LEGAL RIGHTS - CRIMINAL - Conditions of Arrest and Detention

III. JURISPRUDENCE

ICCPR

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

...
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.

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...

· *Valcada v. Uruguay* (9/1977) (R.2/9), ICCPR, A/35/40 (26 October 1979) 107 at paras. 10 and 12.

...
10. The Human Rights Committee therefore decides to base its views on the following facts which have either been essentially confirmed by the State party or are unrepudiated or uncontested except for denials of a general character offering no particular information or explanations: Edgardo Dante Santullo Valcada was arrested on 8 or 9 September 1976. He

was brought before a military judge on 25 October 1976 and again on 5 or 6 November 1976 when he was released. During his detention he did not have access to legal counsel. He had no possibility to apply for *habeas corpus*. Nor was there any decision against him which could be the subject of an appeal.

...

12. 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, having arisen after 23 March 1976, disclose violations of the International Covenant on Civil and Political Rights, in particular:

> - of article 9 (4) because, *habeas corpus* being inapplicable in his case, Santullo Valcada was denied an effective remedy to challenge his arrest and detention...

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

...

14. The Committee 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...Although he had served his sentence on 2 February 1979, he was not released until 1 July 1979...
>
> (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...

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

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

> ...
> of article 9 (3) both because they were not upon their arrest brought promptly before a judicial officer and because they were not brought to trial within a reasonable time;
>
> of article 9 (4) because they were unable effectively to challenge their arrest and detention;
> ...
> of article 9 (1) because they were not released, in the case of Alcides Lanza Perdomo, for five months and, in the case of Beatriz Weismann de Lanza, for 10 months, after their sentences of imprisonment had been fully served.

· *Seqeira v. Uruguay* (6/1977)(R.1/6), ICCPR, A/35/40 (29 July 1980) 127 at paras. 12-14 and 16.

...
12. The Human Rights Committee:

> ...
> hereby decides to base its views on the following facts, which have not been contradicted by the State party:
>
> > Miguel Angel Millan Sequeira, 20 years old at the time of the submission of the communication in 1977, was arrested in April and released in May 1975. He was rearrested on 18 September 1975 and detained until he escaped from custody on 4 June 1976. On both occasions he was told that the reason for his arrest was that he was suspected of being "a militant communist". Although brought before a military Judge on three occasions, no steps were taken to commit him for trial or to order his release. He did not have access to legal assistance and was not afforded an opportunity to

challenge his arrest and detention.

13. The Human Rights Committee has been informed by the Government of Uruguay in another case (R.2/9), that the remedy of *habeas corpus* is not applicable to persons arrested under the Prompt Security Measures.

14. The Human Rights Committee has considered whether acts, which are prima facie not in conformity with the Covenant, could for any reasons be justified under the Covenant in the circumstances. The Covenant (article 4) does not allow national measures derogating from any of its provisions except in strictly defined circumstances, and the Government has not made any submissions of fact or law to justify such derogation.

...

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

> of article 9 (3) because Mr. Millan Sequeira was not brought to trial within a reasonable time;
>
> of article 9 (4) because recourse to *habeas corpus* was not available to him...

· *Weinberger v. Uruguay* (28/1978) (R.7/28), ICCPR, A/36/40 (29 October 1980) 114 at paras. 12, 14 and 16.

...

12. The Committee therefore decides to base its views on the following facts which have either been essentially confirmed by the State party or are uncontested except for denials of a general character offering no particular information or explanation: Ismael Weinberger Weisz was arrested at his home in Montevideo, Uruguay, on 25 February 1976 without any warrant of arrest. He was held incommunicado at the prison of "La Paloma" in Montevideo for more than 100 days and could be visited by family members only 10 months after his arrest...

Ismael Weinberger was first brought before a judge and charged on 16 December 1976, almost 10 months after his arrest. On 14 August 1979, three and a half years after his arrest, he was sentenced to eight years of imprisonment by the Military judge of the Court of First Instance for "subversive association" (art. 60 (V) of the Military Penal Code) with aggravating circumstances of conspiracy against the Constitution. The concrete factual basis of this offence has not been explained by the Government of Uruguay, although the author of the communication claims that the true reasons were that his brother had contributed information on trade-union activities to a newspaper opposed to the

Government and his membership in a political party which had lawfully existed while the membership lasted. The Committee further notes in this connection that the State party did not comply with the Committee's request to enclose copies of any court orders or decisions of relevance to the matter under consideration. Ismael Weinberger was not granted the assistance of counsel during the first 10 months of his detention. Neither the alleged victim nor his counsel had the right to be present at the trial, the proceedings being conducted in writing. The judgement handed down against him was not made public...

...

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

...

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

> ...
> of article 9 (3), because he was not brought promptly before a judge or other officer authorized by law to exercise judicial power and because he was not tried within a reasonable time;
>
> of article 9 (4), because recourse to *habeas corpus* was not available to him...

See also:

- *Motta v. Uruguay* (11/1977) (R.2/11), ICCPR, A/35/40 (29 July 1980) 132 at paras. 14-16.
- *Tourón v. Uruguay* (32/1978)(R.7/32), ICCPR, A/36/40 (31 March 1981) 120 at paras. 8 and 12.

- *Carballal v. Uruguay* (33/1978) (R.8/33), ICCPR, A/36/40 (27 March 1981) 125 at paras. 9-11 and 13.

...

9. The Human Rights Committee...hereby decides to base its views on the following facts

which have been essentially confirmed by the State party, are unrefuted or are uncontested, except for denials of a general character offering no particular information or explanation. Leopoldo Buffo Carballal was arrested on 4 January 1976 and held incommunicado for more than five months, much of the time tied and blindfolded, in several places of detention. Recourse to *habeas corpus* was not available to him. He was brought before a military Judge on 5 May 1976 and again on 28 June or 28 July 1976, when an order was issued for his release. He was, however, kept in detention until 26 January 1977.

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

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

...

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

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

See also:

- *Casariego v. Uruguay* (R.13/56), ICCPR, A/36/40 (29 July 1981) 185 at paras. 9 and 11.

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· *De Bouton v. Uruguay* (37/1978) (R.9/37), ICCPR, A/36/40 (27 March 1981) 143 at paras. 10, 12 and 13.

...

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

...

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

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

> ...
> Of article 9 (1), because she was not released until one month after an order for her release was issued by the military court;
>
> Of article 9 (3), because she was not brought before a judge until eight months after she was detained;
>
> Of article 9 (4), because recourse to *habeas corpus* was not available to her.

See also:

· *Ramírez v. Uruguay* (R.1/4), ICCPR, A/35/40 (23 July 1980) 121 at paras. 15 and 18.

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

...

13.2 Rosario Pietraroia Zapala was arrested in Uruguay, without a warrant for arrest, early in 1976 (according to the author on 19 January 19765 according to the State party on 7 March 1976), and held *incommunicado* under the prompt security measures for four to six months. During the first period of his detention he was at least on two occasions committed to the military hospital. His trial began on 10 August 1976, when he was charged by a military court with the offences of "subversive association ("*asociacion subversiva*") and "conspiracy to violate the Constitution, followed by acts preparatory thereto" ("*atentado contra la Constitucion en el grado de conspiracion sequida de actos preparatorios*"). In this connexion, the Committee notes that the Government of Uruguay has offered no explanations as regards the concrete factual basis of the offences for which Rosario Pietraroia was charged in order to refute the claim that he was arrested, charged and convicted on account of his prior political and trade-union activities which had been lawful at the time engaged in. In May 1977, the military prosecutor called for a penalty of 12 years' rigorous imprisonment and on 28 August 1978 Rosario Pietraroia was sentenced to 12 years' imprisonment, in a closed trial, conducted in writing and without his presence...

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

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

> of article 9 (2), because Rosario Pietraroia Zapala was not duly informed of the charges against him;
>
> of article 9 (3), because he was not brought promptly before a Judge or other officer authorized by law to exercise judicial power and because he was not

> tried within a reasonable time;
>
> of article 9 (4), because recourse to *habeas corpus* was not available to him...

· *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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· *Pinkney v. Canada* (R.7/27), ICCPR, A/37/40 (29 October 1981) 101 at paras. 23 and 30-34.

...

23. Mr. Pinkney alleges that he has been subjected to continual racial insults and ill-treatment in prison. He claims, in particular...that during his pre-trial detention he was not segregated from convicted persons, that his correspondence was arbitrarily interfered with and that his treatment as an unconvicted person was far worse than that given to convicted persons, in violation of articles...10 (1), (2)(a) and 17(1) of the Covenant.

...

30. The Committee is of the opinion that the requirement of article 10(2)(a) of the Covenant that "accused persons shall, save in exceptional circumstances, be segregated from convicted persons" means that they shall be kept in separate quarters (but not necessarily in separate buildings). The Committee would not regard the arrangements described by the State party whereby convicted persons work as food servers and cleaners in the remand area of the prison as being incompatible with article 10(2)(a), provided that contacts between the two classes of prisoners are kept strictly to a minimum necessary for the performance of those tasks.

31. Mr. Pinkney...complains that while detained at the Lower Mainland Regional Correction Centre he was prevented from communicating with outside officials and was thereby subjected to arbitrary or unlawful interference with his correspondence contrary to article 17 (1) of the Covenant. In its submission of 22 July 1981 the State party gives the following explanation of the practice with regard to the control of prisoners' correspondence at the Correction Centre:

> "Mr. Pinkney, as a person awaiting trial, was entitled under section 1.21 (d) of the Gaol Rules and Regulations, 1961, British Columbia Regulations 73/61, in force at the time of his detention to the 'provision of writing material for communicating by letter with (his) friends or for conducting correspondence or preparing notes in connexion with (his) defence'. The Government of Canada does not deny that letters sent by Mr. Pinkney were subject to control and could even be censored. Section 2.40 (b) of the Gaol Rules and Regulations, 1961 is clear on that point:
>
> > '2.40 (b) Every letter to or from a prisoner shall (except as hereinafter provided in these regulations in the case of certain communications to or from a legal adviser) be read by the Warden or by a responsible officer deputed by him for the purpose, and it is within the discretion of the Warden to stop or censor any letter, or any part of a letter, on the ground

> that its contents are objectionable or that the letter is of excessive length.'
>
> "Section 42 of the Correctional Centre Rules and Regulations, British Columbia Regulation 284/78, which came into force on 6 July 1978 provides that:
>
> > '42 (1) A director or a person authorized by the director may examine all correspondence other than privileged correspondence between an inmate and another person where he is of the opinion that the correspondence may threaten the management, operation, discipline or security of the correctional centre.
> >
> > '(2) Where in the opinion of the director, or a person authorized by the director, correspondence contains matter that threatens the management, operation, discipline or security of the correctional centre, the director or person authorized by the director may censor that matter.
> > ...
> > '(4) An inmate may receive books or periodicals sent to him directly from the publisher.
> >
> > '(5) Every inmate may send as many letters per week as he sees fit.'

32. Although these rules were only enacted subsequent to Mr. Pinkney's departure from the Lower Mainland Regional Correction Centre, in practice they were being applied when he was detained in that institution. This means that privileged correspondence, defined in section 1 of the regulations as meaning 'correspondence addressed by an inmate to a Member of Parliament, Members of the Legislative Assembly, barrister or solicitor, commissioner of corrections, regional director of corrections, chaplain, or the director of inspection and standards', were not examined or subject to any control or censorship. As for non-privileged correspondence, it was only subject to censorship if it contained matter that threatened the management, operation, discipline, or security of the correctional centre. At the time when Mr. Pinkney was detained therein, the procedure governing prisoners' correspondence did not allow for a general restriction on the right to communicate with government officials. Mr. Pinkney was not denied this right. To seek to restrict his communication with various government officials while at the same time allowing his access to his lawyers would seem a futile gesture since through his lawyers, he could put his case to the various government officials whom he was allegedly prevented from contacting."

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33. In his letter of 27 August 1981 Mr. Pinkney comments as follows on these submissions of the State party:

> "Further, on page 5 of the Government of Canada's submission, it is alleged by the Government that my mail was not tampered with at Oakalla, when in point of fact, not only was my mail interfered with by prison authorities in the normal sense of the requirements affecting all prisoners, but in point of fact, as the Government well knows, in some instances my mail to members of Government (whose mail should indeed have been privileged mail) never even got to these people, for it never even left the prison, once I mailed it. To imply, as does the Government, that such actions would be 'futile' for prison authorities to engage in, due to my having access to my lawyer at certain very definite times, is absolute nonsense."

34. No specific evidence has been submitted by Mr. Pinkney to establish that his correspondence was subjected to control or censorship which was not in accordance with the practice described by the State party. However, article 17 of the Covenant provides not only that "No one shall be subjected to arbitrary or unlawful interference with his correspondence" but also that "Everyone has the right to the protection of the law against such interference". At the time when Mr. Pinkney was detained at the Lower Mainland Regional Correction Centre the only law in force governing the control and censorship of prisoners' correspondence appears to have been section 2.40 (b) of the Gaol Rules and 'Regulations 1961. A legislative provision in the very general terms of this section did not, in the opinion of the Committee, in itself provide satisfactory legal safeguards against arbitrary application, though, as the Committee has already found, there is no evidence to establish that Mr. Pinkney was himself the victim of a violation of the Covenant as a result. The Committee also observes that section 42 of the Correctional Centre Rules and Regulations that came into force on 6 July 1978 has now made the relevant law considerably more specific in its terms.

· *Gonzalez v. Uruguay* (R.2/10), ICCPR, A/37/40 (29 March 1982) 122 at paras. 13.3 and 15.

...

13.3 With respect to the date when Alberto Altesor was first brought before a judge, the authors claim that he was kept incommunicado and not brought before a judge for over 16 months after his arrest. The State party's explanations in its note of 14 April 1978 are ambiguous in this respect...The Committee cannot determine whether "*con posterioridad*" (subsequently) means that Alberto Altesor was brought before a judge within a reasonable

time; nor is it clear whether "*fue someriCo al juez militar*" means that he was brought personally before the judge or whether his case was merely submitted to the judge in writing or in the presence of a legal representative. The State party should have clearly stated the precise date when Alberto Altesor was brought personally before a judge, since article 9 (3) of the Covenant requires that "Anyone arrested or detained on a criminal charge shall be brought promptly before a judge." Without that statement, the State party has failed to rebut the authors' allegation that their father was not brought before a judge until after 16 months of detention. The fact that Alberto Altesor was committed for trial by a military judge of 24 September 1976 (i.e. over 11 months after his arrest), does not adequately clarify the matter.

...

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

> of article 9(3), because Alberto Altesor was not brought promptly before a judge or other officer authorized by law to exercise judicial power;
>
> of article 9(4) because recourse to *habeus corpus* was not available to him...

· *Izquierdo v. Uruguay* (73/1980) (R.18/73), ICCPR, A/37/40 (1 April 1982) 179 at paras. 7.3, 7.7, 7.9 and 9.

...

7.3 ...From 1972 to 1976 Mario Alberto Teti Izguierdo had access to three defence lawyers of his choice, Dr. Wilmar Olivera in 1972, Dr. Alba Dell'Acgua from January 1973 to December 1975 and Dr. Mario Dell'Acgua from January 1976 to October 1976. All these lawyers left Uruguay, allegedly because of harassment by the authorities.

...

7.7 Since October 1976 he has been unable to have the assistance of counsel of his own choice.

...

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

...

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

> ...
> of article 14 (3) (b) and (c), because he was unable to have the assistance of counsel of his own choice and because the conditions of his detention, from September 1980 to May 1981, effectively barred him from access to any legal assistance...

See also:

- *Machado v. Uruguay* (83/1981)(R.20/83), ICCPR, A/39/40 (4 November 1984) 148 at paras. 11.2 and 13.

