Thompson with an effective and appropriate remedy, including commutation. The State party is under an obligation to take measures to prevent similar violations in the future.

Notes

1/ Under section 65 of the Constitution, the Governor General may exercise the prerogative of mercy, in accordance with the advice of the Minister who acts as Chairman of the Advisory Committee on the prerogative of mercy. The Advisory Committee consists of the Chairman (one of the Cabinet Ministers), the Attorney-General and three to four other members appointed by the Governor General on the advice of the Prime Minister. Of the three or four Committee members at least one shall be a Minister and one other shall be a medical practitioner. Before deciding on the exercise of the prerogative of mercy in any death penalty case, the Committee shall obtain a written report of the case from the trial judge (or the Chief Justice, if a report from the trial judge cannot be obtained) together with such other information derived from the record of the case or elsewhere as he may require.

For dissenting opinions in this context, see Thompson v. Saint Vincent and the Grenadines (806/1998), ICCPR, A/56/40 vol. II (18 October 2000) 93 at Individual Opinion by Lord Colville, 101, and Individual Opinion by Mr. David Kretzmer, co-signed by Messrs. Abdelfattah Amor,

TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Maxwell Yalden and Abdallah Zakhia, 105.

- *Rojas García v. Colombia* (687/1996), ICCPR, A/56/40 vol. II (3 April 2001) 48 at paras. 2.1, 10.5, 11 and 12.

  ...
  2.1 On 5 January 1993, at 2 a.m., a group of armed men wearing civilian clothes, from the Public Prosecutor's Office (Cuerpo Técnico de Investigación de la Fiscalía), forcibly entered the author's house through the roof. The group carried out a room-by-room search of the premises, terrifying and verbally abusing the members of the author's family, including small children. In the course of the search, one of the officials fired a gunshot. Two more persons then entered the house through the front door; one typed up a statement and forced the only adult male (Alvaro Rojas) in the family to sign it; he did not allow him to read it, or to keep a copy. When Alvaro Rojas asked whether it was necessary to act with such brutality, he was told to talk to the Public Prosecutor, Carlos Fernando Mendoza. It was at this juncture that the family was informed that the house was being searched as part of an investigation into the murder of the mayor of Bochalema, Ciro Alonso Colmenares.
  ...
  10.5 With regard to the alleged violation of article 7 of the Covenant, the Committee notes that the treatment received by the Rojas García family at the hands of the police, as described in paragraph 2.1 above, has not been refuted by the State party. The Committee therefore decides that there has been a violation of article 7 of the Covenant in this case.

  11. The Human Rights Committee... is of the view that the facts before it disclose a violation by the State party of article 7 and article 17, paragraph 1, of the International Covenant on Civil and Political Rights in respect of the Rojas García family.

  12. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide Rafael A. Rojas García and his family with an effective remedy, which must include reparation. The State party is also under an obligation to take steps to prevent similar violations occurring in the future.

For dissenting opinion in this context, see Rojas García v. Colombia (687/1996), ICCPR, A/56/40 vol. II (3 April 2001) 48 at Individual Opinion by Nisuke Ando and Ivan A. Shearer, 56 (dissenting in part).

CAT

TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

- *Halimi-Nedzibi v. Austria* (8/1991), CAT, A/49/44 (18 November 1993) 40 at paras. 2.1-2.3, 13.2-13.5 and 14.

...

2.1 The author was arrested on 19 April 1988 and charged with drug-trafficking. The trial at first instance opened on 23 January 1989. He was convicted on 4 July 1990 of having been in charge of an international drug-trafficking organization which allegedly operated from Austria between November 1985 and December 1987.

...

2.2 The author alleges that following his arrest in 1988 he and six named witnesses were maltreated, beaten and tortured by police inspector J.J., who was in charge of the criminal investigation. They were allegedly coerced to make incriminating statements. The author's wife, who was in her third or fourth month of pregnancy, had a miscarriage shortly after she had been interrogated by police inspector J.J. The police inspector allegedly also threatened to kill the author. The author raised these matters before the investigating judge on 5 December 1988. In particular, he stated: "I was pressured so long until I admitted that the drugs belonged to me. Inspector J.J. grabbed me by the hair and threw me against the wall; he also submerged my head in a bucket of water...I suffered an eye injury which required hospital treatment."

2.3 During the trial at first instance author's counsel requested all statements made to inspector J.J. to be ruled inadmissible as evidence. He referred to the declaration made by Austria when ratifying the Convention Against Torture in July 1997, which reads: "Austria regards article 15 of the Convention as the legal basis for the inadmissibility provided therein of the use of statements which are established to have been made as a result of torture". The court however, ruled against this motion.

...

13.2 The Committee notes that the author has claimed that he was ill-treated after his arrest and that as a consequence he suffered an eye-injury. The State party has denied the alleged ill-treatment and has claimed that the author's eye-injury dates from childhood. It has submitted an expert report, in which it is concluded that the author's left eye, with almost absolute certainty ("*mit an Sicherheit grenzender Wahrscheinlichkeit*") had been completely blind already in 1988, owing to retinal detachment.

13.3 The Committee observes that the competence, independence and conclusions of the specialist in ophthalmology have not been challenged. While noting with regret that the State party failed to consult with the author's counsel before appointing the specialist, as the Committee had requested in its decision of 26 April 1993, due weight must be given to his conclusions.

13.4 On the basis of the information before it, the Committee cannot conclude that the allegations of ill-treatment have been sustained. In the circumstances, the Committee finds no violation of article 15 of the Convention.

...

13.5 It remains to be determined whether the State party complied with its duty to proceed to a prompt and impartial investigation of the author's allegations that he had been subjected to torture, as provided in article 12 of the Convention. The Committee notes that the author made his allegations before the investigating judge on 5 December 1988. Although the investigating judge questioned the police officers about the allegations on 16 February 1989, no investigation took place until 5 March 1990, when criminal proceedings against the police officers were instituted. The Committee considers that a delay of 15 months before an investigation of allegations of torture is initiated, is unreasonably long and not in compliance with the requirement of article 12 of the Convention.

14. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, is of the view that the facts before it disclose a violation of article 12 of the Convention.

- *Mutombo v. Switzerland* (13/1993), CAT, A/49/44 (27 April 1994) 45 at paras. 9.1-9.4, 9.6, 9.7 and 10.

...

9.1 ...The issue before the Committee is whether the expulsion or return of the author of the communication to Zaire would violate the obligation of Switzerland under article 3 of the Convention not to expel or return a person to another State where there are substantial grounds for believing that he would be in danger or being subjected to torture.

9.2 The Committee is aware of the concerns of the State party that the implementation of article 3 of the Convention might be abused by asylum seekers. The Committee considers that, even if there are doubts about the facts adduced by the author, it must ensure that his security is not endangered.

9.3 ...The Committee must decide, pursuant to paragraph 1 of article 3, whether there are substantial grounds for believing that Mr. Mutombo would be in danger of being subjected to torture. In reaching this conclusion, the Committee must take into account all relevant considerations, pursuant to paragraph 2 of article 3, including the existence of a consistent

pattern of gross, flagrant or mass violations of human rights. The aim of the determination, however, is to establish whether the individual concerned would be personally at risk of being subjected to torture in the country to which he would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a person would be in danger of being subjected to torture upon his return to that country; additional grounds must exist that indicate that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his specific circumstances.

9.4 The Committee considers that in the present case substantial grounds exist for believing that the author would be in danger of being subjected to torture. The Committee has noted the author's ethnic background, alleged political affiliation and detention history as well as the fact, which has not been disputed by the State party, that he appears to have deserted from the army and to have left Zaire in a clandestine manner and, when formulating an application for asylum, to have adduced arguments which may be considered defamatory towards Zaire. The Committee considers that, in the present circumstances, his return to Zaire would have the foreseeable and necessary consequence of exposing him to a real risk of being detained and tortured. Moreover, the belief that "substantial grounds" exist within the meaning of article 3, paragraph 1, is strengthened by "the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights", within the meaning of article 3, paragraph 2.

...

9.6 Moreover, the Committee considers that, in view of the fact that Zaire is not a party to the Convention, the author would be in danger, in the event of expulsion to Zaire, not only of being subjected to torture but of no longer having the legal possibility of applying to the Committee for protection.

9.7 The Committee therefore concludes that the expulsion or return of the author to Zaire in the prevailing circumstances would constitute a violation of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

10. In the light of the above, the Committee is of the view that, in the prevailing circumstances, the State party has an obligation to refrain from expelling Balabou Mutombo to Zaire or of being subjected to torture.

- *Khan v. Canada* (15/1994), CAT, A/50/44 (15 November 1994) 46 at paras. 12.2-12.6.

...

TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

12.2 ...The Committee must decide, pursuant to paragraph 1 of article 3, whether there are substantial grounds for believing that Mr. Khan would be in danger of being subject to torture. In reaching this conclusion, the Committee must take into account all relevant considerations, pursuant to paragraph 2 of article 3, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim of the determination, however, is to establish whether the individual concerned would be personally at risk of being subjected to torture in the country to which he would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a person would be in danger of being subjected to torture upon his return to that country; additional grounds must exist that indicate that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his specific circumstances.

12.3 The Committee notes that the author of the present case has claimed that he was a local leader of the Baltistan Student Federation, that he has twice been tortured by Pakistani police and military, that he was scheduled to appear before a Court upon charges related to his political activities, and that he will face arrest and torture if he were to return to Pakistan. In support of his claim, the author presented, among other documentation, a medical report which does not contradict his allegations. The Committee notes that some of the author's claims and corroborating evidence have been submitted only after his refugee claim had been refused by the Refugee Board and deportation procedures had been initiated; the Committee, however, also notes that this behaviour is not uncommon for victims of torture. The Committee, however, considers that, even if there could be some doubts about the facts as adduced by the author, it must ensure that his security is not endangered. The Committee notes that evidence exists that torture is widely practised in Pakistan against political dissenters as well as against common detainees.

12.4 The Committee considers therefore that in the present case substantial grounds exist for believing that a political activist like the author would be in danger of being subjected to torture. It notes that the author has produced a copy of an arrest warrant against him, for organizing a demonstration and for criticizing the Government, and that moreover he has submitted a copy of a letter from the President of the Baltistan Student Federation, advising him that it would be dangerous for him to return to Pakistan. The Committee further notes that the author has adduced evidence that indicates that supporters of independence for the northern areas and Kashmir have been the targets of repression.

12.5 Moreover, the Committee considers that, in view of the fact that Pakistan is not a party to the Convention, the author would not only be in danger of being subjected to torture, in the event of his forced return to Pakistan, but would no longer have the possibility of applying

to the Committee for protection.

12.6 The Committee therefore concludes that substantial grounds exist for believing that the author would be in danger of being subjected to torture and, consequently, that the expulsion or return of the author to Pakistan in the prevailing circumstances would constitute a violation of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

- *Parot v. Spain* (6/1990), CAT, A/50/44 (2 May 1995) 62 at paras. 2.2, 10.4-10.7 and 11.

...

2.2 The author, in a submission dated 13 October 1990, states that she has learned the following from her brother: he was interrogated at the headquarters of the Guardia Civil in Seville until the early morning of 3 April 1990; in the course of the interrogation he was tortured. On 3 April 1990, he was transferred to Madrid, where the interrogation continued; allegedly, a special unit of the Guardia Civil normally stationed in Basque territory participated in this interrogation, with the purpose of administering "expert" torture. The interrogation continued for five entire days, during which he was not allowed to eat or sleep.

...

10.4 The Committee notes that, in principle, article 13 of the Convention does not require the formal submission of a complaint of torture. It is sufficient for torture only to have been alleged by the victim for the state to be under an obligation promptly and impartially to examine the allegation.

10.5 It is the Committee's view that the State party considered and rejected the allegation of torture made by Mr. Parot in the above-mentioned statement of 7 April 1990. The judgement of the *Audiencia Nacional* of 18 December 1990 dealt expressly with the said complaint and rejected it on the basis of the five medical examinations that were carried out at the time of the alleged torture and the statements made by Parot himself to the Seville medical examiner, which statements were never denied...

10.6 The Committee considers that where complaints of torture are made during court proceedings it is desirable that they be elucidated by means of independent proceedings. Whether or not such action is taken will depend on the internal legislation of the State party concerned and the circumstances of the specific case.

10.7 There are no grounds for Mr. Parot or the author of the communication to challenge the procedure followed in this case by the State party, since not only did Mr. Parot have the benefit of full assistance by counsel during the trial but he also made frequent exercise of his

right to make other charges and complaints which were also considered by the authorities of the State.

11. The Committee against Torture therefore concludes that the State party did not violate the rule laid down in article 13 of the Convention and it considers that, in the light of the information submitted to it, no finding of violation of any other provision of the Convention could be made.

- *Alan v. Switzerland* (21/1995), CAT, A/51/44 (8 May 1996) 68 at paras. 2.1-2.5, 11.2-11.6 and 12.

...

2.1 Since 1978, the author has been a sympathizer of KAWA, an outlawed kurdish marxist-leninist organisation. In 1981, the author was arrested for the first time. He claims that he was tortured and interrogated about his organisational activities. After nine days, he was released. In June 1983, while fulfilling his military service, the author was once again arrested. He claims that he was brutally tortured during 36 days. He states that he was subjected to electric shocks.

2.2 On 30 April 1984, he was sentenced to 8 years and 4 months of imprisonment plus 2 years and ten days of internal exile, for being an active member of KAWA. His conviction was quashed by the Court of Cassation, on 17 October 1984, and a retrial was ordered. On 5 November 1984, the military tribunal of Elazig sentenced the author to two and a half years' imprisonment and 10 months' internal exile in Izmir, for having assisted militants of KAWA. During his internal exile in Izmir he had to present himself to the police every day. Eventually, the author found a job and bought a house in Izmir.

2.3 The author claims that he was arrested several times in 1988 and 1989 and kept in detention for short periods of time, not over six days, because of his political activities (distribution of flyers). The author claims that during these periods of detention, he was put under pressure to denounce his friends. He also states that he was tortured, without further specifying his claim. In the circumstances, the author thought it better to leave Izmir and to return to his province Tunceli, but when he visited the region in July 1990, he found that the repression was even worse there. By chance, the author met a member of parliament, whom he told about the situation in Tunceli. Later, the parliamentarian, after having conducted his own investigations, raised the matter in parliament. According to the author, the military then started looking for him. In the beginning of September 1990, when the author was visiting his brother in Bursa, the police searched his house, confiscated two books and questioned his wife about his whereabouts. The author then decided to leave and to seek asylum in

Switzerland. He left Turkey with a falsified i.d. card on 20 September 1990.

2.4 Counsel submits a copy of a medical report, dated 25 January 1995, which concludes that the author suffers from a post traumatic stress disorder. Some scars on the left side of his body are compatible with tortures to which he allegedly was submitted during his imprisonment in 1983-84.

2.5 The author states that, after his departure, his wife was put under such pressure by the police that she left the town where she was living and moved to Bursa to live with family. In July 1992, the author's brother was allegedly detained during ten days and maltreated.

...

11.2 Pursuant to paragraph 1 of article 3, the Committee must decide whether there are substantial grounds for believing that Mr. Alan would be in danger of being subject to torture upon return to Turkey. In reaching this conclusion, the Committee must take into account all relevant considerations, pursuant to paragraph 2 of article 3, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim of the determination, however, is to establish whether the individual concerned would be *personally* at risk of being subjected to torture in the country to which he would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a person would be in danger of being subjected to torture upon his return to that country; specific grounds must exist that indicate that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his specific circumstances.

11.3 In the instant case, the Committee considers that the author's ethnic background, his alleged political affiliation, his history of detention, and his internal exile should all be taken into account when determining whether he would be in danger of being subjected to torture upon his return. The State party has pointed to contradictions and inconsistencies in the author's story, but the Committee considers that complete accuracy is seldom to be expected by victims of torture and that such inconsistencies as may exist in the author's presentation of the facts are not material and do not raise doubts about the general veracity of the author's claims.

