TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

III. JURISPRUDENCE, CONTINUED

ICCPR

- *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, 2.10 and 7.5.

  ...
  2.6 The authors were arrested on 26, 29 and 30 June 1992, on suspicion of murder (the so-called Libmanan massacre)...
  ...
  2.10 In a further submission of 29 May 1998, the authors allege that on 24 and 25 March 1997, one of them, Mr. Julio Astillero had been subjected to "alcohol torture or treatment" 1/ by prison guards with the purpose to force him to become a "State witness". The alleged ill-treatment had been reported to Judge Martin Badong, the then presiding judge of the regional trial court, but the latter took no action in this respect.
  ...
  7.5 With regard to the allegations of ill-treatment suffered by Mr. Julio Astillero, the Committee notes that the allegations are very general in nature, and fail to describe the nature of the acts which were allegedly carried out. Thus, while the State party did not respond to the Committee's invitation to comment on the authors' submission of 29 May 1998, the Committee is of the opinion that the authors have not sufficiently substantiated that the rights of Mr. Astillero under articles 7 and 10 of the Covenant were violated.

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  Notes

  1/ The authors do not explain in their communication what such a treatment entails.

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For dissenting opinion in this context, see Cagas et al. v. Philippines (788/1997), ICCPR, A/57/40 vol. II (23 October 2001) 131 (CCPR/C/73/D/788/1997) at Individual Opinion by Mr. Hipólito Solari Yrigoyen,.

- *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, 4.6, 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...

2.2 In February 1997, the author was tried in the High Court, where he pleaded not guilty. He was represented by a legal aid lawyer. 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.

...

4.6 The Committee notes that the author was sentenced to 12 strokes of the birch and recalls its decision in *Osbourne v. Jamaica*6/ in which it decided that 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 or degrading treatment or punishment contrary to article 7 of the Covenant. In the present case, the Committee finds that by imposing a sentence of whipping with the birch, the State party has violated the author's rights under article 7.

...

5. The Human Rights Committee...is of the view that the facts as found by the Committee reveal violations by Trinidad and Tobago of...article 7 of the Covenant.

6. Pursuant to article 2, paragraph 3 (a), of the Covenant, the author is entitled to an effective remedy...If the corporal punishment imposed on the author has not been executed, the State party is under an obligation not to execute the sentence.

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Notes

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6/ Communication No. 759/97.

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- *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.

...

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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.

...

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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.

- *Sahadeo v. Guyana* (728/1996), ICCPR, A/57/40 vol. II (1 November 2001) 81 (CCPR/C/73/D/728/1996) at paras. 2.1, 2.3-2.6 and 9.3.

...

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

...

2.3 From the incomplete notes of evidence of the retrial in 1994 submitted by the alleged victim, it appears that the case for the prosecution was that Terrence Sahadeo and Mutez Ali, according to a common plan including also Ms. Kahn, went to the house of the deceased in order to rob her. The alleged victim and Mr. Ali tied her up and put a knife through her throat. One witness for the prosecution testified at the trial that, in the morning of the incident, she had overheard that Ms. Kahn, in the presence of the accused, had inquired a little girl about who would be in the house of the deceased. They were told that Roshanene Kassim would be in the house by herself. Ms. Kahn then told the two other accused to go and see what they could get. The witness testified that, through a window two houses away, she saw Ms. Kassim in the house and the two men enter and return about fifteen minutes later. She stated further that Mr. Sahadeo had blood on his hands that he washed away and that he handed over jewellery to Ms. Kahn. During her cross-examination the witness stated that she was held for two days by the police and tried to contact a lawyer, since she felt she was held against her will, before she made her statement.

2.4 The only other evidence against Mr. Sahadeo was his confession and other statements given by the investigating police officers. At the retrial in 1994, the voluntariness of the statement was challenged by the defence and examined in a *voir dire*. Mr. Sahadeo claimed that during police investigation in 1985 he was beaten by three policemen and that one policeman hit him on the toe with a small hammer. He then signed the statement. The prison doctor testified that when Mr. Sahadeo was admitted, he complained that he had been beaten on the back. When the doctor examined him, he found no injuries on his back, but discovered a toe injury, for which he gave him antibiotics. After the *voir dire*, the judge ruled the statement admissible.

2.5 The investigating police officers stated in the retrial in 1994 that the alleged victim was arrested, since he was found outside the house next to Kassim's with scratches on the upper

part of his body. The officers denied having used force or threats when questioning the alleged victim and asserted that Mr. Sahadeo has received regular meals during his detention.

2.6 In a statement from the dock, Mr. Sahadeo denied having anything to do with the murder and stated that he had been beaten in order to force him to sign the confession on the third day after his arrest. It is submitted that after Mr. Sahadeo was arrested, he was taken to a doctor, who, after an examination of the alleged victim, issued a medical certificate to the police that he did not find any injuries on his body. The author further submits that the alleged victim was deprived of any food until the day after he made the confession.

...

9.3 With regard to the circumstances in which the confession was signed, the Committee notes that Mr. Sahadeo identified those he holds responsible; further details of his allegations appear from the notes of evidence. The Committee recalls the duty of the State party to ensure the protection against torture and cruel, inhuman or degrading treatment as provided for in article 7 of the Covenant. The Committee considers that it is important for the prevention of violations under article 7 that the law must exclude the admissibility in judicial proceedings of statements or confessions obtained through torture or other prohibited treatment. The Committee observes that Mr. Sahadeo's allegations of torture had been dealt with during the first trial in 1989 and again in the retrial in 1994. It appears from the notes of evidence of the retrial that Mr. Sahadeo had the opportunity to give evidence and that witnesses of his treatment during his detention by the police were cross-examined. The Committee recalls that it is in general for the courts of States parties, and not for the Committee, to evaluate the facts in a particular case. The information before the Committee and the arguments advanced by the author do not show that the Courts' evaluation of the facts were manifestly arbitrary or amounted to a denial of justice. In the circumstances, the Committee finds that the facts before it do not sustain a finding of a violation of article 7 and article 14, paragraph 3 (g), of the Covenant in relation to the circumstances in which the confession was signed.

For dissenting opinion in this context, see Sahadeo v. Guyana (728/1996), ICCPR, A/57/40 vol. II (1 November 2001) 81 (CCPR/C/73/D/728/1996) at Individual Opinion by Mr. Martin Scheinin and Individual Opinion by Mr. Hipólito Solari Yrigoyen.

- *Ashby v. Trinidad and Tobago* (580/1994), ICCPR, A/57/40 vol. II (21 March 2002) 12 (CCPR/C/74/D/580/1994) at paras. 4.1, 4.4, 10.3 and 10.6.

...

4.1 Counsel claims a violation of articles 7, 10 and 14, paragraph 3 (g), alleging that Mr. Ashby was beaten and ill-treated at the police station after his arrest and that he signed the

confession statement under duress, after having been told that he would be released if he signed the statement.

...

4.4 In her initial submission, counsel submitted that Mr. Ashby was the victim of a violation of article 7 and 10, paragraph 1, on the grounds of his prolonged detention on death row, namely, for a period of 4 years, 11 months and 16 days. According to counsel, the length of the detention, during which Mr. Ashby lived in cramped conditions with no or very poor sanitary and recreational facilities, amounted to cruel, inhuman and degrading treatment within the meaning of article 7. As support for her argument, counsel adduces recent judgements of the Judicial Committee of the Privy Council and the Supreme Court of Zimbabwe.2/

...

10.3 With regard to the alleged beatings and the circumstances leading to the signing of the confession, the Committee notes that Mr. Ashby did not give precise details of the incidents, identifying those he holds responsible. However, details of his allegations appear from the trial transcript submitted by the State party. The Committee observes that the allegations of Mr. Ashby were dealt with by the domestic court and that he had the opportunity to give evidence and was cross-examined. His allegations were also mentioned in the decision of the Court of Appeals. The Committee recalls that it is in general for the courts of States parties, and not for the Committee, to evaluate the facts in a particular case. The information before the Committee and the arguments advanced by the author do not show that the Courts' evaluation of the facts were manifestly arbitrary or amounted to a denial of justice.5/ The Committee finds that there is not sufficient evidence to sustain a finding that the State party violated its obligations under article 7 of the Covenant.

...

10.6 As to the conditions of Mr. Ashby's detention (see para. 4.4), the Committee reaffirms its constant jurisprudence that detention on death row for a specific period does not violate, as such, article 7 of the Covenant in the absence of further compelling circumstances. The Committee concludes that article 7 has not been violated in the instant case.

Notes

...

2/ Judicial Committee of the Privy Council, *Pratt and Morgan v. Attorney-General of Jamaica*, Privy Council Appeal No. 10/1993, judgement of 2 November 1993; Supreme Court of Zimbabwe, judgement No. SC 73/93 of 24 June 1993 (unreported).

...

5/ *Terrence Sahadeo v. Guyana*, Case No. 728/1996, Views adopted on 1 November 2001, para. 9.3.

TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

- *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.

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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.

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- *Kennedy v. Trinidad and Tobago* (845/1998), ICCPR, A/57/40 vol. II (26 March 2002) 161 (CCPR/C/74/D/845/1998) at paras. 3.9, 7.7, 8 and 9.

...

3.9 The author claims to be a victim of a violation of articles 7 and 10, paragraph 1, as he was tortured and beaten by police officers after his arrest, whilst awaiting to be charged and brought before a magistrate. He allegedly suffered repeated beatings and was tortured to admit to the offence. He notes that he was hit on the head with a traffic sign, jabbed in the ribs with a rifle butt, stamped on by named police officers, struck in the eyes by a named police officer, threatened with a scorpion and drowning, and denied food. The author complained about the beatings and showed his bruises to the magistrate before whom he was brought on 10 February 1987, and the judge ordered that he be taken to hospital after the hearing.

...

7.7 The Committee has noted the author's allegations of beatings sustained after arrest in police custody. It notes that the State party has not challenged these allegations; that the author has provided a detailed description of the treatment he was subjected to, further identifying the police officers allegedly involved; and that the magistrate before whom he was brought on 10 February 1987 ordered him to be taken to hospital for treatment. The Committee considers that the treatment Mr. Kennedy was subjected to in police custody amounted to a violation of article 7 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 8.

- *Higginson v. Jamaica* (792/1998), ICCPR, A/57/40 vol. II (28 March 2002) 140 (CCPR/C/74/D/792/1998) at paras. 2.1, 4.6, 5 and 6.

...

2.1 On 19 May 1995, the author was convicted of illegal possession of a firearm, rape and robbery with aggravation by the High Court Division Gun Court, Kingston, Jamaica, and sentenced to respectively 5, 10 and 7 years imprisonment with hard labour, to run concurrently, and in addition to receive 6 strokes of the tamarind switch.

...

4.6 ...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 not contested the claim. Irrespective of the nature of the crime that is to be punished or the permissibility of corporal punishment under domestic law, it is the consistent 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 the imposition or the execution of a sentence of whipping with the tamarind switch constitutes a violation of the author's rights under article 7.

5. The Human Rights Committee...is of the view that the facts before it reveal a violation of article 7 of the International Covenant on Civil and Political Rights.

6. Under article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including refraining from carrying out the sentence of whipping upon the author or providing appropriate compensation if the sentence has been carried out. The State party should ensure that similar violations do not occur in the future by repealing the legislative provisions that allow for corporal punishment.

TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

- *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, 9.2, 10 and 11.

...

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.

9.2 Concerning the warrant for the author's execution after he had spent over six years on death row, the Committee reaffirms its jurisprudence that prolonged delays in the execution of a sentence of death do not, *per se*, constitute cruel, inhuman or degrading treatment. The Committee, therefore, finds that the facts before it, in the absence of further compelling circumstances, do not disclose a violation of article 7 of the Covenant.

...

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.

- *Sahadath v. Trinidad and Tobago* (684/1996), ICCPR, A/57/40 vol. II (2 April 2002) 61 (CCPR/C/684/1996) at paras. 2.2-2.6, 7.2, 8 and 9.

...
2.2 On 8 March 1996, the author was read a warrant for his execution on 13 March 1996. On Tuesday 12 March 1996, a stay of execution was granted, with a view to obtaining a full psychiatric examination of the author. The author is believed to be mentally deficient, and counsel argued, in his initial submission, that it would be in violation of his rights under the Covenant to execute him under these circumstances.

2.3 On 9 March 1996, the author was visited at the State Prison by his counsel, Douglas Mendes. When counsel arrived at the prison gate and requested to see the author, the officer on duty made a circular motion with his index finger near his head, to indicate that the author was insane. The officer asked counsel whether in the circumstances he would still like to see the author and, upon counsel's insistence, said that special security arrangements would have to be made for the interview.

2.4 During the interview, counsel asked the author whether he wanted a constitutional motion to be filed on his behalf or not. At first, the author indicated that he wanted to be executed. After further discussion, he agreed to the filing of a constitutional motion. When counsel pointed to the contradictory behaviour of the author, the latter replied that he was confused and could not decide. Counsel ended the interview by telling the author that he would return later in the day, to allow him to make up his mind.

2.5 The author's appearance and demeanour, coupled with the prison guard's comments on his insanity, made counsel believe that the author was of unsound mind. He thus contacted a psychiatrist, Peter Lewis, who accompanied him to the prison in the afternoon of 9 March 1996. Mr. Mendes asked the author whether he wanted a constitutional motion to stop his execution to be filed, and the author replied in the affirmative. For the rest, counsel could not obtain further information from the author: he gave different dates for his conviction, was unaware that an appeal had been heard or that a petition to the Judicial Committee of the

Privy Council had been filed. He could not remember the name of the lawyer who had represented him on trial and said that no lawyer had ever visited him for the preparation of the appeal. He further could not remember the name of the person of whose murder he had been convicted.

2.6 After interviewing the author, Mr. Lewis concluded in an affidavit that the author "is experiencing auditory hallucinations and is probably suffering from severe mental illness that may be significantly affecting his ability to think and behave normally. I recommend that a detailed examination of his mental status be conducted in order to determine the extent and nature of Mr. R. S.'s disorder".

...

7.2 As to the author's claim that issuing of a warrant for the execution of a mentally incompetent person constitutes a violation of articles 6 and 7 of the Covenant, the Committee notes that the author's counsel does not claim that his client was mentally incompetent at the time of imposition of the death penalty and his claim focuses on the time when the warrant for execution was issued. Counsel has provided information that shows that the author's mental state at the time of the reading of the death warrant was obvious to those around him and should have been apparent to the prison authorities. This information has not been contested by the State party. The Committee is of the opinion that in these circumstances issuing a warrant for the execution of the author constituted a violation of article 7 of the Covenant. As the Committee has no further information regarding the author's state of mental health at earlier stages of the proceedings, it is not in a position to decide whether the author's rights under article 6 were also violated.

...

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.

- *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. 2.1, 2.5-2.7, 6.5, 7 and 8.

...

2.1 The author states that he has been detained since 21 April 1989. On 24 January 1992, he was convicted and sentenced to ten years imprisonment for larceny. He states that his

earliest release date is 31 December 1998.1/

...

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.

...

6.5 With respect to the physical assaults on the author's integrity, in particular the incident described in paragraph 2.6 above, the threats of violence against him, and the treatment he received on being searched by the warders (paragraph 2.7), the Committee decides that, in the absence of an explanation from the State party, such treatment amounts to a violation of article 7 of the Covenant.

...

7. The Human Rights Committee...is of the view that the facts before it disclose a violation of articles 7, 9, paragraph 3, 10, paragraph 1, 14(3)(c), 17 and 18, of the International Covenant on Civil and Political Rights.

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.

Notes

1/ No up-to-date information has been provided as to whether the author is still in detention.

TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

- *Coronel et al. v. Colombia* (778/1997), ICCPR, A/58/40 vol. II (24 October 2002) 40 (CCPR/C/76/D/778/1997) at paras. 2.1, 2.2, 2.4, 9.3, 9.5, 9.6, 9.8 and 10.

...

2.1 Between 12 and 14 January 1993, troops of the "Motilones" Anti-Guerrilla Battalion (No. 17), attached to the Second Mobile Brigade of the Colombian National Army, conducted a military operation in the indigenous community of San José del Tarra (municipality of Hacari, department of Norte Santander) and launched a search operation in the region, making incursions into a number of neighbouring settlements and villages. During these operations, the soldiers raided several houses and arrested a number of people, including Ramón Villegas Téllez, Gustavo Coronel Navarro, Nahún Elías Sánchez Vega, Ramón Emilio Sánchez, Ramón Emilio Quintero Ropero and Luis Honorio Quintero Ropero. Both the raids and the arrests were carried out illegally, since the soldiers did not have the judicial warrants prescribed by Colombian law on criminal procedure to conduct searches or make arrests.

2.2 Ramón Villegas Téllez, Gustavo Coronel Navarro, Nahún Elías Sánchez Vega, Ramón Emilio Sánchez, Ramón Emilio Quintero Ropero, Luis Honorio Quintero Ropero and others were tortured by the soldiers, and some of them were forced to put on military uniforms and go on patrol with the members of the "Motilones" Anti-Guerrilla Batallion (No. 17). All of them were "disappeared" between 13 and 14 January 1993.

...