- *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...
...
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...

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· *Borda v. Colombia* (R.11/46), ICCPR, A/37/40 (27 July 1982) 193 at paras. 12.2, 12.3 and 14.

...
12.2 The Supreme Court of Justice of Colombia in a judgement of 30 October 1978 held Decree No. 1923 of 6 September 1978 to be constitutional. In this Decree it is recalled that 'by Decree No. 2131 of 1976, public order was declared to be disturbed and the entire national territory in a state of siege'. Article 9 of Decree No. 1923 reads as follows: 'The military criminal courts, in addition to exercising the competence given them by the laws and regulations in force, shall try by court martial proceedings the offences [in particular of rebellion] referred to in articles 1, 2, 3, 4, 5 and 6, as well as those committed against the life and person of members of the Armed Forces, etc.' In this Decree No. 1923 judicial powers are also granted to army, navy and air force commanders (art. 11) and police chiefs (art. 12).
12.3 On 21 January 1979, Mr. Fals Borda and his wife, Maria Cristina Salazar de Pals Borda, were arrested by troops of the Brigade de Institutos Militates under Decree No. 1923. Mr. Fals was detained *incommunicado* at the Cuartel de Infanteria de Usaquin, from 21 January to 10 February 1979 when he was released without charges. Mrs. Fals continued to be detained for over one year. Mr. and Mrs. Fals Borda were released as a result of court decisions that there was no justification for their continued detention. They had not, however, had a possibility themselves to take proceedings before a court in order that that court might decide without delay on the lawfulness of their detention.
...
14. The Committee...is of the view that the facts...above disclose violations of the International Covenant on Civil and Political Rights, particularly:

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

· *Schweizer v. Uruguay* (66/1980)(R.16/66), ICCPR, A/38/40 (12 October 1982) 117 at paras. 11, 16.2, 17.5, 18.1 and 19.

...
11. ...David Campora...described the daily life of the prisoners, including their constant harassment and persecution by the guards; the regime of arbitrary prohibitions and

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

...

16.2 In May 1974, a judge ordered David Campora's provisional release; his request to leave the country was approved in November 1974. At the same time, however, an order of detention under the rules of "Prompt Security Measures" was issued against him so that be was kept imprisoned without any charges. There were no remedies available to him to challenge his prolonged detention. While he was kept at Trinidad barracks (since November 1974) he suffered mistreatment.

...

17.5 ...The Committee is...in a position to conclude that the conditions of imprisonment to which David Campora was subjected at Libertas prison were inhuman (see, in particular, para. 11 above).

...

18.1 On the basis of the facts of the present case, the Human Rights Committee does not feel that it is in a position to pronounce itself on the general compatibility of the regime of "prompt security measures" under Uruguayan law with the Covenant. According to article 9 (1) of the Covenant, no one shall be subjected to arbitrary arrest or detention. Although administrative detention may not be objectionable in circumstances where the person concerned constitutes a clear and serious threat to society which cannot be contained in any other manner, the Committee emphasizes that the guarantees enshrined in the following paragraphs of article 9 fully apply in such instances. In this respect, it appears that the modalities under which "prompt security measures" are ordered, maintained and enforced do not comply with the requirements of article 9.

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

> of article 9 (3) and (4) because during the time spent in detention under the regime of "prompt security measures", David Alberto Campora Schweizer was not brought before a judge and could not take proceedings to challenge his arrest and detention;

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

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

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

(b) With respect to Guillermo Ignacio Dermit Barbato,

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

of article 9(4), because he was held in communicado and effectively barred from challenging his arrest and detention...

· *Estrella v. Uruguay* (74/1980)(R.18/74), ICCPR, A/38/40 (29 March 1983) 150 at paras. 1.13, 8.5, 9.1, 9.2 and 10.

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

punishments including 30 days in solitary confinement in a punishment cell and seven months without mail or recreation and subjected to harassment and searches. His correspondence was subjected to severe censorship (see para. 1.13 above).

...

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 of control and censorship over prisoners' correspondence. Nevertheless, article 17 of the Covenant provides that "no one shall be subjected to arbitrary or unlawful interference with his correspondence". This requires that any such measures of control or censorship shall be subject to satisfactory legal safeguards against arbitrary application (see para. 21 of the Committee's views of 29 October 1981 on communication No. R.14/63). Furthermore, the degree of restriction must be consistent with the standard of humane treatment of detained persons required by article 10 (1) of the Covenant. 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. On the basis of the information before it, the Committee finds that Miguel Angel Estrella's correspondence was censored and restricted at Libertad prison 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...disclose the following violations...

> ...
> 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.

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

...

10.3 Events subsequent to the entry into force of the Covenant: On 11 September 1979, the Supreme Court of Military Justice upheld the decision of the Court of First Instance, but increased the prison term to 10 years and imposed security measures from one to five years. Gustavo Larrosa has been frequently punished at prison, and from October 1980 to March 1981 he was allowed to receive only one visit. He has also been held in what is called "*La Isla*", a prison wing of small cells without windows, where the artificial light is left on 24 hours a day and the prisoner was kept in solitary confinement for over a month.

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...
11.3 With respect to the state of health of the alleged victim, the Committee finds that the author's allegations as to his brother's loss of hearing in one ear, loss of weight and impaired vision called for more precise information from the State party. Similarly, with respect to general prison conditions and the allegations of ill-treatment made by the author, the State party has adduced no evidence that these allegations have been adequately investigated. A refutation of these allegations in general terms, as contained in the State party's submissions, is not sufficient.
...
11.5 With regard to the burden of proof, the Committee has already established in its views in other cases (e.g., R. 7/30) that said burden cannot rest alone on the author of the communication, especially considering that the author and the State party do not always have equal access to the evidence and that frequently the State party alone has access to relevant information. It is implicit in article 4 (2) of the Optional Protocol that the State party has the duty to investigate in good faith all allegations of violation of the Covenant made against it and its authorities.

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

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

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

...
2.6 With respect to the conditions of her imprisonment, the author states that his sister is interned at the EMR No. 2 (*Penal Punta de Rieles*), which is used exclusively for the detention of women political prisoners and is not administered by special personnel instructed in the treatment of women prisoners, but by military personnel on short assignment. She occupies a cell with 14 other women prisoners. If she fails to perform her tasks she is allegedly punished by solitary confinement for up to three months and by prohibition of visits, denial of cigarettes, etc. Visits may occur every 15 days and last only half an hour. The only persons authorized to visit her are close relatives, but no unrelated friends are allowed. The author claims that the worst part of his sister's imprisonment is the arbitrariness of the guards and the severity of the punishment for, *inter alia*, reporting to her

relatives on prison conditions or speaking with other inmates at certain times. The inmates allegedly live in a state of constant fear of being again submitted to military interrogation in connection with their prior convictions or with alleged political activities in the prison. The author alleges that the penitentiary system is not aimed at reformation and social rehabilitation of prisoners but at the destruction of their will to resist. They are given a number and are never called by their name. Elena Beatriz Vasilskis is No. 433 of Sector B. Psychological pressures on the inmates are allegedly designed to lead them to denounce other inmates.

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

...

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

10.4 With regard to the burden of proof, the Committee has already established in its views in other cases (e.g., R.7/30) that said burden cannot rest alone on the author of the communication, especially considering that the author and the State party do not always have equal access to the evidence and that frequently the State party alone has access to relevant information. It is explicitly stated in article 4, paragraph 2, of the Optional Protocol that the State party concerned has the duty to contribute to clarification of the matter. In the circumstances, the appropriate evidence for the State party to furnish to the

Committee would have been the medical reports on the state of health of Elena Beatriz Vasilskis specifically requested by the Committee in its decision of 25 March 1982. Since the State party has deliberately refrained from providing such expert information, in spite of the Committee's request, the Committee cannot but draw conclusions from such failure.

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

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

· *Caldas v. Uruguay* (43/1979)(R.10/43), ICCPR, A/38/40 (21 July 1983) 192 at paras. 12, 12.1, 13.2, 13.3 and 14.

...

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

12.1 Adolfo Drescher Caldas, a former trade-union official, was arrested in Montevideo, Uruguay, on 28 September 1978, by officials who did not identify themselves or produce any judicial warrant and who apparently belonged to the Navy. He was informed that he was arrested under the prompt security measures, but not, it appears, more specifically of the reasons for his arrest. During the first six weeks of his detention he was kept *incommunicado* and his relatives did not know his whereabouts. Recourse to *habeas corpus* was not available to him. On 7 November 1978, he was charged before the Military Examining Judge with violations of article 60 (V) of the Military Criminal Code and article 340 (theft), 237 (forgery or alteration of an official document by a private individual) and 54 (accumulation of offences) of the Ordinary Criminal Code. He had a defending counsel appointed by the court, Colonel Alfredo Ramirez, and in July 1979 his case was before the Military Court of the fourth sitting. In December 1978, he was brought to Libertad prison, the Military Detention Establishment No. 1, where he continues to be detained.

...

13.2 With regard to the author's contention that her husband was not duly informed of the reasons for his arrest, the Committee is of the opinion that article 9 (2) of the Covenant requires that anyone who is arrested shall be informed sufficiently of the reasons for his arrest to enable him to take immediate steps to secure his release if he believes that the reasons given are invalid or unfounded. It is the view of the Committee that it was not

sufficient simply to inform Adolfo Drescher Caldas that he was being arrested under the prompt security measures without any indication of the substance of the complaint against him.

13.3 The Committee observes that the holding of a detainee incommunicado for six weeks after his arrest is not only incompatible with the standards of humane treatment required by article 10 (1) of the Covenant, but it also deprives him, at a critical stage, of the possibility of communicating with counsel of his own choosing as required by article 14 (3) (b) and, therefore, of one of the most important facilities for the preparation of his defence".

...

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

> of article 9(2), because, at the time of his arrest, Adolfo Drescher Caldas was not sufficiently informed of the reasons for his arrest;
>
> of article 9(4), because recourse to *habeas corpus* was not available to him;
>
> ...
>
> of article 14 (3) (b), because he was unable, particularly while kept incommunicado, to communicate with counsel of his own choosing...

· *Luyeye v. Zaire* (90/1981)(R.22/90), ICCPR, A/38/40 (21 July 1983) 197 at paras 7.1, 7.2 and 8.

...

7.1 The Human Rights Committee...hereby decides to base its views on the following facts, which, in the absence of any observations by the State party, are uncontradicted by it.

7.2 Luyeye Magana ex-Philibert was arrested on 24 March 1977 when three agents of the Centre Nationale de Documentation furnished with a search warrant, came to his house to carry out a search for no apparent reason. They seized documents written by the alleged victim, cinematographic films and magnetic tapes. Following the search, though without any warrant of arrest or summons, they requested him to accompany them to the Centre Nationale de Documentation to provide further information. Once there, he was Introduced to Citizen Kisangani, one of the directors who, without any further proceedings, simply ordered him to be kept in detention. While in detention, he was kept in a cell, locked in from morning to night, sleeping on the grounds he was deprived of all contact with his family and he was refused all medical attention. On 6 April 1977, without his knowledge or that of his family, the Centre Nationale de Documentation sent three agents to the village of his birth, Kintambu in Lower Zaire, to search his country house where they

removed his Scout's Certificate. His detention continued until 9 January 1978 when he was released following an amnesty pronounced by the President of the Republic, without ever having been interrogated or given any document relating to' the detention, though a decree of 22 April 1961 (l'arrete ministeriel No. 05/22) provided that the agents of the Surete Nationale can detain people for inquiry for five days only, after which they must be served with an internment order. During his detention he appealed without result to the Administrateur General and, by letter, to the Head of State. No other remedy was available to him. It is further alleged that during his detention, five members of his immediate family died and were buried without his having been able to be present at the funeral. His children were expelled from school because of the lack of finance while he was detained.

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

> of article 9 (1), because Luyeye Magana ex-Philibert has been subjected to arbitrary arrest and detentions;
>
> of article 9 (2), because he was not informed, at the time of his arrest, of the reasons for his arrest and of any charges against him;
>
> of article 9 (3) and (4), because he was not brought promptly before a Judge and no court decided within a reasonable time on the lawfulness of his detention...

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

...

12.3 The Human Rights Committee, accordingly, 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 in 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.

See also:

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

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

...

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

...

10.4 The Committee observes that the State party, in its submission of 11 October 1982, refuted only in general terms the author's detailed allegations that her father is held under inhuman prison conditions at Libertad (see para.1.7 above). The submissions of the State party in this respect are an insufficient answer to the allegations made. The Committee recalls its findings in other cases a/ that a practice of inhuman treatment existed at Libertad prison during the period to which the present communication relates and that it has come to this conclusion on the basis of specific accounts by former detainees themselves. The Committee concludes that, in the present case also Juan Almarati Nieto has not been treated with humanity and with respect for the inherent dignity of the human person as required by article 10(1) of the Covenant.

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

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

Notes

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

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· *Manera v. Uruguay* (123/1982)(R.26/123), ICCPR, A/39/40 (6 April 1984) 175 at paras. 9.2 and 10.

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

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

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

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

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

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

...

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;
>
> - of article 9, paragraph 3, because, in spite of the charges brought against him, he was not promptly brought before a judge and had no trial within a reasonable time;
>
> - of article 9, paragraph 4, because he was held in communicado and effectively barred from challenging his arrest and detention...

...

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.

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See also:

· *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.

· *Wight v. Madagascar* (115/1982)(R.25/115), 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, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, 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...

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See also:

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

· *Jaona v. Madagascar* (132/1982)(R.28/132), ICCPR, A/40/40 (1 April 1985) 179 at paras. 12.1, 12.2 and 14.

...

12.1 The Human Rights Committee...decides to base its views on the following facts, which appear uncontested, except for denials of a general character offering no particular information or explanations.

12.2 Monja Jaona is a 77-year-old Malagasy national and leader of MONIMA, a political opposition party. In the elections held in Madagascar in November 1982 he was the presidential candidate of his party. Following the re-election of President Ratsiraka, Mr. Jaona challenged the results and called for new elections at a press conference. Shortly afterwards, on 15 December 1982, Mr. Jaona was placed under house arrest in Tananarive and subsequently detained at the military camp of Kelivondrake, 600 km south of Tananarive. He was not informed of the grounds for his arrest and there is no indication that charges were ever brought against him or investigated. An appeal against his arrest was lodged on 15 March 1983, but there is no indication that the appeal was ruled on. Mr. Jaona was released on 15 August 1983. He was elected deputy to the National People's Assembly in elections held on 28 August 1983.

...

14. The Human Rights Committee...is of the view that these facts disclose violations of the Covenant:

> of article 9, paragraph 1, because Monja Jaona was arrested in December 1982 and detained until August 1983 on account of his political opinions;
>
> of article 9, paragraph 2, because he was not informed of the reasons for his arrest or of any charges against him...

· *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 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 Calvary 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...The remedy of *habeas corpus* was not available to Hiber Conteris. He was never brought before a judge and was kept uninformed of the charges against him for over two years. He was not granted a public hearing at which he could defend himself and he had no opportunity to consult with his court appointed lawyer in preparation for his defence. He was tried and sentenced by a military court of first instance to 15 years' imprisonment and, it appears, to one to five years of precautionary detention...

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;
>
> of article 9, paragraph 1, because the manner in which he was arrested and detained, without a warrant, constitutes an arbitrary arrest and detention, irrespective of the charges which were subsequently laid against him;
> ...
> of article 9, paragraph 2, because he was not informed of the charges against him for over two years;
>
> of article 9, paragraph 3, because he was not brought promptly before a judge and because he was not tried within a reasonable time;
>
> of article 9, paragraph 4, because he had no opportunity to challenge his detention...