11.4 The Committee has noted the State party's argument that the author has invoked the general situation of Kurds in Turkey to substantiate his fears of torture, but that he has failed to demonstrate that he personally risks to be subject to torture. The Committee has also noted the State party's statement that, according to information collected by its embassy in Ankara, the author is no longer sought by the police and that no prohibition of a passport is in force

for him. On the other hand, the author's counsel has stated that, according to the author's wife, his house in Izmir had been under constant surveillance by the police, also after his departure, and that, in January 1995, the police questioned his former neighbours about the author. Furthermore, since the author left, his brother has been arrested on more than one occasion and his native village was demolished. As regards the State party's argument that the author could find a safe area elsewhere in Turkey, the Committee notes that the author already had to leave his native area, that Izmir did not prove secure for him either, and that, since there are indications that the police are looking for him, it is not likely that a "safe" area for him exists in Turkey. In the circumstances, the Committee finds that the author has sufficiently substantiated that he personally is at risk of being subjected to torture if returned to Turkey.

11.5 Finally, the Committee has taken note of the State party's argument that Turkey is a party to the Convention against Torture and has recognized the Committee's competence under article 22 of the Convention to receive and examine individual communications. The Committee regretfully notes, however, that practice of torture is still systematic in Turkey, as attested to in the Committee's findings in its inquiry under article 20 of the Convention.1/ The Committee observes that the main aim and purpose of the Convention is to *prevent* torture, not to redress torture once it has occurred, and finds that the fact that Turkey is a party to the Convention and has recognized the Committee's competence under article 22, does not, in the circumstances of the instant case, constitute a sufficient guarantee for the author's security.

11.6 The Committee concludes that the expulsion or return of the author to Turkey in the prevailing circumstances would constitute a violation of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

12. In the light of the above, the Committee is of the view that, in the prevailing circumstances, the State party has an obligation to refrain from forcibly returning Ismail Alan to Turkey.

Notes

1/ Published in the Committee's report to the General Assembly at its 48th session, document No. A/48/44/Add.1.

- *Kisoki v. Sweden*, (41/1996), CAT, A/51/44 (8 May 1996) 81 at paras. 9.1-9.7.

...
9.1 The issue before the Committee is whether the forced return of the author to Zaire would violate the obligation of Sweden under article 3 of the Convention not to expel or to return a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

9.2 Pursuant to article 3, paragraph 1, the Committee must decide whether there are substantial grounds for believing that Ms. Kisoki would be in danger of being subject to torture upon return to Zaire...

9.3 In the instant case, the Committee considers that the author's political affiliation and activities, her history of detention and torture, should be taken into account when determining whether she would be in danger of being subjected to torture upon her return. ...
9.4 ...In the circumstances, the Committee need not take into consideration the general situation of returned refugee claimants, but rather the situation of returned refugee claimants who are active members of the opposition to the Government of President Mobutu.

9.5 In this context, the Committee has noted the position of the United Nations High Commissioner for Refugees, according to whom deportees who are discovered to have sought asylum abroad undergo interrogation upon arrival at Kinshasa airport, following which those who are believed to have a political profile are at risk of detention and consequently ill-treatment. The Committee also notes that, according to the information available, members of UDPS continue to be targeted for political persecution in Zaire.

9.6 In the circumstances, the Committee considers that substantial grounds exist for believing that the author would be in danger of being subjected to torture if returned to Zaire.

9.7 The Committee concludes that the expulsion or return of the author to Zaire in the prevailing circumstances would constitute a violation of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

- *Tala v. Sweden* (43/1995), CAT, A/52/44 (15 November 1996) 56 at paras. 10.1-10.5.

...
10.1 The Committee must decide, pursuant to article 3, paragraph 1, whether there are substantial grounds for believing that Mr. Tala would be in danger of being subjected to torture upon return to Iran...

10.2 The Committee has noted the State party's assertion that its authorities apply practically

the same test as prescribed by article 3 of the Convention when determining whether or not a person can be deported. The Committee, however, notes that the text of the decisions taken be the Immigration Board (26 November 1990) and the Aliens Appeal Board (3 July 1992 and 25 August 1995) in the author's case does not show that the test as required by article 3 of the Convention (and as reflected in chapter 8, section 1, of the 1989 Aliens Act) was in fact applied to the author's case.

10.3 In the present case, the Committee considers that the author's political affiliation with the People's Mujahedin Organization and activities, his history of detention and torture should be taken into account when determining whether he would be in danger of being subjected to torture upon his return. The State party has pointed to contradictions and inconsistencies in the author's story, but the Committee considers that complete accuracy is seldom to be expected by victims of torture and that the inconsistencies that exist in the author's presentation of the facts do not raise doubts about the general veracity of his claims, especially since it has been demonstrated that the author suffers from post-traumatic stress disorder. Further, the Committee has noted from the medical evidence that the scars on the author's thighs could only have been caused by a burn and that this burn could only have been inflicted intentionally by a person other than the author himself.

10.4 The Committee is aware of the serious human rights situation in Iran, as reported, *inter alia*, to the Commission on Human Rights by the Commission's Special Representative on the situation of human rights in Iran. The Committee notes the concern expressed by the Commission, in particular in respect of the high number of executions, instances of torture and cruel, inhuman or degrading treatment or punishment.

10.5 In the circumstances, the Committee considers that substantial grounds exist for believing that the author would be in danger of being subjected to torture if returned to Iran.

See also:

- *Falakaflaki v. Sweden* (89/1997), CAT, A/53/44 (8 May 1998) 99 at paras. 6.2-6.7.

- *X. v. Switzerland* (27/1995), CAT, A/52/44 (28 April 1997) 64 at paras. 2.1-2.5 and 11.2-11.4.

...

2.1 The author states that he has been a member of the Sudanese Youth Union since 1978 and of the Sudanese Unity Students since 1983. Reportedly, he participated in activities for those organizations, such as handing out leaflets, putting up posters and writing essays. Beginning

in 1983 he studied political science in Beirut, where he claims to have continued his political activities. In 1987 he returned to Sudan where he and his brother, who was a member of the Communist party, published several articles against the politics of the Islamic Front of Salvation.

2.2 During the *coup d'état* in Sudan in 1989, the author was on honeymoon in Egypt. It is said that his brother advised him not to return to Sudan because the Islamic Front of Salvation was aware of his articles and had questioned his brother about the author's whereabouts. The author then decided not to return and took up postgraduate studies in Beirut. Through the Sudanese cultural attaché in Damascus, his family in Sudan sent him money for his livelihood.

2.3 It is further stated that in December 1991, in a Sudanese club in Beirut, the author met members of a Sudanese militia, whose political views are said to be similar to those of the Sudanese Government. Reportedly, the author had a political discussion with the leader of the group, Mr. Sedki Ali Nagdi, which turned into a violent clash. The author claims that the leader of the militia threatened to kill him and warned him against returning to Sudan. Some days after this incident his apartment was allegedly ransacked by members of the Hezbollah, which is said to have had contacts with the Sudanese militia.

2.4 After this incident, the author's wife returned to Sudan and the author moved to another district of Beirut. The author first reduced and then ended all political activities in January 1992. In November 1992, he learned that his brother had been arrested by the Sudanese authorities in order to perform his military service; it is said that he has since disappeared. The author's wife and parents have not been harassed by the Sudanese authorities.

2.5 The author states that in November 1993 he was informed that the newly established Sudanese embassy in Lebanon was planning to take certain dissidents back to Sudan by force. He claims that, while he was visiting a friend, members of the Hezbollah came to look for him. He hid in the bathroom and they left. The author claims that they came to kidnap him.
...
11.2 The Committee must decide, pursuant to article 3, paragraph 1, whether there are substantial grounds for believing that the author would be in danger of being subjected to torture upon return to Sudan...

11.3 The author bases his claim on incidents which occurred in Lebanon. He has never been subject to detention or ill-treatment in Sudan and there is no indication that his wife, who returned to Sudan after December 1991, has been harassed by the Sudanese authorities. Further, the author stayed in Lebanon for almost two years after threats were made against him by the leader of a Sudanese militia, during which period he was not further harassed. The author has claimed that his brother was arrested in Sudan in 1992 and has since disappeared,

but there is no indication that his arrest had anything to do with the author, and the information provided remains vague. The author left Lebanon in November 1993, allegedly after having heard that the newly opened Sudanese embassy planned to take dissidents back to Sudan by force. In this context he claims that the Hezbollah came to a friend's apartment in order to kidnap him.

11.4 The Committee notes the inconsistencies in the author's story as pointed out by the State party, as well as the general failure by the author to provide detailed reasons for his departure from Lebanon in 1993. The Committee considers that the information before it does not show that substantial grounds exist for believing that the author will be personally at risk of being subjected to torture if he is returned to Sudan.

See also:

- *N. M. v. Switzerland* (116/1998), CAT, A/55/44 (9 May 2000) 115 at paras. 6.2 and 6.6-6.8.

- *Paez v. Sweden* (39/1996), CAT, A/52/44 (28 April 1997) 86 at paras. 2.1, 2.3, 14.2-14.6 and 15.

...

2.1 The author states that since 1989 he has been a member of Shining Path, an organization of the Communist Party of Peru. On 2 April 1989, he was arrested during a razzia at the university where he was studying. He was taken to the police station for identification and released after 24 hours. On 1 November 1989, the author participated in a demonstration at which he handed out leaflets and handmade bombs. The police arrested about 40 persons, among them the leader of the author's cell. According to the author, this person was forced to reveal the names of the other cell members. The same day, the author's house was allegedly searched by the police and the author decided to go into hiding until 24 June 1990, when he left Peru with a valid passport issued on 5 April 1990.

...

2.3 The author arrived in Sweden on 26 June 1990 and applied for political asylum on 6 August 1990. On 30 March 1993, the Swedish Board of Immigration rejected his application for political asylum, considering that the author had participated in serious non-political criminality. On 16 December 1994, the Aliens Appeal Board found that the author had undoubtedly been politically active but that he could not be regarded as a refugee according to chapter 3, paragraph 2, of the Aliens Law. The Appeal Board considered that, although the author could be seen as a *de facto* refugee, his armed political activities fell within the framework of article 1 F. of the 1951 Convention relating to the Status of Refugees, and

therefore particular reasons existed not to grant him asylum. The Appeal Board forwarded the case to the Swedish Government for decision. On 12 October 1995, the Government confirmed the earlier decision not to grant the author asylum.

...

14.2 The Committee must decide, pursuant to article 3, paragraph 1, whether there are substantial grounds for believing that Mr. Tapia Paez would be in danger of being subjected to torture upon return to Peru...

14.3 The Committee notes that the facts on which the author's asylum claim are based are not in dispute. The author is a member of Sendero Luminoso and on 1 November 1989 participated in a demonstration where he handed out leaflets and distributed handmade bombs. Subsequently, the police searched his house and the author went into hiding and left the country to seek asylum in Sweden. It is, further, beyond dispute that the author comes from a politically active family, that one of his cousins disappeared and another was killed for political reasons, and that his mother and sisters have been granted *de facto* refugee status by Sweden.

14.4 It appears from the State party's submission and from the decisions by the immigration authorities in the instant case, that the refusal to grant the author asylum in Sweden is based on the exception clause of article 1 F. of the 1951 Convention relating to the Status of Refugees. This is illustrated by the fact that the author's mother and sisters were granted de facto asylum in Sweden, since it was feared that they may be subjected to persecution because they belong to a family which is connected to Sendero Luminoso. No ground has been invoked by the State party for its distinction between the author, on the one hand, and his mother and sisters, on the other, other than the author's activities for Sendero Luminoso.

14.5 The Committee considers that the test of article 3 of the Convention is absolute. Whenever substantial grounds exist for believing that an individual would be in danger of being subjected to torture upon expulsion to another State, the State party is under obligation not to return the person concerned to that State. The nature of the activities in which the person concerned engaged cannot be a material consideration when making a determination under article 3 of the Convention.

14.6 In the circumstances of the instant case, as set out in paragraph 14.3 above, the Committee considers that the grounds invoked by the State party to justify its decision to return the author to Peru do not meet the requirements of article 3 of the Convention.

15. In the light of the above, the Committee is of the view that, in the prevailing circumstances, the State party has an obligation to refrain from forcibly returning Mr. Gorki Ernesto Tapia Paez to Peru.

- *Aemei v. Switzerland* (34/1995), CAT, A/52/44 (9 May 1997) 71 at paras. 9.3-9.10, 10 and 11.

...

9.3 In accordance with article 3, paragraph 1, of the Convention, the Committee has to determine whether there are substantial grounds for believing that Mr. Aemei and the members of his family would be in danger of being subjected to torture if they returned to Iran. In order to do this, the Committee must, in accordance with article 3, paragraph 2, take into account all relevant considerations, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. In other words, the existence of a consistent pattern of violations of human rights within the meaning of article 3, paragraph 2, lends force to the Committee's belief that substantial grounds exist within the meaning of paragraph 1.

9.4 However, the Committee has to determine whether the person concerned would be *personally* at risk of being subjected to torture in the country to which he would be expelled. Consequently, the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a particular country does not in itself constitute a sufficient ground for concluding that a particular person would be in danger of being subjected to torture after returning to his country; additional grounds must exist in order to conclude that the person concerned is personally at risk. Similarly, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person cannot be considered to be at risk of being subjected to torture in his specific circumstances.

9.5 In the present case, therefore, the Committee has to determine whether the expulsion of Mr. Aemei (and his family) to Iran would have the *foreseeable* consequence of exposing him to a *real and personal risk* of being arrested and tortured. It observes that the "substantial grounds" for believing that return or expulsion would expose the applicant to the risk of being subjected to torture may be based not only on acts committed in the country of origin, in other words *before* his flight from the country, but also on activities undertaken by him in the receiving country: in fact, the wording of article 3 does not distinguish between the commission of acts, which might later expose the applicant to the risk of torture, *in the country of origin or in the receiving country*. In other words, even if the activities of which the author is accused in Iran were insufficient for article 3 to apply, his subsequent activities in the receiving country could prove sufficient for application of that article.

9.6 The Committee certainly does not take lightly concern on the part of the State party that article 3 of the Convention might be improperly invoked by asylum seekers. However, the Committee is of the opinion that, even though there may be some remaining doubt as to the

veracity of the facts adduced by the author of a communication, it must ensure that his security is not endangered. 1/ In order to do this, it is not necessary that all the facts invoked by the author should be proved; it is sufficient that the Committee should consider them to be sufficiently substantiated and reliable.

9.7 In the case of the author of the present communication, the Committee considers that his membership of the People's Mojahedin organization, his participation in the activities of that organization and his record of detention in 1981 and 1983 must be taken into consideration in order to determine whether he would be in danger of being subjected to torture if he returned to his country. The State party has pointed to inconsistencies and contradictions in the author's statements, which in its opinion cast doubt on the veracity of his allegations. The Committee considers that although there may indeed be some doubt about the nature of the author's political activities in his country of origin, there can be no doubt about the nature of the activities he engaged in in Switzerland for the APHO, which is considered an illegal organization in Iran. The State party confirms these activities by the author and does not deny that skirmishes occurred between APHO representatives and other Iranian nationals in Bern in June 1992. The State party does not say whether it investigated these skirmishes, but the material submitted to the Committee gives the impression that no such investigation took place. In the circumstances, the Committee must take seriously the author's statement that individuals close to the Iranian authorities threatened the APHO members and the author himself on two occasions, in May 1991 and June 1992. The State party simply noted that Mr. Aemei's activities within the APHO did not constitute a new development *vis-à-vis* the criteria established by the case law of the Federal Tribunal and that consequently the competent authorities could not take up the matter of the author's application for reconsideration.

9.8 The Committee is not convinced by the State party's explanations insofar as they refer to Mr. Aemei's activities in Switzerland. It would recall that the protection accorded by article 3 of the Convention is absolute. Whenever there are substantial grounds for believing that a particular person would be in danger of being subjected to torture if he was expelled to another State, the State party is required not to return that person to that State. The nature of the activities in which the person engaged is not a relevant consideration in the taking of a decision in accordance with article 3 of the Convention.2/ In the present case, the refusal of the competent Swiss authorities to take up the author's request for review, based on reasoning of a procedural nature, does not appear justified in the light of article 3 of the Convention.

9.9 Lastly, the Committee is aware of the serious human rights situation in Iran, as reported *inter alia* to the United Nations Commission on Human Rights by the Commission's Special Representative on the situation of human rights in the Islamic Republic of Iran. The Committee notes, in particular, the concern expressed by the Commission, especially about

the large number of cases of cruel, inhuman or degrading treatment or punishment.