2.4 The Second Mobile Brigade reported various alleged armed clashes with guerrillas of the Revolutionary Armed Forces of Colombia (FARC) - the first on 13 January 1993, the second on 18 January 1993 and two incidents on 27 January 1993. The version given by the military authorities was that during the clashes the regular troops had killed a number of guerrillas. On 13 January 1993, three bodies were removed by the judicial police (SIJIN) in Ocaña, one of which was identified as the body of Gustavo Coronel Navarro. On 18 January, the soldiers deposited at the hospital the bodies of four alleged guerrillas "killed in combat". The SIJIN removed these corpses and confirmed the deaths of Luis Honorio Quintero Ropero, Ramón Emilio Quintero Ropero, Nahún Elías Sánchez Vega and Ramón Emilio Sánchez. On 29 January 1993, the Second Mobile Brigade brought in the bodies of four persons killed in the alleged clashes of 27 January 1993; again the SIJIN removed the bodies. On 21 May 1993, the bodies of the last four dead were exhumed in the cemetery of Ocaña; one of these was the body of Luis Ernesto Ascanio Ascanio, which was recognized by his relatives. The forensic report stated that one of the bodies brought to the hospital on 18 January contained a number of bullet entry holes with powder burns. In the records relating to the removal of the bodies on 21 May 1993, SIJIN officials stated that the bodies were clothed in uniforms used exclusively by the National Police.

...

TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

9.3 With regard to the authors' claim that there was a violation of article 6, paragraph 1, of the Covenant, the Committee notes that, according to the authors, the Special Investigations Unit of the Attorney-General's office established, in its final report of 29 June 1994, that State officials were responsible for the victims' detention and disappearance. Moreover, in its decision of 27 February 1998, which the Committee had before it, the Human Rights Division of the Attorney-General's Office acknowledged that State security forces had detained and killed the victims. Considering, furthermore, that the State party has not refuted these facts and that it has not taken the necessary measures against the persons responsible for the murder of the victims, the Committee concludes that the State did not respect or guarantee the right to life of Gustavo Coronel Navarro, Nahún Elías Sánchez Vega, Ramón Emilio Sánchez, Ramón Emilio Quintero Ropero, Luis Honorio Quintero Ropero, Ramón Villegas Téllez and Luis Ernesto Ascanio Ascanio, in violation of article 6, paragraph 1, of the Covenant.

...

9.5 With regard to the authors' allegations of a violation of article 7 of the Covenant, the Committee notes that, in the decision of 27 February 1998 referred to in the preceding paragraphs, the Attorney-General's Office acknowledged that the victims Gustavo Coronel Navarro, Nahún Elías Sánchez Vega, Luis Ernesto Ascanio Ascanio and Luis Honorio Quintero Ropero had been subjected to treatment incompatible with article 7. Taking into account the circumstances of the disappearance of the four victims and that the State party has not denied that they were subjected to treatment incompatible with that article, the Committee concludes that the four victims were the object of a clear violation of article 7 of the Covenant.

9.6 However, with regard to the allegations concerning Ramón Emilio Sánchez, Ramón Emilio Quintero Ropero and Ramón Villegas Téllez, the Committee considers that it does not have sufficient information to determine whether there has been a violation of article 7 of the Covenant.

...

9.8 The Human Rights Committee...is of the view that the facts that have been set forth constitute violations of article 6, paragraph 1; article 7 in respect of Gustavo Coronel Navarro, Nahún Elías Sánchez Vega, Luis Ernesto Ascanio Ascanio and Luis Honorio Quintero Ropero; article 9; and article 17 of the Covenant.

10. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party has an obligation to provide the victims' relatives with effective remedy, including compensation. The Committee urges the State party to conclude without delay the investigations into the violation of articles 6 and 7 and to speed up the criminal proceedings against the perpetrators in the ordinary criminal courts. The State party is also obliged to take steps to prevent similar violations from occurring in the future.

TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

- *C. v. Australia* (900/1999), ICCPR, A/58/40 vol. II (28 October 2002) 188 (CCPR/C/76/D/900/1999) at paras. 2.1, 3.1, 3.2, 8.4, 8.5, 9 and 10.

...

2.1 The author, who has close family ties in Australia 3/ but none in Iran, was lawfully in Australia from 2 February 1990 to 8 August 1990 and left thereafter. On 22 July 1992, the author returned to Australia with a Visitor's Visa but no return air ticket, and was detained, as a "non-citizen" without an entry permit, in immigration detention under (then) s.89 Migration Act 1958 pending removal ("the first detention").

...

3.1 The author contends that he has suffered a violation of his rights under article 7 in dual fashion. Firstly, he was detained in such a way and for such a prolonged period (from his arrival on 22 July 1992 until 10 August 1994) as to cause him mental illness, from which he did not earlier suffer. The medical evidence was unanimous in concluding that his severe psychiatric illness was brought about by his prolonged incarceration, ... and this had been accepted by the AAT [Administrative Appeals Tribunal] and the courts. The author contends that he was initially imprisoned without any evidence of a risk of abscondment or other danger to the community. He could have been released into the community with commonly utilized bail conditions such as a bond or surety, or residential and/or reporting requirements. The author also alleges that his current detention is in breach of article 7.20/

3.2 Secondly, the author argues a violation of article 7 by Australia in that his proposed deportation to Iran would expose him to a real risk of a violation of his Covenant rights, at least of article 7 and possibly also article 9, by Iran. He refers in this connection to the Committee's jurisprudence that if a State party removes a person within its jurisdiction, and the necessary and foreseeable consequence is a violation of that person's rights under the Covenant in another jurisdiction, the State party itself may be in violation of the Covenant.21/ He considers that the Minister's delegate found that the author had a well-founded fear of persecution in Iran because of his religion and because his psychological state may bring him to the notice of the authorities which could lead to the deprivation of his liberty under such conditions as to constitute persecution. Far from being overturned in subsequent proceedings, the AAT in fact affirmed this position. Moreover, the author argues that the pattern of conduct shown by Iran supports the conclusion that he will be exposed to a violation of his Covenant rights in the event of deportation.22/

...

8.4 As to the author's allegations that his first period of detention amounted to a breach of article 7, the Committee notes that the psychiatric evidence emerging from examinations of the author over an extended period, which was accepted by the State party's courts and tribunals, was essentially unanimous that the author's psychiatric illness developed as a result

of the protracted period of immigration detention. The Committee notes that the State party was aware, at least from August 1992 when he was prescribed tranquillisers, of psychiatric difficulties the author faced. Indeed, by August 1993, it was evident that there was a conflict between the author's continued detention and his sanity. Despite increasingly serious assessments of the author's conditions in February and June 1994 (and a suicide attempt), it was only in August 1994 that the Minister exercised his exceptional power to release him from immigration detention on medical grounds (while legally he remained in detention). As subsequent events showed, by that point the author's illness had reached such a level of severity that irreversible consequences were to follow. In the Committee's view, the continued detention of the author when the State party was aware of the author's mental condition and failed to take the steps necessary to ameliorate the author's mental deterioration constituted a violation of his rights under article 7 of the Covenant.

8.5 As to the author's arguments that his deportation would amount to a violation of article 7, the Committee attaches weight to the fact that the author was originally granted refugee status on the basis of a well-founded fear of persecution as an Assyrian Christian, coupled with the likely consequences of a return of his illness. In the Committee's view, the State party has not established that the current circumstances in the receiving State are such that the grant of refugee status no longer holds validity. The Committee further observes that the AAT, whose decision was upheld on appeal, accepted that it was unlikely that the only effective medication (Clozaril) and back-up treatment would be available in Iran, and found the author "blameless for his mental illness" which "was first triggered while in Australia". In circumstances where the State party has recognized a protection obligation towards the author, the Committee considers that deportation of the author to a country where it is unlikely that he would receive the treatment necessary for the illness caused, in whole or in part, because of the State party's violation of the author's rights would amount to a violation of article 7 of the Covenant.

9. The Human Rights Committee...is of the view that the facts before it disclose violations of articles 7 and 9, paragraphs 1 and 4, of the Covenant.

10. 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. As to the violations of articles 7 and 9 suffered by the author during the first period of detention, the State party should pay the author appropriate compensation. As to the proposed deportation of the author, the State party should refrain from deporting the author to Iran. The State party is under an obligation to avoid similar violations in the future.

_____

Notes

...

3/ The author's mother, along with his brother and sister-in-law reside in Australia, while his father is deceased. Another brother resides in Canada.

...

20/ This is clarified by his subsequent (final) submissions of 21 September 2001. See paragraph 5.3 (with footnote 57), paragraph 6.3 and paragraphs 6.5 to 6.8.

21/ *A. R. J. v. Australia* (No. 692/1996) and *T. v. Australia* (No. 706/1996), coupled with General Comment 20 on article 7.

22/ In this connection the author supplies reports, dated 14 December 1994, 1 August 1997, and 19 November 1999, by Dr. Colin Rubinstein, Senior Lecturer in Middle East Politics (Monash University) and member of Victorian Ethnic Affairs Commission, detailing "real and effective discrimination against Christians", "effective intimidation", "the fiercest campaign since 1979 against the small Christian minority", including killings of clerics and arrests of apostates and a "gradual eradication of existing churches under legal pretences". The situation for minorities, including Christians, is "clearly degenerating" and "deteriorating rapidly". Accordingly, the author could expect a "high probability of vindictive retaliation" and "real persecution" in the event of his return.

For dissenting opinion in this context, see C. v. Australia (900/1999), ICCPR, A/58/40 vol. II (28 October 2002) 188 (CCPR/C/76/D/900/1999) at Individual Opinion of Mr. Nisuke Ando, Mr. Eckart Klein and Mr. Maxwell Yalden, 215.

- *Van Grinsven v. The Netherlands* (1142/2002), ICCPR, A/58/40 vol. II (27 March 2003) 603 (CCPR/C/77/D/1142/2002) at paras. 2.1-2.3 and 5.6.

...

2.1 According to the author, in June 1998 the author's wife attempted to kill their two children. Subsequently, the children remained in the sole custody of the author, and his wife was made to follow psychiatric treatment. The author filed for divorce in December 1998.

2.2 In July 1999, the court (Rechtbank) in 's-Hertogenbosch awarded joint custody to the parents, but decided that the children should live with their mother. However, when the mother came to pick up the children from the author's house in August, the author killed her. The author claims that he killed his wife in order to protect his children from their mother. On 12 September 2001, on appeal the Court (Gerechtshof 's-Hertogenbosch) convicted the author of the murder of his wife. He was sentenced to 6 years' imprisonment.

2.3 On 13 March 2000, the first instance court (Rechtbank 's-Hertogenbosch) decided to withdraw child custody from the father and the author's application for visits and telephone contact with his children was denied. On 12 July 2000, the Court of Appeal (Gerechtshof 's-Hertogenbosch) ordered further examination of the children's situation and needs. Subsequently, in its decision of 2 January 2002, the Court of Appeal confirmed the lower court's decision that it is in the interest of the children not to visit or to have telephone contact with their father. On 12 February 2002, the author's lawyer provided him with detailed advice on why an appeal in cassation would have no chance of success. He explained that since the author's complaint was based only on the court's evaluation of facts and evidence, it could not be appealed further.

...

5.6 With regard to the author's claim that he and his children were subjected to mental torture and cruel, inhuman and degrading treatment, the Committee notes that, in the circumstances of the case, the withdrawal of custody rights from the author, the refusal to let him meet and talk to his children, and the censoring of mail to his children, do not fall under the scope of article 7 of the Covenant. Furthermore, the Committee considers that the claim that the author and his children are being held in servitude of the state, in view of the factual circumstances of the case, does not fall within the scope of application of article 8 of the Covenant. Hence, these claims are incompatible with the Covenant and inadmissible under article 3 of the Optional Protocol.

...

- *Bondarenko v. Belarus* (886/1999), ICCPR, A/58/40 vol. II (3 April 2003) 161 (CCPR/C/77/D/886/1999) at paras. 2.1, 10.2 and 12.

...

2.1 Mr. Bondarenko was accused of murder and several other crimes, found guilty as charged and sentenced by the Minsk Regional Court on 22 June 1998 to death by firing squad. The decision was confirmed by the Supreme Court on 21 August 1998...

...

10.2 The Committee notes that the author's claim that her family was informed of neither the date, nor the hour, nor the place of her son's execution, nor of the exact place of her son's subsequent burial, has remained unchallenged. In the absence of any challenge to this claim by the State party, and any other pertinent information from the State party on the practice of execution of capital sentences, due weight must be given to the author's allegation. The Committee understands the continued anguish and mental stress caused to the author, as the mother of a condemned prisoner, by the persisting uncertainty of the circumstances that led to his execution, as well as the location of his gravesite. The Committee considers that complete secrecy surrounding the date of execution, and the place of burial and the refusal

to hand over the body for burial have the effect of intimidating or punishing families by intentionally leaving them in a state of uncertainty and mental distress. The Committee considers that the authorities' initial failure to notify the author of the scheduled date for the execution of her son, and their subsequent persistent failure to notify her of the location of her son's grave amounts to inhuman treatment of the author, in violation of article 7 of the Covenant.

...

12. 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 information on the location where her son is buried, and compensation for the anguish suffered. The State party is also under an obligation to prevent similar violations in the future.

See also:

- *Lyashkevich v. Belarus* (887/1999), ICCPR, A/58/40 vol. II (3 April 2003) 169 (CCPR/C/77/D/887/1999) at paras. 9.2 and 11.

- *Weiss v. Austria* (1086/2002), ICCPR, A/58/40 vol. II (3 April 2003) 375 (CCPR/C/77/D/1086/2002) at paras. 2.1, 2.2, 9.3 and 9.4.

...

2.1 In a trial beginning on 1 November 1998 in the District Court of Florida, the author was tried on numerous charges of fraud, racketeering and money laundering. He was represented throughout the trial by counsel of his choice. On 29 October 1999, as jury deliberations were about to begin, the author fled the courtroom and escaped. On 1 November 1999, the author was found guilty on all charges...

2.2 The author's counsel lodged a notice of appeal within the ten-day time limit stipulated by law. On 10 April 2000, the United States Court of Appeals for the Eleventh Circuit rejected the motion of the author's counsel to defer dismissal of the appeal, and dismissed it on the basis of the "fugitive disentitlement" doctrine. Under this doctrine, a court of appeal may reject an appeal lodged by a fugitive on the sole grounds that the appellant is a fugitive. With that decision, the criminal proceedings against the author were concluded in the United States.1/

...

9.3 As to the author's claim that by operation of the "fugitive disentitlement" doctrine he was denied a full appeal, the Committee notes that, on the information before it, it appears that the author - by virtue of being extradited on fewer than all the charges for which he was initially sentenced - will, according to the rule of specialty, be re-sentenced. According to information supplied to the State party, such a re-sentencing would entitle the author fully

to appeal his conviction and sentence. The Committee thus need not consider whether the "fugitive disentitlement" doctrine is compatible with article 14, paragraph 5, or whether extradition to a jurisdiction where an appeal had been so denied gives rise to an issue under the Covenant in respect of the State party.

9.4 As to whether the State party's extradition of the author to serve a sentence of life imprisonment without possibility of early release violates articles 7 and 10 of the Covenant, the Committee observes, as set out in its preceding paragraph, that the author's conviction and sentence are not yet final, pending the outcome of the re-sentencing process which would open the possibility to appeal against the initial conviction itself. Since conviction and sentence have not yet become final, it is premature for the Committee to decide, on the basis of hypothetical facts, whether such a situation gave rise to the State party's responsibility under the Covenant.

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Notes

1/ The author relies for this proposition on a decision of another United States District Court in *United States v Bakhtiar* 964 F Supp 112. That case held that, when a person was extradited on fewer charges than s/he had been convicted of, the original conviction and sentence remained intact, but an application for habeas corpus would lie against the executive once sentence had been served in respect of the extraditable offences...
...

_____

- *Sarma v. Sri Lanka* (950/2000), ICCPR, A/58/40 vol. II (16 July 2003) 248 (CCPR/C/78/D/950/2000) at paras. 2.1-2.6, 9.3, 9.5 and 11.

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

2.2 In the meantime, the author and other persons arrested were also transferred to

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

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

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

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

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

...

9.3 The Committee notes the definition of enforced disappearance contained in article 7, paragraph 2 (i) of the Rome Statute of the International Criminal Court14/: *"Enforced disappearance of persons" means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time*. Any act of such disappearance constitutes a violation of many of the rights enshrined in the Covenant, including the right to liberty and security of person (art. 9), the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment (art. 7), and the right of all persons deprived of their liberty to be

treated with humanity and with respect for the inherent dignity of the human person (art. 10). It also violates or constitutes a grave threat to the right to life (art. 6).15/

...

9.5 As to the alleged violation of article 7, the Committee recognizes the degree of suffering involved in being held indefinitely without any contact with the outside world16/, and observes that, in the present case, the author appears to have accidentally seen his son some 15 months after the initial detention. He must, accordingly, be considered a victim of a violation of article 7. Moreover, noting the anguish and stress caused to the author's family by the disappearance of his son and by the continuing uncertainty concerning his fate and whereabouts,17/ the Committee considers that the author and his wife are also victims of violation of article 7 of the Covenant. The Committee is therefore of the opinion that the facts before it reveal a violation of article 7 of the Covenant both with regard to the author's son and with regard to the author's family.

...

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

Notes

...

14/ Text of the Rome Statute circulated as document A/CONF.183/9 of 17 July 1998 and corrected by *procès-verbaux* of 10 November 1998, 12 July 1999, 30 November 1999, 8 May 2000, 17 January 2001 and 16 January 2002. The Statute entered into force on 1 July 2002.

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

16/ See *El Megreisi v. Libyan Arab Jamahiriya*, Case No. 440/1990, Views adopted on 23 March 1994.

17/ *Quinteros v. Uruguay*, Case No. 107/1981, Views adopted on 21 July 1983.

TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

- *Gómez Casafranca v. Peru* (981/2001), ICCPR, A/58/40 vol. II (22 July 2003) 278 (CCPR/C/78/D/981/2001) at paras. 2.1, 2.2, 7.1, 8 and 9.

...