· *Hammel v. Madagascar* (155/1983), ICCPR, A/42/40 (3 April 1987) 130 at paras. 18.2, 19.4 and 20.

...
18.2 Maitre Hammel is a French national and resident of France, formerly a practising attorney in Madagascar for 19 years until his expulsion on 11 February 1982. In February 1980 he was threatened with expulsion and was detained and interrogated on 1 March and again on 4 November 1980 in this connection. On 8 February 1982, he was arrested at his

law office in Antananarivo by the Malagasy political police, who took him to a basement cell in the Malagasy political prison and kept him in *incommunicado* detention until 11 February 1982 when he was notified of an expulsion order against him issued on that same date by the Minister of the Interior. At that time he was taken under guard to his home where he had two hours to pack his belongings. He was deported on the same evening to France, where he arrived on 12 February 1982. He was not indicted nor brought before a magistrate on any charge; he was not afforded an opportunity to challenge the expulsion order prior to his expulsion. The proceedings concerning his subsequent application to have the expulsion order revoked ended with the decision of the Administrative Chamber of the Supreme Court of Madagascar, dated 13 August 1986, in which the Court rejected Maitre Hammel's application and found the expulsion order valid on the grounds that Maitre Hammel allegedly made 'use both of his status as a corresponding member of Amnesty International and of the Human Rights Committee [sic] at Geneva, and as a barrister' to discredit Madagascar.

...

19.4 The issues raised in this case also relate to article 9, paragraph 4, of the Covenant, in the sense that, during his detention preceding expulsion, Eric Hammel was unable to challenge his arrest.

20. 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 9, paragraph 4, because Eric Hammel was unable to take proceedings before a court to determine the lawfulness of his arrest...

· *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

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Covenant on Civil and Political Rights, particularly of:

> ...
> Article 10, paragraph 1, because he was subjected to inhuman prison conditions until his release in December 1984...

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

...
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. They had no access to legal counsel until 44 days after their detention.
...
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 9, paragraph 3, and 10, paragraph 1, because they were not brought promptly before a judge, but were kept incommunicado for 44 days following their arrest...

· *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:

> ...
> Article 9, paragraph 1, because he was arbitrarily arrested; and
>
> Article 9, paragraph 2, because he was not informed of the reasons for his arrest.

· *J. R. C. v. Costa Rica* (296/1988), ICCPR, A/44/40 (30 March 1989) 293 at para. 8.4.

...
8.4 The Committee has also examined whether the conditions of articles 2 and 3 of the Optional Protocol have been met. With regard to a possible breach of article 9 of the Covenant, the Committee notes that this article prohibits arbitrary arrest and detention. The author was lawfully arrested and detained in connection with his unauthorized entry into Costa Rica. The Committee observes that the author is being detained pending deportation and that the State party is endeavouring to find a host country willing to accept him. In this connection, the Committee notes that the State party has pleaded reasons of national security in connection with the proceedings to deport him. It is not for the Committee to test a sovereign State's evaluation of an alien's security rating. With respect to a possible violation of article 14 of the Covenant, a thorough examination of the communication has not revealed any facts in substantiation of the author's claim to be a victim of a violation of this article.

· *Voulanne v. Finland* (265/1987), ICCPR, A/44/40 (7 April 1989) 249 at paras. 9.3-9.6 and 10.

...
9.3 The Committee has noted the contention of the State party that the case of Mr. Vuolanne does not fall within the ambit of article 9, paragraph 4, of the Covenant. The Committee considers that this question must be answered by reference to the express terms of the Covenant as well as its purpose. It observes that, as a general proposition, the Covenant does not contain any provision exempting from its application certain categories of persons. According to Article 2, paragraph 1, "each State party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or other origin, property, birth or other status". The all-encompassing character of the terms of this article leaves no room for distinguishing between different categories of persons, such as civilians and members of the military, to the extent of holding the Covenant to be

applicable in one case but not in the other. Furthermore, the *travaux préparatoires* as well as the Committee's general comments indicate that the purpose of the Covenant was to proclaim and define certain human rights for all and to guarantee their enjoyment. It is, therefore, clear that the Covenant is not, and should not be conceived in terms of whose rights shall be protected but in terms of what rights shall be guaranteed and to what extent. As a consequence the application of article 9, paragraph 4, cannot be excluded in the present case.

9.4 The Committee acknowledges that it is normal for individuals performing military service to be subjected to restrictions in their freedom of movement. It is self evident that this does not fall within the purview of article 9, paragraph 4. Furthermore, the Committee agrees that a disciplinary penalty or measure which would be deemed a deprivation of liberty by detention, were it to be applied to a civilian may not be termed such when imposed upon a serviceman. Nevertheless, such penalty or measure may fall within the scope or application of article 9, paragraph 4, if it takes the form of restrictions that are imposed over and above the exigencies of normal military service and deviate form the normal conditions of life within the armed forces of the State party concerned. In order to establish whether this is so, account should be taken of a whole range of factors such as the nature, duration, effects and manner of the execution of the penalty or measure in question.

9.5 In the implementation of the disciplinary measure imposed on him, Mr. Vuolanne was excluded from performing his normal duties and had to spend a day and night for a period of 10 days in a cell measuring 2 x 3 metres. He was allowed out of his cell solely for the purposes of eating, going to the toilet and taking air for a half an hour every day. He was prohibited form talking to other detainees and from making any noise in his cell. His correspondence and personal notes were interfered with. He served a sentence in the same way as a prisoner would. The sentence imposed on the author is of a significant length, approaching that of the shortest prison sentence that may be imposed under Finnish criminal law. In light of the circumstances, the Committee is of the view that this sort of solitary confinement in a cell for 10 days and nights is in itself outside the usual service and exceeds the normal restrictions that military life entails. The specific disciplinary punishment led to a degree of social isolation normally associated with arrest and detention in the sense of article 9, paragraph 4. In this connection, the Committee recalls its General Comment No. 8 (16) according to which most of the provisions of article 9 apply to all deprivations of liberty, whether in criminal cases or in other cases of detention as, for example, for mental illness, vagrancy, drug addiction, educational purposes and immigration control. The Committee cannot accept the State party's contention that because military disciplinary detention is firmly regulated by law, it does not necessitate the legal and procedural safeguards stipulated in article 9, paragraph 4.

9.6 The Committee further notes that whenever a decision depriving a person of his liberty

is taken by an administrative body or authority, there is no doubt that article 9, paragraph 4, obliges the State party to make available to the person detained the right of recourse to a court of law. In this particular case it matters not whether the court be civilian or military. The Committee does not accept the contention of the State party that the request for review before a superior military officer according to the Law on Military Disciplinary Procedure currently in effect in Finland is comparable to judicial or quasi-judicial manner. The procedure followed in the case of Mr. Vuolanne cannot be deemed to be a "court" within the meaning of article 9, paragraph 4; therefore, the obligations laid down therein have not been complied with by the authorities if the State party...

...

10. The Human Rights Committee...is of the view that the communication discloses a violation of article 9, paragraph 4 of the Covenant, because Mr. Voulanne was unable to challenge his detention before a court.

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

...

12.2 The authors of the communications are two leading members of the Union pour la Démocratie et le Progrès Social (U.D.P.S), a political party in opposition to President Mobutu. From mid-June 1986 to the end of June 1987, they were subjected to administrative measures of internal banishment, as a result of the views adopted by the Human Rights Committee on 26 March 1986 in communication No. 138/1983. On 27 June and 1 July 1987, respectively, they were released following a presidential amnesty, and decided to travel abroad. Upon his return to Zaire in mid-January 1988, Mr. Tshisekedi sought to organize a manifestation which met with the disapproval of State authorities. On 17 January 1988 he was arrested...Between 17 January and 11 March 1988, he was kept detained and in a prison in Kinshasa; during this time, he was neither informed of the reasons for his arrest or of charges against him nor brought before a judge...From 16 March to the beginning of April 1988, Mr. Tshisekedi was kept under house arrest at his home in Kinshasa - Gombe, and from 11 April to 19 September 1988, he was intermittently subjected to renewed administrative measures of banishment, which included his internment in several military camps...

...

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

...

b) in respect of Etienne Tshisekedi wa Mulumba:

> 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;
> ...
> of article 9, paragraph 2, because he was not informed, upon his arrest, on 17 January, 1988, of the reasons for his arrest;
>
> of article 9, paragraph 3, because he was not promptly brought before a judge following his arrest in 17 January, 1988.
> ...
> of article 10, paragraph 1, because he was not treated with humanity during his detention from 17 January to 11 March and from 11 April to 19 September 1988...

· *Torres v. Finland* (291/1988), ICCPR, A/45/40 vol. II (2 April 1990) 96 (CCPR/C/38/D/291/1988) at paras. 7.1 and 7.2.

...

7.1 Three separate questions arise with respect to article 9, paragraph 4, of the Covenant: (a) whether the fact that the author was precluded, under the Aliens Act, from challenging his detention for the periods of 8 to 15 October, 1987, 3 to 10 December 1987 and 5 to 10 January, 1988 before a court when he was being detained under orders of the police, constitutes a breach of this provision; (b) whether at once he was by law entitled to challenge his detention under the Aliens Act, (c) whether the application of the Extradition Act to the author entails any violation of this provision.

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

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

· *Kelly v. Jamaica* (253/1987), ICCPR, A/46/40 (8 April 1991) 241 (CCPR/C/41/D/253/1987) at paras. 3.8, 5.6-5.8, 6 and Individual Opinion by Mr. Bertil Wennergren, 252.

...

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

...

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

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

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

5.8 Article 14, paragraph 3(a), requires that any individual under criminal charges shall be informed promptly and in detail of the nature and the charges against him. The requirement of prompt information, however, only applies once the individual has been formally charged with a criminal offence. It does not apply to those remanded in custody pending the result of police investigations; the latter situation is covered by article 9, paragraph 2, of the Covenant. In the present case, the State party has not denied that the author was not apprised in any detail of the reasons for his arrest for several weeks following his apprehension and that he was not informed about the facts of the crime in connection with which he was detained or about the identity of the victim. The Committee concludes that the requirements of article 9, paragraph 2, were not met.

...

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

Notes

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

Individual Opinion by Mr. Bertil Wennergren

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

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

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The author was arrested and taken into custody on 20 August, 1981; he was detained *incommunicado*. On 15 September 1981 he was charged with murder; only one week later he was brought before a judge.

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

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

See also:

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

· *García v. Ecuador* (319/1988), ICCPR, A/47/40 (5 November 1991) 290 (CCPR/C/43/D/319/1988) at paras. 2.2, 2.4, 5.2 and 6.1.

...

2.2 [The author] 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 D.E.A. and informed him that he would be flown to the United States on the basis of an arrest warrant issued against him in 1982.

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...

2.4 After it had been ascertained that Mr. Cañón spoke and understood English, the so-called "Miranda rights" (after a landmark decision of the United States Supreme Court requiring criminal suspects to be informed of their right to remain silent, to obtain the assistance of a lawyer during interrogation, and that statements made by them may be used against them in court) were read out to him, and he was informed that he was detained by order of the United States Government. The author asked for permission to consult with a lawyer or to speak with the Colombian Consul at Guayaquil, but his request allegedly was turned down; instead, he was immediately made to board a plane bound for the United States.

...

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.

· *Fillastre v. Bolivia* (336/1988), ICCPR, A/47/40 (5 November 1991) 294 (CCPR/C/43/D/336/1988) at paras. 6.2 and 6.4.

...

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

...

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

pursuant to article 194 of the Bolivian Code of Criminal Procedure. The Committee cannot but note that there has been no specific reply to its request for information in this particular respect, and reiterates the principle that, if a State party contends that facts alleged by the author are incorrect or would not amount to a violation of the Covenant, it must so inform the Committee. The pertinent factor in this case is that both Mr. Fillastre and Mr. Bizouarn allegedly were held in custody for ten days before being brought before any judicial instance and without being informed of the charges against them. Accordingly, while not unsympathetic to the State party's claim that budgetary constraints may cause impediments to the proper administration of justice in Bolivia, the Committee concludes that the right of Messrs. Fillastre and Bizouarn under article 9, paragraphs 2 and 3, have not been observed.

· *Jijón v. Ecuador* (277/1988), ICCPR, A/47/40 (26 March 1992) 261 at paras. 5.3 and 6.

...
5.3 In respect of the authors' claim of a violation of article 9, paragraph 1, the Committee lacks sufficient evidence to the effect that Mr. Terán's arrest was arbitrary and not based on grounds established by law. On the other hand, the Committee notes that Mr. Terán was kept in detention on the basis of a second indictment, subsequently quashed, from 9 March 1987 until 18 March 1988. In the circumstances, the Committee finds that this continuation of his detention for one year following the release order of 9 March 1987 constituted illegal detention within the meaning of article 9, paragraph 1 of the Covenant. Moreover, Mr. Terán has claimed and the State party has not denied that he was kept incommunicado for five days without being brought before a judge and without having access to counsel. The Committee considers that this entails a violation of article 9, paragraph 3.
...
6. The Human Rights Committee...is of the view that the facts before it disclose violations of articles 7, 9, paragraphs 1 and 3 and 10, paragraph 1, of the Covenant.

· *Wolf v. Panama* (289/1988), ICCPR, A/47/40 (26 March 1992) 277 at paras. 6.2, 6.8 and 7.

...
6.2 While the author has not specifically invoked article 9 of the Covenant, the Committee considers that some of his claims raise issues under this provision. Although he has claimed that he should have been granted a "grace period" of 48 hours to settle his debts before he could be arrested, the Committee lacks sufficient information to the effect that his arrest and detention were arbitrary and not based on grounds established by law. On the other had, the author has claimed and the State party has not denied that he was never

brought before a judge after his arrest, and that he never spoke with any lawyer, whether counsel of his own choice or public defender, during his detention. In the circumstances, the Committee concludes that article 9, paragraph 3, was violated because the author was not brought promptly before a judge or other judicial officer authorized by law to exercise judicial power.

...

6.8 ...[T]he Committee notes that the author was detained for a period of over a year at the penitentiary of Coiba, which according to the author's uncontested claim is a prison for convicted offenders, while he was unconvicted and awaiting trial. This, in the Committee's opinion, amounts to a violation of the author's right, under article 10, paragraph 2, to be segregated from convicted persons and to be subjected to separate treatment appropriate to his status as an unconvicted person...

...

7. The Human Rights Committee...is of the view that the facts before it disclose violations of articles 9, paragraph 3...

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

...

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

· *W. B. E. v. The Netherlands* (432/1990), ICCPR, A/48/40 vol. II (23 October 1992) 205 (CCPR/C/46/D/432/1990) at paras. 6.3-6.5.

...

6.3 With regard to the author's allegation that his pre-trial detention was in violation of article 9 of the Covenant, the Committee observes that article 9, paragraph 3, allows

pre-trial detention as an exception; pre-trial detention may be necessary, for example, to ensure the presence of the accused at the trial, avert interference with witnesses and other evidence, or the commission of other offences. On the basis of the information before the Committee, it appears that the author's detention was based on considerations that there was a serious risk that, if released, he might interfere with the evidence against him.

6.4 The Committee considers that, since pre-trial detention to prevent interference with evidence is, as such, compatible with article 9, paragraph 3, of the Covenant, and since the author has not substantiated, for purposes of admissibility, his claim that there was no lawful reason to extend his detention, this part of the communication is inadmissible under articles 2 and 3 of the Optional Protocol.

6.5 With regard to the author's allegation that his right to compensation under article 9, paragraph 5, was violated, the Committee recalls that this provision grants victims of unlawful arrest or detention an enforceable right to compensation. The author, however, has not substantiated, for purposes of admissibility, his claim that his detention was unlawful. In this connection, the Committee observes that the fact that the author was subsequently acquitted does not in and of itself render the pre-trial detention unlawful. This part of the communication is therefore inadmissible under articles 2 and 3 of the Optional Protocol.