9.10 In the light of the content of the preceding paragraphs, the Committee considers that substantial grounds exist for believing that the author and his family would be in danger of being subjected to torture if they were sent back to Iran.

10. Taking account of the above, the Committee is of the view that, in the present circumstances, the State party has an obligation to refrain from forcibly returning the author and his family to Iran, or to any other country where they would run a real risk of being expelled or returned to Iran.

11. The Committee's finding of a violation of article 3 of the Convention in no way affects the decision(s) of the competent national authorities concerning the granting or refusal of asylum. The finding of a violation of article 3 has a *declaratory character*. Consequently, the State party is not required to modify its decision(s) concerning the granting of asylum; on the other hand, it does have a responsibility to find solutions that will enable it to take all necessary measures to comply with the provisions of article 3 of the Convention. These solutions may be of a legal nature (e.g. decision to admit the applicant temporarily), but also of a political nature (e.g. action to find a third State willing to admit the applicant to its territory and undertaking not to return or expel him in its turn).

Notes

1/ See views on Communication No. 13/1993 (*Mutombo v. Switzerland*), paragraph 9.2, adopted on 27 April 1994.

2/ See views in communication No. 39/1996 (*Tapia Paez v. Sweden*), paragraph 14.5, adopted on 28 April 1997.

- *X. v. Switzerland* (38/1995), CAT, A/52/44 (9 May 1997) 80 at paras. 3 and 10.4-10.6.

...

3. The author argues that if forced to return to Sudan he would face an investigation in which torture is commonly used. His wife states in a letter to the author, dated 1 November 1995, that the Security Police officers regularly come to the house to ask for him. The author states that it is therefore clear that the Sudanese Government considers him to be an informer for the Ba'ath Party and that it is known worldwide that collaborators of the opposition press in Sudan are under permanent danger of reprisals.

...

10.4 The Committee notes that the author does not claim that he has been tortured by the police or security forces in Sudan, and that no medical evidence exists that he suffers from the consequences of torture, either physically or mentally. The Committee therefore concludes that the inconsistencies in the author's story cannot be explained by the effects of a post-traumatic stress disorder, as in the case of many torture victims.

10.5 The Committee further considers that, even if it were to ignore those inconsistencies, the facts as presented show that the author has not participated in political activities, nor worked as a journalist, nor was a member of the Ba'ath Party. The Committee further notes that the author has been kept in detention only once, for 24 hours, in March 1992. On the basis of the information before it, the Committee finds that the author does not belong to a political, professional or social group targeted by the authorities for repression and torture.

10.6 The Committee is aware of the serious human rights situation in Sudan but, on the basis of the above, considers that the author has not substantiated his claim that he will be personally at risk of being subjected to torture if he is returned to Sudan.

- *E. A. v. Switzerland* (28/1995), CAT, A/53/44 (10 November 1997) 54 at paras. 11.2-11.5.

...

11.2 The Committee must decide, pursuant to paragraph 1 of article 3, whether there are substantial grounds for believing that E. A. would be in danger of being subject to torture upon return to Turkey...

11.3 The Committee has noted that the State party's argument that the danger to an individual must be serious ("substantial") in the sense of being highly likely to occur. The Committee does not accept this interpretation and is of the view that "substantial grounds" in article 3 require more than a mere possibility of torture but do not need to be highly likely to occur to satisfy that provision's conditions.

11.4 In the present case, the Committee notes that the author's political activities date back to the beginning of the eighties, at which time he was arrested, tortured, prosecuted and acquitted. The author himself states that he did not resume his activities and although was interrogated by the police twice (once in 1988 and once five months before leaving) there is no indication that the police intended to detain him. In this context, the Committee finds also that the author has not provided substantiation for his claim that the collision with a jeep in 1988 was in fact an attack on him. The Committee further notes that the author has not contested the State party's assertion that the authorities in Tunceli issued him a passport in

1991, and that there is no indication that the police are looking for him at present.

11.5 The Committee is aware of the serious human rights situation in Turkey, but recalls that, for the purposes of article 3 of the Convention, a foreseeable, real and personal risk must exist of being tortured in the country to which a person is returned. On the basis of the considerations above, the Committee is of the opinion that such risk has not been established.

- *P. Q. L. v. Canada* (57/1996), CAT, A/53/44 (17 November 1997) 60 at paras. 2.1, 2.2, 3.1 and 10.4-10.6.

...
2.1 P. Q. L. was born in 1974 in Viet Nam. His mother is Vietnamese and his father Chinese. He was three years old when his family fled from the Vietnamese civil war to China. They left China in 1988, and the applicant has been living in Canada with his family since then.

2.2 Since 1990, P. Q. L. has been convicted three times for robbery and sentenced to terms of three months', six months', and, finally, three years' imprisonment. Immigration Canada issued a deportation order on 9 May 1995, stating that P. Q. L. was a danger to public order. He should have been released on 26 April 1996, after serving his sentence of three years' imprisonment, but the immigration authorities ordered that he be kept in jail while awaiting expulsion.
...
3.1 The applicant argues that his life would be in danger should he return to China. He states that there are substantial grounds for fearing that he could be imprisoned and ill-treated by the Chinese authorities because of his past convictions in Canada. He refers to the Chinese Criminal Code, article 7 of which states that any crime outside China's territory is punishable, even if it has already been tried in the foreign country concerned. He further states that acts of robbery are punished by disproportionate sentences such as 10 years or life imprisonment and even the death penalty.
...
10.4 The Committee notes that the author claims the protection of article 3 on the grounds that he is in danger of being arrested and retried for the offences which he committed in Canada. However, he does not claim that he has participated in political activities in China, nor that he belongs to a political, professional or social group targeted by the authorities for repression or torture.

10.5 The Committee adds that, according to the information in its possession, there is no indication that the Chinese authorities intend to imprison the author because of his Canadian convictions. On the contrary, the State party has stated that judicial proceedings are not

undertaken in such cases. Moreover, the Committee considers that, even if it were certain that the author would be arrested on his return to China because of his prior convictions, the mere fact that he would be arrested and retried would not constitute substantial grounds for believing that he would be in danger of being subjected to torture.

10.6 Furthermore, the Committee refers to the documents submitted by the author, in support of his request for repeal of the decision to revoke his permanent resident status, which allegedly provide proof of his rehabilitation and reintegration into Canadian society. The Committee notes that article 3 of the Convention authorizes it to determine whether return would expose a person to the danger of being subjected to torture but that it is not competent to determine whether or not the author is entitled to a residence permit under a country's domestic legislation.

- *X., Y. and Z. v. Sweden* (61/1996), CAT, A/53/44 (6 May 1998) 75 at paras. 11.1-11.5.

...

11.1 The Committee must decide, pursuant to paragraph 1 of article 3, whether there are substantial grounds for believing that the authors would be in danger of being subject to torture upon return to the Democratic Republic of the Congo...

11.2 The Committee notes that the authors have claimed that they have been subjected to torture in the past, and that Y has provided medical evidence showing that she suffers from a post traumatic stress disorder. The Committee observes that past torture is one of the elements to be taken into account by the Committee when examining a claim concerning article 3 of the Convention, but that the aim of the Committee's examination of the communication is to find whether the authors would risk being subjected to torture now, if returned to the Democratic Republic of the Congo.

11.3 The authors' fear of being subjected to torture was originally based on their political activities for the PRP. The Committee notes that the party is part of the alliance forming the present Government in the Democratic Republic of the Congo, and that the authors' fear thus appears to lack substantiation.

11.4 In their latest submission, the authors have raised other grounds for fearing to be subjected to torture upon return to their country. In this context, they have stated that they disagree with the present Government's policy and that they have participated in a demonstration against the arrest of a political leader in the Democratic Republic of the

Congo. According to the Committee's jurisprudence,3/ activities in the receiving country should also be taken into account when determining whether substantial grounds exist for believing that the return to their country would expose the authors to a risk of torture. In the instant case, however, the Committee considers that the authors' activities in Sweden are not such as to substantiate the belief that they would be in danger of being subjected to torture.

11.5 The Committee is aware of the serious situation of human rights in the Democratic Republic of the Congo, as *inter alia*, reflected by the report of the Special Rapporteur of the Commission on Human Rights. The Committee observes however, that UNHCR has not issued a recommendation to suspend the return of rejected asylum seekers to the Democratic Republic of the Congo in view of the current situation and accordingly that no objective impediments exist to the return of failed refugee claimants to the Democratic Republic of the Congo. The Committee recalls that, for the purpose of article 3 of the Convention, a foreseeable, real and personal risk must exist of being tortured in the country to which a person is returned. On the basis of the above considerations, the Committee is of the opinion that such risk has not been established.

Notes

...

3/ See Committee's Views in communication No. 34/1995 *(Aemei v. Switzerland)*, adopted on 9 May 1997.

- *I. A. O. v. Sweden* (65/1997), CAT, A/53/44 (6 May 1998) 82 at paras. 14.2-14.6.

...

14.2 The Committee must decide, pursuant to paragraph 1 of article 3, whether there are substantial grounds for believing that the author would be in danger of being subjected to torture upon return to Djibouti...

14.3 The Committee has noted the medical evidence provided by the author, and on this basis is of the opinion that there is firm reason to believe that the author has been tortured in the past. In this context, the Committee observes that the author suffers from a post-traumatic stress disorder, and that this has to be taken into account when assessing the author's presentation of the facts. The Committee is therefore of the opinion that the inconsistencies as exist in the author's story do not raise doubts as to the general veracity of his claim that he was detained and tortured.

14.4 The Committee further notes that the author was detained in 1991, allegedly because

he had published articles abroad, criticizing the Government. The author has stated that he has continued to publish articles about Djibouti, and that he therefore continues to be at risk of being detained and tortured when returned to Djibouti. The Committee notes that the State party's immigration authorities were of the opinion that the author's writings were not of such character as to endanger him upon his return. The author has provided a list of his publications in Arabic-language magazines, in which he has criticized the Government for its policies and denounced the discriminatory treatment of Afars. There is no indication that the author is otherwise politically active against the Government of Djibouti.

14.5 The Committee is aware of reported human rights violations in Djibouti, but has no information which would allow it to conclude that a consistent pattern of gross, flagrant or mass violations of human rights exists in Djibouti. According to the information available to the Committee, although journalists are occasionally jailed or intimidated by police, they do not appear to be among the groups that are targeted for repression and opposition periodicals circulate freely and openly criticise the Government. The Committee also notes that no reports of torture exist with regard to the FRUD officials who were detained in September 1997. The Committee recalls that, for the purposes of article 3 of the Convention, a foreseeable, real and personal risk must exist of being subjected to torture in the country to which a person is returned. On the basis of the considerations above, the Committee is of the opinion that such risk has not been established. In this connection, the Committee notes that a risk of being detained as such is not sufficient to trigger the protection of article 3 of the Convention.

14.6 The Committee considers that the information before it does not show that *substantial* grounds exist for believing that the author will be in danger of being subjected to torture if he is returned to Djibouti.

- *Abad v. Spain* (59/1996), CAT, A/53/44 (14 May 1998) 66 at paras. 2.1, 5.2, 8.2-8.8 and 9.

...

2.1 The author was detained...on 29 January 1992 by officers of the Guardia Civil for alleged involvement in activities on behalf of the armed gang ETA. She alleges that she was mistreated between 29 January and 2 February 1992, when she was kept *incommunicado* under anti-terrorist legislation.

...

5.2 The Committee considered that the communication might raise issues under articles 12 and 13 of the Convention, notably in relation to the period of over a month that elapsed between when the court received the medical report and when it heard the author, and what

the court was doing during the almost 11 months that separated the author's statement from the stay of proceedings.

...

8.2 The Committee observes that, under article 12 of the Convention, the authorities have the obligation to proceed to an investigation *ex officio*, wherever there are reasonable grounds to believe that acts of torture or ill-treatment have been committed and whatever the origin of the suspicion. Article 12 also requires that the investigation should be prompt and impartial. The Committee observes that promptness is essential both to ensure that the victim cannot continue to be subjected to such acts and also because in general, unless the methods employed have permanent or serious effects, the physical traces of torture, and especially of cruel, inhuman or degrading treatment, soon disappear.

8.3 The Committee observes that when she appeared before the National High Court on 2 February 1992, after having been held *incommunicado* since 29 January, the author stated that she had been subjected to physical and mental ill-treatment, including the threat of rape. The Court had before it five reports of the forensic physician attached to the National High Court who had examined her daily, the first four examinations having taken place on Guardia Civil premises and the last on the premises of the National High Court prior to the above-mentioned court appearance. These reports note that the author complained of having been subjected to ill-treatment consisting of insults, threats and blows, of having been kept hooded for many hours and of having been forced to remain naked, although she displayed no signs of violence. The Committee considers that these elements should have sufficed for the initiation of an investigation, which did not however take place.

8.4 The Committee also observes that when, on 3 February, the physician of the penitentiary centre noted bruises and contusions on the author's body, this fact was brought to the attention of the judicial authorities. However, the competent judge did not take up the matter until 17 February and Court No. 44 initiated preliminary proceedings only on 21 February.

8.5 The Committee finds that the lack of investigation of the author's allegations, which were made first to the forensic physician after the first examination and during the subsequent examinations she underwent, and then repeated before the judge of the National High Court, and the amount of time which passed between the reporting of the facts and the initiation of proceedings by Court No. 44 are incompatible with the obligation to proceed to a prompt investigation, as provided for in article 12 of the Convention.

8.6 The Committee observes that article 13 of the Convention does not require either the formal lodging of a complaint of torture under the procedure laid down in national law or an express statement of intent to institute and sustain a criminal action arising from the offence, and that it is enough for the victim simply to bring the facts to the attention of an authority

of the State for the latter to be obliged to consider it as a tacit but unequivocal expression of the victim's wish that the facts should be promptly and impartially investigated, as prescribed by this provision of the Convention.

8.7 The Committee notes, as stated above, that the author's complaint to the judge of the National High Court was not examined and that, while Court No. 44 examined the complaint, it did not do so with the requisite promptness. Indeed, more than three weeks passed from the time that the court received the medical report from the penitentiary centre on 17 February 1992 until the author was brought to court and made her statement on 13 March. On that same date the court called for Section 2 of the National High Court to provide the findings of the medical examinations of the author by the forensic physician of that court, but more than two months elapsed before on 13 May they were added to the case file. On 2 June the judge requested the court's own forensic physician to report thereon, and this was done on 28 July. On 3 August the judge summoned the forensic physician of Court No. 2 who had conducted the said examinations. This physician's statement was taken on 17 November. On that same date the court requested the penitentiary centre to indicate the time at which the author had been examined in that institution and how the injuries had developed; this information was transmitted to the court on 23 December. Contrary to the State party's contention...that there had been "no tardiness or delay in the conduct of the investigation", the Committee considers that the above chronology shows the investigative measures not to have satisfied the requirement for promptness in examining complaints, as prescribed by article 13 of the Convention, a defect that cannot be excused by the lack of any protest from the author for such a long period.

8.8 The Committee also observes that during the preliminary proceedings, up to the time when they were discontinued on 12 February 1993, the court took no steps to identify and question any of the Guardia Civil officers who might have taken part in the acts complained of by the author. The Committee finds this omission inexcusable, since a criminal investigation must seek both to determine the nature and circumstances of the alleged acts and to establish the identity of any person who might have been involved therein, as required by the State party's own domestic legislation...Furthermore, the Committee observes that, when the proceedings resumed as of October 1994, the author requested the judge on at least two occasions to allow the submission of evidence additional to that of the medical experts, i.e. she requested the hearing of witnesses as well as the possible perpetrators of the ill-treatment, but these hearings were not ordered. The Committee nevertheless believes that such evidence was entirely pertinent since, although forensic medical reports are important as evidence of acts of torture, they are often insufficient and have to be compared with and supplemented by other information. The Committee has found no justification in this case for the refusal of the judicial authorities to allow other evidence and, in particular, that proposed by the author. The Committee considers these omissions to be incompatible with the obligation to

proceed to an impartial investigation, as provided for in article 13 of the Convention.

9. The Committee against Torture...is of the view that the facts before it reveal a violation of articles 12 and 13 of the Convention.

- *G. R. B. v. Sweden* (83/1997), CAT, A/53/44 (15 May 1998) 92 at paras. 2.1-2.3, 6.2, 6.4, 6.5, 6.7 and 7.

...