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

2.2 According to the author, the victim was subjected to cruel and savage physical, psychological and mental torture. In the records of the second oral hearing, held in 1998, the prisoner states that he was tortured to obtain certain statements. Specifically, he tells of how they bent back his hands and twisted his arms, hoisted him up in the air, put a pistol in his mouth, took him to the beach and attempted to drown him, and later attempted to rape him by inserting a candle in his anus. On 7 September 2001 Mr. Gómez Casafranca reported the torture to which he had been subjected while at DIRCOTE on 3 October 1986 to the National Police Department of Human Rights. On 17 September 2001 the Department issued a finding in which it noted that the victim had been advised by counsel and that he had not submitted a complaint in a timely manner. Mr. Casafranca was charged with homicide, bodily injury and terrorist acts. The author maintains that her son always maintained his innocence and did not even know the other accused persons who, possibly owing to the torture to which they too were subjected, implicated him in the offence.

...

7.1 With regard to the author's claims that her son was subjected to ill-treatment while being held at the police station, the Committee notes that, while the author does not provide further information in this regard, the attached copies of the records of the oral proceedings of 30 January 1998 reveal how the victim described in detail before the judge the acts of torture to which he had been subjected. Taking into account the fact that the State party has not provided any additional information in this regard, or initiated an official investigation of the events described, the Committee finds that there was a violation of article 7 of the Covenant.

...

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

9. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an

obligation to release Mr. Gómez Casafranca and pay him appropriate compensation. The State party is also under an obligation to ensure that similar violations do not occur in future.

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Notes

1/ Department of Counter-Terrorism.

...

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

...

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

...

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

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

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Notes

...

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

...

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

- *Howell v. Jamaica* (798/1998), ICCPR, A/59/40 vol. II (21 October 2003) 21 (CCPR/C/79/D/798/1998) at paras. 2.1, 2.3-2.6, 2.9, 6.2, 6.3, 7 and 8.

...

2.1 The author was charged with seven counts of capital murder and was convicted on all seven counts and sentenced to death on 27 October 1993 by the Home Circuit Court in Kingston. The basis for the charge of capital murder was that the murders had been committed in the course of or in the furtherance of an act of terrorism.

...

2.3 After his conviction, the author was confined to death row at St. Catherine's District Prison, Spanish Town, Jamaica. On 15 October 1996, the author petitioned the Privy Council in London for leave to appeal against his conviction and sentence. The appeal was set for hearing on 26-27 January 1998, but it remains unclear whether the Privy Council heard the appeal or not.

2.4 In a letter dated 21 March 1997, the author complained to his counsel about the prison conditions at St. Catherine's District Prison, and particularly about an incident which occurred on 5 March 1997. On that day, as a reaction to an escape attempt initiated by four other inmates, some prisoners - including the author - were brutally beaten by two groups of 20 and 60 warders who punished whoever was directly or indirectly involved in the escape attempt. The author observes that "some warders started to beat me from every handle1/ while some were throwing away my personal belongings out of my cell" and that afterwards "the warders carried me into an empty bathroom where my ordeal started again".

2.5 As a result of the beatings, the author was brought to hospital where he informed the doctor that he was "feeling pain all over his body". The author was unable to contact counsel until some time later because he had suffered serious injury to one hand and was beaten to the point that "he could hardly walk". At the time of writing of his letter to the counsel - 16 days after the incident - he alleged that "various parts of [his] body is still swollen". Furthermore, his personal belongings as well as documents relating to his legal appeals were burned; in this connection, he reports that when he returned to his cell "it was almost empty and when I reach down stairs I saw a big fire on the compound with our personal belongings burning in the fire". The author adds that "as far as I understand, the warders got order to beat us and burn up our things".

2.6 The author submits that the scale of the warders' action and the apparent coordination of the respective groups of 20 and 60 warders can only be explained as deliberate and premeditated. In this connection, he alleges that the presence at the prison hospital of the Commissioner of Corrections as well as the Superintendent shortly after the incidents, taken together with the failure properly to investigate and prosecute the perpetrators of these actions, demonstrate the level at which the actions of the prison authorities were known and endorsed. He also states that he knew the names of the warders who searched his cell and beat him, but adds that he felt too threatened to denounce them.

...

2.9 Two letters dated 6 January and 4 September 1997 from a friend of the author to counsel, describe the conditions of detention, such as the size of the cells, hygienic conditions, the poor diet and the lack of dental care. It is submitted that visitors under 18 were not allowed into the prison, and the author could not see his children (aged 9 and 6) since he had been imprisoned; the death row compound - where inmates can only leave cells for about 20 minutes per day - is small and dirty, with faeces everywhere. The author could touch the walls on either side when standing in the middle of the floor of his cell and had to paper the walls to cover the dirt. The entire compound smells of sewage. Hygienic and medical conditions are poor, and so is the food. Due to the poor diet and the lack of dental care, the author lost numerous teeth.

...

6.2 In relation to the claim as to the violation of articles 7 and 10 (1), the Committee observes that the author has given a detailed account of the treatment he was subjected to and that the State party has not challenged his grievances. The Committee considers that the repeated beatings inflicted on the author by warders amount to a violation of article 7 of the Covenant3/. Furthermore, taking into account the Committee's earlier views in which it has found the conditions on death row in St. Catherine's District Prison to violate article 10 (1) 4/, the Committee considers that the author's conditions of detention, taken together with the lack of medical and dental care and the incident of the burning of his personal belongings, violate the author's right to be treated with humanity and respect for the dignity of his person

under article 10 (1) of the Covenant.

...

6.3 As to the claim that severe mental distress amounts to a further violation of Article 7 caused by the continued uncertainty of whether or not the author would be executed, the Committee recalls its constant jurisprudence that prolonged delays in the execution of a sentence of death do not *per se* constitute a violation of articles 7 in the absence of other "compelling circumstances"5/ In the present case, the Committee is of the view that the author has not shown the existence of such compelling circumstances. Accordingly, there has been no violation of article 7 in this respect.

...

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

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

Notes

1/ The author appears to refer to being made to run the gauntlet of a group of warders armed with sticks.

...

3/ See for example *McTaggart v. Jamaica*, No. 749/1997, para. 8.7, in which the author was beaten and had his personal belongings burnt.

4/ See particularly *McTaggart v. Jamaica*, communication No. 749/1997.

5/ See e.g. *Johnson v. Jamaica*, No. 588/1994, para. 8.5; *Francis v. Jamaica*, No. 606/1994, para. 9.1.

For dissenting opinion in this context, see Howell v. Jamaica (798/1998) ICCPR, A/59/40 vol. II (21 October 2003) 21 (CCPR/C/79/D/798/1998) at Individual Opinion by Mr. Prafullachandra Bhagwati, 27.

TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

- *Bakhtiyari v. Australia* (1069/2002), ICCPR, A/59/40 vol. II (29 October 2003) 301 (CCPR/C/79/D/1069/2002) at para. 8.4.

...

8.4 Referring to the arguments that Mrs. Bakhtiyari and her children, if removed to Afghanistan, would be in fear of being subjected to treatment contrary to article 7 of the Covenant, the Committee observes that as the authors have not been removed from Australia, the issue before the Committee is whether such removal if implemented at the present time would entail a real risk of treatment contrary to article 7 as a consequence. The Committee also observes that the State party's authorities, in the proceedings to date, have determined, as a matter of fact, that the authors are not from Afghanistan, and hence they do not stand in fear of being returned to that country by the State party. The authors on the other hand have failed to demonstrate that if returned to any other country, such as Pakistan, they would be liable to be sent to Afghanistan, where they would be in fear of treatment contrary to article 7. Much less have the authors substantiated that even if returned to Afghanistan, directly or indirectly, they would face, as a necessary and foreseeable consequence, treatment contrary to article 7. The Committee accordingly takes the view that the claim that, if the State party returns them at the present time, Mrs. Bakhtiyari and her children would have to face treatment contrary to article 7, has not been substantiated before the Committee, for purposes of admissibility, and is inadmissible under article 2 of the Optional Protocol.

- *Wilson v. The Philippines* (868/1999), ICCPR, A/59/40 vol. II (30 October 2003) 48 (CCPR/C/79/D/868/1999) at paras. 2.1, 2.3-2.6, 2.8, 7.2-7.4, 8 and 9.

...

2.1 On 16 September 1996, the author was forcibly arrested without warrant as a result of a complaint of rape filed by the biological father of the author's twelve year old step-daughter and transferred to a police station. He was not advised of his rights, and, not speaking the local language, was unaware as to the reasons for what was occurring. At the police station, he was held in a 4 x 4 ft cage with three others, and charged on the second day with attempted rape of his stepdaughter. He was then transferred to Valenzuela municipal jail, where the charge was changed to rape. There he was beaten and ill-treated in a "concrete coffin". This 16 x 16 ft cell held 40 prisoners with a 6 inch air gap some 10 ft from the floor. One inmate was shot by a drunken guard, and the author had a gun placed to his head on several occasions by guards. The bottoms of his feet were struck by a guard's baton, and other inmates struck him on the guards' orders. He was ordered to strike other prisoners and was beaten when he refused to do so. He was also constantly subjected to extortion by other inmates with the acquiescence and in some instances on the direct instruction of the prison authorities, and beaten when he refused to pay or perform the directed act(s). There was no

running water, insufficient sanitary conditions (a single non-flush bowl in the cell for all detainees), no visiting facility, and severe food rationing. Nor was he segregated from convicted prisoners.

...

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

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

2.5 The author was forced to pay for the 8 x 8 ft area in which he slept and financially to support the eight others with him. He was forced to sleep alongside drug-deranged individuals and persons who deliberately and constantly deprived him of sleep. He was forcibly tattooed with a permanent gang mark. Inmates were stretched out on a bench on public display and beaten with wood across the thighs, or otherwise "taught a lesson". The author states he lived in constant fear coming close to death and suicidal depression, watching six inmates walk to their execution while five others died violent deaths. Fearing death after a "brutally unfair and biased" trial, he suffered severe physical and psychological distress and felt "total helplessness and hopelessness". As a result, he is "destroyed both financially and in many ways emotionally".

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

...

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

...

7.2 As to the author's claims relating to the imposition of the death penalty, including passing of sentence of death for an offence that under the law of the State party, enacted subsequent to capital punishment having once been removed from the criminal code, carried mandatory capital punishment, without allowing the sentencing court to pay due regard to the specific circumstances of the particular offence and offender, the Committee observes that the author is no longer subject to capital punishment, as his conviction and hence the imposition of capital punishment was annulled by the Supreme Court in late December 1999, after the author had spent almost 15 months in imprisonment following sentence of death. In these circumstances, the Committee considers it appropriate to address the remaining issues related to capital punishment in the context of the author's claims under article 7 of the Covenant instead of separately determining them under article 6.

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

7.4 As to the claims concerning the author's mental suffering and anguish as a consequence of being sentenced to death, the Committee observes that the authors' mental condition was

exacerbated by his treatment in, as well as the conditions of, his detention, and resulted in documented long-term psychological damage to him. In view of these aggravating factors constituting further compelling circumstances beyond the mere length of time spent by the author in imprisonment under a sentence of death,13/ the Committee concludes that the author's suffering under a sentence of death amounted to an additional violation of article 7. None of these violations were remedied by the Supreme Court's decision to annul the author's conviction and death sentence after he had spent almost fifteen months of imprisonment under a sentence of death.

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

9. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy. In respect of the violations of article 9 the State party should compensate the author. As to the violations of articles 7 and 10 suffered while in detention, including subsequent to sentence of death, the Committee observes that the compensation provided by the State party under its domestic law was not directed at these violations, and that compensation due to the author should take due account both of the seriousness of the violations and the damage to the author caused. In this context, the Committee recalls the duty upon the State party to undertake a comprehensive and impartial investigation of the issues raised in the course of the author's detention, and to draw the appropriate penal and disciplinary consequences for the individuals found responsible... All monetary compensation thus due to the author by the State party should be made available for payment to the author at the venue of his choice, be it within the State party's territory or abroad. The State party is also under an obligation to avoid similar violations in the future.

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Notes

...

13/ *Johnson v. Jamaica* case No. 588/1994, Views adopted on 22 March 1996; *Francis v. Jamaica* case No. 606/1994, Views adopted on 25 June 1995.

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- *Baroy v. The Philippines* (1045/2002), ICCPR, A/59/40 vol. II (31October 2003) 518 (CCPR/C/79/D/1045/2002) at paras. 2.1-2.3, 8.3 and 9.

...

2.1 On 2 March 1998, a woman was raped three times. The author and an (adult)

co-accused were thereafter charged with three counts of rape with use of a deadly weapon contrary to article 266A(1), 1/ in conjunction with article 266B(2), 2/ of the Revised Penal Code. It is alleged that on the date of the offence, the author would have been 14 years, 1 month and 14 days old, by virtue of being born on 19 January 1984.

2.2 At trial, the defence introduced the issue of minority through the author, who claimed to have been born in 1982. The trial court instructed the appropriate government agencies to submit evidence on his true age. Three documents were submitted. A Certificate of Live Birth listed the date as 19 January 1984, while a Certificate of Late Registration of Birth showed the date as 19 January 1981, and an Elementary School permanent record as 19 January 1980. The trial court considered, in the light of the author's physical appearance, that the author's true date of birth was 19 January 1980, thus making him over 18 years of age at the time the offence was committed.

2.3 On 20 January 1999, the author and his (adult) co-accused were each convicted of three counts of rape with a deadly weapon and sentenced to death by lethal injection. In imposing the maximum penalty available, the Court considered that there were the aggravating circumstances of nighttime and confederation, and no mitigating circumstances. By way of civil liability, each was further sentenced to pay, in respect of each count, PHP50,000 in indemnity, PHP50,000 in moral damages and PHP50,000 in civil damages. On 4 January 2002, the communication was submitted to the Committee.

...

8.3 In spite of this conclusion with respect to the claims under article 6 [finding the claim inadmissible], the Committee observes that sentencing a person to death and placing him or her on death row in circumstances where his or her minority has not been finally determined raises serious issues under articles 10 and 14, as well as potentially under article 7, of the Covenant. The Committee observes, however, with respect to the exhaustion of domestic remedies, that the author has filed a "partial motion for reconsideration", currently pending before the Supreme Court, requesting the Court to reconsider its treatment of his minority in its judgment of 9 May 2002...

9. The Committee therefore decides:

(a) That the communication is inadmissible under articles 1 and 5, paragraph 2(b), of the Optional Protocol;

...

Notes

1/ This provision defines rape as committed "by a man who shall have carnal knowledge

of woman under any of the following circumstances:
a) through force, threat or intimidation; ….".

2/ This provision sets out : "Whenever the rape is committed with a use of a deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death."

- *Kurbanova v. Tajikistan* (1096/2002), ICCPR, A/59/40 vol. II (6 November 2003) 354 (CCPR/C/79/D/1096/2002) at paras. 2.1, 2.2, 7.4 and 7.5.

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

2.2 On 9 June 2001, a criminal investigation was opened in relation to the triple murder of Firuz and Fayz Ashurov and D. Ortikov, which had occurred in Dushanbe on 29 April 2001. In addition to the initial fraud charge, the author's son was, on 30 July 2001, charged with the murders and with illegal possession of firearms2/. The author claims that her son was tortured before he accepted to write down his confession under duress; during her visits, she noted scars on her son's neck and head, and as well as broken ribs. She adds that one of the torturers - investigation officer Rakhimov - was charged in August 2001 with having received bribes and with abuse of power in 13 other cases also related to the use of torture; he was later sentenced to 5 years and 6 months of imprisonment.
...
7.4 The Committee has noted the author's fairly detailed description of beatings and other ill-treatment that her son was subjected to. She has furthermore identified by name some of the individuals alleged to have been responsible for her son's ill-treatment. In reply, the State party has confined itself to stating that these allegations were neither raised during the investigation nor in court. The Committee recalls, 4/ with regard to the burden of proof, that this 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 evidence and that frequently the State party alone has access to relevant information. Further, the mere fact that no allegation of torture was made in the domestic appeal proceedings cannot as such be held against the alleged victim if it is proposed, as in the present case, that such an allegation was in fact made during the actual trial but was neither recorded nor acted upon. In the light of

the details given by the author on the alleged ill-treatment, the unavailability of a trial transcript and the absence of any further explanations from the State party, due weight must be given to the author's allegations. Noting in particular that the State party has failed to investigate the author's allegations, which were brought to the State party's authorities' attention, the Committee considers that the facts as submitted disclose a violation of article 7 of the Covenant.

7.5 In the light of the above finding and the fact that the author's conviction was based on his confession obtained under duress, the Committee concludes that there was also a violation of article 14, paragraph 3 (g), of the Covenant.

...

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Notes

...

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

...

4/ See, for example, Communication No. 161/1983, *Rubio v. Colombia*.

_____

- *Pryce v. Jamaica* (793/1998), ICCPR, A/59/40 vol. II (15 March 2004) 10 at paras. 6.2 and 8.

...

6.2 The Committee notes that the author has made specific and detailed allegations concerning his punishment. The State party has not responded to these allegations. The Committee notes that the author was sentenced to six strokes of the tamarind switch and recalls its jurisprudence3/, that, irrespective of the nature of the crime that is to be punished, however brutal it may be, corporal punishment constitutes cruel, inhuman and degrading treatment or punishment contrary to article 7 of the Covenant. The Committee finds that the imposition of a sentence of whipping with the tamarind switch on the author constituted a violation of the author's rights under article 7, as did the manner in which the sentence was executed.

...

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. The State party is under an obligation to ensure that similar violations do not occur in the future and to repeal domestic legislative provisions that allow for corporal punishment.

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TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Notes

...