· *González del Río v. Peru* (263/1987), ICCPR, A/48/40 vol. II (28 October 1992) 17 (CCPR/C/46/D/263/1987) at para. 5.1.

...
5.1 As to the alleged violation of article 9, paragraphs 1 and 4, the Committee notes that the material before it does not reveal that, although a warrant for the author's arrest was issued, Mr. González del Río has in fact been subjected to either arrest or detention, or that he was at any time confined to a specific, circumscribed location or was restricted in his movements on the State party's territory. Accordingly, the Committee is of the view that the claim under article 9 has not been substantiated.

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

...
6.3 The Committee has noted that when the communication was placed before it for consideration, Mr. Bwalya had been detained for a total of 31 months, a claim that has not

been contested by the State party. It notes that the author was held solely on charges of belonging to a political party considered illegal under the country's (then) one-party constitution and that on the basis of the information before the Committee, Mr. Bwalya was not brought promptly before a judge or other officer authorized by law to exercise judicial power to determine the lawfulness of his detention. This, in the Committee's opinion, constitutes a violation of the author's right under article 9, paragraph 3, of the Covenant.

· *Kalenga v. Zambia* (326/1988), ICCPR, A/48/40 vol. II (27 July 1993) 68 (CCPR/C/48/D/326/1988) at paras. 6.3 and 7.

...
6.3 The Committee is of the opinion that the author's right, under article 9, paragraph 2, to be promptly informed about the reasons for his arrest and of the charges against him, has been violated, as it took the State party authorities almost one month to so inform him. Similarly, the Committee finds a violation of article 9, paragraph 3, as the material before it reveals that the author was not brought promptly before a judge or other officer authorized by law to exercise judicial power. On the other hand, on the basis of the chronology of judicial proceedings provided by the author himself, the Committee cannot conclude that Mr. Kalenga was denied his right, under article 9, paragraph 4, to take proceedings before a court of law.

7. The Human Rights Committee...is of the view that the facts as found by the Committee disclose violations of articles 9, paragraphs 2 and 3...

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

...
9.1 With respect to the author's allegation that he was arbitrarily arrested and detained between 26 May and 17 June 1986, the Committee notes that the State party has not contested this claim and merely indicated that the author could have availed himself of judicial remedies. In the circumstances, the Committee considers that the author has substantiated his claim and concludes that he was subjected to arbitrary arrest and detention, in violation of article 9, paragraph 1. It further concludes that as the author was not brought promptly before a judge or other officer authorized by law to exercise judicial power, the State party has failed to comply with its obligations under article 9, paragraph 3.

· *Berry v. Jamaica* (330/1988), ICCPR, A/49/40 vol. II (7 April 1994) 20

(CCPR/C/50/D/330/1988) at paras. 3.4 and 11.2.

...

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

...

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

See also:

· *Morisson v. Jamaica* (663/1995), ICCPR, A/54/40 vol. II (3 November 1998) 148 (CCPR/C/64/D/663/1995) at para. 8.2.

· *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.

· *Mika Miha v. Equatorial Guinea* (414/1990), ICCPR, A/49/40 vol. II (8 July 1994) 96 (CCPR/C/51/D/414/1990) at paras. 6.4 and 6.5.

...

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.

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

· *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).

· *Griffin v. Spain* (493/1992), ICCPR, A/50/40 vol. II (4 April 1995) 47 (CCPR/C/53/D/493/1992) at paras. 3.1, 9.2 and 9.3.

...

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

...

9.2 With regard to the author's claim that, as there was no interpreter present at the time of his arrest, he was not informed of the reasons for his arrest and of the charges against him, the Committee notes from the information before it that the author was arrested and taken into custody at 11:30 p.m. on 17 April 1991, after the police, in the presence of the author, had searched the camper and discovered the drugs. The police reports further reveal that the police refrained from taking his statement in the absence of an interpreter, and that the following morning the drugs were weighed in the presence of the author. He was then brought before the examining magistrate and, with the use of an interpreter, he was informed of the charges against him. The Committee observes that, although no interpreter was present during the arrest, it is wholly unreasonable to argue that the author was unaware of the reasons for his arrest. In any event, he was promptly informed, in his own language, of the charges held against him. The Committee therefore finds no violation of article 9, paragraph 2, of the Covenant.

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

· *Barroso v. Panama* (473/1991), ICCPR, A/50/40 vol. II (19 July 1995) 46 (CCPR/C/54/D/473/1991) at para. 8.2.

...
8.2 The Committee has noted the author's claim that her nephew was arrested and detained arbitrarily, and that he was denied bail primarily out of "political motives". However, the material before the Committee does not reveal that Mr. del Cid was not detained on specific criminal charges; accordingly, his detention cannot be qualified as "arbitrary" within the meaning of article 9, paragraph 1. There is further no indication that Mr. del Cid was denied bail without a proper weighing, by the judicial authorities, of the possibility of releasing him on bail; accordingly, there is no basis for a finding of a violation of article 9, paragraph 3. Similar considerations apply to the alleged violation of article 9, paragraph 4: the Superior Tribunal did in fact review the lawfulness of Mr. del Cid's detention.

· *Stephens v. Jamaica* (373/1989), ICCPR, A/51/40 vol. II (18 October 1995) 1 (CCPR/C/55/D/373/1989) at paras. 9.5-9.7.

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

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

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

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

Notes

...

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

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

...

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

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

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

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

...

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

· *Celis Laureano v. Peru* (540/1993), ICCPR, A/51/40 vol. II (25 March 1996) 108 (CCPR/C/56/D/540/1993) at para. 8.6.

...

8.6 The author has alleged a violation of article 9, paragraph 1, of the Covenant. The evidence before the Committee reveals that Ms. Laureano was violently removed from her home by armed State agents on 13 August 1992; it is uncontested that these men did not act on the basis of an arrest warrant or on orders of a judge or judicial officer. Furthermore, the State party has ignored the Committee's requests for information about the results of the author's petition for *habeas corpus*, filed on behalf of Ana R. Celis Laureano. The Committee finally recalls that Ms. Laureano had been provisionally released into the custody of her grandfather by decision of 5 August 1992 of a judge on the Civil Court of

Huacho, i.e., merely eight days before her disappearance. It concludes that, in the circumstances, there has been a violation of article 9, paragraph 1, *juncto* article 2, paragraph 1.

· *Tomlin v. Jamaica* (589/1994), ICCPR, A/51/40 vol. II (16 July 1996) 191 (CCPR/C/57/D/589/1994) at para. 8.3.

...
8.3 The author has finally contended that his correspondence has been interfered with arbitrarily, in violation of his right to privacy. The State party contends that there is no evidence to support this claim. The Committee notes that the material before it does not reveal that the State party's authorities, in particular the prison administration, withheld the author's letter to counsel for a period exceeding two months. In this respect, it cannot be said that there was an "arbitrary" interference with the author's correspondence within the meaning of article 17, paragraph 1...After carefully weighing the information available to it, the Committee concludes that there has been no violation of either article 14 paragraph 3 (b), or of article 17, paragraph 1, 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.

· *Neptune v. Trinidad and Tobago* (523/1992), ICCPR, A/51/40 vol. II (16 July 1996) 84 (CCPR/C/57/D/523/1992) at para. 9.1.

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

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

...
9.5 With regard to the authors' claim of ill-treatment on death row, and in Mr. Henry's case prior to his death, two separate issues arise: the ill-treatment each author was subjected to while detained on death row including, this is, in Mr. Henry's case, being kept in a cold cell after being diagnosed for cancer, and in Mr Douglas' case having medical problems caused by a gunshot wound. These allegations have not been contested by the State party. In the absence of a response from the State party, the Committee must give appropriate weight to these allegations, to the extent that they have been substantiated. In the opinion of the Committee, therefore, the conditions of incarceration under which Mr. Henry continued to be held until his death, even after the prison authorities were aware of his terminal illness, and the lack of medical attention, for the gunshot wounds, received by Mr. Douglas, reveal a violation of articles 7, and 10 paragraph 1, of the Covenant. As to Mr. Henry's claim that he did not receive adequate medical attention for his cancer, the State party has forwarded

a report which shows that the author did visit various hospitals and received medical treatment for his cancer, including chemotherapy. With regards to the contention of counsel for Mr. Henry that the author's cancer had been diagnosed in 1989 rather than in 1993, as asserted by the State party, the Committee concludes that counsel for Mr. Henry has failed to produce any evidence to support the contention advanced. In this respect the Committee finds that there has been no violation of articles 7 and 10, paragraph 1, of the Covenant on this count.

· *Hill v. Spain* (526/1993), ICCPR, A/52/40 vol. II (2 April 1997) 5 (CCPR/C/59/D/526/1993) at paras. 12.2 and 12.3.

...

12.2 With regard to the authors' allegations of violations of article 9 of the Covenant, the Committee considers that the authors' arrest was not illegal or arbitrary. Article 9, paragraph 2, of the Covenant requires that anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him. The authors specifically allege that seven and eight hours, respectively, elapsed before they were informed of the reason for their arrest, and complain that they did not understand the charges because of the lack of a competent interpreter. The documents submitted by the State party show that police formalities were suspended from 6 a.m. until 9 a.m., when the interpreter arrived, so that the accused could be duly informed in the presence of legal counsel. Furthermore, from the documents sent by the State it appears that the interpreter was not an ad hoc interpreter but an official interpreter appointed according to rules that should ensure her competence. In these circumstances, the Committee finds that the facts before it do not reveal a violation of article 9, paragraph 2, of the Covenant.

12.3 As for article 9, paragraph 3, of the Covenant, which stipulates that it shall not be the general rule that persons awaiting trial shall be detained in custody, the authors complain that they were not granted bail and that, because they could not return to the United Kingdom, their construction firm was declared bankrupt. The Committee reaffirms its prior jurisprudence that pre-trial detention should be the exception and that bail should be granted, except in situations where the likelihood exists that the accused would abscond or destroy evidence, influence witnesses or flee from the jurisdiction of the State party. The mere fact that the accused is a foreigner does not of itself imply that he may be held in detention pending trial. The State party has indeed argued that there was a well-founded concern that the authors would leave Spanish territory if released on bail. However, it has provided no information on what this concern was based and why it could not be addressed by setting an appropriate sum of bail and other conditions of release. The mere conjecture of a State party that a foreigner might leave its jurisdiction if released on bail does not

justify an exception to the rule laid down in article 9, paragraph 3, of the Covenant. In these circumstances, the Committee finds that this right in respect of the authors has been violated.

· *A. v. Australia* (560/1993), ICCPR, A/52/40 vol. II (3 April 1997) 125 (CCPR/C/59/D/560/1993) at paras. 9.1-9.6 and Individual Opinion by Prafullachandra N. Bhagwati at 145.

...

9.1 The Human Rights Committee has examined the present communication in the light of all the information placed before it by the parties, as it is required to do under article 5, paragraph 1, of the Optional Protocol to the Covenant. Three questions are to be determined on their merits:

> (a) whether the prolonged detention of the author, pending determination of his entitlement to refugee status, was "arbitrary" within the meaning of article 9, paragraph 1;
>
> (b) whether the alleged impossibility to challenge the lawfulness of the author's detention and his alleged lack of access to legal advice was in violation of article 9, paragraph 4...
>
> ...

9.2 On the first question, the Committee recalls that the notion of "arbitrariness" must not be equated with "against the law" but be interpreted more broadly to include such elements as inappropriateness and injustice. Furthermore, remand in custody could be considered arbitrary if it is not necessary in all the circumstances of the case, for example to prevent flight or interference with evidence: the element of proportionality becomes relevant in this context. The State party however, seeks to justify the author's detention by the fact that he entered Australia unlawfully and by the perceived incentive for the applicant to abscond if left in liberty. The question for the Committee is whether these grounds are sufficient to justify indefinite and prolonged detention.

9.3 The Committee agrees that there is no basis for the author's claim that it is *per se* arbitrary to detain individuals requesting asylum. Nor can it find any support for the contention that there is a rule of customary international law which would render all such detention arbitrary.

9.4 The Committee observes however, that every decision to keep a person in detention should be open to review periodically so that the grounds justifying the detention can be assessed. In any event, detention should not continue beyond the period for which the State

can provide appropriate justification. For example, the fact of illegal entry may indicate a need for investigation and there may be other factors particular to the individuals, such as the likelihood of absconding and lack of cooperation, which may justify detention for a period. Without such factors detention may be considered arbitrary, even if entry was illegal. In the instant case, the State party has not advanced any grounds particular to the author's case, which would justify his continued detention for a period of four years, during which he was shifted around between different detention centres. The Committee therefore concludes that the author's detention for a period of over four years was arbitrary within the meaning of article 9, paragraph 1.

9.5 The Committee observes that the author could, in principle, have applied to the court for review of the grounds of his detention before the enactment of the Migration Amendment Act of 5 May 1992; after that date, the domestic courts retained that power with a view to ordering the release of a person if they found the detention to be unlawful under Australian law. In effect, however, the courts' control and power to order the release of an individual was limited to an assessment of whether this individual was a "designated person" within the meaning of the Migration Amendment Act. If the criteria for such determination were met, the courts had no power to review the continued detention of an individual and to order his/her release. In the Committee's opinion, court review of the lawfulness of detention under article 9, paragraph 4, which must include the possibility of ordering release, is not limited to mere compliance of the detention with domestic law. While domestic legal systems may institute differing methods for ensuring court review of administrative detention, what is decisive for the purposes of article 9, paragraph 4, is that such review is, in its effects, real and not merely formal. By stipulating that the court must have the power to order release "if the detention is not lawful', article 9, paragraph 4, requires that the court be empowered to order release, if the detention is incompatible with the requirements in article 9, paragraph 1, or in other provisions of the Covenant. This conclusion is supported by article 9, paragraph 5, which obviously governs the granting of compensation for detention that is "unlawful" either under the terms of domestic law or within the meaning of the Covenant. As the State party's submissions in the instant case show that court review available to A was, in fact, limited to a formal assessment of the self-evident fact that he was indeed a "designated person" within the meaning of the Migration Amendment Act, the Committee concludes that the author's right, under article 9, paragraph 4, to have his detention reviewed by a court, was violated.

9.6 As regards the author's claim that article 9, paragraph 4, encompasses a right to legal assistance in order to have access to the courts, the Committee notes from the material before it that the author was entitled to legal assistance from the day he requested asylum and would have had access to it, had he requested it. Indeed, the author was informed on 9 December 1989, in the attachment to the form he signed on that day, of his right to legal assistance. This form was read in its entirety to him in Kampuchean, his own language, by

a certified interpreter. That the author did not avail himself of this possibility at that point in time cannot be held against the State party. Subsequently (as of 13 September 1990), the author sought legal advice and received legal assistance whenever requesting it. That A was moved repeatedly between detention centres and was obliged to change his legal representatives cannot detract from the fact that he retained access to legal advisers; that this access was inconvenient, notably because of the remote location of Port Hedland, does not, in the Committee's opinion, raise an issue under article 9, paragraph 4.

...