2.1 The author states that she belongs to a politically active family in Palcamayo in the Department of Junin...

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

2.3 On 16 May 1991, the author took a bus from Tarma to Palcamayo in order to visit her parents. According to the author, the bus was stopped on the way by two men belonging to the Sendero Luminoso. They forced the author off the bus and she was raped and held as a prisoner for one or two nights before she managed to escape...

...

6.2 ...Before the Committee is...the issue of whether, pursuant to article 16, paragraph 1, the forced return *per se* would constitute cruel, inhuman or degrading treatment or punishment not amounting to torture as defined in article 1.

...

6.4 The Committee notes that the facts on which the author's claim are based, are not in dispute. The Committee further notes that the author has never been subjected to torture or ill-treatment by the Peruvian authorities and that she has not been politically active since 1985 when she left Peru to study abroad. According to unchallenged information, the author has been able to visit Peru on two occasions without encountering difficulties with the national authorities.

6.5 The Committee recalls that the State party's obligation to refrain from forcibly returning

a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture is directly linked to the definition of torture as found in article 1 of the Convention. For the purposes of the Convention, according to Article 1, "the term 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, *when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity*". The Committee considers that the issue whether the State party has an obligation to refrain from expelling a person who might risk pain or suffering inflicted by a non-governmental entity, without the consent or acquiescence of the Government, falls outside the scope of article 3 of the Convention.

...

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

7. The Committee against Torture...is of the view that the facts as found by the Committee do not reveal a breach of...article 16 of the Convention.

See also:

- *S. V. et al. v. Canada* (49/1996), CAT, A/56/44 (15 May 2001) 102 at para. 9.5.

- *A. L. N. v. Switzerland* (90/1997), CAT, A/53/44 (19 May 1998) 106 at paras. 2.1 and 8.2-8.7.

...

2.1 The author states that on 16 February 1997 his father, a member of the União Nacional para a Indepêndencia Total de Angola (UNITA) gave him a video cassette on torture and massacres perpetrated by the Movimento Popular para a Libertação de Angola (MPLA) for him to take to a friend. The cassette contained a scene filmed in 1987 showing soldiers

plunging the then nine-year-old author's hand into boiling water in front of his father. The author says that the scars are still visible. He was arrested on the way during an identity check by MPLA soldiers, who took him to an unknown site in Luanda, where he was beaten. He was then forced to take the soldiers to the family home so that they could arrest his father. At the house he managed to escape while the soldiers were momentarily distracted. On 19 February 1997, he left the country on a borrowed passport issued to the son of one of his father's friends and went to Italy. He arrived in Switzerland on 24 February 1997.

...

8.2 The Committee must decide, pursuant to article 3, paragraph 1, if there are substantial grounds for believing that the author would be in danger of being tortured if sent back to Angola...

8.3 The Committee observes that past torture is one of the elements to be taken into account when examining a claim under article 3 of the Convention, but its purpose in considering the communication is to decide whether, if the author were returned to Angola, he would now risk being tortured.

8.4 In the case in point the Committee notes the author's claim to have been tortured in 1987 and beaten upon his arrest in February 1997. The author has however, supplied no evidence, whether medical certificates or other, attesting to acts of torture or ill-treatment or the *sequelae* of such. In particular, the Committee notes that the author has supplied no detailed information on how he was treated when arrested in February 1997, although it was that arrest that prompted him to leave for Switzerland.

8.5 The author bases his fear of torture on the fact that he is still being sought by MPLA soldiers because of the video cassette. The Committee notes, however, that he has put forward no reason to suggest that he is indeed still wanted. Neither does he make any allusion to the circumstances of his family, including his father, who, according to the author, was also wanted in connection with the video cassette.

8.6 The Committee notes that the situation in Angola, given the peace process, is still difficult, as recently stated in a report by the Secretary-General on the United Nations Observer Mission in Angola (MONUA). The same report states that human rights violations, including torture, which are attributed to the national police among other parties, continue to take place. But it also says that significant progress has been made and that the Government and UNITA have agreed on important points which should enable the peace process to advance. It would therefore seem that the situation in the country has not deteriorated since the author left.

8.7 The Committee points out that, for the purposes of article 3 of the Convention, the

individual concerned must face a foreseeable, real and personal risk of being tortured in the country to which he is returned. On the basis of the above considerations, the Committee is of the opinion that such a risk has not been established.

- *K. N. v. Switzerland* (94/1997), CAT, A/53/44 (19 May 1998) 111 at paras. 10.3 and 10.4.

...
10.3 The author has claimed that he was arrested once in 1990 by the Indian armed forces, that his brother became a member of the Tamil Tigers in 1994 and that for this reason the army is looking for him and has searched his family's house on several occasions. The Committee notes that the only substantiation in support of the author's claim is a letter from the author's father, in which it is stated that the army came to the house to look for him and his brother. The Committee notes, however, that the letter does not give any details about either the author's or his family's situation. The author has not presented any other evidence in support of his claim. He does not claim that he has been tortured in the past.

10.4 The Committee has carefully examined the material before it and finds that it appears that the author's main reason to leave his country was that he felt caught between the two parties in the internal conflict. There is no indication that the author himself is personally targeted by the Sri Lankan authorities for repression.

- *J. U. A. v. Switzerland* (100/1997), CAT, A/54/44 (10 November 1998) 63 at paras. 6.3-6.6.

...
6.3 The Committee must decide, pursuant to article 3, paragraph 1, whether there are substantial grounds for believing that the author would be in danger of being tortured if sent back to Nigeria...

6.4 In the case in point, the Committee notes that the author has never been arrested or subjected to torture. Nor has the author claimed that persons in his immediate circle or individuals who participated in the events which according to him were the reason for his departure from the country were arrested or tortured. Furthermore, it has not been clearly established that the author continues to be sought by the Nigerian police or that the arrest warrant he furnished is an authentic document. Finally, the author has not cited specific cases of individuals alleged to have been tortured in Nigeria after being rejected by countries from which they had requested asylum.

6.5 The Committee notes with concern the numerous reports of human rights violations,

including the use of torture, in Nigeria, but recalls that, for the purposes of article 3 of the Convention, the individual concerned must face a foreseeable, real and personal risk of being tortured in the country to which he is returned. In the light of the foregoing, the Committee deems that such a risk has not been established.

6.6 On the basis of the above considerations, the Committee considers that the information before it does not show substantial grounds for believing that the author runs a personal risk of being tortured if he is sent back to Nigeria.

See also:

- *A.M. v. Switzerland* (144/1999), CAT, A/56/44 (14 November 2000) 161 at paras. 6.6-6.8.

- *Chipana v. Venezuela* (110/1998), CAT, A/54/44 (10 November 1998) 96 at paras. 2.1, 2.2, 3.1 and 6.3-6.7.

...

2.1 The Committee received the first letter from the author on 30 April 1998. She stated that she was arrested in Caracas on 16 February 1998 by officials of the Intelligence and Prevention Services Department (DISIP). The Government of Peru requested her extradition on 26 February 1998, and extradition proceedings were instituted in the Criminal Chamber of the Supreme Court of Justice.

2.2 The author maintained that the nature of the accusations against her would place her in the group of persons liable to be subjected to torture. The Peruvian authorities accused her of the offence of disturbing public order (terrorism against the State) and being a member of the subversive movement Sendero Luminoso. The main evidence in support of these accusations was testimony by two persons under the repentance legislation (a legal device for the benefit of persons who are involved in acts of terrorism and who provide useful information to the authorities) in which they stated that they recognized the author in a photograph, as well as the police reports stating that subversive propaganda had been found in the place where the witnesses say the author carried out the acts of which she was accused. According to the author, the witnesses did not meet the requirements for being regarded as competent witnesses in accordance with the State party's procedural legislation because they were co-defendants in the proceedings against her. She also pointed out that her sister had been arrested in 1992, tried for her alleged involvement in subversive acts and kept in prison

for four years until an appeal court declared her innocent.

...

3.1 The author maintained that her forced return to Peru would place her in danger of being subjected to torture. Such a situation had to be borne in mind, particularly in the context of the existence in Peru of a consistent pattern of violations of human rights, an aspect of which was the frequent use of torture against persons accused of belonging to insurgent organizations, as noted by United Nations bodies, the Organization of American States and non-governmental organizations. The author therefore asked the Committee to request the State party to refrain from carrying out her forced return to Peru while her communication was being considered by the Committee.

...

6.3 The Committee must then decide whether there are well-founded reasons for believing that the author would be in danger of being subjected to torture on her return to Peru...

6.4 When considering the periodic reports of Peru,1/ the Committee received numerous allegations from reliable sources concerning the use of torture by law enforcement officials in connection with the investigation of the offences of terrorism and treason with a view to obtaining information or a confession. The Committee therefore considers that, in view of the nature of the accusations made by the Peruvian authorities in requesting the extradition and the type of evidence on which they based their request, as described by the parties, the author was in a situation where she was in danger of being placed in police custody and tortured on her return to Peru.

7. In the light of the above, the Committee...considers that the State party failed to fulfil its obligation not to extradite the author, which constitutes a violation of article 3 of the Convention.

Notes

1/ A/50/44, paras. 62-73, and A/53/44, paras. 197-205.

- *Ayas v. Sweden* (97/1997), CAT, A/54/44 (12 November 1998) 57 at paras. 6.3-6.6.

...

6.3 The Committee must decide, pursuant to paragraph 1 of article 3, whether there are substantial grounds for believing that the author would be in danger of being subjected to torture upon return to Turkey...

6.4 The Committee is aware of the serious human rights situation in Turkey. Reports from reliable sources suggest that persons suspected of having links with the PKK are frequently tortured in the course of interrogations by law enforcement officers and that this practice is not limited to particular areas of the country.

6.5 It is not in dispute that the author comes from a politically active family. Moreover, the Committee considers the explanations regarding his own political activities as credible and consistent with the findings of the medical reports according to which he suffers from post-traumatic stress syndrome and his scars are in conformity with the alleged causes. Although the author changed his first version of the facts he gave a logical explanation of his reasons for having done so. Hence, the Committee has not found inconsistencies that would challenge the general veracity of his claim.

6.6 In the circumstances the Committee considers that, given the human rights situation in Turkey, the author's political affiliation and activities with the PKK as well as his history of detention and torture constitute substantial grounds for believing that he would be at risk of being arrested and subjected to torture if returned to Turkey.

- *A. v. The Netherlands* (91/1997), CAT, A/54/44 (13 November 1998) 50 at paras. 2.2 and 6.3-6.8.

...
2.2 After his return to Tunisia the author started private lessons with a teacher who happened to be a prominent member of the illegal *Al-Nahda* movement although he never told him that. On several occasions he was picked up by the police and held for a few days during which he was interrogated about his teacher and beaten. At a certain point an arrest warrant was issued against the teacher, who asked the author for help in leaving the country. The author knew the border region well because his family came from that part of the country. That is why he was able to help the teacher cross the border. In May 1992 the author was arrested. For two weeks he was beaten daily and held in a sort of chicken coop at the police station. That treatment left him with scars on his back and three broken toes. At the end of those two weeks he was sent for military service which he had not yet performed despite having been called up in 1991. As a punishment he was sent to Ghafsa, an army centre in the desert, where he was again subjected to ill-treatment, such as being kept for several days in an underground cell. In August 1992 he managed to escape and left the country immediately through a small border post.
...
6.3 The Committee must decide, pursuant to paragraph 1 of article 3, whether there are substantial grounds for believing that the author would be in danger of being subjected to

torture upon return to Tunisia...

6.4 Reports from reliable sources have over the years documented cases suggesting that a pattern of detention, imprisonment, torture and ill-treatment of persons accused of political opposition activities, including links with the *Al-Nahda* movement, exist in Tunisia.

6.5 The Committee notes that in the proceedings that followed his first request for asylum the author lied about his identity and his nationality and expressed a number of inconsistencies as to the reasons that prompted his departure from Tunisia. In the Committee's view, however, these inconsistencies were clarified by the explanations given by the author in his interview with immigration authorities on 24 February 1997, explanations which have not been referred to in the State party's submission.

6.6 With respect to the medical evidence provided by the author, in the Committee's view the State party has failed to explain why his claims were considered insufficiently substantial as to warrant a medical examination.

6.7 The author has repeatedly stated that he is not a supporter of the *Al-Nahda* movement. This fact leads the State party to conclude that the Tunisian authorities would not have interest in him. The Committee notes, however, that the State party does not dispute that the author was tortured while held in police custody as a result of assisting an *Al-Nahda* member to flee to Algeria and emphasizes the fact that it occurred because of the *Al-Nahda* association. It also notes that the author escaped from the barracks where he was performing military service. If the author was tortured in the past despite not being an *Al-Nahda* supporter, he could be tortured again in view of his past history of detention, his assistance of an *Al-Nahda* member to flee to Algeria and his desertion from the military barracks in Ghafsa.

6.8 In the circumstances, the Committee considers that substantial grounds exist for believing that the author would be in danger of being subjected to torture if returned to Tunisia.

- *Korban v. Sweden* (88/1997), CAT, A/54/44 (16 November 1998) 45 at paras. 6.3-6.5 and 7.

...
6.3 The Committee must decide, pursuant to paragraph 1 of article 3, whether there are substantial grounds for believing that the author would be in danger of being subjected to torture upon return to Iraq...

6.4 The Committee is aware of the serious human rights situation in Iraq and considers that the author's history of detention in that country as well as the possibility of his being held responsible for his son's defection from the army should be taken into account when determining whether he would be in danger of being subjected to torture upon his return. The Committee also considers that the presentation of the facts by the author do not raise significant doubts as to the general veracity of his claims and notes that the State party has not expressed doubts in this respect either. In the circumstances, the Committee considers that substantial grounds exist for believing that the author would be in danger of being subjected to torture if returned to Iraq.

6.5 The Committee notes that the Swedish immigration authorities had ordered the author's expulsion to Jordan and that the State party abstains from making an evaluation of the risk that the author will be deported to Iraq from Jordan. It appears from the parties' submissions, however, that such risk cannot be excluded, in view of the assessment made by different sources, including UNHCR, based on reports indicating that some Iraqis have been sent by the Jordanian authorities to Iraq against their will, that marriage to a Jordanian woman does not guarantee a residence permit in Jordan and that this situation has not improved after the signature of a Memorandum of Understanding between the UNHCR and the Jordanian authorities regarding the rights of refugees in Jordan. The State party itself has recognized that Iraqi citizens who are refugees in Jordan, in particular those who have been returned to Jordan from a European country, are not entirely protected from being deported to Iraq.

7. In the light of the above, the Committee is of the view that, in the prevailing circumstances, the State party has an obligation to refrain from forcibly returning the author to Iraq. It also has an obligation to refrain from forcibly returning the author to Jordan, in view of the risk he would run of being expelled from that country to Iraq. In this respect the Committee refers to paragraph 2 of its general comment on the implementation of article 3 of the Convention in the context of article 22, according to which "the phrase 'another State' in article 3 refers to the State to which the individual concerned is being expelled, returned or extradited, as well as to any State to which the author may subsequently be expelled, returned or extradited". Furthermore, the Committee notes that although Jordan is a party to the Convention, it has not made the declaration under article 22. As a result, the author would not have the possibility of submitting a new communication to the Committee if he was threatened with deportation from Jordan to Iraq.

- *Haydin v. Sweden* (101/1997), CAT, A/54/44 (20 November 1998) 67 at paras. 6.3-6.9.

...
6.3. The Committee must decide, pursuant to paragraph 1 of article 3, whether there are

substantial grounds for believing that the author would be in danger of being subject to torture upon return to Turkey...

6.4. The Committee is aware of the serious human rights situation in Turkey. Reports from reliable sources suggest that persons suspected of having links with the PKK are frequently tortured in the course of interrogations by law enforcement officers and that this practice is not limited to particular areas of the country. In this context, the Committee further notes that the Government has stated that it shares the view of UNHCR, i.e. that no place of refuge is available within the country for persons who risk being suspected of being active in or sympathizers of the PKK.

6.5. The Committee recalls that, for the purposes of article 3 of the Convention, the individual concerned must face a foreseeable, real and personal risk of being tortured in the country to which he is returned. The Committee wishes to point out that the requirement of necessity and predictability should be interpreted in the light of its general comment on the implementation of article 3 which reads: "Bearing in mind that the State party and the Committee are obliged to assess whether there are substantial grounds for believing that the author would be in danger of being subjected to torture were he/she to be expelled, returned or extradited, the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable" (A/53/44, annex IX, para. 6).