3/ See *Malcolm Higginson v. Jamaica*, communication No. 792/1998, where the author was subjected to receive 6 strokes of the tamarind switch, and see also *George Osbourne v. Jamaica*, communication No. 759/1997, where the author was sentenced to 15 years' imprisonment with hard labour and was subjected to receive 10 strokes of the tamarind switch.

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

...

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

8.2 The Committee notes that with regard to these allegations, the State party has disputed only that there are inadequate medical facilities, that the author received regular medical treatment from 1997 and that now he has a mattress, receives nutritious food, and that the sewage disposal system works satisfactorily. The Committee notes, however, that the author was detained in 1987 and transferred to death row in June 1988, and from there to the General Penitentiary after commutation of his death sentence, and that it does not transpire from the State party's submission that his conditions of detention were compatible with article 10 prior to January 1997. The rest of the author's allegations stand undisputed and, in these circumstances, the Committee finds that article 10, paragraph 1, has been violated. In light of this finding, in respect of article 10, a provision of the Covenant dealing specifically with the situation of persons deprived of their liberty and encompassing for such persons the elements set out generally in article 7, it is not necessary separately to consider the claims under article 7 of the Covenant.

TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

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

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

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

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

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

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

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

office told the author that any exhumation was subject to the initiation of criminal proceedings, under article 180 of the Criminal Code of the Russian Federation. In the case in point, the author's request could not be met, according to the procurator's office, as the decision of 13 April 1994 by the Nizhny Tagil procurator's office was under review by the Procurator General of the Russian Federation, following an appeal lodged by Mrs. Telitsina.
....
7.3 [The Committee]...notes that the State party maintains the theory of suicide on the basis of the report by the forensic medical expert, an inspection of the scene of the incident, a study of the photographs of the deceased and statements by prison staff and prisoners. It also takes note of the author's arguments rebutting the suicide explanation, particularly the absence of photographs of the place and manner of her son's death by hanging and the production by the authorities of photographs that Mrs. Telitsina claims have been manipulated.

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

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

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

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

8. The Human Rights Committee...finds that the State party violated article 6, paragraph 1,

article 7 and article 10, paragraph 1, of the Covenant.

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

- *Ahani v. Canada* (1051/2002), ICCPR, A/59/40 vol. II (29 March 2004) 260 at paras. 2.1-2.10, 8.1, 8.2, 10.2-10.10, 11 and 12.

...
2.1 On 14 October 1991, the author arrived in Canada from Iran and claimed protection under the Convention on the Status of Refugees and its Protocol, based on his political opinion and membership in a particular social group. He contended, on various occasions, (i) that he had been beaten by members of the Islamic Revolutionary Committee in Iran for being intoxicated, (ii) that his return to Iran would endanger his life due to his knowledge of Iranian covert operations and personnel, knowledge which he had acquired as a forced conscript in the foreign assassins branch of the Iranian Foreign Ministry, (iii) that he had been jailed for four years as a result of refusing to carry out a drug raid which was in fact a raid on the home of an Iranian dissident, with women and children, in Pakistan, and (iv) that he had been released after pretending to repent. On 1 April 1992, the Immigration and Refugee Board determined that the author was a Convention refugee based on his political opinion and membership in a particular social group.

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

2.3 On 22 June 1993, in accordance with the statutory procedure set out in section 40 (1) of the Act for a determination of whether the Ministers' certificate was "reasonable on the basis

of the information available", the Federal Court (Denault J.) examined the security intelligence reports in camera and heard other evidence presented by the Solicitor-General and the Minister, in the absence of the plaintiff. The Court then provided the author with a summary of the information, required by statute to allow the affected person to be "reasonably" informed of the circumstances giving rise to the certification while being appropriately redacted for national security concerns, and offered the author an opportunity to respond.

2.4 Rather than exercising his right to be heard under this procedure, the author then challenged the constitutionality of the certification procedure and his detention subsequent to it in a separate action before the Federal Court. On 12 September 1995, the Federal Court (McGillis J.) rejected his challenge, holding that the procedure struck a reasonable balance between competing interests of the State and the individual, and that the detention upon the Ministers' certification pending the Court's decision on its reasonableness was not arbitrary. The author's further appeals against that decision were dismissed by the Federal Court of Appeal and the Supreme Court on 4 July 1996 and 3 July 1997, respectively.

2.5 Following the affirmation of the constitutionality of section 40 (1) procedure, the Federal Court (Denault J.) proceeded with the original reasonableness hearing, and, following extensive hearings, concluded on 17 April 1998 that the certificate was reasonable. The evidence included information gathered by foreign intelligence agencies which was divulged to the Court *in camera* in the author's absence on national security grounds. The Court also heard the author testify on his own behalf in opposition to the reasonableness of the certificate. The Court found that there were grounds to believe that the author was a member of the MIS, which "sponsors or undertakes directly a wide range of terrorist activities including the assassination of political dissidents worldwide". The Federal Court's decision on this matter was not subject to appeal or review.

2.6 Thereafter, in April 1998, an immigration adjudicator determined that the author was inadmissible to Canada, and ordered the author's deportation. On 22 April 1998, the author was informed that the Minister of Citizenship and Immigration would assess the risk the author posed to the security of Canada, as well as the possible risk that he would face if returned to Iran. The Minister was to consider these matters in deciding under section 53 (1) (b) of the Act1/ (which implements article 33 of the Convention on the Status of Refugees) whether the prohibition on removing a Convention refugee to the country of origin could be lifted in the author's case. The author was accordingly given an opportunity to make submissions to the Minister on these issues.

2.7 On 12 August 1998, the Minister, following representations by the author that he faced a clear risk of torture in Iran, determined, without reasons and on the basis of a memorandum

attaching the author's submissions, other relevant documents and a legal analysis by officials, that he (a) constituted a danger to the security of Canada, and (b) could be removed directly to Iran. The author applied for judicial review of the Minister's opinion. Pending the hearing of the application, the author applied for release from detention pursuant to section 40(1)(8) of the Act, as 120 days has passed from the issue of the deportation order against him2/. On 15 March 1999, the Federal Court (Denault J.), finding reasonable grounds to believe that his release would be injurious to the safety of persons in Canada, particularly Iranian dissidents, denied the application for release. The Federal Court of Appeal upheld this decision.

2.8 On 23 June 1999, the Federal Court (McGillis J.) rejected the author's application for judicial review of the Minister's decision, finding there was ample evidence to support the Minister's decision that the author constituted a danger to Canada and that the decision to deport him was reasonable. The Court also dismissed procedural constitutional challenges, including to the process of the provision of the Minister's danger opinion. On 18 January 2000, the Court of Appeal rejected the author's appeal. It found that "the Minister could rightly conclude that the [author] would not be exposed to a serious risk of harm, let alone torture" if he were deported to Iran. It agreed that there were reasonable grounds to support the allegation that the author was in fact a trained assassin with the Iranian secret service, and that there was no basis upon which to set aside the Minister's opinion that he was a danger to Canada.

2.9 On 11 January 2001, the Supreme Court unanimously rejected the author's appeal, finding that there was "ample support" for the Minister to decide that the author was a danger to the security of Canada. It further found the Minister's decision that he only faced a "minimal risk of harm", rather than a substantial risk of torture, in the event of return to Iran to be reasonable and "unassailable". On the constitutionality of deportation of persons at risk of harm under section 53 (1) (b) of the Act, the Court referred to its reasoning in a companion case of *Suresh v. Canada (Minister of Citizenship and Immigration)*3/ decided the same day, where it held that "barring extraordinary circumstances, deportation to torture will generally violate the principles of fundamental justice". As *Suresh* had established a *prima facie* risk of torture, he was entitled to enhanced procedural protections, including provision of all information and advice the Minister intended to rely on, receipt of an opportunity to address the evidence in writing and to be given written reasons by the Minister. In the author's case, however, the Court considered that he had not cleared the evidentiary threshold required to make a *prima facie* case and access these protections. The Court was of the view that the author, in the form of the letter advising him of the Minister's intention to consider his danger to Canada as well as the possible risks to him in the event of expulsion, "was fully informed of the Minister's case against him and given a full opportunity to respond". The process followed, according to the Court, was therefore

consistent with principles of fundamental justice and not prejudicial to the author even though it had not followed the *Suresh* requirements.

2.10 The same day, the Committee indicated its request pursuant to rule 86 of its rules of procedure for interim measures of protection, however the State party's authorities proceeded with arrangements to effect removal. On 15 January 2002, the Ontario Superior Court (Dambrot J.) rejected the author's argument that the principles of fundamental justice, protected by the *Charter*, prevented his removal prior to the Committee's consideration of the case. On 8 May 2002, the Court of Appeal for Ontario upheld the decision, holding that the request for interim measures was not binding upon the State party. On 16 May 2002, the Supreme Court, by a majority, dismissed the author's application for leave to appeal (without giving reasons). On 10 June 2002, the author was deported to Iran.

...

8.1 The Committee finds, in the circumstances of the case, that the State party breached its obligations under the Optional Protocol, by deporting the author before the Committee could address the author's allegation of irreparable harm to his Covenant rights. The Committee observes that torture is, alongside the imposition of the death penalty, the most grave and irreparable of possible consequences to an individual of measures taken by the State party. Accordingly, action by the State party giving rise to a risk of such harm, as indicated *a priori* by the Committee's request for interim measures, must be scrutinized in the strictest light.

8.2 Interim measures pursuant to rule 86 of the Committee's rules adopted in conformity with article 39 of the Covenant, are essential to the Committee's role under the Protocol. Flouting of the rule, especially by irreversible measures such as the execution of the alleged victim or his/her deportation from a State party to face torture or death in another country, undermines the protection of Covenant rights through the Optional Protocol.

...

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

4, to judicial review of the detention, that is to say, review of the substantive justification of detention, as well as sufficiently frequent review.

10.3 As to the alleged violation of article 9, paragraph 4, the Committee is prepared to accept that a "reasonableness" hearing in Federal Court promptly after the commencement of mandatory detention on the basis of a Ministers' security certificate is, in principle, sufficient judicial review of the justification for detention to satisfy the requirements of article 9, paragraph 4, of the Covenant. The Committee observes, however, that when judicial proceedings that include the determination of the lawfulness of detention become prolonged the issue arises whether the judicial decision is made "without delay" as required by the provision, unless the State party sees to it that interim judicial authorization is sought separately for the detention. In the author's case, no such separate authorization existed although his mandatory detention until the resolution of the "reasonableness" hearing lasted 4 years and 10 months. Although a substantial part of that delay can be attributed to the author who chose to contest the constitutionality of the security certification procedure instead of proceeding directly to the "reasonableness" hearing before the Federal Court, the latter procedure included hearings and lasted nine and half months after the final resolution of the constitutional issue on 3 July 1997. This delay alone is in the Committee's view too long in respect of the Covenant requirement of judicial determination of the lawfulness of detention without delay. Consequently, there has been a violation of the author's rights under article 9, paragraph 4, of the Covenant.

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

10.5 As to the claims under articles 6, 7, 13 and 14, with respect to the process and the fact of the author's expulsion, the Committee observes, at the initial stage of the process, that at the Federal Court's "reasonableness" hearing on the security certification the author was provided by the Court with a summary redacted for security concerns reasonably informing him of the claims made against him. The Committee notes that the Federal Court was conscious of the "heavy burden" upon it to assure through this process the author's ability appropriately to be aware of and respond to the case made against him, and the author was able to, and did, present his own case and cross-examine witnesses. In the circumstances of national security involved, the Committee is not persuaded that this process was unfair to the author. Nor, recalling its limited role in the assessment of facts and evidence, does the Committee discern on the record any elements of bad faith, abuse of power or other arbitrariness which would vitiate the Federal Court's assessment of the reasonableness of the

certificate asserting the author's involvement in a terrorist organization. The Committee also observes that the Covenant does not, as of right, provide for a right of appeal beyond criminal cases to all determinations made by a court. Accordingly, the Committee need not determine whether the initial arrest and certification proceedings in question fell within the scope of articles 13 (as a decision pursuant to which an alien lawfully present is expelled) or 14 (as a determination of rights and obligations in a suit at law), as in any event the author has not made out a violation of the requirements of those articles in the manner the Federal Court's "reasonableness" hearing was conducted.

10.6 Concerning the author's claims under the same articles with respect to the subsequent decision of the Minister of Citizenship and Immigration that he could be deported, the Committee notes that the Supreme Court held, in the companion case of *Suresh*, that the process of the Minister's determination in that case of whether the affected individual was at risk of substantial harm and should be expelled on national security grounds was faulty for unfairness, as he had not been provided with the full materials on which the Minister based his or her decision and an opportunity to comment in writing thereon and further as the Minister's decision was not reasoned. The Committee further observes that where one of the highest values protected by the Covenant, namely the right to be free from torture, is at stake, the closest scrutiny should be applied to the fairness of the procedure applied to determine whether an individual is at a substantial risk of torture. The Committee emphasizes that this risk was highlighted in this case by the Committee's request for interim measures of protection.

10.7 In the Committee's view, the failure of the State party to provide him, in these circumstances, with the procedural protections deemed necessary in the case of *Suresh*, on the basis that the present author had not made out a *prima facie* risk of harm fails to meet the requisite standard of fairness. The Committee observes in this regard that such a denial of these protections on the basis claimed is circuitous in that the author may have been able to make out the necessary level of risk if in fact he had been allowed to submit reasons on the risk of torture faced by him in the event of removal, being able to base himself on the material of the case presented by the administrative authorities against him in order to contest a decision that included the reasons for the Minister's decision that he could be removed. The Committee emphasizes that, as with the right to life, the right to be free from torture requires not only that the State party not only refrain from torture but take steps of due diligence to avoid a threat to an individual of torture from third parties.

10.8 The Committee observes further that article 13 is in principle applicable to the Minister's decision on risk of harm, being a decision leading to expulsion. Given that the domestic procedure allowed the author to provide (limited) reasons against his expulsion and to receive a degree of review of his case, it would be inappropriate for the Committee to

accept that, in the proceedings before it, "compelling reasons of national security" existed to exempt the State party from its obligation under that article to provide the procedural protections in question. In the Committee's view, the failure of the State party to provide him with the procedural protections afforded to the plaintiff in *Suresh* on the basis that he had not made out a risk of harm did not satisfy the obligation in article 13 to allow the author to submit reasons against his removal in the light of the administrative authorities' case against him and to have such complete submissions reviewed by a competent authority, entailing a possibility to comment on the material presented to that authority. The Committee thus finds a violation of article 13 of the Covenant, in conjunction with article 7.

10.9 The Committee notes that as article 13 speaks directly to the situation in the present case and incorporates notions of due process also reflected in article 14 of the Covenant, it would be inappropriate in terms of the scheme of the Covenant to apply the broader and general provisions of article 14 directly.

10.10 As a result of its finding that the process leading to the author's expulsion was deficient, the Committee thus does not need to decide the extent of the risk of torture prior to his deportation or whether the author suffered torture or other ill-treatment subsequent to his return. The Committee does however refer, in conclusion, to the Supreme Court's holding in *Suresh* that deportation of an individual where a substantial risk of torture had been found to exist was not necessarily precluded in all circumstances. While it has neither been determined by the State party's domestic courts or by the Committee that a substantial risk of torture did exist in the author's case, the Committee expresses no further view on this issue other than to note that the prohibition on torture, including as expressed in article 7 of the Covenant, is an absolute one that is not subject to countervailing considerations.

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

12. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including compensation. In the light of the circumstances of the case, the State party, having failed to determine appropriately whether a substantial risk of torture existed such as to foreclose the author's deportation, is under an obligation (a) to make reparation to the author if it comes to light that torture was in fact suffered subsequent to deportation, and (b) to take such steps as may be appropriate to ensure that the author is not, in the future, subjected to torture as a result

of the events of his presence in, and removal from, the State party. The State party is also under an obligation to avoid similar violations in the future, including by taking appropriate steps to ensure that the Committee's requests for interim measures of protection will be respected.

Notes

1/ Section 53 (1) (b) reads, in relevant part: "…[N]o person who is determined…to be a Convention refugee…shall be removed from Canada to a country where the person's life or freedom would be threatened for reasons of race, religion, nationality, membership in a particular social group or political opinion unless

…

(b) the person is a member of an inadmissible class described in paragraph 19 (1) (e), (f), (g), (j), (k) or (l) and the Minister is of the opinion that the person constitutes a danger to the security of Canada".

2/ Section 40 (1) provides, in material part:

"(8) Where a person is detained under subsection (7) and is not removed from Canada within 120 days of after the making of a removal order relating to that person, the person may apply to the [Federal Court].

(9) On [such] an application, the [Federal Court] may, subject to such terms and conditions as the [Federal Court] deems appropriate, order that the person be released from detention if the [Federal Court] is satisfied that:

(a) The person will not be removed from Canada within a reasonable time; and

(b) The person's release would not be injurious to national security or the safety of persons."

3/ [2002] 1 SCR.

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

TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

- *Mulezi v. Democratic Republic of the Congo* (962/2001), ICCPR, A/59/40 vol. II (6 July 2004) 159 at paras. 2.2, 2.4, 2.5, 2.8, 5.3, 6 and 7.

...

2.2 At around 5 a.m. on 27 December 1997, members of a military intelligence service of the Congolese Armed Forces - known as "Détection Militaire des Activités Antipatrie" or DEMIAP associated with the regime of Congolese President Laurent Désiré Kabila - called on the author at his home to tell him that his services were required by Commander Mortos. The author was taken to the Gemena military camp, where he was immediately placed in detention. At 9 a.m. he was subjected to an interrogation directed by Commander Mortos concerning his alleged collaboration with the former President of the Congo, General Joseph Désiré Mobutu, and his associates.