Individual Opinion by Prafullachandra N. Bhagwati

I am in agreement with the opinion rendered by the Committee save and except that in regard to paragraph 9.5, I would prefer the following formulation:

> "9.5 The Committee observes that the author could, in principle, have applied to the court for review of the grounds of his detention before the enactment of the Migration Amendment Act on 5 May 1992; after that date, the domestic courts retained the power of judicial review of detention with a view to ordering the release of a person if they found the detention to be unlawful. But with regard to a particular category of persons falling within the meaning of the expression 'designated person', in the Migration Amendment Act, the power of the courts to review the lawfulness of detention and order release of the detention was found unlawful, was taken away by Section 54R of the Migration Amendment Act. If the detained person was a 'designated person' the courts had no power to review the continued detention of such person and order his/her release. The only judicial review available in such a case was limited to a determination of the fact whether the detained person was a 'designated person' and if he was, the court could not proceed further to review the lawfulness of his detention and order his/her release. The author in the present case, being admittedly a 'designated person', was barred by Section 54R of the Migration Amendment Act from challenging the lawfulness of his continued detention and seeking his release by the courts."

But it was argued on behalf of the State that all that article 9, paragraph 4, of the Covenant requires is that the person detained must have the right and opportunity to take proceedings before a court for review of lawfulness of his/her detention and lawfulness must be limited merely to compliance of the detention with domestic law. The only inquiry which the detained person should be entitled to ask the court to make under article 9, paragraph 4, is whether the detention is in accordance with domestic law, whatever the domestic law may be. But this would be placing too narrow an interpretation on the language of article 9, paragraph 4, which embodies a human right. It would not be right to adopt an interpretation

which will attenuate a human right. It must be interpreted broadly and expansively. The interpretation contended for by the State will make it possible for the State to pass a domestic law virtually negating the right under article 9, paragraph 4, and making non-sense of it. The State could, in that event, pass a domestic law validating a particular category of detentions and a detained person falling within that category would be effectively deprived of his/her right under article 9, paragraph 4. I would therefore place a broad interpretation on the word "lawful" which would carry out the object and purpose of the Covenant and in my view, article 9, paragraph 4, requires that the court be empowered to order release "if the detention is not lawful", that is, the detention is arbitrary or incompatible with the requirement of article 9, paragraph 1, or with other provisions of the Covenant. It is no doubt true that the drafters of the Covenant have used the word "arbitrary" along with "unlawful" in article 17 while the word "arbitrary" is absent in article 9, paragraph 4. But it is elementary that detention which is arbitrary is unlawful or in other words, unjustified by law. Moreover the word "lawfulness" which calls for interpretation in article 9, paragraph 4, occurs in the Covenant and must therefore be interpreted in the context of the provisions of the Covenant and having regard to the object and purpose of the Covenant. This conclusion is furthermore supported by article 9, paragraph 5, which governs the granting of compensation for detention "unlawful" either under the terms of the domestic law or within the meaning of the Covenant or as being arbitrary. Since the author in the present case was totally barred by Section 54R of the Migration Amendment Act from challenging the "lawfulness" of his detention and seeking his release, his right under article 9, paragraph 4, was violated.

· *Williams v. Jamaica* (561/1993), ICCPR, A/52/40 vol. II (8 April 1997) 147 (CCPR/C/59/D/561/1993) at paras. 2.1 and 9.2.

...

2.1 The author was taken into custody in June 1985 in connection with the murder, on 29 May 1985 in the Parish of St. Andrew, of Ernest Hart. On 9 July 1985, after having been identified by the deceased's son and wife, Rafael and Elaine Hart, at an identification parade, he was charged with Mr. Hart's murder. On 5 October 1987, he was found guilty as charged and sentenced to death.

...

9.2 Article 14, paragraph 3(a), gives the right to everyone charged with a criminal offence to be informed "promptly and in detail in a language which he understands of the nature and cause of the charge against him". The author contends that he was detained for six weeks

before he was charged with the offence for which he was later convicted. For the purposes of article 14, paragraph 3(a), detailed information about the charges against the accused must not be provided immediately upon arrest, but with the beginning of the preliminary investigation or the setting of some other hearing which gives rise to a clear official suspicion against the accused See the Committee's General Comment 13[21] of 12 April 1984, paragraph 8.. While the file does not reveal on what specific date the preliminary hearing in the case took place, it transpires from the material before the Committee that Mr. Williams has been informed of the reasons for his arrest and the charges against him by the time the preliminary hearing started. In the circumstances of the case, the Committee cannot conclude that Mr Williams was not informed of the charges against him promptly and in accordance with the requirements of article 14, paragraph 3(a), of the Covenant.

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

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

For dissenting opinion in this context, see Blaine v. Jamaica (696/1996), ICCPR, A/52/40 vol. II (17 July 1997) 216 (CCPR/C/60/D/696/1996) at Individual Opinion by Martin Scheinin at 224.

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

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

that, in the circumstances, the facts presented by the author constitute a violation of article 10, paragraphs 1 and 2 (a) of the Covenant.

· *McLawrence v. Jamaica* (702/1996), ICCPR, A/52/40 (18 July 1997) 225 (CCPR/C/60/D/702/1996) at paras. 5.5-5.7 and 5.9.

...

5.5 As to the claim that article 9, paragraph 1, was breached because the author's arrest warrant did not feature the three principal sources of evidence later relied upon by the prosecution, the Committee recalls that the principle of legality is violated if an individual is arrested or detained on grounds which are not clearly established in domestic legislation. There is no indication, in the instant case, that Mr. McLawrence was arrested on grounds not established by law. He has argued, however, that he was not promptly informed of the reasons for his arrest, in violation of article 9, paragraph 2. The State party has refuted this claim in general terms, in that the author must show that he did not know the reasons for his arrest; it is, however, not sufficient for the State party simply to reject the author's allegations as unsubstantiated or untrue. In the absence of any State party information to the effect that the author was promptly informed of the reasons for his arrest, the Committee must rely on Mr. McLawrence's statement that he was only apprised of the charges for his arrest when he was first taken to the preliminary hearing, which was almost three weeks after the arrest. This delay is incompatible with article 9, paragraph 2.

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

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

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

...

5.9 Article 14, paragraph 3 (a), of the Covenant gives the right to everyone charged with a criminal offence to be informed "promptly and in detail...of the charge against him". Mr. McLawrence contends that he was never formally informed of the charges against him, and that he first knew of the reasons for his arrest when he was taken to the preliminary hearing. The Committee notes that the duty to inform the accused under article 14, paragraph 3 (a), is more precise than that for arrested persons under article 9, paragraph 2. So long as article 9, paragraph 3, is complied with, the details of the nature and cause of the charge need not necessarily be provided to an accused person immediately upon arrest. On the basis of the information before it, the Committee concludes that there has been no violation of article 14, paragraph 3 (a).

Notes

...

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

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

See also:

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

· *P. Taylor v. Jamaica* (707/1996), ICCPR, A/52/40 vol. II (18 July 1997) 234 (CCPR/C/60/D/707/1996) at para. 8.3.

...

8.3 The author has claimed that he was not charged for 29 days, nor was he promptly brought before a judge. In the instant case, the author was kept in detention for 26 days, was released and later arrested and held in detention for three days before being charged and brought before a judicial authority; the Committee notes that the State party itself

concedes that there was a delay of 26 days and that this delay is undesirable, though denying that either this period or a further three days might constitute a violation of the Covenant. In the circumstances, the Committee, and notwithstanding the State party's arguments, finds that to detain the author for a period of 26 days without charge was a violation of article 9, paragraph 2, of the Covenant. The failure of the State party to bring the author before the Court during the 26 days of detention and not until three days after his re-arrest was a violation of article 9, paragraph 3.

See also:

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

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

...

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.

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

...

8.3 With regard to the author’s allegations of conditions of detention and ill-treatment, the Committee notes that the State party has not offered any information to refute the author’s allegations. Due weight must therefore be given to the author’s allegation that he only had “a piece of sponge and old newspapers” to sleep on, “food not fit for human consumption” given to him, and that he was treated with brutality by the warders whenever complaints were made. In the Committee’s view, the author was not treated with humanity and respect for the inherent dignity of the human, in person, in violation of article 10, paragraph 1, of the Covenant.

LEGAL RIGHTS - CRIMINAL - Conditions of Arrest and Detention

· *Arhuacos v. Colombia* (612/1995), ICCPR, A/52/40 vol. II (29 July 1997) 173 (CCPR/C/60/D/612/1995) at paras. 7.2, 7.3 and 8.6.

...

7.2 Counsel states that the criminal proceedings are in contrast with the clear and forceful action taken by the Human Rights Division of the Attorney-General's Office. In Decision No. 006 of 27 April 1992, the Human Rights Division considered the following facts to have been substantiated:

> That the indigenous leaders of the Arhuaco community, Luis Napoleón Torres Crespo, Angel María Torres Arroyo and Antonio Hugues Chaparro Torres, were detained on 28 November 1990 by Colombian army units near Curumani, Department of César.
>
> ...

7.3 In the above-mentioned decision of 1992, the Human Rights Division considered, in the following terms, that the two officers' participation in the events had been established:

> "Luis Fernando Duque Izquierdo and Pedro Antonio Fernández Ocampo took part in both the physical and psychological torture inflicted on José Vicente and Amado Villafañe Chaparro, members of the Arhuaco indigenous community, and on a civilian, Manuel de la Rosa Pertuz Pertuz, and also the abduction and subsequent killing of Angel María Torres, Luis Napoleón Torres and Antonio Hugues Chaparro" (sheet 30).

On the basis of the evidence gathered by the Human Rights Division, counsel rejects the Colombian Government's argument justifying the delays and standstill in the investigations.

...

8.6 Counsel has alleged a violation of article 9 in respect of the three murdered indigenous leaders. The above-mentioned decision of the Human Rights Division concluded that the indigenous leaders' abduction and subsequent detention were illegal (see paras. 7.2 and 7.3 above), as no warrant for their arrest had been issued and no formal charges had been brought against them. The Committee concludes that the authors' detention was both unlawful and arbitrary, violating article 9 of the Covenant.

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

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...

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

...

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

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

8.5 ...[I]t is beyond dispute that during his transfer to Callao Mr. Polay Campos was displayed to the press in a cage: this, in the Committee's opinion, amounted to degrading treatment contrary to article 7 and to treatment incompatible with article 10, paragraph 1, since it failed to respect Mr. Polay Campos' inherent and individual human dignity.

Detention at Callao from 26 April 1993 to the present

8.6 As to the detention of Victor Polay Campos at Callao, it transpires from the file that he was denied visits by family and relatives for one year following his conviction, i.e. until 3 April 1994. Furthermore, he was unable to receive and to send correspondence. The latter information is corroborated by a letter dated 14 September 1993 from the International Committee of the Red Cross to the author, which indicates that letters from Mr. Polay Campos' family could not be delivered by Red Cross delegates during a visit to him on 22 July 1993, since delivery and exchange of correspondence were still prohibited. In the Committee's opinion, this total isolation of Mr. Polay Campos for a period of a year and the restrictions placed on correspondence between him and his family constitute inhuman treatment within the meaning of article 7 and are inconsistent with the standards of human treatment required under article 10, paragraph 1, of the Covenant.

8.7 As to Mr. Polay Campos' general conditions of detention at Callao, the Committee has noted the State party's detailed information about the medical treatment Mr. Polay Campos has received and continues to receive, as well as his entitlements to recreation and sanitation, personal hygiene, access to reading material and ability to correspond with relatives. No information has been provided by the State party on the claim that Mr. Polay Campos continues to be kept in solitary confinement in a cell measuring two metres by two,

and that apart from his daily recreation, he cannot see the light of day for more than 10 minutes a day. The Committee expresses serious concern over the latter aspects of Mr. Polay Campos' detention. The Committee finds that the conditions of Mr. Polay Campos' detention, especially his isolation for 23 hours a day in a small cell and the fact that he cannot have more than 10 minutes' sunlight a day, constitute treatment contrary to article 7 and article 10, paragraph 1, of the Covenant.

· *Yasseen and Thomas v. Guyana* (676/1996), ICCPR, A/53/40 vol. II (30 March 1998) 151 (CCPR/C/62/D/676/1996) at paras. 7.4 and 7.6.

...

7.4 ...[T]he Committee notes that the authors and in particular Mr. Thomas, claim that they were abused in pretrial custody, that they were detained in poor conditions together with convicted prisoners, and that they were unnecessarily humiliated by virtue of their being transferred handcuffed by public transport to court hearings, in full view of the public. The State party has provided a detailed account of the situation which differs in some respects from that presented by the authors and has provided some explanations for the treatment received. The State party has admitted, however, that detainees are required to share mattresses. The Committee finds that this situation is in violation of the requirements of article 10, paragraph 1, of the Covenant.

...

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

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

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

...

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

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

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

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

...

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

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

...

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

See also:

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

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

  ...
  8.1 Article 9, paragraph 2, of the Covenant gives the right to everyone arrested to know the reasons for his arrest and to be promptly informed of the charges against him. Mr. McTaggart contends that he was not informed of the charges against him until he appeared before the Circuit Court on 11 May 1995, and that this was the first time he knew of the reasons for his arrest. The Committee notes from the material before it, submitted by the author's counsel, that Mr McTaggart saw a lawyer within the same week he was arrested, it was therefore highly unlikely that neither the author nor his Jamaican counsel were aware of the reasons for his arrest. In these circumstances and on the basis of the information before it the Committee concludes that there has been no violation of article 9, paragraph 2.

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

- *Shaw v. Jamaica* (704/1996), ICCPR, A/53/40 vol. II (2 April 1998) 164 (CCPR/C/62/D/704/1996) at paras. 7.1-7.3.

  ...
  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.

7.3 The author has alleged a violation of article 9 of the Covenant, because 19 days passed between his arrest and his being formally charged. However, it appears from the file that the author was arrested on 28 April 1992 and not on 18 April 1992, as indicated in counsel's submission. Mr. Shaw signed a caution statement on 29 April 1992 in front of a Justice of the Peace. The State party does not contest that the author was kept in custody for at least 9 days before he was formally charged and that there was a further delay of three months before he was brought before a judge or judicial officer. This, in the Committee's opinion constituted a violation of article 9, paragraph 3.

See also:

- *Daley v. Jamaica* (750/1997), ICCPR, A/53/40 vol. II (31 July 1998) 235 at paras. 7.1, 7.2 and 7.6.
- *Campbell v. Jamaica* (618/1995), ICCPR, A/54/40 vol. II (20 October 1998) 78 (CCPR/C/64/D/618/1995) at paras. 7.1 and 7.2.

- *Domukhovsky, 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/623/1996/624/1995/626/1995/627/1995) at para. 18.4.

...

18.4 Mr. Tsiklauri has claimed that he was arrested illegally in August 1992 without a

warrant and that he was not shown a warrant for his arrest until after he had been in detention for a year. The State party has denied this allegation, stating that he was arrested in August 1993, but it does not address the claim in detail or provide any records. In the absence of information provided by the State party as to when the arrest warrant was presented to Mr. Tsiklauri and when he was first formally charged, and in the absence of an answer to the author's claim that he had been in custody for one year before the warrant was issued, the Committee considers that due weight must be given to the author's allegation. Consequently, the Committee finds that article 9, paragraph 2, has been violated in Mr. Tsiklauri's case.

· *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.

...
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 a 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.

See also:

· *Colin Johnson v. Jamaica* (653/1995), ICCPR, A/54/40 vol. II (20 October 1998) 135 (CCPR/C/64/D/653/1995) at para. 8.2.
· *Marshall v. Jamaica* (730/1996), ICCPR, A/54/40 vol. II (3 November 1998) 228 (CCPR/C/64/D/730/1996) at para. 6.7.
· *Morgan and Williams v. Jamaica* (720/1996), ICCPR, A/54/40 vol. II (3 November 1998) 216 (CCPR/C/64/D/720/1996) at para. 7.2.
· *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.

· *Morrison v. Jamaica* (635/1995), ICCPR, A/53/40 vol. II (27 July 1998) 113 (CCPR/C/63/D/635/1995) at para. 22.3.