6.6. The Committee notes the medical evidence provided by the author. The Committee notes in particular that the author suffers from a post-traumatic stress disorder and that this has to be taken into account when assessing the author's presentation of the facts. The Committee notes that the author's medical condition indicates that the author has in fact been subjected to torture in the past.

6.7. In the author's case, the Committee considers that the author's family background, his political activities and affiliation with the PKK, his history of detention and torture, as well as indications that the author is at present wanted by Turkish authorities, should be taken into account when determining whether he would be in danger of being subjected to torture upon his return. The Committee notes that the State party has pointed to contradictions and inconsistencies in the author's story and further notes the author's explanations for such inconsistencies. The Committee considers that complete accuracy is seldom to be expected by victims of torture, especially when the victim suffers from post-traumatic stress syndrome; it also notes that the principle of strict accuracy does not necessarily apply when the inconsistencies are of a material nature. In the present case, the Committee considers that the presentation of facts by the author does not raise significant doubts as to the trustworthiness of the general veracity of his claims.

6.8. In the circumstances, the Committee considers that substantial grounds exist for believing that the author would be in danger of being subjected to torture if returned to Turkey.

6.9. In the light of the above, the Committee is of the view that the State party has an obligation to refrain from forcibly returning the author to Turkey, or to any other country where he runs a real risk of being expelled or returned to Turkey.

- *H. D. v. Switzerland* (112/1998), CAT, A/54/44 (30 April 1999) 101 at paras. 6.3-6.7.

...
6.3 The Committee must decide, pursuant to paragraph 1 of article 3, whether there are substantial grounds for believing that the author would be in danger of being subjected to torture upon return to Turkey...

6.4 In the present instance, the Committee notes that the State party draws attention to inconsistencies and contradictions in the author's account, casting doubt on the truthfulness of his allegations. The Committee considers, however, that even in the presence of lingering doubts as to the truthfulness of the facts presented by the author of a communication, it must satisfy itself that the applicant's security will not be jeopardized. It is not necessary, for the Committee to be so satisfied, that all the facts related by the author should be proved: it is enough if the Committee considers them sufficiently well attested and credible.

6.5 From the information submitted by the author, the Committee observes that the events that prompted his departure from Turkey date back to 1991, and seem to be particularly linked to his relations with members of his family who belong to the PKK. The apparent object of arresting the author in 1991 was, on the first occasion, to force him to disclose his cousin's whereabouts, and on the second occasion, to force him to collaborate with the security forces. On the other hand, the question of a prosecution against him on specific charges has never arisen. Furthermore, there is nothing to suggest that he has collaborated with PKK members in any way since leaving Turkey in 1991, or that he or members of his family have been sought or intimidated by the Turkish authorities. In the circumstances, the Committee considers that the author has not furnished sufficient evidence to support his fears of being arrested and tortured upon his return.

6.6 The Committee notes with concern the numerous reports of human rights violations, including the use of torture, in Turkey, but recalls that, for the purposes of article 3 of the Convention, the individual concerned must face a foreseeable, real and personal risk of being tortured in the country to which he is returned. In the light of the foregoing, the Committee

deems that such a risk has not been established.

6.7 The Committee against Torture...concludes that the State party's decision to return the author to Turkey does not constitute a breach of article 3 of the Convention.

See also:

- *K. M. v. Switzerland* (107/1998), CAT, A/55/44 (16 November 1999) 109 at paras. 6.3-6.8.
- *Y. S. v. Switzerland* (147/1999), CAT, A/56/44 (14 November 2000) 166 at paras. 6.3-6.7.
- *S. L. v. Sweden* (150/1999), CAT, A/56/44 (11 May 2001) 187 at paras. 6.3 and 6.4.

- *S. M. R. and M. M. R. v. Sweden* (103/1998), CAT, A/54/44 (5 May 1999) 73 at paras. 2.1-2.4 and 9.3-9.8.

...

2.1. The authors state that S.M.R. has been an active member of the illegal organization the Mujahedin. Because of her political activities she has been imprisoned twice by the Iranian authorities. She was first arrested in 1982 and spent four years in the Evin-Ghezelhesar prison. She was released in May 1986 when the authorities revised old sentences. About the time of her release the Mujahedin launched a military offensive, and she was arrested again in August 1986 together with other activists who were seen as threats by the Iranian authorities. She was released in May 1990 due to lack of evidence, but she had to report regularly to the authorities for the following six months.

2.2 S.M.R. was ill-treated and tortured in prison, especially during her first imprisonment. She states that she was beaten on the soles of her feet and that she was flogged on two occasions. As a result of the flogging she was unconscious and suffered renal haemorrhage. She was treated in a hospital for two days before she was sent back to prison. She also states that she was subjected to a fake execution.

2.3 In 1991 S.M.R. resumed her work for the Mujahedin. She was a member of a group of four politically active women who produced leaflets for the Mujahedin in her home, where they met three times a week. The reason why the women always met in S.M.R.'s home was that her husband, because of his profession, had a typewriter which the women used to produce the leaflets. The authors state, however, that M.M.R. was unaware of the political

activities of his wife.

2.4 S.M.R. and her children arrived in Sweden on 21 July 1995 on a valid passport, to attend the marriage of a relative. She states that at that time she intended to return to Iran. While in Sweden she learned that her husband, who was not politically active, had been arrested by the Iranian security police in August 1995 and interrogated about the political activities of his wife. The police had informed him that the other women belonging to the political group in which S.M.R. was active had been arrested and that one of the women had revealed his wife's identity. The police had also searched the family's house and confiscated the typewriter which had been used to produce the leaflets. S.M.R. decided not to return to Iran, where she claims she risks being imprisoned and tortured again.

...

9.3 The Committee must decide, pursuant to paragraph 1 of article 3, whether there are substantial grounds for believing that the authors would be in danger of being subjected to torture upon return to Iran...

9.4 In the case under consideration the Committee notes the State party's statement that the risk of torture should be a "foreseeable and necessary consequence" of an individual's return. In this respect the Committee recalls its previous jurisprudence c/ that the requirement of necessity and predictability should be interpreted in the light of its general comment on the implementation of article 3, which reads: "Bearing in mind that the State party and the Committee are obliged to assess whether there are substantial grounds for believing that the author would be in danger of being subjected to torture were he/she to be expelled, returned or extradited, the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable" (A/53/44, annex IX, para. 6).

9.5 The Committee does not share the view of the National Immigration Board that it is unlikely that S.M.R. held regular meetings at her home without her husband's knowledge. Furthermore, the Committee has no reasons to question S.M.R.'s credibility regarding her past experiences of detention, her political activities and the way in which she obtained a passport. However the Committee considers, on the basis of the information provided, that the political activities that S.M.R. claims to have carried out after 1991, inside and outside Iran, are not of such a nature as to conclude that she risks being tortured upon her return. The Committee notes, in particular, that after M.M.R.'s release he was not further questioned about his wife's activities and whereabouts, neither was he molested by the Iranian authorities. Moreover, there is no indication that an arrest order has been issued against S.M.R. Counsel submits that the other members of her group were arrested and that the head of the group was sentenced to imprisonment. No information is provided, however, as to the grounds for her conviction and there is no indication that the women were subjected to torture or

ill-treatment.

9.6 The Committee further considers that the fact that M.M.R. left Iran without a visa to enter Sweden does not constitute an additional argument to conclude that the authors risk being tortured if they return to Iran. No evidence has been provided to the Committee that such an act is punished in Iran with imprisonment, let alone torture.

9.7 The Committee notes with concern the numerous reports of human rights violations, including the use of torture, in Iran, but recalls that for the purposes of article 3 of the Convention, the individual concerned must face a foreseeable, real and personal risk of being tortured in the country to which he is returned. In the light of the foregoing, the Committee deems that such a risk has not been established.

9.8 On the basis of the above considerations the Committee considers that the information before it does not show substantial grounds for believing that the authors run a personal risk of being tortured if they return to Iran.

Notes

...

c/ Communication No. 101/1997 (CAT/C/21/D/101/1997), Views adopted on 20 November 1998.

- *M. B. B. v. Sweden* (104/1998), CAT, A/54/44 (5 May 1999) 82 at paras. 6.2, 6.4, 6.6, 6.9 and 7.

...

6.2 The issue before the Committee is whether the forced return of the author to Iran would violate the obligation of Sweden under article 3 of the Convention not to expel or to return a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

...

6.4 In the case under consideration the Committee notes the statement of the National Immigration Board that the author was not entitled to asylum in accordance with the Convention relating to the Status of Refugees in view of the fact that he had admitted having committed the kind of crimes referred to in article 1 F of the said Convention. The Committee recalls, however, that unlike the provisions of the above Convention, article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment applies irrespective of whether the individual concerned has committed crimes

and the seriousness of those crimes. On the other hand, the legal status of the individual concerned in the country where he/she is allowed to stay is not relevant for the Committee.

...

6.6 In the present case the Committee notes that the author has provided it with an account of his activities in Iran which differs in many respects from the one he provided to the Swedish authorities. In the Committee's view, the important disparities cannot fully be explained by "poor translations", as suggested by the author, and raise doubts about his credibility. The author's credibility is further undermined by the fact that he provided the Swedish authorities with copies of an arrest warrant issued by a prosecutor and a judgement drawn up by the supreme military tribunal of Iran which turned out to be forgeries. In these circumstances the Committee finds that the author has not substantiated his claims that he is at risk of being tortured if he returns to Iran.

...

6.9 On the basis of the above considerations the Committee considers that the information before it does not show substantial grounds for believing that the author runs a personal risk of being tortured if he is sent back to the Islamic Republic of Iran.

7. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the decision of the State party to return the author to Iran does not constitute a breach of article 3 of the Convention.

- *Elmi v. Australia* (120/1998), CAT, A/54/44 (14 May 1999) 109 at paras. 2.1-2.3 and 6.5-6.9.

...

2.1 The author was born on 10 July 1960 in Mogadishu. Before the war he worked as a goldsmith in Mogadishu, where his father was an elder of the Shikal clan. The author states that members of the Shikal clan, of Arabic descent, are identifiable by their lighter coloured skin and discernable accent. The clan is known for having brought Islam to Somalia, for its religious leadership and relative wealth. The author claims that the clan has not been directly involved in the fighting, however it has been targeted by other clans owing to its wealth and its refusal to join or support economically the Hawiye militia...

2.2 The author further states that upon refusal to provide support to the Hawiye militia in general, and in particular to provide one of his sons to fight for the militia, his father was shot and killed in front of his shop. The author's brother was also killed by the militia when a bomb detonated inside his home, and his sister was raped three times by members of the Hawiye militia, precipitating her suicide in 1994.

TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

2.3 The author claims that on a number of occasions he barely escaped the same fate as his family members, and that his life continues to be threatened, particularly by members of the Hawiye clan who, at present, control most of Mogadishu. From 1991 until he left Somalia in 1997, he continuously moved around the country for reasons of security, travelling to places that he thought would be safer. He avoided checkpoints and main roads and travelled through small streams and the bush on foot.

...

6.5 The Committee does not share the State party's view that the Convention is not applicable in the present case since, according to the State party, the acts of torture the author fears he would be subjected to in Somalia would not fall within the definition of torture set out in article 1 (i.e. pain or suffering inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity, in this instance for discriminatory purposes). The Committee notes that for a number of years Somalia has been without a central government, that the international community negotiates with the warring factions and that some of the factions operating in Mogadishu have set up quasi-governmental institutions and are negotiating the establishment of a common administration. It follows then that, *de facto*, those factions exercise certain prerogatives that are comparable to those normally exercised by legitimate governments. Accordingly, the members of those factions can fall, for the purposes of the application of the Convention, within the phrase "public officials or other persons acting in an official capacity" contained in article 1.

6.6 The State party does not dispute the fact that gross, flagrant or mass violations of human rights have been committed in Somalia. Furthermore, the independent expert on the situation of human rights in Somalia, appointed by the Commission on Human Rights, described in her latest report (13) the severity of those violations, the situation of chaos prevailing in the country, the importance of clan identity and the vulnerability of small, unarmed clans such as the Shikal, the clan to which the author belongs.

6.7 The Committee further notes, on the basis of the information before it, that the area of Mogadishu where the Shikal mainly reside, and where the author is likely to reside if he ever reaches Mogadishu, is under the effective control of the Hawiye clan, which has established quasi-governmental institutions and provides a number of public services. Furthermore, reliable sources emphasize that there is no public or informal agreement of protection between the Hawiye and the Shikal clans and that the Shikal remain at the mercy of the armed factions.

6.8 In addition to the above, the Committee considers that two factors support the author's case that he is particularly vulnerable to the kind of acts referred to in article 1 of the Convention. First, the State party has not denied the veracity of the author's claims that his family was particularly targeted in the past by the Hawiye clan, as a result of which his father and brother were executed, his sister raped and the rest of the family was forced to flee and

constantly move from one part of the country to another in order to hide. Second, his case has received wide publicity and, therefore, if returned to Somalia the author could be accused of damaging the reputation of the Hawiye.

6.9 In the light of the above the Committee considers that substantial grounds exist for believing that the author would be in danger of being subjected to torture if returned to Somalia.

- *Josu Arkauz Arana v. France* (63/1997), CAT, A/55/44 (9 November 1999) 77 at paras. 2.1, 2.3, 11.3-11.5 and 12.

...
2.1 The author, who is of Basque origin, states that he left Spain in 1983 following numerous arrests of persons reportedly belonging to ETA, the Basque separatist movement, by the security forces in his native village and nearby. Many of the persons arrested, some of whom were his childhood friends, were subjected to torture. During the interrogations and torture sessions, the name of Josu Arkauz Arana had been one of those most frequently mentioned. Sensing that he was a wanted person and in order to avoid being tortured, he fled. In 1984 his brother was arrested. In the course of several torture sessions the members of the security forces asked the latter questions about the author and said that Josu Arkauz Arana would be executed by the Anti-Terrorist Liberation Groups (GAL).
...
2.3 In March 1991 the author was arrested on the charge of belonging to ETA and sentenced to eight years' imprisonment for criminal conspiracy ("association de malfaiteurs"). He began serving his sentence in Saint-Maur prison and was due to be released on 13 January 1997. However, on 10 July 1992, he was further sentenced to a three-year ban from French territory. He filed an appeal against the decision to ban him with the Paris Court of Major Jurisdiction in October 1996, but no action was taken.
...
11.3 ... [T]he Committee must determine whether the author's deportation to Spain violated the obligation of the State party, under article 3, paragraph 1, of the Convention, not to expel or return a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. In doing so the Committee must take into account all relevant considerations with a view to determining whether the person concerned is in personal danger.

11.4 The Committee recalls that during the consideration of the third periodic report submitted by Spain under article 19 of the Convention, it had expressed its concern regarding the complaints of acts of torture and ill-treatment which it frequently received. It also noted that, notwithstanding the legal guarantees as to the conditions under which it could be

imposed, there were cases of prolonged detention *incommunicado*, when the detainee could not receive the assistance of a lawyer of his choice, which seemed to facilitate the practice of torture. Most of the complaints received concerned torture inflicted during such periods. h/ Similar concerns had already been expressed during the consideration of the second periodic report by the Committee, i/ as well as in the concluding observations of the Human Rights Committee regarding the fourth periodic report submitted by Spain under article 40 of the International Covenant on Civil and Political Rights. j/ Furthermore, the European Committee for the Prevention of Torture (CPT) also reported complaints of torture or ill-treatment received during its visits to Spain in 1991 and 1994, in particular from persons detained for terrorist activities. The CPT concluded that it would be premature to affirm that torture and severe ill-treatment had been eradicated in Spain. k/

11.5 The Committee notes the specific circumstances under which the author's deportation took place. First, the author had been convicted in France for his links with ETA, had been sought by the Spanish police and had been suspected, according to the press, of holding an important position within that organization. There had also been suspicions, expressed in particular by some non-governmental organizations, that other persons in the same circumstances as the author had been subjected to torture on being returned to Spain and during their *incommunicado* detention. The deportation was effected under an administrative procedure, which the Administrative Court of Pau had later found to be illegal, entailing a direct handover from police to police, l/ without the intervention of a judicial authority and without any possibility for the author to contact his family or his lawyer. That meant that a detainee's rights had not been respected and had placed the author in a situation where he was particularly vulnerable to possible abuse. The Committee recognizes the need for close cooperation between States in the fight against crime and for effective measures to be agreed upon for that purpose. It believes, however, that such measures must fully respect the rights and fundamental freedoms of the individuals concerned.