...

2.4 When he contested these accusations, the author was brutally beaten up by at least six soldiers. In addition to injuries to the nose and mouth, his fingers were broken. He was tortured again the following day, when he was tied up and beaten all over his body until he lost consciousness. In the course of some two weeks of detention in Gemena, the author was tortured four or five times every day: hung upside down; lacerated; the nail of his right forefinger pulled out with pincers; cigarette burns; both legs broken by blows to the knees and ankles with metal tubing; two fingers broken by blows with rifle butts. Despite his condition, and in particular his loss of mobility, he was not allowed to see a doctor. Like his fellow detainees, the author was unable to leave his cell even for a shower or a walk. He states that he was in a cell measuring 3 metres by 3, which he shared at first with 8 and, eventually, 15 other detainees. Furthermore, since he was being held *incommunicado*, he was not getting enough food, unlike the other prisoners, who were brought food by their families.

2.5 After about two weeks, the author was transferred by air to the Mbandaka military camp, where he was held for 16 months. Again, he was unable to see a doctor, despite his physical condition, notably loss of mobility. He was never informed of any charge against him; he was never brought before a judge; and he was not allowed access to a lawyer. He states that he was held with 20 others in a cockroach-ridden cell measuring roughly 5 metres by 3, with no sanitation, no windows and no mattresses. His food rations consisted of manioc leaves or stalks. Two showers a week were permitted and the soldiers occasionally put the author out in the yard as he could not move by himself. The author states that he eventually obtained some medicines when Médecins sans Frontières (Doctors without Borders) visited the camp.

...

2.8 On 25 May 1999, the author bribed some soldiers to take him to the harbour next to the

military camp, and a boat owner agreed to help him to leave Mbandaka. The author then managed to escape from Africa to Switzerland. According to a medical certificate from the Geneva University Hospital, the author was hospitalized as soon as he arrived in Switzerland in December 1999, for physical and psychological *sequelae* of the violence he had been subjected to in his country of origin. After intensive medical care, the author has recovered partial mobility, but he requires further treatment if he is to regain his independence to any satisfactory degree.

...

5.3 As to the complaint of a violation of articles 7 and 10, paragraph 1, of the Covenant, the Committee notes that the author has given a detailed account of the treatment he was subjected to during his detention, including acts of torture or ill-treatment and, subsequently, the deliberate denial of proper medical attention despite his loss of mobility. Indeed, he has provided a medical certificate attesting to the sequelae of such treatment. Under the circumstances, and in the absence of any counter-argument from the State party, the Committee finds that the author was a victim of multiple violations of article 7 of the Covenant, prohibiting torture and cruel, inhuman and degrading treatment. The Committee considers that the conditions of detention described in detail by the author also constitute a violation of article 10, paragraph 1, of the Covenant.

...

6. The Human Rights Committee...is of the view that the facts before it reveal violations by the Democratic Republic of the Congo of articles 6, paragraph 1; 7; 9, paragraphs 1, 2 and 4; 10, paragraph 1; and 23, paragraph 1, of the Covenant.

7. Under article 2, paragraph 3 (a), of the Covenant, the State party has an obligation to ensure that the author has an effective remedy available. The Committee therefore urges the State party (a) to conduct a thorough investigation of the unlawful arrest, detention and mistreatment of the author and the killing of his wife; (b) to bring to justice those responsible for these violations; and (c) to grant Mr. Mulezi appropriate compensation for the violations. The State party is also under an obligation to take effective measures to ensure that similar violations do not occur in future.

- *Saidov v. Tajikistan* (964/2001), ICCPR, A/59/40 vol. II (8 July 2004) 164 at para. 6.2.

...

6.2 With regard to the claim that the author's husband was tortured and threatened following his arrest to make him confess, the Committee notes that the author has provided the names of the officials who beat her husband, using batons and kicks, and has described in some detail her husband's resulting injuries. From the documents submitted by the author, it transpires that these allegations were presented to the President of the Supreme Court on 7

April 2000, and that he responded that the allegations had already been examined by the Military Chamber of the Supreme Court and were found to be groundless. The author argues that her husband and his co-accused revoked their initial confessions in court, having been extracted under torture; this challenge to the voluntariness of the confessions was dismissed by the judge. The Committee notes that the State party has failed to indicate how the court investigated these allegations, nor has it provided copies of any medical reports in this respect. In the circumstances, due weight must be given to the author's claim, and the Committee considers that the facts as submitted disclose a violation of article 7 of the Covenant.

- *Nallaratnam v. Sri Lanka* (1033/2001), ICCPR, A/59/40 vol. II (21 July 2004) 246 at paras. 7.4-7.6.

...
7.4 On the claim of a violation of the author's rights under article 14, paragraph 3 (g), in that he was forced to sign a confession and subsequently had to assume the burden of proof that it was extracted under duress and was not voluntary, the Committee must consider the principles underlying the right protected in this provision. It refers to its previous jurisprudence that the wording, in article 14, paragraph 3 (g), that no one shall "be compelled to testify against himself or confess guilt", must be understood in terms of the absence of any direct or indirect physical or psychological coercion from the investigating authorities on the accused with a view to obtaining a confession of guilt 17/. The Committee considers that it is implicit in this principle that the prosecution prove that the confession was made without duress. It further notes that pursuant to section 24 of the Sri Lankan Evidence Ordinance, confessions extracted by "inducement, threat or promise" are inadmissible and that in the instant case both the High Court and the Court of Appeal considered evidence that the author had been assaulted several days prior to the alleged confession. However, the Committee also notes that the burden of proving whether the confession was voluntary was on the accused. This is undisputed by the State party since it is so provided in section 16 of the PTA [Prevention of Terrorism Act]. Even if, as argued by the State party, the threshold of proof is "placed very low" and "a mere possibility of involuntariness" would suffice to sway the court in favour of the accused, it remains that the burden was on the author. The Committee notes in this respect that the willingness of the courts at all stages to dismiss the complaints of torture and ill-treatment on the basis of the inconclusiveness of the medical certificate (especially one obtained over a year after the interrogation and ensuing confession) suggests that this threshold was not complied with. Further, insofar as the courts were prepared to infer that the author's allegations lacked credibility by virtue of his failing to complain of ill-treatment before its Magistrate, the Committee finds that inference to be manifestly unsustainable in the light of his expected return to police detention. Nor did this

treatment of the complaint by its courts satisfactorily discharge the State party's obligation to investigate effectively complaints of violations of article 7. The Committee concludes that by placing the burden of proof that his confession was made under duress on the author, the State party violated article 14, paragraphs 2, and 3 (g), read together with article 2, paragraph 3, and 7 of the Covenant.

7.5 The Human Rights Committee...is of the view that the facts before it disclose violations of articles 14, paragraphs 1, 2, 3, (c), and 14, paragraph (g), read together with articles 2, paragraph 3, and 7 of the Covenant.

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

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17/ *Berry v. Jamaica*, case No. 330/1988, Views adopted on 4 July 1994.

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

...

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

the individual concerned and is of the view that the State party should attempt to minimize this anguish as far as possible 8/. However, on the basis of the information provided, the Committee cannot find that the setting of the time of the execution of the author within eight hours after notification, considering that he would already have had at least one year following the exhaustion of domestic remedies and prior to notification to organize his personal affairs and meet with family members, would violate his rights under articles 7, and 10, paragraph 1.

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Notes

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6/ Section 1, Republic Act No. 8177.

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

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

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- *Khomidov v. Tajikistan* (1117/2002), ICCPR, A/59/40 vol. II (29 July 2004) 363 at paras. 2.5, 2.6, 2.8, 2.9, 6.2, 6.5, 7 and 8.

...

2.5 The author contends that her son was tortured with electric shocks and was beaten throughout the investigation, forcing him to sign written confessions prepared by the investigators in advance; the majority of these confessions were signed in the absence of a lawyer. The author provides the names of the prosecution officials who she claims tortured her son. She claims that her son was beaten with batons, and parts of his body were electrocuted with a metal bar, causing head and ribs injuries. She also affirms that her son showed her his crooked fingers, a consequence of the torture used.

2.6 Mr. Khomidov was accused of being a member of a criminal gang, headed by one N.I., specialized in robbery. The author's son was charged with 10 acts of robbery and allegedly

was the only member of the group to be prosecuted (five other suspected members of the gang were killed in a police action in May 2000); he was also charged with the assault of a driver and the hijacking of his car; he was further accused of illegal possession and storage of firearms and of participation in an attack against governmental troops, and an attempt to blow up the house of a police inspector. Mr. Khomidov was put under psychological pressure also because the family of Mr. and Mrs. Pirnazarov, supported by the police, had set fire to his house and forced his wife and children to leave the premises, while the police illegally confiscated his car and the furniture of his house. His father's mill was destroyed and his animals were taken away; his father was beaten with a rifle butt. Mr. Khomidov allegedly was kept informed of these incidents by the police in order to put him under additional pressure.

...

2.8 The Supreme Court judge, S.K., allegedly acted in an accusatory manner. Mr. Khomidov's lawyer's requests were denied, particularly when he asked to call supplementary witnesses, and when he requested that a medical expert examine him to clarify whether he had sustained injuries as a result of the torture he was subjected to. The only witness of the crime was the 5-year old daughter of the neighbours, and she was the only one who identified Mr. Khomidov as the culprit. According to the author, the child's testimony was the consequence of the police "preparation" she was subjected to. As to the episode related to the hijacking of a car, the author alleges that the eyewitnesses could not recognize her son during an identification parade and in court.

2.9 On 12 September 2001, the Supreme Court found Mr. Khomidov guilty of all the charges against him and sentenced him to death. According to the author, the death penalty was imposed on her son because the judge was afraid of eventual persecution against her by the victims' family. On 13 November 2001, on appeal, the Criminal College of the Supreme Court upheld the decision. On 3 October 2002, the President of Tajikistan refused to grant her son a pardon.

...

6.2 The Committee has noted the author's detailed description of the acts of torture to which her son was subjected to make him confess guilt. She has identified by name several of the individuals alleged to have participated in the above events. In the circumstances, and in the absence of any explanations from the State party in this respect, due weight must be given to her allegations. As the author has provided detailed information of specific forms of physical and psychological torture inflicted upon her son during pre-trial detention (see paragraphs 2.5 and 2.6), the Committee considers that the facts as submitted disclose a violation of article 7 of the Covenant.

...

6.5 The Committee has noted the author's claim that the trial of Mr. Khomidov was unfair, as the court did not fulfil its obligation of impartiality and independence (see paragraphs 2.8

and 2.9 above). It has noted also the author's contention that her son's lawyer requested the court to call witnesses on his behalf, and to have Mr. Khomidov examined by a doctor to evaluate his injuries sustained as a result of the torture to which he was subjected to make him confess guilt. The judge denied his request without providing any reason. In the absence of any pertinent State party information on this claim, the Committee concludes that the facts before it disclose a violation of article 14, paragraphs 1, and 3 (e) and (g), of the Covenant.

...

7. The Human Rights Committee...is of the view that the facts before it disclose a violation of articles 7; 9, paragraphs 1 and 2; 14, paragraphs 1, and 3 (b), (e) and (g), read together with article 6, of the Covenant.

8. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide Mr. Khomidov with an effective remedy, entailing commutation of his sentence to death, a compensation, and a new trial with all the guarantees of article 14, or, should this not be possible, release. The State party is under an obligation to take measures to prevent similar violations in the future.

- *Byahuranga v. Denmark* (1222/2003), ICCPR, A/60/40 vol. II (1 November 2004) 247 at paras. 2.1, 2.3, 3.1, 11.2-11.4, 12 and 13.

...

2.1 The author served as an officer in the Ugandan army during the rule of Idi Amin. He fled Uganda in 1981, after he had been unlawfully detained and allegedly tortured several times by military forces. In December 1984, he entered Denmark, where he was granted asylum on 4 September 1986, under section 7 (1) (ii) 2/ of the Aliens Act. On 24 July 1990, he was issued a permanent residence permit.

...

2.3 By judgement of 23 April 2002, the Copenhagen City Court convicted the author of drug-related offences (section 191 of the Danish Criminal Code), and sentenced him to two years and six months' imprisonment. It also ordered the author's expulsion from Denmark,3/ finding that such expulsion would not amount to a violation of the right to family life under article 8 of the European Convention, and permanently barred him from re-entering Denmark. It based its decision on an opinion dated 19 April 2002 of the Danish Immigration Service, which considered that there were no circumstances which would constitute a decisive argument against the author's expulsion within the meaning of section 26 4/ of the Aliens Act. It based itself on (a) the fact that, at the age of 45 years, the author had resided in Denmark for 17 years and four months; (b) the author's good health, i.e. the absence of any diseases which could not be treated in Uganda; (c) the fact that his expulsion would not

affect the right of his spouse and children to continue residing in Denmark, given that his wife and his older daughter had meanwhile been granted permanent residence permits; (d) the absence of any risk that, in cases other than those mentioned in section 7 (1) and (2) of the Aliens Act, he would be ill-treated in Uganda. The Immigration Service did not object to the prosecutor's claim to expel the author, despite the latter's loose ties with his Ugandan family and the fact that he had not returned to Uganda since 1981.

...

3.1 The author claims (a) that his expulsion would amount to a violation of his rights under article 7 of the Covenant, as it would expose him to a real and immediate danger of being subjected to ill-treatment upon return to Uganda; and (b) that it would constitute an arbitrary interference with his right to family life under article 17 of the Covenant and a violation of the State party's duty to respect and protect the family as the natural and fundamental group unit of society, as prescribed by article 23, paragraph 1.

...

11.2 The first issue before the Committee is whether the author's expulsion to Uganda would expose him to a real and foreseeable risk of being subjected to treatment contrary to article 7. The Committee recalls that, under article 7 of the Covenant, States parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or *refoulement* 10/ It takes note of the author's detailed account as to why he fears to be subjected to ill-treatment at the hands of the Ugandan authorities, and concludes that he has made out a *prima facie* case of such a risk.

11.3 The Committee observes that the State party, while challenging the author's claim under article 7, does not submit any substantive grounds for its position. Instead, it merely refers to the risk assessments of the Danish Immigration Service under articles 26 (opinions dated 19 April 2002 and 18 September 2003) and 31 (decision of 19 January 2004, as affirmed by the Danish Refugee Board on 28 June 2004) of the Aliens Act. After an examination of the documents, the Committee notes, firstly, that the Immigration Service's scrutiny under article 26(1)(vii) of the Aliens Act was limited to an assessment of the author's personal circumstances in Denmark, as well as his risk of being subjected to punishment for the same offence for which he had been convicted in Denmark, without addressing the broader issues under article 7 of the Covenant, such as ill-treatment which may give rise to an asylum claim under article 7 (1) and (2) of the Aliens Act. Secondly, in its decision of 19 January 2004, the Immigration Service merely relies on an assessment made by the Ministry for Foreign Affairs concerning the risk of double jeopardy in Uganda and an amnesty for supporters of former President Amin to conclude that the author would not face a risk of being tortured or ill-treated upon return to Uganda. Similarly, the Refugee Board, after giving a detailed account of the author's statements as to his fear of being subjected to ill-treatment upon return to Uganda, dismissed his appeal on the basis of the

same opinion by the Ministry, without providing any substantive reasons of its own, in its decision of 28 June 2004. In particular, the Board merely dismissed, because of late submission, the author's claim that his political activities in Denmark were known to the Ugandan authorities, thereby placing him at a particular risk of being subjected to ill-treatment upon return to Uganda. The State party has not furnished the Committee with the opinion of its Ministry for Foreign Affairs or with other documents that would make out the factual basis for the Ministry's assessment. In sum, before the Committee the State party seeks to refute the alleged risk of treatment contrary to article 7 merely by referring to the outcome of the assessment made by its own authorities, instead of commenting the author's fairly detailed account on why such a risk in his opinion exists.

11.4 In the light of the State party's failure to provide substantive arguments upon which the State party relies to rebut the author's allegations, the Committee finds that due weight must be given to his detailed account of the existence of a risk of treatment contrary to article 7. Consequently, the Committee is of the view that the expulsion order against the author would, if implemented by returning him to Uganda, constitute a violation of article 7 of the Covenant.

...

12. The Human Rights Committee...is of the view that the author's expulsion to Uganda would, if implemented, violate his rights under article 7 of the Covenant.

13. 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 revocation and full re-examination of the expulsion order against him. The State party is also under an obligation to prevent similar violations in the future.

_____

Notes

...

2/ Section 7 (1) of the Aliens Act then in force read: "Section 7. (1) Upon application, a residence permit shall be issued to an alien in Denmark or at the border, (i) if the alien falls within the provisions of the Convention on the Status of Refugees of 28 July 1951; or (ii) if for reasons similar to those listed in the Convention or for other weighty reasons, the alien cannot be required to return to his country of origin."

3/ Section 22 of the Aliens Act then in force read, in pertinent parts: "Section 22. An alien who has lawfully stayed in Denmark for more than the past seven years or an alien issued with a residence permit under sections 7 or 8 may be expelled if: [...] (iv) the alien is sentenced, pursuant to the Drugs and Narcotics Act or pursuant to sections 191 or 191a of the Criminal Code, to imprisonment […]."

4/ Section 26 of the Aliens Act then in force read: "Section 26. (1) In deciding on expulsion, regard must be had to the question whether the expulsion must be presumed to be particularly burdensome, in particular because of:

(i) the alien's ties with the Danish community [...];
(ii) the duration of the alien's stay in Denmark;
(iii) the alien's age, health and other personal circumstances;
(iv) the alien's ties with persons living in Denmark;
(v) the consequences of the expulsion for the alien's close relatives living in Denmark;
(vi) the alien's weak or non-existing ties with his country of origin or any other country in which he may be expected to take up residence; and
(vii) the risk that, in cases other than those mentioned in section 7 (1) and (2), the alien will be ill-treated in his country of origin or any other country in which he may be expected to take up residence.