...
22.3 When the author was first informed of the charges against him concerning the murder of Mr. Hunter, he was in detention in connection with the murder of Ms. Baugh-Dujon. He was subsequently convicted of this later murder, before his trial in the Hunter case began. As the author was lawfully being detained in the Baugh-Dujon case, he had no right to be released in the Hunter case. Article 9 was therefore not violated...

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

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

9.4 Counsel has claimed that the author is allergic to dust and to the paint used in St. Catherine Prison and that his allergy provokes attacks of asthma and burning eyes, for which he does not receive any treatment. He has also described the conditions of detention on death row as inhumane and degrading. Finally, he has claimed that the author was beaten on 5 March 1997 and again on 7 March 1997, and that he did not receive medical attention for his injuries. The State party has not answered to any of these allegations. In the absence of any information from the State party, due weight must be given to the author's claims. The Committee considers that the treatment to which the author has been subjected and the conditions of detention described by him, constitute a violation of articles 7 and 10, paragraph 1, of the Covenant.

For dissenting opinion in this context, see Whyte v. Jamaica (732/1997), ICCPR, A/53/40 vol. II (27 July 1998) 195 (CCPR/C/63/D/732/1997) at Individual Opinion by Mr. Martin Scheinin, 204.

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

...
3.2 The author further claims that while awaiting trial he was held in a cell with 23 other people and that he had to stand most of the time because of lack of space. If he slept, it was usually on the floor. Since his conviction, he has been held in a single very small cell. He

sleeps on a sponge and has to use a bucket as a toilet. He is not provided with reading material. He further states that he is being bullied by the warders who tell him that the hangman is on his way and that he will be the next to go to the gallows.

...

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

...

11.7 The author has claimed that since his conviction he has been held in a very small cell with only a sponge to sleep on and a bucket as toilet. Furthermore, he states that he is being bullied by the warders. The author's claims have not been refuted by the State party, which remains silent on the issue. The Committee considers that the conditions of detention and the treatment as described by the author are in violation of article 10, paragraph 1, of the Covenant.

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

...

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

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

days, but that he was denied pain killers.

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

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.

· *Pennant v. Jamaica* (647/1995), ICCPR, A/54/40 vol. II (20 October 1998) 118 (CCPR/C/64/D/647/1995) at paras. 8.1, 8.2 and 8.4.

...

8.1 Article 9, paragraph 2, of the Covenant gives the right to everyone arrested to know the reasons for his arrest and to be promptly informed of the charges against him. The author states that he went to the police station of his own accord on 1 May, 1983 and informed the officer in charge of his involvement in the death of Stephens. He was detained, transferred to another police-station and formally arrested and charged three days later. In these circumstances, when it must have been absolutely clear to the author that his detention and subsequent arrest were for involvement in the death of Stephens, the Committee cannot conclude that the author's right to be informed of the reasons for his arrest was violated. Furthermore, the author was formally charged with the murder of Stephens three days after first being detained, following what must have been an initial investigation. The duty to be promptly informed of the charges against one, as opposed to the reason for one's arrest, cannot arise until such charges have been determined. In the present case, it does not seem

that a period of three days from the time of detention until formal charge of the author, amounted to a violation of his right to be promptly informed of the charges against him.

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

...

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

See also:

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

· *Phillip v. Trinidad and Tobago* (594/1992), ICCPR, A/54/40 vol. II (20 October 1998) 33 (CCPR/C/64/D/594/1992) at para. 7.4.

...

7.4 The Committee notes that with regard to the author's conditions of detention he has made precise allegations, of being kept in a filthy, badly ventilated, cockroach and rat infested, underground cell. He sleeps on pieces of carpet and torn cardboard box on cold concrete floor, with no bedding. Food is inadequate and there are no toiletries or medication. The State party has made no attempt to refute these specific allegations. In the circumstances and in the absence of a response from the State party, the Committee takes the allegations as undisputed. It finds that holding a prisoner in the above conditions of detention violates his right to be treated with humanity and with respect for the inherent

dignity of the human person, and is therefore contrary to article 10, paragraph 1.

· *Henry v. Trinidad and Tobago* (752/1997), ICCPR, A/54/40 vol. II (3 November 1998) 238 (CCPR/C/64/D/752/1997) at paras. 2.2, 2.3, 7.3 and 7.4.

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

2.3 The author states that during his detention on death row, he was confined in a 9 x 6' cell for 23 hours a day. A light burned in his cell 24 hours a day and no natural lighting existed. There was no integral sanitation in the cell. There was a ventilation hole, measuring 8" x 8", but no window. The exercise periods were insufficient and were not longer than one hour in a small exercise yard with handcuffs on.
...
7.3 The State party has failed to provide any information with regard to the conditions of the author's detention on death row. In the circumstances due weight must be given to the author's allegations, if substantiated. The Committee finds that the circumstances of detention as described by the author amount to a violation of article 10, paragraph 1, of the Covenant.

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

· *Amore v. Jamaica* (634/1995), ICCPR, A/54/40 vol. II (23 March 1999) 281 at para. 6.4.

...
6.4 With regard to the author's claim to be a victim of articles 7 and 10, paragraph 1, of the

Covenant because of the conditions of the prison regime at St. Catherine's District Prison, the Committee notes that counsel merely makes reference to reports by Americas Watch and Amnesty International, and does not adduce any particular sufferings by the author. Therefore, also this part of the communication is inadmissible under article 2 of the Optional Protocol for lack of substantiation.

· *Brown v. Jamaica* (775/1997), ICCPR, A/54/40 vol. II (23 March 1999) 260 (CCPR/C/65/D/775/1997) at paras. 3.2, 6.5 and 6.13.

...

3.2 The author claims that after having been detained at Almond Town police station for over two weeks, he was taken to Patrick Gardens Police Station for one day, where he was beaten, after which he suffered an asthma attack. He claims that he was induced into signing the caution statement with promises of medical attention. He further complains about the conditions of pre-trial detention in the different prisons. It is alleged that despite suffering from asthma he was made to sleep, in some instances on a cold concrete floor without a mattress, in others in an extremely hot cell where his asthma worsened. At the General Penitentiary, he was remanded at the hospital section of the prison.

...

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

...

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.

LEGAL RIGHTS - CRIMINAL - Conditions of Arrest and Detention

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

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

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

· *D. Thomas v. Jamaica* (800/1998), ICCPR, A/54/40 vol. II (8 April 1999) 276 (CCPR/C/65/D/800/1998) at para. 6.5.

...
6.5 With respect to the non segregation of the author from adult prisoners both at the General Penitentiary and at St. Catherine's District Prison, the Committee once again regrets the State party's lack of cooperation in this matter. The Committee considers that it is incumbent upon the State party where a complaint such as this is submitted to it in respect of a serving prisoner, to verify whether that prisoner is, or has at any relevant stage, been a minor. The Committee notes from the information before it and not refuted by the State party, that the author was born in November 1980, making him seventeen years old when his communication was submitted to the Committee and 15 when he was sentenced. The Committee considers that the State party has failed to discharge its obligations under

the Covenant in respect of Damian Thomas, in so far as he has been kept among adult prisoners when still a minor, and consequently, finds that there has been a violation of article 10 paragraphs 2 and 3.

For dissenting opinion in this context, see D. Thomas v. Jamaica (800/1998), ICCPR, A/54/40 vol. II (8 April 1999) 276 (CCPR/C/65/D/800/1998) at Individual Opinion by Hipólito Solari Yrigoyen, 283.

· *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 para. 6.5.

...

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.

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, 194.

· *Hamilton v. Jamaica* (616/1995), ICCPR, A/54/40 vol. II (23 July 1999) 73 (CCPR/C/66/D/616/1995) at paras. 8.2 and 10.

...

8.2 With regard to the author's complaints with respect to his conditions of detention at St. Catherine's District Prison, the Committee notes that the author has made very precise allegations, relating to the difficulties he has encountered as a disabled person...All of this has not been contested by the State party, except to say that measures would have to be put in place to accommodate the author as a disabled person in prison. In the Committee's opinion, the conditions described in para 3.1, are such as to violate the author's right to be treated with humanity and with respect for the inherent dignity of the human person, and are therefore contrary to article 10, paragraph 1.

...

10. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide Mr. Hamilton with an effective remedy, entailing compensation and placement in conditions that take full account of his disability. The State party is under an obligation to ensure that similar violations do not occur in the future.

· *Spakmo v. Norway* (631/1995), ICCPR, A/55/40 vol. II (5 November 1999) 22 at paras. 2.1-2.3, 3, 6.2, 6.3, 7 and 8.

LEGAL RIGHTS - CRIMINAL - Conditions of Arrest and Detention

...

2.1 The author was commissioned, in July 1984, by a landlord, one Finn Grimsgaard, to carry out repairs on a building, including the demolition and replacement of three balconies. Work commenced on 23 July 1984. Two tenants applied for an injunction from the Tenancy Disputes Court until such time as the owner guaranteed that the balconies would be restored to their original appearance; the injunction was granted on 25 July 1984. According to the author, he then contacted the judge of the Tenancy Disputes Court to ascertain how to proceed and was informed that the owner could either request an oral negotiation in court or that the municipal building authorities issue a ruling authorizing the demolition of the balconies. In the morning of Friday 27 July 1984, a municipal inspector, Per M. Berglie (since deceased), examined the building together with the author. The author states that the building inspector gave an oral order to continue with the demolition.

2.2 The author reinitiated the work later on 27 July 1984. After having received a complaint from one of the tenants in the building, the police arrived at the site for inspection at 10.30 p.m. The police was of the opinion that the work was disturbing the peace in the neighbourhood, and verbally ordered the author to stop his work. The author refused to do so and claimed that he was working legally. After repeatedly having been ordered to stop his activities, the superintendent on duty ordered the author's arrest. He was arrested around 11.00 p.m., and released one hour later.

2.3 The next day, the author continued with his demolition activities. Again, the police ordered him to stop, which the author refused. Around 2.25 pm he was arrested and brought to the police station from where he was released eight hours later. On Tuesday 31 July 1984, the building authorities issued a written demolition order for the balconies.

...

3. The author claims to be a victim of a violation of article 9, paragraph 1, of the Covenant in that he was arbitrarily arrested, since his arrest was not on such grounds and in accordance with such procedures as established by law. In this respect, counsel alleges that the police exceeded their competence in that they enforced a temporary order between two parties in a civil suit, acting on information received by a high-ranking officer from a friend who was one of the parties in the civil suit. The author was not party to that suit and could therefore only be detained if so ordered by a judicial authority. Norwegian law provides for a special authority (namsmenn, the head of which in Oslo is the byfogd) to implement civil decisions; the police may only intervene at the request of the mentioned authority. Counsel states that the police and later the Government shifted the burden of proof in demanding that the author prove in writing that he had been authorized to carry out the work at the time when he was arrested. This, counsel contends, is in breach of Norwegian law, as it was the police who had to prove that they had the legal right to act against the author in the manner they did, interfering with his liberty. Furthermore, his arrest was not on such grounds or in accordance with such procedures as established by law, since it was based on the decision

of the Tenancy Disputes Court, between the two tenants and the landlord; counsel contends that the decision is not applicable to a third party.

...

6.2 The question before the Committee is whether the author's arrest was in violation of article 9 of the Covenant. The author has argued that there was no legal basis for his arrest and that the police was exceeding its competence when detaining him ... On the basis of the information before it, the Committee concludes that the author was arrested in accordance with Norwegian law and that his arrest was thus not unlawful.

6.3 The Committee recalls that for an arrest to be in compliance with article 9, paragraph 1, it must not only be lawful, but also reasonable and necessary in all the circumstances. 3/ In the instant case, it is not disputed that on Friday 27 July 1984, the police ordered the author several times to stop the demolition, that the hour was 10.30 pm and that the author refused to comply. In the circumstances, the Committee considers that the author's arrest on Friday 27 July 1984 was reasonable and necessary in order to stop the demolition, which the police considered unlawful and a disturbance of the peace in the neighbourhood. The author's arrest of the next day was again a result of him refusing to follow the orders of the police. While accepting that the author's arrest by the police also on Saturday may have been reasonable and necessary, the Committee considers that the State party has failed to show why it was necessary to detain the author for eight hours in order to make him stop his activities. In the circumstances, the Committee finds that the author's detention for eight hours was unreasonable and constituted a violation of article 9, paragraph 1, of the Covenant.

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

8. ... [T]he State party is under the obligation to provide Mr. Spakmo with an effective remedy, including compensation. The State party is under an obligation to take measures to prevent similar violations in the future.

Notes

...

3/ See the Committee's Views in respect to communication No. 305/1988 (*Van Alphen v. The Netherlands*), adopted on 23 July 1990.

For dissenting opinion in this context, see Spakmo v. Norway (631/1995), ICCPR, A/55/40 vol. II (5 November 1999) 22 at Individual Opinion by A. Amor, N. Ando, Lord Colville, E. Klein, R. Wieruszewski and M. Yalden, 28.

LEGAL RIGHTS - CRIMINAL - Conditions of Arrest and Detention

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

...

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 para. 7.5.

...

7.5 The author also has claimed a violation of article 9, paragraphs 2 and 4, since he was not promptly informed of the charges against him at the time of his arrest. Article 9, paragraph 2, of the Covenant gives the right to everyone arrested to know the reasons for his arrest and to be promptly informed of the charges against him. Counsel contends that the author was not informed of the charges against him until four days after his arrest. The Committee notes the State party's contention that the author was aware of the reasons for his arrest in general terms even if the formal charges for murder were only laid against him four days after his arrest. It also notes information provided by counsel where in an affidavit signed by the author on 4 May 1988, he states he was arrested and charged with murder on 1 September 1985. Furthermore, the Committee notes that this issue was not

brought to the attention of the Courts in Jamaica. On the basis of the information before it the Committee concludes that the author was aware of the reasons for his arrest and consequently there has been no violation of the Covenant in this respect. The Committee has not found any facts that substantiate a violation of article 9, paragraph 4.

· *Robinson v. Jamaica* (731/1996), ICCPR, A/55/40 vol. II (29 March 2000) 116 at paras. 10.1, 10.2 and 12.

...

10.1 The author has claimed a violation of articles 7 and 10, paragraph 1, on the ground of the conditions of detention to which he was subjected while detained at St. Catherine's District Prison. To substantiate his claim, the author has invoked three NGO reports...The Committee notes that the author refers to the inhuman and degrading prison conditions in general, such as the complete lack of mattresses, other bedding and furniture in the cells; that there is a desperate shortage of soap, toothpaste and toilet paper; that the quality of food and drink is very poor; that there is no integral sanitation in the cells and open sewers and piles of refuse; that there is no doctor, leaving warders with very limited training to treat medical problems. In addition to the NGO reports, counsel makes reference to reports from prisoners, stating that the prison is infested by vermin, and that the kitchen and the bakery despite having been condemned for many years are still in regular use. In addition to these claims, the author has also made specific allegations that he is confined to his cell for 22 hours every day in enforced darkness, isolated from other men, without anything to keep him occupied.

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

...

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

· *Wuyts v. The Netherlands* (785/1997), ICCPR, A/55/40 vol. II (17 July 2000) 210 at paras. 2.1, 2.2 and 10.2-10.4.

...

2.1 On 11 February 1994, the author was convicted on several counts of theft with use of violence or threat of violence against persons, as well as attempts and threats of serious

physical abuse. He was sentenced to eight months of imprisonment and ordered to be detained at her Majesty's pleasure for compulsory treatment in a psychiatric hospital. The initial detention was set at two years, renewable. According to the judgement, the author's treatment was to begin on 3 March 1994, but according to counsel it did not actually begin until 17 March 1995, more than one year later. During that period, the author was detained without any treatment.

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

...