12. In the light of the foregoing, the Committee is of the view that the author's expulsion to Spain, in the circumstances in which it took place, constitutes a violation by the State party of article 3 of the Convention.

Notes

...

h/ A/53/44, paras. 129 and 131.

i/ A/48/44, paras. 456 and 457.

j/ CCPR/C/79/Add.61 of 3 April 1996.

k/ CPT/Inf (96) 9, paras. 208-209.

l/ At the time of the consideration of the second periodic report submitted by France pursuant to article 19 of the Convention, the Committee expressed its concern at the practice whereby the police hand over individuals to their counterparts in another country (A/53/44, para. 143).

- *M'Barek v. Tunisia* (60/1996), CAT, A/55/44 (10 November 1999) 61 at paras. 2.1-2.4, 11.4-11.10 and 12.

...

2.1 The author affirms that Faisal Baraket, together with others, was arrested on the morning of 8 October 1991...After his arrest, during which he was beaten, he was brought to the headquarters of the Brigade...

2.2 The author affirms that...Faisal Baraket's hands and feet were immediately bound and he was suspended between two chairs on a big stick...He was then beaten. Some of the officers later threw him out into the corridor...

2.3 ...[T]wo detainees were permitted to lay him on a bench and untie him...they discovered that he was dead...

2.4 On 17 October 1991, Hedi Baraket, the father of Faisal Baraket...was informed that his son had died in a car accident...[H]e was asked to identify the body. He noted that the face was disfigured and difficult to recognize. He was not permitted to see the rest of the body. He was made to sign a statement acknowledging that his son had been killed in an accident...At the funeral, the police brought the coffin and supervised its interment without it being opened.

...

11.4 As regards article 12 of the Convention, the Committee notes first that study of the information forwarded by the parties points to the following established facts:

> The victim Faisal Baraket did indeed die no later than 11 November 1991, the date of the order for an autopsy; dying, according to the author of the communication, as a result of his arrest, or, according to the State party, as a result of a road accident caused by an unknown person.
>
> In October 1991, the State party received allegations that Faisal Baraket died as a result of torture from the following non-governmental organizations: Amnesty International, World Organization against Torture, Action of Christians for the Abolition of Torture (France) and Association for the Prevention of Torture (Switzerland).

On 13 July 1992, a report prepared by the Higher Committee for Human Rights and Fundamental Freedoms, an official Tunisian body, had considered Faisal Baraket's death to be suspicious and had suggested that an inquiry should be begun under article 36 of the Code of Criminal Procedure.

11.5 However, only on 22 September 1992 was an inquiry ordered into these allegations of torture - over 10 months after the foreign non-governmental organizations had raised the alarm and over 2 months after the Driss Commission's report.

11.6 In a similar case, e/ the Committee had considered delays of three weeks and more than two months on the part of the competent authorities in reacting to allegations of torture to be excessive.

11.7 The Committee is of the view that the State party did not comply with its obligation under article 12 of the Convention to proceed to a prompt...investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction and that there was consequently a violation of the Convention.

11.8 Concerning the investigation carried out by the competent authorities of the State party, the following acts may be regarded as having been established:

The examining magistrate, who was entrusted with the case by the Public Prosecutor's Office on 22 September 1992, ordered a new medical evaluation, which found that it was impossible to determine the mechanism by which the lesions observed on the victim had arisen, or their origin, and dismissed the case.

Assigned the case once again, following Communication No. 14/1994, the magistrate examined the persons mentioned by the author of the communication. However, as all these persons denied the slightest knowledge of the alleged events, the magistrate again dismissed the case.

11.9 The Committee notes in this regard that, among other things, the examining magistrate had at his disposal the results of other important investigations which are customarily conducted in such matters, but made no use of them:

First, notwithstanding the statements made by the witnesses mentioned, and in particular bearing in mind the possibility of incomplete recall, the magistrate could have checked in the records of the detention centres referred to whether there was any trace of the presence of Faisal Baraket during the period in question, as well as that, in the same detention centre and at the same time,

> of the two persons mentioned by the author of the communication as having been present when Faisal Baraket died. It is not without relevance to note in this regard that in pursuance of principle 12 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted on 9 December 1988...a record must be left of every person detained.
>
> Next, the magistrate might have sought to identify the accused officials, examine them and arrange a confrontation between them and the witnesses mentioned, as well as the complainant.
>
> Lastly, in view of the major disparities in the findings of the forensic officials as to the causes of some of the lesions observed on the victim, the Committee considers that it would have been wise to order the exhumation of the body in order at least to confirm whether the victim had suffered fractures to the pelvis (confirming the accident hypothesis) or whether he had not (confirming the hypothesis that a foreign object had been introduced into his anus); this should have been done, as far as possible, in the presence of non-Tunisian experts, and more particularly those who have had occasion to express a view on this matter.

11.10 The Committee considers that the magistrate, by failing to investigate more thoroughly, committed a breach of the duty of impartiality imposed on him by his obligation to give equal weight to both accusation and defence during his investigation, as did the Public Prosecutor when he failed to appeal against the decision to dismiss the case. In the Tunisian system the Minister of Justice has authority over the Public Prosecutor. It could therefore have ordered him to appeal, but failed to do so.

12. Consequently, the State party breached its obligation under articles 12 and 13 of the Convention to proceed to an impartial investigation wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

Notes

...

e/ *Encarnación Blanco Abad v. Spain* (CAT/C/20/D/59/1996).

- *A. D. v. The Netherlands* (96/1997), CAT, A/55/44 (12 November 1999) 88 at paras. 7.2-7.4.

...

7.2 The Committee must decide, pursuant to article 3, paragraph 1, of the Convention,

whether there are substantial grounds for believing that the author would be in danger of being subjected to torture upon return to Sri Lanka...

7.3 The Committee notes the State party's information that the author at present does not risk expulsion, pending the consideration of the author's request for extension of his residence permit for medical treatment. Noting that the order for the author's expulsion is still in force, the Committee considers that the possibility that the State party will grant the author an extended temporary permit for medical treatment is not sufficient to fulfil the State party's obligations under article 3 of the Convention.

7.4 The Committee considers that the author's activities in Sri Lanka and his history of detention and torture are relevant when determining whether he would be in danger of being subjected to torture upon his return. The Committee notes in that respect that although the State party has pointed to inconsistencies in the author's account of events, it has not contested the general veracity of his claim. The Committee further notes the medical evidence indicating that the author, although not at present fulfilling the criteria for a diagnosis of a post-traumatic stress disorder, may have suffered from this syndrome in the past. However, the Committee also notes that the harassment and torture to which the author was allegedly subjected was directly linked to his exposure of human rights violations taking place while the previous Government was in power in Sri Lanka. The Committee is aware of the human rights situation in Sri Lanka but considers that, given the shift in political authority and the present circumstances, the author has not substantiated his claim that he will personally be at risk of being subjected to torture if returned to Sri Lanka at present.

- *K. T. v. Switzerland* (118/1998), CAT, A/55/44 (19 November 1999) 121 at paras. 2.1 and 6.2-7.

...
2.1 The author states that he was a member of the People's Revolution Movement (MPR) from 1992. He was working on behalf of former President Mobutu and promoting Mobutu's interests. He received money from the MPR and had no other occupation. On 10 May 1997, six soldiers loyal to Laurent-Désiré Kabila questioned him and sacked his house. The author hid for four days at the home of his superior in the MPR before leaving the country on 14 May 1997 using a false passport.
...
6.2 The issue before the Committee is whether the expulsion of the author to the Democratic Republic of the Congo would violate the State party's obligation under article 3 of the Convention not to expel or return a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

6.3 The Committee must decide, pursuant to article 3, paragraph 1, whether there are substantial grounds for believing that the author would be in danger of being subjected to torture if returned to the Democratic Republic of the Congo. In reaching this decision, it must take into account all relevant considerations, pursuant to article 3, paragraph 2, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim of the determination, however, is to establish whether the individual concerned would be personally at risk of being subjected to torture. The existence of a consistent pattern of gross, flagrant or mass violations of human rights in the country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon returning to that country; there must be other grounds indicating that he or she would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be in danger of torture in his or her specific circumstances.

6.4 In the present case it must be pointed out that the author has provided neither the Committee nor the State party with any evidence that he was a member of MPR or that his family has been persecuted by the current regime in Kinshasa. The Committee does not find his explanations for the absence of such evidence convincing. Nor has the author provided evidence of the alleged persecution to which former, in particular junior, members of MPR are supposedly subject at present owing to their support for the country's former president and active backing for the opposition to the regime currently in power.

6.5 The Committee is concerned at the many reports of human rights violations, including the use of torture, in the Democratic Republic of the Congo, but recalls that for the purposes of article 3 of the Convention the individual concerned must face a foreseeable, real and personal risk of being tortured in the country to which he or she is returned. In the light of the foregoing, the Committee deems that such a risk has not been established.

7. The Committee against Torture, acting under article 22, paragraph 7 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the decision of the State party to return the author to the Democratic Republic of the Congo does not constitute a breach of article 3 of the Convention.

See also:

- *G. T. v. Switzerland* (137/1999), CAT, A/55/44 (16 November 1999) 147 at paras. 6.2-6.9.

- *H. A. D. v. Switzerland* (126/1998), CAT, A/55/44 (10 May 2000) 125 at paras. 8.3, 8.5 and 8.6.

TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

...

8.3. The Committee must decide, pursuant to paragraph 1 of article 3, whether there are substantial grounds for believing that the author would be in danger of being subjected to torture upon return to Turkey ...

...

8.5. The Committee does not doubt the allegations of ill-treatment to which the author was subjected during his 28-day detention after his arrest in 1985, even though the medical reports do not substantiate the author's description of acts of torture or their effects.

8.6. However, in view of the time that has elapsed between the events described by the author, the establishment of the veracity of his claims and the present day (15 years have passed), the current risk for the author of being subjected to torture or "deliberate persecution" on being returned to Turkey does not appear to have been sufficiently well-established.

- *S. C. v. Denmark* (143/1999), CAT, A/55/44 (10 May 2000) 154 at paras. 2.1-2.3, 2.5, 2.6, 4.6, 6.3 and 6.5-6.7.

...

2.1 The author states that she became a member of the illegal opposition party Partido Roldosista Ecuatoriano (PRE) in Santo Domingo in April 1995, but underlines that she had been an active supporter since 1985. According to the author, she was arrested on 28 May 1994 after having distributed political propaganda material. She was first held in detention for three days, when she was allegedly ill-treated by being pulled by the hair, beaten and threatened every three hours. The author further states that she was given a six-months probationary sentence, during which she was deprived of her papers, including her passport, and her civil and political rights as an Ecuadorian national.

2.2 The author alleges that she was again detained on 13 December 1995, after having organized and participated in a unauthorized political demonstration of about 200 persons. According to the author, she was kept in detention for 10 days and allegedly starved, kicked and beaten with truncheons before she being sentenced to 10 days' imprisonment. To support her statement, the author refers to copies of medical records from the medical doctor she visited after her release.

2.3 On 26 April 1996, the author was appointed political leader for a women's group of the party. Her main tasks were to organize meetings for women, particularly from poor neighbourhoods, and inform them about their rights. She also provided assistance to families where one or both parents had disappeared.

2.5 According to the author, she was again detained on 27 January 1997 for having participated in a political demonstration in Santo Domingo. The author was allegedly sentenced to six months' imprisonment and claims that during her imprisonment she was starved, electric chocks were applied to her fingers and she was raped. After her release, the author contacted a doctor, but no medical records are available. The author further states that, while she was in prison in 1997, her home was broken into and everything was taken, and that she has reason to believe that the police were responsible.

2.6 The author states that at the time of her release she was told by the police to leave the country. However, instead, she joined her family in the mountains, where they had fled to prevent the author's children being taken by the authorities. While in hiding, the author learned from her sister that a warrant for her arrest had been issued because she had not left the party and had not reported to the police,after her release, as ordered. The author hid in the mountains for six months with her children before she could leave the country, allegedly with the help of PRE.

...

4.6 The State party underlines that, according to the practice of the Committee, it is decisive for the assessment of the merits of the case whether information on conditions in the recipient country supports the author's claim. The Committee's attention is drawn to the fact that PRE, in which the author allegedly has had a prominent position, is not an illegal political party as claimed by the author, but one of the largest parties in Ecuador, whom the author was not able to identify, was Head of Government in 1996.

...

6.3 The issue before the Committee is whether the forced return of the author to Ecuador would violate the obligation of Denmark under article 3 of the Convention not to expel or to return a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

...

6.5 From the information submitted by the author, the Committee notes the author's activities for women's rights in Ecuador. It further notes that the State party, although expressing doubts as to the complete veracity of the author's account, do not necessarily dispute that the author might have encountered difficulties with the Ecuadorian authorities because of her political activities. The Committee recalls, *inter alia*, that the author has carried out her political activities as a member of a lawful political party of a country which has ratified not only the Convention against Torture, but has also made the optional declaration under article 22 of the Convention.

6.6 The Committee notes that for the purposes of article 3 of the Convention, the individual concerned must establish that he or she faces a foreseeable, real and personal risk of being tortured in the country to which he or she is returned.

6.7 It is the view of the Committee that the information presented by the author does not show substantial grounds for believing that she runs a foreseeable, real and personal risk of being tortured if she is returned to Ecuador

- *V. X. N. and H. N. v. Sweden* (130 and 131/1999), CAT, A/55/44 (15 May 2000) 133 at paras. 1.1, 13.3 and 13.6-14.

1.1 The authors of the communications are Mr. V.X.N., born on 1 December 1959, and Mr. H.N., born on 10 November 1963, two Vietnamese nationals currently residing in Sweden where they received refugee status and permanent residence permits on 18 August 1992 and 23 August 1991 respectively. The authors claim that they risk torture if they are returned to Viet Nam and that their forced return to that country would therefore constitute a violation by Sweden of article 3 of the Convention ...

...

13.3 The Committee must decide, pursuant to article 3, paragraph 1, of the Convention, whether there are substantial grounds for believing that the authors would be in danger of being subjected to torture upon return to Viet Nam ...

...

13.6 ... [T]he Committee considers that the authors' activities in Viet Nam and their history of detention and torture are relevant in determining whether they would be in danger of being subjected to torture upon their return. The Committee notes in that respect that the State party has pointed to inconsistencies in the authors' accounts of events and has contested the general veracity of their claim. In the present case, although a number of disparities may be explained by difficulties in translation, the considerable time which has elapsed since the authors' escape from Viet Nam and the procedural circumstances, the Committee considers that some doubts as to the authors' credibility remain.

13.7 Notwithstanding the above, the Committee is aware of the human rights situation in Viet Nam, but considers that given, *inter alia*, the considerable time which has elapsed since the escape of the authors and the fact that the illegal departure from Viet Nam in the middle of the 1980s is no longer considered an offence by the Vietnamese authorities, the authors have not substantiated their claims that they will personally be at risk of being subjected to torture if returned to Viet Nam at present. In this connection the Committee notes that a risk of being imprisoned upon return as such is not sufficient to trigger the protection of article 3 of the Convention.

13.8 The Committee recalls that, for the purposes of the Convention, one of the prerequisites for "torture" is that it is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. The Committee considers that the issue whether a State party has an obligation to refrain from expelling a

person who might risk pain or suffering inflicted by a private person, without the consent or acquiescence of the State, falls outside the scope of article 3 of the Convention.

14. The Committee ... is of the view that the facts as found by the Committee do not reveal a breach of article 3 of the Convention.

- *T. P. S. v. Canada* (99/1997), CAT, A/55/44 (16 May 2000) 94 at paras. 2.1-4, 15.1-5, 16.1 and 16.2.

...
2.1 In January 1986, the author and four co-accused were convicted by a Pakistani court of hijacking an Indian Airlines aeroplane in September 1981 and sentenced to life imprisonment...

2.2 In October 1994, the Government of Pakistan released the author and his co-accused on the condition that they leave the country. The author states that he could not return to India for fear of persecution. With the assistance of an agent and using a false name and passport, he arrived in Canada in May 1995. Upon arrival he applied for refugee status under his false name and did not reveal his true identity and history ...