(2) An alien may be expelled under section 22 (iv) to (vi) unless the circumstances mentioned in subsection (1) constitute a decisive argument against such expulsion."

10/ General comment 20 [44], at para. 9.

For dissenting opinion in this context, see, Byahuranga v. Denmark (1222/2003), ICCPR, A/60/40 vol. II (1 November 2004) 247, at Individual Opinion of Ms. Ruth Wedgwood and Mr. Maxwell Yalden, 258.

- *Khalilov v. Tajikistan* (973/2001), ICCPR, A/60/40 vol. II (30 March 2005) 74 at paras. 2.5-2.8, 2.11, 2.12, 7.2, 7.3, 7.7, 8 and 9.

...

2.5 According to the author, her son was beaten by investigators to make him confess participation in different unresolved crimes, including murder, use of violence, robberies and theft, and different other crimes that occurred between 1998 and 2000. According to her, the investigators refused to interrogate neighbours of the aunts in whose houses her son hid between December 1997 and January 2000, and who could have testified that he was innocent.

2.6 On an unspecified date, Mr. Khalilov was transferred from the Lenin District Police Department to Kaferingansky District Police Department. In the meantime, his father was taken from his workplace and brought to his son in the Kaferingansky District Police Department. The father noted that his son had been beaten and stated that he would

complain to the competent authorities. The investigators began to beat him in front of his son. The author's son was threatened and told that he had to confess his guilt of two murders during a TV broadcast or otherwise his father would be killed. Mr. Khalilov confessed guilt in the two murders as requested. Notwithstanding, the investigators killed his father 1/.

2.7 On 12 February, Mr. Khalilov was shown again on national television (broadcast "Iztirob"). According to the author, he had been beaten and his nose was broken, but the cameras showed his face only from one particular angle that did not reveal these injuries.

2.8 Mr. Khalilov's case was examined by the Supreme Court jointly with the cases of other five co-accused 2/. The author's son was found guilty of the crimes under articles 104(2) (homicide), 181 (3) (hostage taking), 186 (3) (banditism), 195 (3) (illegal buying, selling, keeping, transporting of weapons, ammunitions, explosives, etc.), 244 (theft), and 249 (robbery with use of violence), of the Criminal Code of Tajikistan. He was sentenced to death on 8 November 2000. According to the author, no victim or injured party recognized her son in court as a participant in the criminal acts, notwithstanding the fact that the witnesses had declared that they could recognize by face every participant in the crimes. The Court allegedly ignored their statements and refused to take them into account or to include them in its decision.

...

2.11 The author also explains that she does not know where her son is held. The officials of the SIZO No. 1 Detention Centre in Dushanbe allegedly had refused to accept her parcels, telling that her son was removed, without explaining further.

2.12 On 18 February 2005, the author informed the Committee that she received a letter from the Deputy Chairman of the Supreme Court, dated 2 February 2005, where it was stated that her son was executed on 2 July 2001.

...

7.2 The Committee has taken note of the author's allegations that her son, while in detention, was ill-treated and beaten by the investigators to force him to confess guilt and that in order to put additional pressure on him, his father was beaten and tortured in front of him and as a consequence died in the police premises. The author furthermore identified by name some of the individuals alleged to have been responsible for the beatings of her son and for burning her husband's hands with an iron. In the absence of any State party information, due weight must be given to the author's allegations, to the effect that they have been sufficiently substantiated. The Committee considers that the facts before it justify the conclusion that the author's son was subjected to torture and to cruel and inhuman treatment, in violation of articles 7 and 10, paragraph 1, of the Covenant.

7.3 As above-mentioned acts were inflicted by the investigators on Mr. Khalilov to make

him to confess guilt in several crimes, the Committee furthermore considers that the facts before it also disclose a violation of article 14, paragraph 3 (g), of the Covenant.

...

7.7 The Committee has noted the author's claim that the Tajik authorities, including the Supreme Court, have consistently ignored her requests for information and systematically refused to reveal any detail about her son's situation or whereabouts. The Committee understands the continued anguish and mental stress caused to the author, as the mother of a condemned prisoner, by the persisting uncertainty of the circumstances that led to his execution, as well as the location of his gravesite. The secrecy surrounding the date of execution, and the place of burial have the effect of intimidating or punishing families by intentionally leaving them in a state of uncertainty and mental distress. The Committee considers that the authorities' initial failure to notify the author of the execution of her son amounts to inhuman treatment of the author, in violation of article 7 of the Covenant 10/.

8. The Human Rights Committee...is of the view that the facts before it disclose a violation of Mr. Khalilov's rights under articles 6, paragraph 1; 7; 10, paragraph 1; and 14, paragraphs 2, 3 (g) and 5, of the Covenant, and a violation of article 7 in the author's own respect.

9. Under article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including information on the location where her son is buried, and compensation for the anguish suffered. The State party is also under an obligation to prevent similar violations in the future.

Notes

1/ The author submits a letter of her son (dated 27 December 2000), addressed to the Committee, in which M. Khalilov contends that his father was brought to the police department and was beaten, humiliated, and burned with an iron by the investigators, until he died. According to Mr. Khalilov, his father was returned home dead and was buried on 9 February 2000. Mr. Khalilov gives the names of two officials who participated in his and his father's beatings: one N., chief of a Criminal Inquiry Department, and his deputy, U. According to him, there were also 3-4 other persons.

2/ The exact dates of the proceedings are not provided.

...

10/ See communications Nos. 886/1999, *Bondarenko v. Belarus*, and 887/1999, *Lyashkevich v. Belarus*, Views adopted on April 2003.

TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

- *Rouse v. The Philippines* (1089/2002), ICCPR, A/60/40 vol. II (25 July 2005) 123 at paras. 2.22, 7.8, 8 and 9.

...

2.22 From 2001, while in prison, the author allegedly experienced extensive suffering provoked by kidney stones. The author reports that all scheduled tests at an outside hospital were postponed for administrative reasons not imputable to the author (failure of the guards to come to work, lack of authorization of the Department of Justice, insufficient requests from the prison's doctors). As a result, the requisite tests were not made and the author did not receive an effective diagnosis and treatment. He submits a copy of a medical certificate dated 13 March 2003, resulting from a medical examination performed that day, recommending that the author be granted conditional pardon and voluntary deportation so that a thorough examination and possible operation could be done in the United States.

...

7.8 As to the author's claim under article 7, the Committee recalls that States parties are under an obligation to observe certain minimum standards of detention, which include provision of medical care and treatment for sick prisoners, in accordance with rule 22 (2) of the Standard Minimum Rules for the Treatment of Prisoners.3/ It is apparent from the author's uncontested account that he suffered from severe pain due to aggravated kidney problems, and that he was not able to obtain proper medical treatment from the prison authorities. As the author suffered such pain for a considerable amount of time, from 2001 up to his release in September 2003, the Committee finds that he was the victim of cruel and inhuman treatment in violation of article 7. In the light of this finding, it is unnecessary to consider the author's additional claim under article 7.

8. The Human Rights Committee...is of the view that the facts before it disclose a violation of articles 14, paragraphs 1 and 3 (c) and (e); 9, paragraph 1; and 7 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 adequate compensation, *inter alia* for the time of his detention and imprisonment.

_____

Notes

...

3/ 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. E.02.XIV.4), chap. J, sect. 34.

TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

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CAT

- *M. S. v. Switzerland* (156/2000), CAT, A/57/44 (13 November 2001) 130 at paras. 2.1-2.4, 6.2 and 6.4-6.9.

...

2.1 The complainant states that, like most Sri Lankans of Tamil origin, he was forced to work from a very early age for the Liberation Tigers of Tamil Eelam (LTTE) movement, particularly in building bunkers and putting up propaganda posters. He says that he had to flee from Kilinochchi to Colombo because he refused to be more active in the movement.

2.2 The complainant maintains that he was arrested several times by the government authorities in Colombo and sometimes held for over a fortnight and that he was tortured on the grounds of being a member of the Tamil Tigers. He says that he was taken before the court on several occasions, the first time being on 15 March 1997, before being released shortly afterwards. He adds that he was arrested again on 3 January 1999 by the Colombo police and detained for a month before being brought before the court again on 10 February 1999. According to the complainant, the judge released him only on condition that he report every Saturday to the office of the Criminal Investigation Department (CID) in order to sign a register.

2.3 The complainant states that he fled Sri Lanka on 28 March 1999 with the help of a trafficker. He adds that, as a result of his flight, a warrant was issued for his arrest, with reference to which a document issued by the Colombo police was produced dated 23 August 1999. He arrived in Switzerland on 29 March 1999.

2.4 The complainant's application for asylum in Switzerland, filed on 30 March 1999, was turned down on 18 August 1999. On 10 December 1999, in response to an appeal lodged by the complainant on 21 September 1999, the Swiss Appeal Commission on Asylum Matters upheld the original decision to refuse asylum...

...

6.2 The issue before the Committee is whether the expulsion of the complainant to Sri Lanka would violate the State party's obligation under article 3 of the Convention not to expel or return a person to a State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

...

6.4 The Committee recalls its general comment on the implementation of article 3, which

reads as follows: "Bearing in mind that the State party and the Committee are obliged to assess whether there are substantial grounds for believing that the author would be in danger of being subjected to torture were he/she to be expelled, returned or extradited, the risk of torture must be assessed on grounds that go beyond mere theory or supposition. However, the risk does not have to meet the test of being highly probable" (A/53/44, annex IX, para. 229).

6.5 In the present case, the Committee notes that the State party has drawn attention to inconsistencies and contradictions in the complainant's account, casting doubt on the truthfulness of his allegations. It also takes note of the explanations provided by counsel in this respect.

6.6 The Committee also notes that it has not been clearly established that the complainant was wanted by the Sri Lankan police or CID or that the Colombo police document be provided as evidence was genuine, it being indeed surprising that this document, dated 23 August 1999, was never shown to the Swiss authorities, even when the complainant applied to have the 20 January deadline for his departure extended.

6.7 Furthermore, the Committee believes that there is insufficient support for the complainant's allegations of having been tortured in Sri Lanka and that, in particular, his allegations are not corroborated by medical evidence, even though the complainant received medical treatment in Switzerland shortly after his arrival.

6.8 The Committee is aware of the seriousness of the human rights situation in Sri Lanka, and of reports alleging the practice of torture there. However, it recalls that, for the purposes of article 3 of the Convention, a foreseeable, real and personal risk must exist of being subjected to torture in the country to which a person is returned. On the basis of the considerations above, the Committee is of the opinion that such risk has not been established.

6.9 The Committee against Torture...concludes that the decision of the State party to return the complainant to Sri Lanka does not constitute a breach of article 3 of the Convention.

- *H. O. v. Sweden* (178/2001), CAT, A/57/44 (13 November 2001) 174 at paras. 2.1-2.7 and 11-15.

...

2.1 Counsel submits that the petitioner, who is Kurdish by descent and comes from the city of Sanandaj, started in 1990 to take part in political activities on behalf of the interests of the Kurdish people directed against the Iranian authorities. These activities included turning the

photos of the Ayatollah the wrong side around and encouraging students at his school to take part in demonstrations. In February 1994 the petitioner allegedly was arrested and accused of distributing leaflets at his school and writing slogans against the regime. He states that he was interrogated for two days, and then tortured by methods such as beating on the bottom of the feet. After two months' detention, the petitioner was released. He then discovered that he had been expelled from his school. He has lately been working as a taxi driver. After his release, the petitioner stopped his political activities for fear of persecution.

2.2. On 22 February 1999, demonstrations officially sanctioned by the Government were held in Sanandaj to protest against the arrest by the Government of Turkey of Kurdish Workers Party leader Abdullah Oçalan in Nairobi. The petitioner states that the Government's intention was to turn the Kurdish people against the Governments of the United States of America and Israel.

2.3 The petitioner and about 15 of his friends planned to use the demonstrations to express their opinions on the injustices suffered by the Kurdish people in Iran. They prepared posters and leaflets with anti-Iranian and pro-Kurdistan slogans. After they started the demonstrations, thousands of people joined in and began to shout anti-Government slogans, while the petitioner and his friends handed out posters and leaflets. The military and Revolutionary Guards opened fire at the demonstrators, and many were arrested. The petitioner's friend, Jamil, was shot and the petitioner ran away. He considered it too risky to return to his family, so he hid in a friend's house for 13 days. While hidden, the petitioner was informed that Revolutionary Guards had arrested his father and brother. The petitioner left to stay with a relative in Ourmiyeh, where he stayed for 24 days. Another relative provided him with a passport under a false name, and an exit visa. The petitioner travelled to Van and Istanbul in Turkey, and after 20 days took a plane to Sweden.

2.4 The petitioner entered Sweden on 21 April 1999 and applied for asylum the following day. Upon arrival, the petitioner carried neither passport nor identification document. The Swedish Migration Board held an initial interview with the petitioner on 22 April 1999, lasting about one hour. A fuller interview took place on 20 May, lasting for about four hours. On 8 September 1999, the Swedish Migration Board rejected the petitioner's application for asylum. The Board found that the petitioner's statements were not credible and that the petitioner had not proved that he risked persecution if he returned to Iran.

2.5 The petitioner appealed to the Aliens Appeals Board, explaining that he carried no identification documents when arriving in Sweden because he had been forced to give the documents to the smuggler that brought him there, and that Iranian authorities twice had made inquiries about him at his family's house. On 11 August 2000, the Aliens Appeals Board rejected his application for asylum.

2.6 On 1 September 2000, the petitioner lodged a new application for asylum and a residence permit with the Aliens Appeals Board. The petitioner submitted further information, stating that his father and brother had been released from detention and that the Iranian authorities had made further inquiries about his whereabouts. He referred to an appeal from the Iranian Refugee Council of Stockholm that expressed concerns about his security should he be deported to Iran. Finally, he invoked humanitarian reasons for a residence permit based upon a statement from a psychiatrist affirming that he suffered from post-traumatic stress disorder, acute depression, strong memories of previous torture and was suicidal. Again, on 5 October 2000, the Aliens Appeals Board rejected his application.

2.7 On 7 November 2000, the petitioner lodged a new application with the Aliens Appeals Board, and submitted information that was intended to clarify the information he had provided at the earlier stages of his case, together with a new statement from a psychiatrist about his post-traumatic stress disorder and the serious risk of suicide. The Aliens Appeals Board rejected the application on 12 December 2000.

...

13. In the present case...the Committee has to determine whether the expulsion of the petitioner to Iran would have the foreseeable consequence of exposing him to a real and personal risk of being arrested and tortured.

14. The State party has pointed to inconsistencies and contradictions in the petitioner's statements which in its opinion cast doubt on the veracity of his allegations. Even assuming, however, the truth of the petitioner's statements regarding his past experience of detention in Iran, the Committee considers, on the basis of the information provided, that the political activities that the petitioner claims to have carried out prior to and during the demonstrations in February 1999 are not of such a nature as to lead to the conclusion that he risks being tortured upon his return. This view is further supported by the fact that the petitioner was not the object of interest by Iranian authorities after he was released from detention in 1994, assuming that this occurred, and until the demonstrations in February 1999.

15. On the basis of the above considerations, the Committee considers that the petitioner of the communication has not substantiated his claim that he would be subjected to torture upon return to the Islamic Republic of Iran.

- *B. S. v. Canada* (166/2000), CAT, A/57/44 (14 November 2001) 153 at paras. 2.1-2.5, 7.1, 7.3, 7.4 and 8.

...

2.1 On 2 August 1990, the petitioner arrived in Canada. He was granted refugee status by

decision of the Immigration and Refugee Board on 11 January 1996.

2.2 Since 1992, the petitioner was convicted of various criminal offences, including theft, uttering threats, assault, will to cause personal injury, false pretences, sexual assault, obstructing a peace officer and altering a forged document. Restraining orders were issued against the petitioner in 1997 and 1998. On 15 January 1999, the Minister of Citizenship and Immigration's delegate issued an opinion pursuant to sections 70 (5) and 53 (1) of the Immigration Act that the petitioner constitutes a danger to the public in Canada due to the number and nature of criminal convictions acquired by the applicant in Canada since 1992. A deportation order was issued against the petitioner on 1 March 1999.

2.3 On 15 April 1999, the petitioner filed an application for leave and judicial review of the decision to remove him to Iran. The Federal Court dismissed the application on 12 July 2000. The Federal Court had denied his application for leave and for judicial review of the decision that he constituted a danger to the public on 14 July 1999. Counsel submits that all effective domestic remedies have been exhausted and that the petitioner expects his deportation any time.

2.4 The petitioner alleges that he fled persecution in Iran in July 1990. He submits that, in early 1985, while in high school, he had been arrested and questioned by Revolutionary Guards about his participation in political discussions. The Petitioner was held for eight days during which he was beaten, punched, kicked, and tortured. In September 1984, the petitioner's family home was raided by Revolutionary Guards after siblings left Iran because of perceived involvement with the pro-monarchist movement. The petitioner alleges that he was held for 18 days and that his sister, his mother, and he himself were beaten. In January 1985, while serving in the military, the petitioner was suspected of political activity and detained and questioned by an officer of the Ideological/Religious Department of the Army for two days. The petitioner submits that he was forced to witness the execution of six soldiers convicted of opposing the regime and its war efforts. In April 1985, the petitioner was wounded by a grenade and released from the army, after treatment in a military hospital, in February 1986. In October 1989, the petitioner was arrested by Revolutionary Guards, handcuffed and taken to the offices of the branch of police that deals with anti-revolutionary offences (Komiteh), where he was allegedly beaten and held for one month. In March and April 1990, the Komiteh again detained the petitioner for 24 hours each time. After the second arrest, the petitioner was ordered to report daily to the Komiteh office. The petitioner submits that every time he reported to the office, he was afraid that the police officers would kill or torture him. After four or five days, the petitioner fled to Bandar Abbas, obtained a false passport and fled Iran by plane. In 1993 a summons was published in the Iranian newspaper *Khabar* indicating that the petitioner had been charged with escape and was requested to report to the Investigation Branch of the General Prosecutor's Office in Shiraz.