10.2 Two issues are before the Committee: one, whether the State party's failure to place the author without delay in a psychiatric hospital for treatment constitutes a violation of article 10 for the duration of the delay, and two, whether the author's continued compulsory treatment and confinement constitutes a violation of article 10 because of the delay in beginning the treatment.

10.3 With respect to the first issue, the Committee notes that the State party has argued that the author has failed to exhaust domestic remedies, since he could have gone to court to request placement in a psychiatric hospital, and failing that, compensation ...

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

· *Gridin v. Russian Federation* (770/1997), ICCPR, A/55/40 vol. II (20 July 2000) 172 at paras. 8.1 and 10.

...

8.1 With respect to the allegation that the author was arrested without a warrant and that this was only issued more than three days after the arrest, in contravention of national legislation which stipulates that a warrant must be issued within 72 hours of arrest, the Committee notes that this matter has not been addressed by the State party. In this regard, the Committee considers that in the circumstances of the present case the author was deprived of his liberty in violation of a procedure as established by law and consequently it finds that the facts before it disclose a violation of article 9, paragraph 1.

LEGAL RIGHTS - CRIMINAL - Conditions of Arrest and Detention

...

10. ...[T]he State party is under an obligation to provide Mr. Gridin with an effective remedy, entailing compensation and his immediate release. The State party is under an obligation to ensure that similar violations do not occur in the future.

· *Arredondo v. Peru* (688/1996), ICCPR, A/55/40 vol. II (27 July 2000) 51 at paras. 2.3, 3.1, 10.3, 10.4 and 12.

...

2.3 Ms. Arredondo on arrest was accused of being a member of *Socorro Popular*, an organization which is allegedly a support unit of *Sendero Luminoso* [the terrorist organization Shining Path], and sentenced to 12 years' imprisonment by a "faceless court" (*tribunal sin rostro*) (File No. 05-93). In a legal opinion prepared by counsel for Ms. Arredondo's defence, it is stated that she was convicted on the basis of her mere physical presence in the building at the same time as several members of *Sendero Luminoso* were arrested by the police. None of the other co-defendants accused her, nor were there any witnesses against her, nor any expert evidence which incriminated her...

...

3.1 The author claims that prison conditions are appalling, and that the inmates are allowed out of their 3 x 3 metre cells only for half an hour each day. They are allowed no writing materials, unless expressly authorized. Ms. Arredondo has been given permission to write three letters in the last three years. Any books brought to the prisoners are strictly censored and there is no guarantee that the prisoners will receive them. They have no access whatsoever to magazines, newspapers, radio or television. Only inmates on the first floor of B wing are allowed to work in workshops; as Ms. Arredondo is on the second floor, she is only permitted to do very rudimentary jobs. The quality of the food is poor. Any food supplies or toiletries have to be handed to the authorities in transparent bags, and no tinned or bottled products are allowed into the prison. Any medication, including vitamins and food supplements, has to be prescribed by the prison doctor. Many inmates suffer from psychiatric problems or contagious diseases. All inmates are housed together and there are no facilities for the sick. When inmates are taken to hospital, they are handcuffed and fettered. Inmates are allowed only one visit a month from their closest relatives. Visits are limited to 20 to 30 minutes. It is claimed that, according to Peruvian legislation, inmates are entitled to one visit a week. There is also a provision for direct contact between the prisoners and their children or grandchildren once every three months. Children have to enter the prison on their own, and the persons accompanying them must leave them at the prison entrance. Ms. Arredondo is visited once a month by her daughter and once every three months by her 5-year-old grandson; however, due

to police controls applied to adult visitors, the two elder grandchildren (17 and 18 years old) do not visit her since by so doing they would acquire a police record.

...

10.3 On the question of whether Ms. Arredondo's arrest was carried out in conformity with the requirements of article 9, paragraphs 1...of the Covenant, in other words, whether she was arrested on the basis of an arrest warrant,...the Committee regrets that the State party has not replied specifically to the allegation made, but has, in a general fashion, said that the detention and trial of Ms. Arredondo were conducted in conformity with Peruvian laws. The Committee considers that, since the State party has not replied to these allegations, due weight must be given to them and it must be assumed that the events occurred as described by the author. Consequently, the Committee finds a violation of article 9, paragraphs 1..., of the Covenant.

10.4 As to the author's submissions concerning her mother's conditions of detention, contained in paragraph 3.1... the Committee takes note of the State party's acceptance of the description of these conditions is accurate, and that they are justified by the seriousness of the offences committed by the prisoners and by the serious problem of terrorism which the State party experienced....It considers that the conditions of Ms. Arredondo's detention, especially in the earlier years and to a lesser extent since the Supreme Decree's entry into force, are excessively restrictive. Even though it recognizes the need for security restrictions, these always have to be justified. In the present case, the State party has failed to provide any justification for the conditions described in Ms. Teillier's submission. The Committee subsequently finds that the conditions of detention infringe article 10, paragraph 1, of the Covenant.

...

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

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

...

8.4 The author has claimed that his conditions of detention are in violation of articles 7 and 10 (1) of the Covenant, and the State party has denied this claim in general terms and has referred to the judgement by the High Court, which rejected the author's claim. The Committee considers that, although it is in principle for the domestic courts of the State party to evaluate facts and evidence in a particular case, it is for the Committee to examine

whether or not the facts as established by the Court constitute a violation of the Covenant. In this respect, the Committee notes that the author had claimed before the High Court that he was confined in a small cell, that he had been provided only with a blanket and a slop pail, that he slept on the floor, that an electric light was on day and night, and that he was allowed out of the cell into the yard one hour a day. The author has further alleged that he does not get any sunlight, and that he is at present detained in a moist and dark cell. The State party has not contested these claims. The Committee finds that the author's conditions of detention constitute a violation of article 10 (1) of the Covenant. 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.

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

...

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

2.2 After a period of over 22 months, the author was brought to trial on 23 July 1990 in the High Court of Justice. On 25 July 1990, the author was convicted by unanimous jury verdict and sentenced to death for the murder charged. From this point (until commutation of his sentence), the author was confined in Port-of-Spain State Prison (Frederick Street) in a solitary cell measuring 9 feet by 6 feet, containing an iron bed, mattress, bench and table.1/ In the absence of integral sanitation, a plastic pail was provided as toilet. A small ventilation hole measuring 8 inches by 8 inches, providing inadequate ventilation, was the only opening. In the absence of any natural light, the only light was provided by a fluorescent strip light illuminated 24 hours a day (located above the door outside the cell). Due to his arthritis, the author never left his cell save to collect food and empty the toilet pail. Due to stomach problems, the author was placed on a vegetable diet, and when these

were not provided the author went without food. The author did not receive a response from the Ombudsman on a written complaint on this latter matter.

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

2.4 From that point, the author has been detained in Port-of-Spain Prison in conditions involving confinement to a cell measuring 9 feet by 6 feet together with 9 to 12 other prisoners, which overcrowding causes violent confrontations between prisoners. One single bed is provided for the cell and therefore the author sleeps on the floor. One plastic bucket is provided as slop pail and is emptied once a day, such that it sometimes overflows. Inadequate ventilation consists of a 2 foot by 2 foot barred window. The prisoner is locked in his cell, on average 23 hours a day, with no educational opportunities, work or reading materials. The location of the prison food-preparation area, around 2 metres from where the prisoners empty their slop pails, creates an obvious health hazard. The contention is repeated that the provision of food does not meet the author's nutritional needs.

...

7.4 As to the author's claims that the conditions of detention in the various phases of his imprisonment violated articles 7 and 10, paragraph 1, the Committee notes the State party's general argument that the conditions in its prisons are consistent with the Covenant. In the absence of specific responses by the State party to the conditions of detention as described by the author,26/ however, the Committee must give due credence to the author's allegations as not having been properly refuted. As to whether the conditions as described violate the Covenant, the Committee notes the State party's arguments that its courts have, in other cases, found prison conditions in other cases satisfactory.27/ The Committee cannot regard the courts' findings on other occasions as answering the specific complaints made by the author in this instance. The Committee considers, as it has repeatedly found in respect of similar substantiated allegations,28/ that the author's conditions of detention as described violate his right to be treated with humanity and with respect for the inherent dignity of the human person, and are therefore contrary to article 10, paragraph 1. In the light of this finding in respect of article 10, a provision of the Covenant dealing specifically with the situation of persons deprived of their liberty and encompassing for such persons the elements set out generally in article 7, it is not necessary to separately consider the claims arising under article 7.

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

LEGAL RIGHTS - CRIMINAL - Conditions of Arrest and Detention

Notes

1/ Counsel's description of these conditions is derived from the author's correspondence and a personal visit by counsel to the author in custody in July 1996.
2/ On this date, after hearing argument, the Court refused leave to appeal and affirmed the conviction and sentence. The reasons for judgement (20 pages) were delivered shortly thereafter on 10 April 1995.
...
26/ In the case of *Chadee v. Trinidad and Tobago* (Communication 813/1998) which the State party refers to, the State party did provide details of fact and the Committee, by a majority, ultimately found itself not in a position to make a finding of a violation of article 10.

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

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

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

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

2.7 On 14 August 1992, the authors appeared in Court and were ordered detained until the trial. On 11 November 1992, the authors filed a petition for bail and on 1 December 1992, they filed a motion to quash the arrest warrants. On 22 October 1993, the regional Trial Court refused to grant bail. On 12 October 1994, the Court of Appeals in Manila confirmed the Trial Court Order of 22 October 1993. A motion for reconsideration of the Court of Appeals' decision was dismissed on 20 February 1995. On 21 August 1995, the Supreme Court dismissed the authors' appeal against the Court of Appeals' decision.
...
3.4 Although not expressly invoked by the authors, the facts as submitted raise issues under articles 9 (3) and 14 (3) of the Covenant in relation to the time that the authors have spent in pre-trial detention...
...

7.3 With regard to the allegation of violation of article 14 (2), on account of the denial of bail, the Committee finds that this denial did not *a priori* affect the right of the authors to be presumed innocent. Nevertheless, the Committee is of the opinion that the excessive period of preventive detention, exceeding nine years, does affect the right to be presumed innocent and therefore reveals a violation of article 14 (2).

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

...

8. The Human Rights Committee...is of the view that the facts before it disclose a violation of articles 9 (3), 14 (2) and 14 (3) (c) of the Covenant.

9. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the authors with an effective remedy, which shall entail adequate compensation for the time they have spent unlawfully in detention. The State party is also under an obligation to ensure that the authors be tried promptly with all the guarantees set forth in article 14 or, if this is not possible, released.

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

...

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

2.2 In February 1997, the author was tried in the High Court, where he pleaded not guilty... He was convicted and sentenced to 12 strokes with the birch, as well as 50 years of

concurrent sentences, equivalent to a sentence of 20 years after remission.

...

4.7 The Committee notes counsel's contention that the State party has violated article 9, paragraph 3, as the author was held in detention for an unreasonable time prior to his trial. The State party did not provide any justification for the author's detention and its duration. The Committee notes that the author spent three years in detention prior to release on bail and considers, therefore, that the State party has violated article 9, paragraph 3, of the Covenant.

...

5. The Human Rights Committee...is of the view that the facts as found by the Committee reveal violations by Trinidad and Tobago of articles 9, paragraph 3, 14, paragraph 3 (c) and (d), and article 7 of the Covenant.

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

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

...

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

...

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

2.6 Since his conviction, the author has been confined in a cell alone for periods of up to 22 hours each day, most of his waking time is spent in darkness making it impossible for him to keep occupied. Slop buckets are used, filled with human waste and stagnant water, and only emptied once per day. There is also no running water provided in the author's cell. Consequently, the author has to wait until he is released to get running water which he then

stores in a bottle. It is also stated that the author slept on cardboard and newspapers on concrete until October 1994 when he was provided with an old mattress.

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

...

3.2 ...[C]ounsel claims that: (a) the conditions, described above in paragraphs 2.1 and 2.6, in which the author has been detained since his arrest, as well as his lack of medical treatment described above in paragraphs 2.1 and 2.7, amount themselves to cruel, inhuman and degrading treatment and punishment, in breach of articles 7 and 10, paragraph 1, of the Covenant; and (b) the period of delay, when addressed in the context of the conditions of detention and lack of medical treatment, constitutes a breach of articles 7 and 10, paragraph 1, of the Covenant. In this respect, counsel submits that numerous non-governmental organizations2/ have reported on the appalling conditions of the prison regime at St. Catherine's District Prison, observing that the facilities are poor: no mattresses, bedding or furniture in the cells; no sanitation in the cells; broken plumbing, piles of refuse and open sewers; until 1994 there was no artificial lighting in the cells; there are only small air vents through which natural light can enter; no employment opportunities available to inmates; no proper facilities to wash and infrequent permission to wash; no doctor attached to the prison, so that medical problems are generally treated by warders who receive very limited training; and inmates on death row occupy single cells where they are generally confined more than 18 hours per day.3/

...

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

...

7.2 As to the allegation of a violation of articles 7 and 10 of the Covenant, the Committee notes that counsel has provided specific and detailed allegations concerning inappropriate conditions of detention prior to his trial and since his conviction, and lack of medical treatment. The State party has not responded to these allegations with specific responses but in its initial submission merely denies that the conditions constitute a violation of the Covenant and then goes on to say that it would investigate these allegations, including the allegation of the failure to provide medical treatment (para. 4.6). The Committee notes that the State party has not informed the Committee of the outcome of its investigations. In the absence of any explanation from the State party, the Committee considers that the author's

conditions of detention and his lack of medical treatment as described violate his right to be treated with humanity and with respect for the inherent dignity of the human person and are therefore contrary to article 10, paragraph 1. In light of this finding in respect of article 10, a provision which deals with the situation of persons deprived of their liberty and encompasses the elements set out generally in article 7, it is not necessary to consider separately the claims arising under that article. (para. 3.2)

...

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

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

Notes

1/ At the trial, the case rested on the eyewitness evidence of three witnesses. They alleged that they saw Simpson coming to George S. Cockett's grocery, where Cecil Cockett (George S. Cockett's father) and his brother Donovan were working at 7.30 p.m. on 8 August 1991. They testified that Simpson drew a gun and fired several shots, outside the shop and in the shop through the window, at Donovan, Cecil and Simon Cockett, which led to the death of Donovan and Cecil Cockett. One of the witnesses testified that a week before the incident, Simpson and Donovan Cockett had an argument in the course of which Simpson threatened to kill the whole family. The author made an unsworn statement in which he denied being present and stated that the accusations against him were being made falsely because one of the witnesses believed that Simpson had informed on him in relation to drug dealing, which had resulted in a police raid a few weeks before the incident.

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

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

· *Wanza v. Trinidad and Tobago* (683/1996), ICCPR, A/57/40 vol. II (26 March 2002) 55 (CCPR/C/74/D/683/1996) at paras. 3.3, 9.2, 9.3, 10 and 11.

...

3.3 From the author's affidavit in support of his constitutional motion, it appears that he

claims that he is confined in a small cell (nine by six feet), which contains a bed, table, chair and a slop pail. There is no window, only a small ventilation hole of 18 by 8 inches. The entire cell block is illuminated by means of fluorescent lights which are kept on all night and affects the author's ability to sleep. Apart from the customary one hour exercise in the yard, he was only permitted to leave his cell to meet with visitors and to have a bath once a day. On Sundays and holidays he could not leave the cell because of lack of prison staff.

...