2.3 At the end of 1995, an immigration inquiry was opened to determine whether the author had committed an offence outside Canada which, if committed in Canada, would constitute an offence punishable by a maximum prison term of 10 years or more. His refugee application was suspended. In the beginning of 1996, an adjudicator decided that the author had committed such an offence and, as a result, a conditional deportation order was issued against him. At the same time the Canadian Minister of Immigration was requested to render an opinion as to whether the author constituted a danger to the Canadian public. Such a finding by the Minister would prevent the author from having his refugee claim heard and would remove his avenues of appeal under the Immigration Act.

2.4 The author successfully appealed the adjudicator's decision and a new inquiry was ordered by the Federal Court of Canada. As a result of the second inquiry the author was again issued with a conditional deportation order. No appeal against the decision was filed, for lack of funds. The Minister was again requested to render an opinion as to whether the author constituted a danger to the public. The Minister issued a certificate so stating and the author was detained with a view to his removal.
...
15.1 The Committee must decide, pursuant to article 3, paragraph 1, of the Convention, whether there are substantial grounds for believing that the author would be in danger of being subjected to torture upon return to India ...

15.2 The Committee first notes that the author was removed to India on 23 December 1997, despite a request for interim measures pursuant to rule 108 (9) of the rules of procedure according to which the State party was requested not to remove the author while his communication was pending before the Committee.

15.3 One of the overriding factors behind the speedy deportation was the claim by the State party that the "author's continued presence in Canada represents a danger to the public". The Committee, however, is not convinced that an extension of his stay in Canada for a few more months would have been contrary to the public interest. In this regard, the Committee refers to a case of the European Court of Human Rights (*Chahal v. United Kingdom*) which requires that scrutiny of the claim "must be carried out without regard to what the person may have done to warrant expulsion or to any perceived threat to the national security of the expelling State".

15.4 As for the merits of the communication, the Committee notes that the author has now been living in India for more than two years. During this time, although he claims to have been harassed and threatened along with his family, on various occasions by the police, it seems that there was no escalation in the manner in which he has been treated by the authorities. In these circumstances, and given the substantial period that has elapsed since the author's removal - ample time for the allegations of the author to have materialized - the Committee cannot but conclude that such allegations were unfounded.

15.5 The Committee is of the opinion that after a period of nearly two and a half years, it is unlikely that the author would still at risk of being subjected to acts of torture.

16.1 The Committee considers that the State party, in ratifying the Convention and voluntarily accepting the Committee's competence under article 22, undertook to cooperate with it in good faith in applying the procedure. Compliance with the provisional measures called for by the Committee in cases it considers reasonable is essential in order to protect the person in question from irreparable harm, which could, moreover, nullify the end result of the proceedings before the Committee. The Committee is deeply concerned that the State party did not accede to its request for interim measures under rule 108, paragraph 3, of its rules of procedure and removed the author to India.

16.2 The Committee ... concludes that the author's removal to India by the State party does not constitute a breach of article 3 of the Convention.

For dissenting opinion in this context, see T. P. S. v. Canada (99/1997), CAT, A/55/44 (16 May 2000) 94 at Individual Opinion by Guibril Camara, 109.

TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

- *M. R. P. v. Switzerland* (122/1998), CAT, A/56/44 (24 November 2000) 124 at paras. 2.1-2.4, 6.3, 6.5 and 6.6.

...

2.1 The author claims to be a member of the Bangladesh National Party (BNP), the main opposition political party. He was president of the BNP Union from 1994 to 1997 and vice-president of a regional BNP youth organization (the Yuba Dubal) as of 1997.

2.2 On 13 January 1997, the author and his brother were apparently attacked by members of the Awami League (AL), the political party in power. The author managed to flee, but his brother was seriously injured. A complaint was lodged with the police. The police arrested one of the suspected attackers, but quickly released him without charge. Members of the arrested person's family also exerted pressure on the author, who in the end withdrew his complaint.

2.3 After that incident, the author was forced to leave his home during the day. In the night of 13-14 June 1997, an AL member who was a driver for one of the organization's leaders, Mr. Shafijrahman, was killed. The attack's intended victim was apparently Mr. Shafijrahman himself, who was prompted to lodge a complaint against the author and four other BNP sympathizers. In that regard, the author points out that, in Bangladesh, it is common practice for BNP members to have complaints lodged against them and to be charged on non-existent grounds; this, in fact, constituted an abuse of power by AL members to intimidate and eliminate political opponents. After the complaint was lodged, the author decided to leave his country immediately.

2.4 The author arrived in Switzerland on 26 August 1997 and applied for asylum on 29 August 1997. His application was turned down on 7 January 1998, essentially on the grounds that the attack against him and his brother had not been carried out by the State ...

...

6.3 The Committee must decide, pursuant to article 3, paragraph 1, whether there are substantial grounds for believing that the author would be in danger of being subjected to torture upon return to Bangladesh ...

...

6.5 The Committee notes the arguments advanced by the author and by the State party regarding the alleged risk of the author's being tortured and considers that the latter has not produced enough evidence to show that he would run a personal real and foreseeable risk of being tortured in Bangladesh.

6.6 The Committee therefore finds that the information submitted to it does not demonstrate that there are substantial grounds for believing that the author would be in danger of being personally tortured if returned to Bangladesh.

TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

- *A. S. v. Sweden* (149/1999), CAT, A/56/44 (24 November 2000) 173 at paras. 2.1-2.5, 2.7, 2.8, 8.3-8.7 and 9.

...

2.1 The author submits that she has never been politically active in the Islamic Republic of Iran. In 1981, her husband, who was a high-ranking officer in the Iranian Air Force, was killed during training in circumstances that remain unclear; it has never been possible to determine whether his death was an accident. According to the author, she and her husband belonged to secular-minded families opposed to the regime of the mullahs.

2.2 In 1991, the Government of the Islamic Republic of Iran declared the author's late husband a martyr. The author states that martyrdom is an issue of utmost importance for the Shia Muslims in that country. All families of martyrs are supported and supervised by a foundation, the *Bonyad-e Shahid*, the Committee of Martyrs, which constitutes a powerful authority in Iranian society. Thus, while the author and her two sons' material living conditions and status rose considerably, she had to submit to the rigid rules of Islamic society even more conscientiously than before. One of the aims of *Bonyad-e Shahid* was to convince the martyrs' widows to remarry, which the author refused to do.

2.3 At the end of 1996 one of the leaders of the *Bonyad-e Shahid*, the high-ranking Ayatollah Rahimian, finally forced the author to marry him by threatening to harm her and her children, the younger of whom is handicapped. The Ayatollah was a powerful man with the law on his side. The author claims that she was forced into a so-called *sighe* or *mutah* marriage, which is a short-term marriage, in the present case stipulated for a period of one and a half years, and is recognized legally only by Shia Muslims. The author was not expected to live with her *sighe* husband, but to be at his disposal for sexual services whenever required.

2.4 In 1997, the author met and fell in love with a Christian man. The two met in secret, since Muslim women are not allowed to have relationships with Christians. One night, when the author could not find a taxi, the man drove her home in his car. At a roadblock they were stopped by the Pasdaran (Iranian Revolutionary Guards), who searched the car. When it became clear that the man was Christian and the author a martyr's widow, both were taken into custody at Ozghol police station in the Lavison district of Tehran. According to the author, she has not seen the man since, but claims that since her arrival in Sweden she has learned that he confessed under torture to adultery and was imprisoned and sentenced to death by stoning.

2.5 The author says that she was harshly questioned by the Zeinab sisters, the female equivalents of the Pasdaran who investigate women suspected of "un-Islamic behaviour", and was informed that her case had been transmitted to the Revolutionary Court. When it was discovered that the author was not only a martyr's widow but also the *sighe* wife of a powerful ayatollah, the Pasdaran contacted him. The author was taken to the ayatollah's home where she was severely beaten by him for five or six hours. After two days the author was allowed to leave and the ayatollah used his influence to stop the case being sent to the Revolutionary Court.

...

2.7 The author and her son arrived in Sweden on 23 December 1997 and applied for asylum on 29 December 1997. The Swedish Immigration Board rejected the author's asylum claim on 13 July 1998. On 29 October 1999, the Aliens Appeal Board dismissed her appeal.

2.8 The author submits that since her departure from Iran she has been sentenced to death by stoning for adultery. Her sister-in-law in Sweden has been contacted by the ayatollah who told her that the author had been convicted. She was also told that the authorities had found films and photographs of the couple in the Christian man's apartment, which had been used as evidence.

...

8.3 The Committee must decide, pursuant to article 3, paragraph 1, of the Convention, whether there are substantial grounds for believing that the author would be in danger of being subjected to torture upon return to the Islamic Republic of Iran ...

8.4 From the information submitted by the author, the Committee notes that she is the widow of a martyr and as such supported and supervised by the *Bonyad-e Shahid* Committee of Martyrs. It is also noted that the author claims that she was forced into a *sighe* or *mutah* marriage and to have committed and been sentenced to stoning for adultery. Although treating the recent testimony of the author's son, seeking asylum in Denmark, with utmost caution, the Committee is nevertheless of the view that the information given further corroborates the account given by the author.

8.5 The Committee notes that the State party questions the author's credibility primarily because of her failure to submit verifiable information and refers in this context to international standards, i.e. the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status, according to which an asylum-seeker has an obligation to make an effort to support his/her statements by any available evidence and to give a satisfactory explanation for any lack of evidence.

8.6 The Committee draws the attention of the parties to its general comment on the implementation of article 3 of the Convention in the context of article 22, adopted on 21 November 1997, according to which the burden to present an arguable case is on the

author of a communication. The Committee notes the State party's position that the author has not fulfilled her obligation to submit the verifiable information that would enable her to enjoy the benefit of the doubt. However, the Committee is of the view that the author has submitted sufficient details regarding her *sighe* or *mutah* marriage and alleged arrest, such as names of persons, their positions, dates, addresses, name of police station, etc., that could have, and to a certain extent have been, verified by the Swedish immigration authorities, to shift the burden of proof. In this context the Committee is of the view that the State party has not made sufficient efforts to determine whether there are substantial grounds for believing that the author would be in danger of being subjected to torture.

8.7 The State party does not dispute that gross, flagrant or mass violations of human rights have been committed in the Islamic Republic of Iran. The Committee notes, *inter alia*, the report of the Special Representative of the Commission on Human Rights on the situation of human rights in the Islamic Republic of Iran (E/CN.4/2000/35) of 18 January 2000, which indicates that although significant progress is being made in that country with regard to the status of women in sectors like education and training, "little progress is being made with regard to remaining systematic barriers to equality" and for "the removal of patriarchal attitudes in society". It is further noted that the report, and numerous reports of non-governmental organizations, confirm that married women have recently been sentenced to death by stoning for adultery.

9. Considering that the author's account of events is consistent with the Committee's knowledge about the present human rights situation in the Islamic Republic of Iran, and that the author has given plausible explanations for her failure or inability to provide certain details which might have been of relevance to the case, the Committee is of the view that, in the prevailing circumstances, the State party has an obligation, in accordance with article 3 of the Convention, to refrain from forcibly returning the author to the Islamic Republic of Iran or to any other country where she runs a risk of being expelled or returned to the Islamic Republic of Iran.

- *M. K. O. v. The Netherlands* (134/1999), CAT, A/56/44 (9 May 2001) 147 at paras. 2.1-2.3, 2.5, 4.3 and 7.3-7.5.

...
2.1 The author comes from a village located in the region of Tunceli, Turkish Kurdistan, where for many years there has been a war between the Turkish army and the Kurds. He claims to have been urged several times by the Turkish military to become a village guard, which he always refused.

2.2 The author alleges that as a village guard he would have to kill Kurds and Alevis, his own people. Because of this refusal, he was very often ill-treated. He was beaten on several occasions by the Turkish militaries. During the winter, the author and other Kurds were forced to stand barefoot in the snow for hours. The author suffers from a kidney ailment as a result. Sometimes he and other Kurds were threatened with death and their food supplies stopped by the Turkish military. The author also alleges that he was arrested on several occasions and taken to the forest or the mountains where he was tortured.

2.3 When the author's neighbours were arrested for giving food to the guerrillas, he decided to leave Turkey because he was afraid of being arrested for the same reason. He arrived in the Netherlands on 21 June 1997 and applied for refugee status the same day. His request was turned down on 22 August 1997.

...

2.5 The author is an active member of the Kurdish Union in The Hague and in various Kurdish activities. He has run in marathons for the Kurds in the Netherlands and Germany, and has been seen with his Kurdish music band, Zylan several times on MED-TV, a Kurdish television station in Europe which can also be seen in Turkey and which was recently forbidden. On 16 February 1999, he was arrested in the Netherlands along with 300 other Kurds during a demonstration against Abdullah Öcalan's extradition to Turkey. Since then, he has remained in detention because he does not have a residence permit.

...

4.3 The State party maintains that the author has not proved that he would attract special attention from the Turkish authorities because he expressly said that he had never been arrested and had never had any problem despite having helped the PKK. It was only during the appeal phase of the asylum procedure that the author told the Dutch authorities that he was once arrested by three soldiers in civilian clothes. The author has never furnished a clear explanation for this contradiction.

...

7.3 The Committee must decide, pursuant to article 3, paragraph 1, of the Convention, whether there are substantial grounds for believing that the author would be in danger of being subjected to torture upon return to Turkey ...

7.4 The Committee notes the arguments developed by both parties and considers that the author has not given any satisfactory explanation for the contradictions between his different statements to the Dutch immigration authorities. It notes that he fulfilled his military obligation without any appreciable problems and finds that he has not demonstrated that his later activities in the Netherlands could draw the attention of the Turkish authorities to the extent that he would risk being tortured were he removed to Turkey.

7.5 The Committee concludes that the author has not furnished sufficient evidence to substantiate his claim that he would run a personal, real and foreseeable risk of being tortured if he were sent back to his country of origin.

- *Ristic v. Yugoslavia* (113/1998), CAT, A/56/44 (11 May 2001) 115 at paras. 1, 2.1, 2.2, 3.1 and 9.3-9.8.

1. The author of the communication, dated 22 July 1998, is Mr. Radivoje Ristic, a citizen of Yugoslavia, currently residing in Šabac, Yugoslavia. He claims that an act of torture resulting in the death of his son, Milan Ristic, was committed by the police and that the authorities have failed to carry out a prompt and impartial investigation. The communication was transmitted to the Committee, on behalf of Mr. Ristic, by the Humanitarian Law Center, a non-governmental organization based in Belgrade.

2.1 The author alleges that on 13 February 1995 three policemen (Dragan Riznic, Uglješa Ivanovic and Dragan Novakovic) arrested Milan Ristic in Šabac while looking for a murder suspect. One of the officers struck his son with a blunt object, presumably a pistol or rifle butt, behind the left ear, killing him instantly. The officers moved the body and, with a blunt instrument, broke both thighbones. It was only then that they called an ambulance and the on-duty police investigation team, which included a forensic technician.

2.2 The policemen told the investigators that Milan Ristic had committed suicide by jumping from the roof of a nearby building ...

...

3.1 The author considers that first the police and, subsequently, the judicial authorities failed to ensure a prompt and impartial investigation. All domestic remedies were exhausted without the court ever having ordered or formally instituted proper investigative proceedings...

...

9.3 With regard to articles 2 and 16, the Committee first considers that it does not fall under its mandate to assess the guilt of persons who have allegedly committed acts of torture or police brutality. Its competence is limited to considering whether the State party has failed to comply with any of the provisions of the Convention. In the present case, the Committee will therefore not pronounce itself on the existence of torture or ill-treatment.

9.4 With regard to articles 12 and 13 of the Convention, the Committee notes the following elements, on which both parties have been able to submit observations:

> (a) There are apparent differences and inconsistencies between the statement made on 18 August 1995 by the doctor who came with the ambulance as to

the premise of the cause of death of the alleged victim, the autopsy report of 13 February 1995 and the report made on 20 March 1995 by two forensic experts at the request of the parents of the alleged victim;

(b) Although the investigating judge in charge of the case when the parents of the alleged victim proceeded in the capacity of private prosecutor stated that the autopsy "had not been performed in line with all the rules of forensic medicine", there was no order of exhumation of the body for a new forensic examination;

(c) There is a difference between the statement made on 13 February 1995 by one of the three police officers allegedly responsible for the death of the alleged victim according to which the Police Department had been called for a person who *had committed* suicide and the statements made by another of the above-mentioned police officers, as well as by two other police officers and the witness D. Markovic, according to which the Police Department had been called for a person who *might jump* from the roof of a building;

(d) The police did not immediately inform the investigating judge on duty of the incident in order for him to oversee the on-site investigation in compliance with article 154 of the Code of Criminal Procedure of the State party.