2.5 The petitioner submits that he fears for his life and safety if he is returned to Iran. Furthermore, the Iranian authorities would be alerted to his return, because the petitioner would require travel documents issued by Iran. The petitioner alleges that the State party did not assess the risks he faced upon his return. The petitioner alleges also that he has never been assessed for determining the likelihood that he will commit more crimes.

...

7.1 The issue before the Committee is whether the removal of the petitioner to the Islamic Republic of Iran would violate the obligation of Canada under article 3 of the Convention not to expel or return a person to another state where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

...

7.3 In the present case, the Committee notes that the petitioner has claimed that, during his first detention in early 1985, he was tortured. Although not explicitly corroborated by medical evidence or detained submission by the petitioner, the Committee is prepared to consider that the petitioner may have been maltreated during his first detention. The Committee also notes that the petitioner has not claimed that he was tortured during his subsequent detentions. Finally, the Committee notes that the periods of the two latest detentions in 1990 were short, that the petitioner has not claimed that he was ever an active political opponent and that there is no indication that he is being sought by the authorities in Iran at the present time or would be at a particular risk of being tortured for reason of his Canadian criminal record. Therefore, the Committee considers that the petitioner has not substantiated his claim that he will be personally at risk of being subjected to torture if he is returned to Iran.

7.4 With regard to the alleged violation of article 16 of the Convention, the Committee notes that article 3 of the Convention does not encompass situations of ill-treatment envisaged by article 16, and further finds that the petitioner has not substantiated a claim that he would face such treatment upon return to Iran as would constitute cruel, inhuman or degrading treatment or punishment with the meaning of article 1 of the Convention.

8. The Committee against Torture...concludes that the removal of B.S. to the Islamic Republic of Iran, on the basis of the information submitted, would not entail a breach of articles 3 and 16 of the Convention.

- *M. S. v. Australia* (154/2000), CAT, A/57/44 (23 November 2001) 124 at paras. 2.1-2.6, 6.4-6.7 and 7.

...

2.1 On 24 August 1998, coming from South Africa, the petitioner arrived in Australia

without valid travel documents. In his interview at the airport he requested the State party's protection as a refugee.

2.2 On 3 September 1998, the petitioner made an application for refugee status (protection visa) with the Department of Immigration and Multicultural Affairs under the Migration Act. On 2 October 1998, a delegate of the Minister for Immigration and Multicultural Affairs delivered a decision denying a protection visa. On 14 December 1998, the Refugee Review Tribunal RRT) affirmed this decision. On 30 April 1999, the Federal Court of Australia dismissed the petitioner's request for judicial review.

2.3 On 22 March 1999, the petitioner requested the Minister for Immigration and Multicultural Affairs to intervene and set aside the decision of the RRT in the public interest, pursuant to section 417 of the Migration Act. In an undated letter, the Minister responded that he decided not to exercise this power. On 13 September 1999, counsel again wrote to the Minister requesting that the petitioner be permitted to submit a second application for a protection visa pursuant to section 48B of the Migration Act. Counsel has not received a response to this request.

2.4 The petitioner submits that he was involved in the social assistance activities of the Front islamique du salut (FIS) since 1990, i.e. after work, the petitioner sued to go to the local FIS office and assess what to give to families in need. In January 1992, after the results of the general election for the National Peoples' Assembly were cancelled, the local FIS office was closed and the petitioner was called by the police (gendarmerie) and questioned for more than two hours. The petitioner submits that after his release, he was required to report to the gendarmerie on a daily basis and not to leave his hometown, Ngaos. On 16 September 1994, supported by a friend, he left Algeria for the Syrian Arab Republic by plane. The day after his departure, and again in October, the gendarmerie questioned his father about the residence of the alleged victim. It is further submitted that the petitioner's father subsequently advised him not to return to Algeria because the police accused him of avoiding his military recall.

2.5 The petitioner submits that he left Algeria in 1994 after he heard of an official decree calling up reservists who had only served 18 months of military service for an extra six months. The petitioner had served in the National Republic Army from May 1988 to March 1990. The petitioner submits that in March 1994 it was reported that the Algerian Minister of the Interior announced the Government's intention to draft thousands of army reservists and that these reports were not before the RRT when it reviewed the case.

2.6 The petitioner submits that, in 1996, he obtained a copy of a court verdict, dated 17 November 1996, convicting him of forming a terrorist group and, in absentia, sentencing him

to death.1/

...

6.4 In the present case, the Committee notes that the petitioner's social activities for the FIS date back to the beginning of 1992, at which time he was detained and interrogated for two hours. It is not submitted that the petitioner was tortured or prosecuted for his activities for FIS before leaving for Syria.

6.5 The Committee notes that the petitioner invokes the protection of article 3 on the grounds that he is personally in danger of being arrested and tortured in connection with the disputed court verdict of 1996. However, the petitioner does not submit any information supporting the claim that the petitioner will be exposed to the risk of torture. The Committee considers that, even if it were certain that the petitioner would be arrested on his return to Algeria because of a prior conviction, the mere fact that he would be arrested and retried would not constitute substantial grounds for believing that he would personally be in danger of being subjected to torture.2/

6.6 With regard to the claim that the petitioner will be targeted and that an anti-Government opinion will automatically be attributed to him, the Committee notes that the petitioner did not present evidence that there was, in fact, a military recall of the petitioner at all. From the evidence before the Committee, it also cannot be established that the petitioner is at risk of being tortured if interviewed at the airport upon his return to Algeria.

6.7 The Committee recalls that, for the purposes of article 3 of the Convention, a foreseeable, real and personal risk must exist of being tortured in the country to which a person is returned. On the basis of the considerations above, the Committee considers that the petitioner has not presented sufficient evidence to convince the Committee that he faces a personal risk of being subjected to torture if returned to Algeria.

7. The Committee against Torture...concludes that the removal of the petitioner to Algeria, on the basis of the information submitted, would not entail a breach of article 3 of the Convention.

Notes

1/ The translated text of the decision submitted by the petitioner reads in its relevant part: "The Court has in default sentenced accused 'M. S.' to death..."

2/ See *P. Q. L. v. Canada*, communication No. 57/1996, para. 10.5.

- *Y. H. A. v. Australia* (162/2000), CAT, A/57/44 (CAT/C/27/D/162/2000) (23 November 2001) 137 at paras. 7.2-7.4.

...
7.2 The Committee must decide whether the forced return of the petitioner to Somalia would violate the State party's obligation, under article 3, paragraph 1 of the Convention, not to expel or return (*refouler*) an individual to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture

7.3 The Committee notes the petitioner's claim that he faces a real risk of being tortured if returned to Somalia on the basis of his father's position as a police officer in the previous government, his own position at the UNOSOM and his vulnerability as a member of the Shikal clan. In support of his claim, he outlines past incidents of torture against himself and his family. The Committee observes that the State party does not deny that these incidents may have occurred but argues that the petitioner has not been consistent in his description of events and that these attacks were more likely to have occurred as part of the general climate of violence in Mogadishu at the time rather than as a deliberate attempt to target the petitioner for the reasons outlined by him. The Committee also observes that the petitioner has failed to explain the inconsistencies in his description of the attacks, which raise doubts with the Committee as to his credibility.

7.4 In addition, the Committee recalls that, even if the evidence of past torture provided by the petitioner was not in question, the aim of the Committee's examination of the communication is to ascertain whether the petitioner would risk being subjected to torture now, if returned to Somalia. Given the composition of the new Transitional government, including members of the Shikal clan itself, the Committee is of the opinion that the petitioner would not now face such a risk. In light of the foregoing, and while recognising the ongoing widespread violations of human rights in Somalia, the Committee finds that the petitioner has not established that he would face a foreseeable, real and personal risk of being tortured within the meaning of article 3 of the Convention.

- *S. T. v. The Netherlands* (175/2000), CAT, A/57/44 (CAT/C/27/D/175/2000) (23 November 2001) 159 at paras. 6.2-6.4.

...
6.2 The Committee must decide whether the forced return of the petitioner to Sri Lanka would violate the State party's obligation, under article 3, paragraph 1 of the Convention, not to expel or return (*refouler*) an individual to another State where there are substantial

grounds for believing that he would be in danger of being subjected to torture...

6.3 The Committee has noted the petitioner's claim that he is in danger of being subjected to torture if he is returned to Sri Lanka due to his previous involvement with the LTTE, that he has allegedly already been maltreated twice by the authorities, and that he has scars on his body which the authorities would likely assume to have been caused by fighting for the LTTE...

6.4 Although the State party appears to concede that, the petitioner was arrested and detained by the authorities twice in October 2000, the Committee notes that it was not of the view that the petitioner is suspected of involvement with the LTTE, considering the fact that he was held for only one day on each occasion of his arrest and was never actually a member of this organisation. The Committee observes that the petitioner does not contend that he was a member of the LTTE nor does he contend that he was involved in any political activity. In addition, the Committee notes that the petitioner only worked for two months for this organisation, six years prior to his first arrest. In the Committee's view, the petitioner has not alleged any other circumstances, other than the presence of scars on his body, which would appear to make him particularly vulnerable to the risk of being tortured. For the abovementioned reasons, the Committee finds that the petitioner has not provided substantial grounds for believing that he would be in danger of being tortured were he to be returned to Sri Lanka and that such danger is personal and present.

- *R. S. v. Austria* (111/1998), CAT, A/57/44 (30 April 2002) 105 at paras. 2.1-2.3, 9.2 and 10.

...
2.1 On 30 July 1996, the complainant was questioned by police officers at the Leopoldstadt District Police station of the Vienna Federal Police Directorate. While the complainant was questioned by officers of one investigation team, three officers entered the room and brought the complainant into the office of one of them. The officers of the investigation team protested against the complainant's transfer, because they had not yet finished their interrogation. Shortly after the complainant had been brought into the other office, he was found outside the office with three bleeding injuries on his right lower leg. The complainant was examined by a medical officer of the police and photos of the injuries were taken. On 1 August 1996, the complainant was transferred by his private doctor to hospital for further examinations that were undertaken on 2 August 1996. The complainant was released immediately. The report of the hospital, submitted by the complainant, documented injuries of the right lower leg and a slightly swollen nose.

2.2 On 9 August 1996, the Vienna Federal Police Directorate sent a report on the facts of

the case and the allegations of the complainant that he had been ill-treated to the Public Prosecutor's Office. On 20 August 1996, the Public Prosecutor instituted court proceedings against the three police officers charging them with mistreatment of a prisoner and attempted coercion.

2.3 The first court hearing took place on 7 October 1996. On 6 November 1996, the complainant's trial attorney proposed to the court and to the prosecutor that an examining judge be assigned, in accordance with a decree by the Federal Ministry of Justice, to complete the preliminary investigation carried out by the Federal Police Directorate. This proposal was rejected by the court and the prosecutor. On 25 November 1996, the three police officers were acquitted. On 10 March 1997, the prosecutor withdrew his appeal. It is submitted that, therefore, the decision of the court is final.

...

9.2 The Committee notes the complainant's claim that the State party was in breach of article 13 of the Convention, because the Regional Criminal Court failed to open a judicial investigation into his allegations of torture. He contends that only a judicial investigation could be considered impartial. In this connection the Committee observes that the decision of the Regional Criminal Court of 25 November 1996 reveals that the court took into account all evidence presented by the complainant and the prosecutor when deciding to acquit the three policemen. The Committee finds that the complainant has failed to substantiate in what way the investigations conducted by the State party were not impartial within the meaning of article 13 of the Convention.

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

- *M. P. S. v. Australia* (138/1999), CAT, A/57/44 (30 April 2002) 111 at paras. 2.1-2.8, 7.1, 7.3-7.5 and 8.

...

2.1 On 9 September 1997, the complainant arrived in Australia without a passport or other identification papers. On 15 September 1997, he applied for refugee status (protection visa) to the Department of Immigration and Multicultural Affairs. His application was rejected on 25 September 1997. The decision not to grant a protection visa was confirmed by the Refugee Review Tribunal (RRT) on 30 October 1997, after conducting a hearing, where a legal adviser and an interpreter assisted the complainant. Upon decision of the Federal Court of 13 May 1998, the matter was referred back to the RRT for re-determination. On 20 August 1998, the Tribunal decided again not to grant a protection visa, after hearing the complainant.

TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

On 3 February 1999, the federal Court dismissed the complainant's appeal against the second RRT decision. An appeal to the Full Court of the Federal Court was dismissed on 14 May 1999. On 3 November 1997, 20 August 1998 and 18 June 1999, his case was considered not to satisfy the requirements for granting a visa to remain in Australia on humanitarian grounds. Counsel submits that all effective domestic remedies have been exhausted.

2.2 Counsel submits that the complainant lived in Nuwara Eliya, an area in the south of Sri Lanka. In 1989, when fighting broke out between the pro-Sinhalese movement Janatha Vimurthi Peramuna (JVP) and the Government in the Nuwara Eliya area, the complainant was arrested and detained for six to seven months in the Diyatalawa Army Camp on suspicion of being a member of JVP. During this time, the complainant was allegedly questioned and subjected to torture by army officers. The complainant's father paid a large amount of money to secure his release.

2.3 From 1992 to 1995, members of the Liberation Tigers of Tamil Eelam (LTTE), friends of his wife's family, visited frequently and the complainant was obliged to provide food and accommodation. On the last occasion, in October 1995, several members of the LTTE came to stay with his family for 15 days. During this time, the oil tanks in Kolonawa, Colombo, were bombed and the police believed that the people staying with the complainant's family had been involved. The complainant was allegedly taken to the police station in Nuwara Eliya, interrogated and tortured. It is submitted that the complainant had only been released after three days upon payment of a large amount of money to the police officer in charge.

2.4 In February 1996, the LTTE accused the complainant of providing the Government with information on the oil tank attack. Counsel submits that the complainant was beaten and threatened with death. After intervention by his family and his wife, he was spared.

2.5 Towards the end of February 1996, the complainant was arrested by the police and taken to Diyathalawa Army Camp, detained for three days, and allegedly tortured. Counsel submits that the father of the complainant paid a large amount of money for his release. Immediately after his release, the complainant fled Nuwara Eliya for fear of the Sri Lankan authorities and the LTTE. He stayed with friends in Kandy and later in Hatton for some months, before he went to Colombo.

2.6 Later in 1996, the Maradana police arrested the complainant in Colombo, detained him for one week and questioned him on his relationship with the LTTE. It is submitted that the complainant was beaten every night by police officers and that he was not given proper food. In March 1997, the complainant managed to flee Sri Lanka to Cambodia, Bangkok and Sydney.

2.7 Counsel submits that in view of the two arrests of the complainant with regard to the Kolonawa bomb blast, there is a real chance that he would be arrested again should he return to Sri Lanka. Counsel believes that the documents, which have been taken away from the complainant by the police, have been supplied to the secret police (NIB) and, therefore, the authorities will be in a position to trace the complainant wherever he lives. Counsel argues that the complainant had been arrested and come to the attention of the security forces for providing a safe place to LTTE members who allegedly were involved in what is considered to be one of the major assassinations committed by the LTTE. The complainant would very likely be detained and interrogated at the airport upon his return to Colombo.

2.8 Counsel further submits that there are substantial grounds for believing that the complainant would be in danger of being subjected to torture by Sri Lankan police, security forces and the LTTE if he returned to Sri Lanka. The complainant experienced torture and ill-treatment by the authorities and the LTTE before he left the country. Counsel quotes Human Rights Watch reports and reports by the United States Department of State of 1996 as evidence of a consistent pattern of gross and systematic violations of human rights in Sri Lanka. Counsel argues that under the Prevention of Terrorism Act and Emergency Regulations the police can arrest on the basis of mere suspicion, often based on the presumption of guilt arising merely from a person coming from the north or east of the country. In such an atmosphere, counsel sees every chance that the complainant, as a Tamil-speaking young man from the Eastern Province of Sri Lanka, will be harassed and mistreated by the authorities on mere suspicion. Counsel quotes from Sri Lankan newspaper headlines and articles in this regard.

...

7.1 The issue before the Committee is whether the forced return of the complainant to Sri Lanka violated the obligation of Australia under article 3 of the Convention not to expel or return a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

...

7.3 In the present case, the Committee notes the State party's argument that it is beyond its competence to review findings of fact or the interpretation of domestic legislation by national organs of the State party. The Committee agrees that it cannot overturn an authoritative domestic organ's interpretation of the application of domestic legislation, but reiterates that it is not bound by findings of fact that are made by organs of the State party and instead has the power, provided for by article 22, paragraph 4, of the Convention, of free assessment of the facts based upon the full set of circumstances in every case 1/. The Committee recalls that, even though there may be some remaining doubt as to the veracity of the facts adduced by a complainant, it must ensure that his security is not endangered 2/. In order to do this, it is not necessary that all the facts invoked by the complainant should be proved; it is sufficient that the Committee should consider them to be sufficiently substantiated and reliable.