9.2 With regard to the author's claim that his conditions of detention amounted to a violation of articles 7 and 10(1) of the Covenant, the Committee notes that the information provided by counsel and the author contradicts itself in respect to the light in the cell. However, the remaining specific allegations on the poor conditions of detention, in particular, that the cell is small and does not contain a window but a ventilation hole of 18 by 8 inches, that the author was kept in this cell for 22 to 23 hours a day, and that on weekends and holidays he was not allowed to leave the cell because of lack of prison staff, have not been contested by the State party, except in a very general way. According to the Committee's prior jurisprudence, such conditions sustain the finding of a violation of article 10(1) in the instant case. In the light of this finding in respect of article 10, a provision of the Covenant dealing specifically with the situation of persons deprived of their liberty and encompassing for such persons the elements set out generally in article 7, it is not necessary to consider separately the claims arising under article 7.

9.3 With regard to the author's claim that his prolonged detention on death row constitutes a violation of articles 7 and 10(1), the Committee notes that the author was kept on death row from his conviction on 28 February 1989 until 24 June 1996, when his sentence was commuted. The Committee refers to its previous jurisprudence 4/ that prolonged detention on death row per se does not constitute a violation of articles 7 and 10(1) of the Covenant, in the absence of further compelling circumstances. In the Committee's opinion, the facts before it do not show the existence of further compelling circumstances beyond the length of detention on death row. The Committee concludes that in this respect the facts do not reveal a violation of articles 7 and 10, paragraph 1 of the Covenant.

...

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

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

Notes

...

4/ See *inter alia* the Committee's Views in communication No. 558/1994, *Erroll Johnson v. Jamaica*, para. 8.2-8.5, Views adopted on 22 March 1996; CCPR/C/66/D/709/1996, *Everton Bailey v. Jamaica*, Views adopted on 21 July 1999, para. 7.6.

· *Lantsova v. Russian Federation* (763/1997), ICCPR, A/57/40 vol. II (26 March 2002) 96 (CCPR/C/74/D/763/1997) at paras. 2.1-2.7 and 9.1, 9.2, 10 and 11.

...

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

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

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

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

2.5 It appears that other detainees requested medical assistance for Mr. Lantsov some time after the first week of his detention, that a medical doctor attended to him once or twice in the cell and that he was given aspirin for his temperature. However, between 3 and 6 April,

during what was a rapid and obvious deterioration in his condition, he received no medical attention, despite repeated requests for assistance by the other detainees. On 6 April, after the other detainees cried out for assistance, medical personnel arrived with a stretcher. Mr. Lantsov died later that day in the prison clinic. His death certificate identifies the cause of death as "acute cardiac/circulatory insufficiency, intoxication, cachexia of unknown etiology".

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

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

...

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

9.2 Concerning the death of Mr. Lantsov, the Committee notes the author's allegations, on the strength of testimony by several fellow detainees, that after the deterioration of the health of the author's son, he received medical care only during the last few minutes of his life, that the prison authorities had refused such care during the preceding days and that this situation caused his death. It also takes note of the information provided by the State party, namely that several inquiries were carried out into the causes of the death, i.e. acute pneumonia leading to cardiac insufficiency, and that Mr. Lantsov had not requested medical assistance. The Committee affirms that it is incumbent on States to ensure the right of life of detainees, and not incumbent on the latter to request protection. The stated intention of the State party to improve conditions has no impact in the assessment of this case. The Committee notes that the State party has not refuted the causal link between the conditions of the detention of Mr. Lantsov and the fatal deterioration of his state of health. Further, even if the Committee starts from the assertion of the State party that neither Mr.

Lantsov himself nor his co-detainees had requested medical help in time, the essential fact remains that the State party by arresting and detaining individuals takes the responsibility to care for their life. It is up to the State party by organizing its detention facilities to know about the state of health of the detainees as far as may be reasonably expected. Lack of financial means cannot reduce this responsibility. The Committee considers that a properly functioning medical service within the detention centre could and should have known about the dangerous change in the state of health of Mr. Lantsov. It considers that the State party failed to take appropriate measures to protect Mr. Lantsov's life during the period he spent in the detention centre. Consequently, the Human Rights Committee concludes that, in this case, there has been a violation of paragraph 1 of article 6 of the Covenant.

...

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

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

Notes

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

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

3/ *Ibid*, para. 41.

4/ *Ibid*, para. 71.

LEGAL RIGHTS - CRIMINAL - Conditions of Arrest and Detention

· *Kennedy v. Trinidad and Tobago* (845/1998), ICCPR, A/57/40 vol. II (26 March 2002) 161 (CCPR/C/74/D/845/1998) at paras. 7.6, 7.8, 8 and 9.

...

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

...

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

...

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

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

See also:

· *Evans v. Trinidad and Tobago* (908/2000), ICCPR, A/58/40 vol. II (21 March 2003) 216 (CCPR/C/77/D/908/2000) at paras. 2.3, 6.4 and 6.5.

· *Teesdale v. Trinidad and Tobago* (677/1996) ICCPR, A/57/40 vol. II (1 April 2002) 36

(CCPR/C/74/D/677/1996) at paras. 3.1, 9.1, 10, 11 and Individual Opinion by Mr. Rajsoomer Lallah (concurring).

...

3.1 The author claims that he is a victim of a violation of articles 7 and 10, paragraph 1, of the Covenant. Between the date of the arrest and the date of his trial the author was remanded in custody for almost one and a half years. During that time he was in a cell (12 x 8 ft.) in which conditions were totally unsanitary, as there was no sunlight, no air, the men had to urinate and defecate anywhere in the cell, no bedding, nowhere to wash. After being sentenced to death, he has been detained in similar surroundings (10 x 8 ft.) with a light bulb directly overhead, which is kept on day and night. The author claims that he does not get any visitors and lacks privacy. He is handcuffed and placed in a box (3 x 3 ft.) when he consults his attorney. During the interview at least two guards are standing directly behind the attorney. Furthermore, the author was denied an eye test until September 1996, even though his glasses did not fit since 1990. The author claims that he was prevented by the prison authorities to pick up his new glasses in person and that the glasses he received as prescribed do not sufficiently correct his sight.

...

9.1 With regard to the conditions of the author's detention at State Prison, Port-of-Spain, both before and after conviction, the Committee notes that in his different submissions the author made specific allegations, in respect of the deplorable conditions of detention (see 3.1 above). The Committee recalls its earlier jurisprudence that certain minimum standards regarding the conditions of detention must be observed and that it appears from the author's submissions that these requirements were not met during the author's detention since 28 May 1988. In the absence of any response from the State party, the Committee must give due weight to the allegations of the author. Consequently, the Committee finds that the circumstances described by the author disclose a violation of articles 10, paragraph 1, of the Covenant. In the light of this finding in respect of article 10, a provision of the Covenant dealing specifically with the situation of persons deprived of their liberty and encompassing for such persons the elements set out generally in article 7, is not necessary to consider separately the claims arising under article 7.

...

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

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

...

LEGAL RIGHTS - CRIMINAL - Conditions of Arrest and Detention

Individual Opinion by Mr. Rajsoomer Lallah (concurring)

I agree with the views of the Committee but would wish to add some observations on the length of the term of imprisonment of 75 years to which the sentence of the author was commuted.
The author did not raise any issue on the possible impact of the commuted sentence, by reason of its length, on the author's rights and the State party's obligations under Article 10 (1) and (3) of the Covenant. The result is that the State party was not given an opportunity of responding to that issue and the Committee could not make a pronouncement on it.

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

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

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

· *Sahadath v. Trinidad and Tobago* (684/1996), ICCPR, A/57/40 vol. II (2 April 2002) 61 (CCPR/C/74/D/684/1996) at paras. 2.7, 2.8, 7.3, 8 and 9.

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

> "The information gained from 3 prisoners who had their sentences commuted from death to life imprisonment in 1984 reveal conditions which appear to be quite appalling, with far too many people sharing a single cell, no space to lie down let alone sleep, and degrading sanitary arrangements, to say nothing on the absence of useful employment, education and recreational facilities.
>
> Prisoners who have had their sentence commuted to life imprisonment share cells measuring approximately 9' x 6' with between 9 and 12 other prisoners. Each cell consists of 2 bunks, therefore only 4 men can sleep at any one time. All the occupants of the cell share a single plastic bucket for all toilet functions. They are

> permitted to empty the contents of the bucket once a day. Ventilation consists of a single barred window measuring approximately 2 foot square. Each prisoner spends as average of 23 hours each day locked inside his cell, although exceptionally and unpredictably he and his cell mates are allowed out for as long as 6 hours."

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

> "The prisoners are kept confined in a very small cell measuring approximately nine feet by six. The cell contains a bed, table, chair and "Slop Pail", that is, a bucket provided to each prisoner to use as a toilet. There is no window, only a small ventilation hole, measuring eighteen inches by eight inches approximately. The entire cell block is illuminated by means of fluorescent lights which are kept on all night and affects my [sic] ability to sleep. They are kept in this cell twenty-three hours every day except on weekends, public holidays, and days of staff shortage, when they are shut in for the entire twenty-four hours. Apart from the customary one hour exercise in the exercise yard, they are only permitted to leave their cells to meet with visitors and to have a bath once a day during which time they clean out their slop pail.
>
> The hour's exercise is conducted with handcuffs on in an extremely small enclosure thus making meaningful exercise extremely difficult if not impossible. Visiting and other privileges are severely restricted, They are allowed two visits per week each of only twenty minutes duration. Writing material are provided only upon a request being entered in the request book. Often there is no paper or pens available. Writing is permitted only between 4.30 pm and 7.15 pm on weekends and public holidays.
>
> The persons of death row are subjected to three searches of cell and body every day. The final such search is conducted at 9.30 at night at which time they are often asleep. They will be awakened and search accordingly. Shortly after this search, the three electronic alarm bells in death row are tested. The resulting effect of the noise makes it difficult to return to sleep, concluding that the author notes that cells measure approximately 9 by 6 feet, with an 18 inch hole for ventilation. The death row section is entirely illuminated by fluorescent lights, including at night, thereby impeding sleep. Prisoners are only allowed out of their cells one hour per day, except on weekends, when they are kept in 24 hours because of shortage of staff. Meaningful exercise is impossible, as prisoners remain handcuffed during the exercise period. They are permitted two twenty-minute visits per week, and writing pads and books are severely restricted."

...

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

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

9. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including appropriate medical and psychiatric care. The State party is also under an obligation to improve the present conditions of detention so as to ensure that the author is detained in conditions that are compatible with article 10 of the Covenant, or to release him, and to prevent similar violations in the future.

Notes

...

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

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

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

...

2.2 On 3 December 1990, while still in pre-trial detention, a map of the prison and a hand made weapon were found in the author's cell. As punishment, the author was placed in "cellular confinement" in a special high security cellblock for "escapees" in Carrera Prison. The author has remained in cellular confinement since. Such confinement consists of being locked in his cell for 23 hours a day, where he sleeps on a 1-inch thick carpet. He is allowed out only once a day for his airing and to bathe. His airing takes place in an area where inmate urinal and faecal wastes are disposed of, while other inmates are allowed their airings in a much larger, cleaner facility where they are allowed to exercise, play tennis and football, and engage in other recreational activities. His airing facility is damp, slippery, infested with worms and flies and faecal waste is often scattered on the ground. If the author complains about the conditions of his airing facility, he is left in his cell. In March 1991 his diet was restricted for 21 days.

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

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

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

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

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

are subjected to such humiliation.

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

...

6.4 The Committee notes the author's complaint in paragraphs 2.2 and 2.6 above that he has been held in appalling and insalubrious conditions as a result of which his eyesight has deteriorated. In the Committee's opinion, the conditions described therein are such as to violate his right to be treated with humanity and with respect for the inherent dignity of the human person and are therefore contrary to article 10, paragraph 1, of the Covenant.

...

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

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

...

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

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

...

2.1 Messrs. Francis, Glaude and George were arrested on 24 July 1986, 23 July 1986 and 24 May 1987 respectively for suspicion of murder on 19 July 1986 of one Ramesh Harriral. Until their trial in November 1990, the authors were detained at the remand section of

Golden Grove Prison, Arouca, in a cell measuring 9 feet by 6 feet with between 8 to 15 other inmates.

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

2.3 In the absence of sanitation facilities in the cell, a plastic pail was provided as toilet. A small ventilation hole, measuring 8 inches by 8 inches, provided scarce and inadequate ventilation. The only light provided was by a fluorescent strip illuminated 24 hours a day located outside the cell above the door. The authors remained locked inside their cell continuously, save for collecting food, bathing, and slopping out the contents of their plastic pail. They enjoyed exercise outside their cell approximately once a month only in handcuffs. They were allowed only a limited number of personal items, excluding radios, and access to writing and reading material remained very limited. Mr. Francis further stated that he had no right to see copies of the Prison Rules, that he was not allowed to write to the Ministry of National Security complaining as to his conditions of detention, that doctors visits were irregular and that letters to his family had been intercepted and not processed without explanation. Mr. Glaude also stated that poor food had resulted in significant weight loss, and that no medicine had been provided to him.

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

2.5 From that point, the authors have been detained in Port of Spain Prison in conditions involving confinement to a cell measuring 9 feet by 6 feet together with 9 to 12 other prisoners. It is stated that such overcrowding leads to violent confrontations amongst the prisoners. One single bed is provided for the cell and therefore the authors sleep on the floor. One plastic bucket is provided as slop pail and is emptied once a day, such that it sometimes overflows or is spilled over. Inadequate ventilation consists of a 2 foot by 2 foot barred window. The prisoners are locked in their cell, on average 23 hours a day, with no educational opportunities, work or reading materials. The location of the prison food-preparation area, around 2 metres from where the prisoners empty their slop pails,

creates an obvious health hazard. The quantity and quality of food are said not to meet the authors' nutritional needs, and the complaint mechanisms for prisoners are inadequate.

...

5.6 As to the authors' claims that the conditions of detention in each phase of their imprisonment violated articles 7 and 10, paragraph 1, in the absence of any responses by the State party to the allegations concerning the conditions of detention as described by the authors, the Committee must give due consideration to the authors' allegations since they have not been properly refuted. The Committee considers that the authors' conditions of detention as described violate their right to be treated with humanity and with respect for the inherent dignity of the human person, and are therefore contrary to article 10, paragraph 1, of the Covenant. In the light of this finding in respect of article 10, a provision of the Covenant dealing specifically with the situation of persons deprived of their liberty and encompassing for such persons the elements set out generally in article 7, it is not necessary separately to consider the claims arising under article 7 of the Covenant.

...

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

7. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the authors with an effective remedy, including adequate compensation. In the light of the long years spent by the authors in deplorable conditions of detention that violate article 10 of the Covenant, the State party should consider release of the authors. The State party should, in any event, improve the conditions of detention in its prisons without delay, in order to bring the authors' conditions of detention into line with article 10 of the Covenant.

Notes

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

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

In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the authors with an effective remedy, including adequate compensation. In the light of the long years spent by the authors in deplorable conditions of detention that violate article 10 of the Covenant, the State party should release the authors. The State party should, in any event, improve the conditions of detention in its

prisons without delay, in order to bring the authors' conditions of detention into line with article 10 of the Covenant.

· *van Alphen v. The Netherlands* (305/1988), ICCPR, A/45/40 vol. II (23 July 1990) 108 at paras. 5.8 and 6. For text of communication, see **LIBERTY AND SECURITY OF THE PERSON.**

· *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 and 13.4. For text of communication, see **TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT**.

· *Francis v. Jamaica* (606/1994), ICCPR, A/50/40 vol. II (25 July 1995) 148 (CCPR/C/54/D/606/1994) at para. 9.2. For text of Communication, see **TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT**.

CAT

· *S. S. and S. A. v. The Netherlands* (142/1999), CAT, A/56/44 (11 May 2001) 153 at paras. 2.1, 2.4, 2.5, 6.7 and 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.
...
2.4 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.

...

6.7 ... [T]he 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...

6.8 The Committee against Torture...concludes that the authors' removal from the State party would not constitute a breach of article 3 of the Convention.