9.5 Moreover, the Committee is especially concerned by the fact that the doctor who carried out the autopsy admitted in a statement dated 18 July 1995 that he was not a specialist in forensic medicine.

9.6 Noting the above elements, the Committee considers that the investigation that was conducted by the State party's authorities was neither effective nor thorough. A proper investigation would indeed have entailed an exhumation and a new autopsy, which would in turn have allowed the cause of death to be medically established with a satisfactory degree of certainty.

9.7 Moreover, the Committee notes that six years have elapsed since the incident took place. The State party has had ample time to conduct a proper investigation.

9.8 In the circumstances, the Committee finds that the State party has violated its obligations under articles 12 and 13 of the Convention to investigate promptly and effectively allegations of torture or severe police brutality.

- *S. S. and S. A. v. The Netherlands* (142/1999), CAT, A/56/44 (11 May 2001) 153 at paras.

TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

2.1-2.6, 6.3 and 6.5-6.8.

...

2.1 As to Mr. S. S., a member of the Tamil ethnic group, it is stated that he was held in detention by the Tamil Tiger organization LTTE from 10 January 1995 until 30 September 1995 for having publicly criticized the organization and its leader, and refusing to take part in its activities. During the period of detention, he performed tasks such as wood cutting, filling sandbags, digging bunkers and cooking. Before he was detained by LTTE, his father had been detained in his place and he had died in detention of a heart attack. On 30 September 1995, Mr. S. S. escaped from the LTTE barracks and travelled to Colombo.

2.2 On 3 October 1995, he was arrested by police, during a routine check, for inability to show an identity card. He was questioned as to personal details and whether he was involved with LTTE, which he denied. He claims not to have been believed and to have been accused of spying for LTTE and travelling to Colombo to plan an attack. The next day he was released upon the intervention of an uncle and payment of a sum of money, subject to an obligation to report daily to police while staying in Colombo. The author states that he heard that the authorities intended to transfer him to Boosa prison, from which allegedly detainees never emerge alive. On 8 October 1995, Mr. S. S. left the country by air for the Netherlands.

2.3 On 18 December 1995, Mr. S. S.'s request for asylum of 19 October 1995 was denied. An appeal made to the Secretary of Justice on 23 January 1996 was rejected on 16 September 1996 ...

2.4 As to Mrs. S. A., also a member of the Tamil ethnic group, it is contended that in mid-November 1995 she was also detained by LTTE in an attempt to determine her husband's whereabouts and activities. While in the LTTE camp, she was forced to perform duties such as cooking and cleaning. After being taken to hospital at the end of March 1996, she escaped on 3 April 1996.

2.5 On 17 June 1996, she was arrested by the Eelam People's Revolutionary Liberation Front (EPRLF). She states that she was accused by a third party of collaboration with LTTE and was repeatedly questioned in this regard by EPRLF, but explained that she had performed forced labour for LTTE and why. She states she was not ill-treated but occasionally struck. She was handed over to the Sri Lankan authorities, held in custody and made to identify various alleged LTTE members at roadblocks. In mid-August 1996, she was able to escape after a convoy in which she was travelling struck a mine. She travelled to Colombo in late August and left the country by air for the Netherlands on 12 September 1996. It is alleged, without any details being provided, that because of her escape her uncle was killed by the authorities.

2.6 On 18 November 1996, Mrs. S. A.'s request for asylum of 16 October 1996 was denied. An appeal made to the Secretary of Justice on 31 December 1996 was rejected on 20 March 1997 ...

...

6.3 The Committee must decide, pursuant to article 3, paragraph 1, whether there are substantial grounds for believing that the authors would be in danger of being subjected to torture if returned to Sri Lanka.

...

6.5 In the present case, the Committee notes that the authors were provided with a comprehensive examination of their claims, with multiple opportunities to contribute to and correct the formal record, with an investigation by an independent advisory commission as well as judicial review. The Committee notes the attention drawn by the State party to the determinations of its various authorities of a number of inconsistencies and contradictions in the authors' accounts, casting doubt on the veracity of the allegations. It also notes the explanations provided by the authors in that respect.

6.6 The Committee finds that the authors have failed to show significant grounds that the evaluation of the State party's authorities was arbitrary or otherwise unreasonable, in concluding generally that the likelihood of torture of Tamils in Colombo who belong to a "high risk" group is not so great that the group as a whole runs a substantial risk of being so exposed. Nor have they demonstrated any inaccuracy in the State party's conclusion that the situation in Sri Lanka is not such that for Tamils in general, even if they are from the north of the country, substantial grounds exist for believing that they risk torture if returned from abroad.

6.7 As to the authors' individual circumstances, the Committee considers that the respective detentions suffered by the authors do not distinguish the authors' cases from those of many other Tamils having undergone similar experiences, and in particular they do not demonstrate that the respective detentions were accompanied by torture or other circumstances which would give rise to a real fear of torture in the future. In the circumstances, the Committee considers that the authors have failed to demonstrate, generally, that their membership of a particular group, and/or, specifically, that their individual circumstances give rise to a personal, real and foreseeable risk of being tortured if returned to Sri Lanka at this time.

6.8 The Committee ... concludes that the authors' removal from the State party would not constitute a breach of article 3 of the Convention.

- *S. V. et al. v. Canada* (49/1996), CAT, A/56/44 (15 May 2001) 102 at paras. 1, 2.1, 9.2, 9.6-9.8.

TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

1. The authors of the communication are Mr. S.V., his wife and daughter, citizens of Sri Lanka currently seeking refugee status in Canada. They claim that forcible return to Sri Lanka would constitute a violation of articles 3 and 16 of the Convention against Torture by Canada. They are represented by counsel.

...

2.1 The author is a Tamil from the area of Jaffna in the north of Sri Lanka. He and his wife have two children, an 8-year-old daughter and a 2-year-old son who was born in Canada and is a Canadian citizen. The authors claim that in the period from 1987 until their departure from Sri Lanka in 1992 they, and especially the author, suffered serious persecution from the Indian Peacekeeping Force (IPKF), the Liberation Tigers of Tamil Elam (LTTE), the Sri Lankan Army (SLA) and the Colombo police. The author was arrested on several occasions and, in the course of at least two of them, he was tortured by the army and the police.

...

9.2 The issue before the Committee is whether or not the forced return of the authors to Sri Lanka would violate the obligation of Canada under article 3 of the Convention not to expel a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

...

9.6 With respect to the possibility of the author suffering torture at the hands of the State on return to Sri Lanka, the Committee notes the author's allegations that he was tortured by the Sri Lankan army in December 1990 and that this treatment, which left him disabled, amounted to torture in terms of article 3 of the Convention. It also notes the allegations that he was maltreated by the police in Colombo in 1991. However, the Committee also notes the State party's contention, unchallenged by the author, that he left Sri Lanka regularly and always returned, even after the incident in December 1990. The Committee notes that with respect to the incident in March 1992, which according to the author was the reason for his departure, he was not maltreated and was released by the authorities. Furthermore, the author has not indicated that since that period he has been sought by the authorities. In fact, the author has not alleged to have been engaged in political or other activity within or outside the State, or alleged any other circumstance which would appear to make him particularly vulnerable to the risk of being placed in danger of torture. For the above-mentioned reasons, the Committee finds that the author has not provided substantial grounds for believing that he would be in danger of being tortured were he to be returned to Sri Lanka and that such danger is personal and present.

9.7 Similarly, the author's wife and their daughter have never been arrested or subjected to torture. The obligation to register at the police station at Colombo and the allegation, challenged by the State party, that the police took her identity card are not substantial grounds for believing that they would be in danger of being subjected to torture were they to be returned to Sri Lanka and that such danger is personal and present.

9.8 The Committee recalls that, for the purposes of article 3 of the Convention, the individual concerned must face a foreseeable, real and personal risk of being tortured in the country to which he or she is returned. In light of the foregoing, the Committee deems that such a risk has not been established by the authors. Moreover, the Committee observes that article 3 applies only to situations of torture as defined in article 1 of the Convention.

- *Z. Z. v. Canada* (123/1998), CAT, A/56/44 (15 May 2001) 129 at paras. 2.1-2.3, 8.4, 8.5 and 9.

...

2.1 The author allegedly fled Afghanistan in 1977 at the time of the armed intervention of the Soviet Union in the Afghan conflict. His brother was killed by Soviet forces and he feared the same fate ...

2.2 The author arrived in Canada in 1987 on a false passport. Upon his arrival in Montreal, he applied for asylum. He was found to have a credible basis for his refugee claim, which entitled him to apply for permanent residence, and he became a permanent resident in 1992.

2.3 On 29 June 1995, the author, found guilty of importing narcotics, was sentenced to 10 years' imprisonment. On 10 April 1996, the Minister of Citizenship and Immigration declared him a "danger to the public in Canada" and decided that he should therefore be removed to his country of origin ...

...

8.4 The Committee is of the opinion that the author did not bring any evidence that he would be personally at risk of being subjected to torture if he were returned to Afghanistan. The Committee also noted that the author has not suggested that he had been subjected to torture in the past. Nor has he alleged that he has been involved in any political or religious activities such that his return could draw the attention of the Taliban to the extent of putting him at personal risk of torture.

8.5 The author only brought information on the general situation in Afghanistan and claimed that, as a member of the Tajik ethnic group, he would face torture upon return to Afghanistan. Although it recognizes the difficulties encountered by some ethnic groups in Afghanistan, the Committee considers that the mere claim of being a member of the Tajik ethnic group does not sufficiently substantiate the risk that the author would be subjected to torture upon return.

9. As a consequence, the Committee ... is of the view that the facts as presented by the author and as found by the Committee do not reveal a breach of article 3 of the Convention.

TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

- *X. Y. v. Switzerland* (128/1999), CAT, A/56/44 (15 May 2001) 138 at paras. 2.1-2.4, 6.7, 6.8, 8.3, 8.5, 8.6 and 9.

...

2.1 The author claims that he has been a member of the Kurdistan Democratic Party in Iraq (KDP-Iraq) 1/ since 1980. As such, he allegedly participated in various activities of that organization, chiefly by transporting funds to support Kurds in Iraq and by distributing pamphlets deploring the situation of the Syrian Kurds, who had been stripped of their nationality by the Syrian State.

2.2 The author claims that he was twice arrested by the Syrian security forces. The first time, during the Iraqi invasion of Kuwait, he was in possession of funds intended for Iraq. He was freed after 18 days, only after a large sum of money had been paid by his family for his release. The second arrest reportedly took place in 1993. On that occasion, the author was held for 96 days in Mezze prison near Damascus and was reportedly tortured. He was released only after swearing to forgo any political activities in the future. His family again paid approximately 6,000 United States dollars to secure his release.

2.3 Subsequently, however, the author continued his political activities. In March 1995 he was warned by a family member who had reportedly received information from the security services that he was going to be arrested once again. The author then decided to flee the country and crossed the border into Lebanon illegally. He left Lebanon by boat in March, but it is not clear when he arrived in Europe. Nevertheless, on 10 April 1995 he applied for political asylum in Switzerland, largely on the basis of his alleged persecution in the Syrian Arab Republic.

2.4 The author's request for asylum was turned down on 28 May 1996 by the Federal Office for Refugees as being implausible, and 15 August 1996 was set as the deadline for the author's departure from Swiss territory. Subsequently the author appealed against that decision to the Swiss Appeal Commission on Asylum Matters, supporting his appeal with a medical report certifying that he might have been tortured in the past. The Appeal Commission dismissed the appeal on 8 July 1996, declaring it inadmissible on the grounds that the deadline for submission of an appeal had not been met.

...

6.7 According to the State party, the author never reported that he had been subjected to torture, either during the hearings at the transit centre or to the Federal Office for Refugees. The author's counsel apparently reproached the authorities with failing to question the petitioner on that specific point. The State party replies that it could "legitimately be expected that a person who subsequently claimed he had to leave his country for fear of being subjected again to torture would at least mention this circumstance when questioned in the host country about the reasons for applying for asylum".

6.8 The State party queries the fact that the author only produced a medical certificate dated 20 August 1996 3/ stating that he could have been subjected to torture in the past when he appeared before the Swiss Appeal Commission on Asylum Matters and not when filing his initial application for asylum. The State expresses surprise that a seeker of asylum on grounds of torture waited to have his application turned down before producing a medical certificate, whose evidential status was, moreover, compromised by the fact that three years had passed since the alleged facts. The State adds that, even if one considered the author's allegation that he had been subjected to torture in the past to be well founded, it did not follow that he ran a foreseeable personal and present risk of being subjected to torture again if he was returned to the Syrian Arab Republic. 4/

...

8.3 The Committee must decide, pursuant to article 3, paragraph 1, whether there are substantial grounds for believing that the author would be in danger of being subjected to torture upon return to the Syrian Arab Republic ...

...

8.5 The Committee expresses doubts about the credibility of the author's presentation of the facts, since he did not invoke his allegations of torture or the medical certificate attesting to the possibility of his having been tortured until after his initial application for political asylum had been rejected (paras. 6.7 and 6.8 of the present decision).

8.6 The Committee also takes into consideration the fact that the State party has undertaken an examination of the risks of torture faced by the author, on the basis of all the information submitted. The Committee considers that the author has not provided it with sufficient evidence to enable it to consider that he is confronted with a foreseeable, real and personal risk of being subjected to torture in the event of expulsion to his country of origin.

9. Consequently, the Committee ... considers that the decision of the State party to return the author to the Syrian Arab Republic constitutes no violation of article 3 of the Convention.

Notes

1/ The file contains a document dated 12 July 1995 certifying the author's membership in KDP-Europe, based in London; the document states that the author, whose name is misspelled, was a party member and had "taken part in the resistance movement and in the struggle for peace and democracy".

3/ The certificate was drawn up by the Hôpitaux universitaires de Genève on 20 August 1996 at the request of the author's counsel. It is based on two interviews with the author and sets forth the facts as presented by him with details of the acts of torture to which he was allegedly subjected. With regard to his physical condition, the doctors describe it as being within the bounds of normality but mention a number of scars on his body (a fine bow-shaped scar at

the base of the first toe of his right foot, three round scars on his left hand and wrist, and a star-shaped scar on his left cheek). With regard to his psychological condition, they say that the author was cooperative, with sound temporal and spatial orientation and without major memory disorders, but that he had trouble remembering specific dates accurately. They note a tendency towards dissociation when scenes of violence were mentioned. A reading of the medical report provoked considerable nervousness and agitation. The doctors consider that the author's description of the scenes of torture are compatible with what is known about the treatment of opponents of the regime in Syrian prisons, especially Mezze prison (see Amnesty International Report 1994, pp. 319-322). The scars correspond to his description of the torture he allegedly suffered, and the lesions are probably the sequelae of torture. Taking this and his psychological condition into account, the doctors diagnose post-traumatic stress syndrome (PTSS), a characteristic disorder of torture victims. The doctors go on to state that "we therefore conclude that there has been a flagrant violation of human rights. Under these circumstances and in view of the fact that the Kurdish issue in Syria has not been settled, the return of [the author] to his country would condemn him to renewed acts of violence ...". The doctors further conclude that the PTSS is in remission for the time being because the author feels safe in Switzerland. His refoulement would probably lead to a return of the symptoms, whose seriousness should not be underestimated. Moreover, as far as treatment is concerned, the doctors state that, to their knowledge, the type of medical care needed to stabilize the author's condition (physiotherapy and supportive psychotherapy) do not exist in the Syrian Arab Republic.

4/ In this connection, the State party refers to the Committee's jurisprudence, in particular communications *I.A.O. v. Sweden* (65/1997) and *X, Y and Z v. Sweden* (61/1996), in which the Committee, while finding that medical certificates established that the authors had been subjected to torture, nevertheless considered that it had not been shown that the authors would be in danger of being subjected to torture if they were returned.