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

7.5 The Committee notes with concern the reports of torture by public officials in Sri Lanka, including those submitted by the complainant, but points out that, for the purposes of article 3 of the Convention, substantial grounds must exist that create a foreseeable, real and personal risk of torture in the country to which the complainant is to be returned. On the basis of the facts as submitted by the complainant, the Committee is of the opinion that such grounds have not been established. Therefore, the Committee considers that the complainant has not substantiated his claim that he was personally at a real risk of being subjected to torture, if returned to Sri Lanka.

8. The Committee against Torture...concludes that the removal of the complainant to Sri Lanka, on the basis of the information submitted, did not constitute a breach of article 3 of the Convention.

Notes

1/ General Comment No. 1, sixteenth session (1996), para. 9 (b).

2/ See *Mutombo v. Switzerland*, case No. 13/1993, Views adopted on 27 April 1994, para. 9.2.

3/ *G.R.B. v. Sweden*, case No. 83/1997, Views adopted on 15 May 1998, para. 6.5.

TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

- *B. M. v. Sweden* (179/2001), CAT, A/57/44 (30 April 2002) 182 at paras. 2.1-2.5, 2.9-2.11, 5.3 and 6.

...

2.1 The complainant lived and worked in Saudi Arabia from 1983 to 1998. During this period, he was very active in the Muslim community, holding religious discussions with other Muslims and collecting money for the poor and for the families of imprisoned members of the Al-Nadha Party in Tunisia. The complainant is not a member of that party but an active supporter. He states that all Muslim organizations in Tunisia are considered to be working politically against the Tunisian regime, including the Al-Nadha Party.

2.2 In 1989, 1990 and 1992, while the complainant was still residing in Saudi Arabia, he made several visits to Tunisia. His first visit in 1989 was to arrange his marriage contract. He was arrested at the airport, detained and interrogated in prison and then brought before the "Al-Kassabah" court where he was forced to sign a confession stating that he adhered to Wahhabism, which is the interpretation of Islam practised in Saudi Arabia. The complainant was allegedly tortured during the interrogation.

2.3 In 1990, the complainant entered Tunisia again in order to marry. He was again arrested at the airport, interrogated, accused again of being a Wahhabi and then released. In 1992, the complainant and his wife went to Tunisia together. They were arrested at the airport and interrogated about the complainant's activities and religious ideas. He was again accused of being a Wahhabi and of collecting money for the families of men imprisoned for activities against the Tunisian regime. After interrogation they were released, but a travel ban was issued. A few days later, uniformed and civilian police forcibly entered the house where they were staying. The police forcibly removed the veil of the complainant's wife, and beat the complainant. The couple were brought to a camp where they were interrogated separately for approximately three hours and then released after the complainant signed a confession stating that he had adopted the Wahhabi ideas and had forced his wife to wear a veil. On their release, the couple was helped by a friend of the complainant's to leave the country and return to Saudi Arabia.

2.4 On his return to Saudi Arabia in 1992, the complainant continued with his activities in the Muslim community. In July of that year, he also received a new passport at the Tunisian Embassy in Riyadh. In 1993 a "secret decree" was issued in Tunisia, which forbade Tunisian embassies from issuing or renewing passports without consulting the Tunisian Ministry of Internal Affairs. For wanted persons, the embassies could only issue a laisser-passer for a journey back to Tunisia.

2.5 In 1996, the complainant received information that he and other Tunisians were being

monitored by the Tunisian Embassy. He was also told that another Tunisian who lived in Saudi Arabia and whom he used to meet for religious discussions had been arrested and imprisoned when he was visiting Tunisia on vacation.

...

2.9 On 1 March 1999, the complainant's application for asylum and a residence permit was turned down by the Swedish Immigration Board. He appealed the decision to the Aliens Appeals Board. On 28 September 2000, his appeal was refused.

2.10 In February 2001, the complainant then made a second application for asylum and a residence permit to the Aliens Appeals Board. His second application was also refused although he submitted the false stamps he had bought in Saudi Arabia to extend his passport, a second letter from the Chairman of the Al-Nadha certifying his personal knowledge of the complainant and referring to the likelihood of his being subjected to torture if deported to Tunisia, and a letter from UNHCR stating the following, "UNHCR has no reasons to doubt the genuineness of the above attestation [certificate from the Chairman of Al-Nadha]. In light of this, and considering that members of the Al-Nadha Party still risk persecution in Tunisia, we would advise against the return of the applicant to Tunisia."

2.11 On 6 March, the complainant submitted a third application for consideration by the Aliens Appeals Board. The complainant included a letter from Amnesty International, Sweden and the United States Department of State country report describing the general human rights situation in Tunisia. The letter from Amnesty also states that in the opinion of the organization the complainant would be at risk of torture if returned to Tunisia because of his involvement with Al-Nadha. On 19 March 2001, the Aliens Board rejected his application, stating that the complainant had referred to the same information as in his previous applications.

...

5.3 The Committee notes the complainant's argument that there is a foreseeable risk that he will be tortured if deported to Tunisia because of his involvement with Al-Nadha and the fact that he was previously interrogated and tortured by the Tunisian authorities. The Committee takes note of the information provided by Amnesty International but observes that the complainant does not contest that he was not a member of Al-Nadha nor involved in any political activity, but merely involved in work of a humanitarian nature. In addition, the Committee notes that the complainant has not provided any evidence of having been tortured by the Tunisian authorities and has not alleged any other circumstances which would appear to make him particularly vulnerable to the risk of being torture. This consideration is further supported by the fact that the author, although allegedly tortured in Tunisia in 1989, returned to Tunisia in 1990 without being subjected to torture. For the above-mentioned reasons, the Committee finds that the complainant has not provided substantial grounds for believing that he would be in danger of being tortured were he to be returned to Tunisia and that such

danger is personal and present.

6. The Committee against Torture...concludes that the complainant's removal to Tunisia would not constitute a breach by the State party of article 3 of the Convention.

- *F. F. Z. v. Denmark* (180/2001), CAT, A/57/44 (30 April 2002) 190 at paras. 10-12.

...
10. In the present case...the Committee has to determine whether the expulsion of the complainant to Libya would have the foreseeable consequence of exposing him to a real and personal risk of being arrested and tortured.

11. The State party has pointed out that none of the three arrests to which the complainant was subjected, were related to his political activities. It also submits that the complainant would not have been able to have his passport stamped on his departure from Libya if he had been exposed to persecution at that time, and that the Amnesty International medical report provides no objective indication that he was subjected to gross outrages. Furthermore, the events that motivated the author's departure date far back in time, and his family has not been sought or harassed on account of the complainant since his brother's release in 1996. The Committee considers, on the basis of the information provided, that the political activities that the complainant claims to have carried out, are not of such a nature as to conclude that he runs a real risk of being tortured upon his return. Indeed, he does not seem to be particularly exposed to persecution by the Libyan authorities. The Danish Ministry of Foreign Affairs has stated that Libyan citizens who return to Libya more than a year after their legal or illegal departure are frequently detained and questioned, but then released after some hours.

12. On the basis of the above considerations, the Committee considers that the complainant has not proved his claim that there are substantial grounds to support his claim that he would risk torture if returned to Libya.

- *H. M. H. I. v. Australia* (177/2001), CAT, A/57/44 (1 May 2002) 166 at paras. 2.1-2.5, 6.4-6.6 and 7.

...
2.1 The complainant is a member of the Dabarre sub-clan of the Rahanwein clan. His uncle was a Minister for Higher Education of the former Said Barre regime. Upon the outbreak of clan violence in 1991, the complainant and his family resided in Baidoa, largely populated

by Rahanwein, but controlled by Said Barre's brother-in-law, a member of the Marehan sub-clan of the Darod clan. According to the complainant, a competing sub-clan destroyed the city, killing many, only for Rahanwein forces to return, followed by pillaging Marehan forces.

2.2 Following the destruction of the complainant's house, Marehan forces detained the complainant and his wife. Upon learning they were Rahanwein, they were taken prisoner and forced to work on local farms. The complainant alleges that his wife was raped, but they escaped in April 1992. After the death of his brother at the hands of the forces of a militia warlord, Hussain Aideed, of the Hawiye clan, the complainant and his wife reached an area where some of his Dabarre sub-clan lived and where he left his family. He departed the area as Aideed forces had killed many of his relatives. In November 1992, close to the national border, the complainant heard that his Dabarre sub-clan had been attacked by another sub-clan of the Rahanwein. In December 1994, he heard that his uncle, the former Minister, had died at the hands of Aideed forces.

2.3 On 25 December 1997, the complainant reached Sydney, Australia, via Thailand, without valid documentation. From that point he has remained in immigration detention. On 2 January 1998, the complainant applied for a "protection visa" (refugee status) and was granted legal representation. He claimed to fear treatment amounting to persecution in Somalia (torture or execution) on the basis of either his race or, alternatively, on the basis of his nationality, political opinion or membership of a particular social group due to his clan membership and familial ties to a political figure of the former Barre Government. On 15 January 1998, the complainant's application was refused.

2.4 On 8 July 1998, following a hearing with the complainant on 9 April 1998, the Refugee Review Tribunal (RRT) refused his application for review of the first instance decision. The RRT found the complainant to be credible and accepted his account of his clan's and sub-clan's experiences. However, it found that the human rights violations he feared were not "persecution" within the meaning of the 1951 Convention relating to the Status of Refugees since he was, instead, a victim of civil war.

2.5 On 15 October 1998, the Federal Court of Australia dismissed the complainant's application for review of the RRT's decision. On 9 April 1999, the Full Federal Court upheld the complainant's appeal against the Federal Court decision. On 26 October 2000 a majority of the High Court upheld an appeal by the Minister of Immigration and Multicultural Affairs against the decision of the Full Federal Court, and affirmed the RRT's decision.

2.6 On 30 November 2000 and 2 February 2001, the Department of Immigration and Multicultural Affairs rejected applications for a discretionary ministerial waiver under the

Migration Act of the RRT decision.

...

6.4 The Committee recalls its jurisprudence that the State party's obligation under article 3 to refrain from forcibly returning a person to another State where there are substantial grounds of a risk of torture, as defined in article 1 of the Convention, which requires actions by "a public official or other person acting in an official capacity". Accordingly, in *G.R.B. v. Sweden*9/ the Committee considered that allegations of a risk of torture at the hands of Sendeero Luminoso, a non-State entity controlling significant portions of Peru, fell outside the scope of article 3 of the Convention. In *Elmi v. Australia*,10/ the Committee considered that, in the exceptional circumstance of State authority that was wholly lacking, acts by groups exercising quasi-governmental authority could fall within the definition of article 1, and thus call for the application of article 3. The Committee considers that, with three years having elapsed since the *Elmi* decision, Somalia currently possesses a State authority in the form of the Transitional National Government, which has relations with the international community in its capacity as central Government, though some doubts may exist as to the reach of its territorial authority and its permanence. Accordingly, the Committee does not consider this case to fall within the exceptional situation in *Elmi*, and takes the view that acts of such entities as are now in Somalia commonly fall outside the scope of article 3 of the Convention.

6.5 Moreover, the Committee has taken into account all relevant considerations, including the existence in the State party of a consistent pattern of gross, flagrant or mass violations of human rights, although the existence of such a pattern does not as such constitute sufficient grounds for determining whether the particular person would be in danger of being subjected to torture upon his return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. In this case, the Committee considers that the complainant has failed to show that there are substantial grounds for believing that he is personally at a risk of being subjected to torture in the event of return to Somalia.

6.6 The Committee also takes note that the State party does not intend to return the complainant to Mogadishu, and that the complainant will be at liberty to avail himself of the UNHCR voluntary repatriation programme and choose the area of Somalia to which he wishes to return.

7. The Committee against Torture...is of the view that the removal of the complainant from Australia would not entail a breach of article 3 of the Convention.

_____

Notes

...

9/ [Communication No. 83/1997.]

10/ [Communication No. 120/1998.]

- *Chedli Ben Ahmed Karoui v. Sweden* (185/2001), CAT, A/57/44 (8 May 2002) 198 at paras. 2.1-2.9 and 8-12.

...

2.1 Mr. Karoui grew up in the town of Jendouba, north-west of the capital Tunis. He attended high school, where he became interested in philosophical and political issues, especially in the Islamic movement. He has been an active member of the Islamic Al-Nahdha Movement since 1981. Later on, he became responsible for the cultural and ideological teaching within the organization in his neighbourhood.

2.2 Because of his affiliation with Al-Nahdha, he was expelled from school in 1979. His family supported his continued studies in a private school. In 1981, he was detained for 1 month and 10 days, and interrogated about his political activities, and more specifically about the demonstrations he had participated in. However, still being a minor, he was released without penalty. This was the first of a total of seven arrests between 1981 and 1996.

2.3 In 1983, he was detained for one month, before being sentenced to six months in prison for participating in demonstrations against the Government. He was also expelled from school because of the allegations made against him. When released, he was unemployed and relied upon the financial support of his family. In 1984, he was arrested and sentenced to two and a half years in prison for affiliating with Al-Nahdha and participating in demonstrations. In 1986, he was again arrested and detained for six months under the accusations of having produced and distributed leaflets against the Government. As the accusations were not proved, he was released without conviction.

2.4 Mr. Karoui tried to leave for Algeria in order to continue his studies, but his passport was confiscated, and he was prohibited from leaving the country as well as taking up employment in Tunisia. In spite of this prohibition, he took up casual work for shorter periods. In November 1987, when the President Ben Ali was elected, the tensions in Tunisia were eased for a while before the repression hardened again. Although wanted for his participation in demonstrations against the United States of America's involvement in the Gulf War, he managed to travel illegally to Algeria in the end of 1990, in order to continue his studies. He returned to Tunisia once in June 1991, when his father became ill, but returned to Algeria at the end of the year after obtaining a Tunisian passport. He pursued his

studies until the end of 1992.

2.5 In 1992 he was expelled to Tunisia together with 11 other Tunisians affiliated with Islamic movements. In Tunisia, they were kept in pre-trial detention for two and a half months. He and three other prisoners managed to escape while awaiting trial. He fled to Algeria again, where he applied for asylum on 8 September 1992. The application was rejected in December 1992, and he was again sent to Tunisia in 1993.

2.6 Upon return to Tunisia, he was arrested, and sentenced to one and a half years in prison for being a member of an illegal organization, and for having participated in demonstrations and agitation. According to the complainant, he was maltreated and tortured during every detention, but even more so during the last one, including hitting in his right leg with a baton causing a fracture and permanent pains, pouring of water over him while he was handcuffed, removing hair from his body, and burning his body with cigarettes.

2.7 When he married an Algerian woman in December 1994, he planned to abandon political activity. He worked for a construction company from 1 March 1996 to 30 June 1999. However, in 1996, he was again accused of anti-governmental activity, after refusing to participate in meetings called by the local leader of the governmental party. He was arrested and sentenced to one and a half years in prison. He was released in January 1997, due to demonstrations and international pressure to ease the repression. Subsequent to his detention, he had to report to the police every day. From 1998, the reporting frequency was changed to once a week and it was still in effect when he left Tunisia.

2.8 In the summer of 1999, he was informed that several members of Al-Nahdha whom he knew had been arrested; therefore he decided to escape the country. He obtained a passport through contact and bribes, and a visa for Sweden to visit his cousin, and left for Sweden on 7 August 1999. He arrived in Sweden on the same day, and destroyed his passport immediately after arrival. Before applying for asylum on 24 August 1999, he awaited documents and proof from Tunisia. Whilst in Sweden he was summoned for trial in Tunisia for 15 September 1999, and he was sentenced to eight years in prison in absentia, for attempts of agitation, disturbing the public order and collecting funds. The complainant submitted a fax copy of a certificate from the Jendouba court dated 18 February 2000, confirming these alleged facts. The police came to search his house in Tunisia several times, and once detained his wife for three days. Subsequently, his wife had a miscarriage. After he left for Sweden, his wife went to Algeria since she was under the constant pressure of Tunisian authorities, and in January 2000 his wife and daughter travelled to Sweden.

2.9 On 4 January 2000, the Swedish Immigration Board rejected his application, and ordered his expulsion to Tunisia. The reasons for rejection were mainly that the Board

doubted his credibility, since he had destroyed his passport when arriving in Sweden, and he had waited 17 days before applying for asylum. Furthermore, the Board noted that in spite of the strict controls at Tunisian airports, he was able to leave through a Tunisian airport in his own name. The Board therefore considered it unlikely that he was wanted by Tunisian authorities. The Board also noted that there were several discrepancies in the information provided by him, i.e. about the length of time he was employed, when he was first tortured, and the length of the sentence he was convicted to in 1996. It also noted that meanwhile he informed the Swedish Immigration authorities in an interview on 25 August, that he had a case pending before a Tunisian court.

...

8. In accordance with article 3, paragraph 1, of the Convention, the Committee has to determine whether there are substantial grounds for believing that he would be in danger of being subjected to torture if returned to Tunisia. In order to do this, the Committee must, in accordance with article 3, paragraph 2, take into account all relevant considerations, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. Furthermore, the Committee has to determine whether the expulsion of Mr. Karoui to Tunisia would have the foreseeable consequence of exposing him to a real and personal risk of being arrested and tortured, especially in view of an *in absentia* judgement against him.

9. The Committee refers to its consideration of the report submitted by Tunisia, in 1997, where it expressed concern over the reported widespread practice of torture and other cruel and inhuman treatment perpetrated by police and security forces. Later human rights reports from reliable sources suggest that a pattern of detention, imprisonment, torture and ill-treatment of persons accused of political opposition activities, including links with the Al-Nahdha Movement, still exist in Tunisia.

10. The Committee notes the State party's arguments that the inconsistencies in the information provided by the complainant in the asylum process in Sweden cast doubts on the veracity of his claim. However, the Committee attaches importance to the explanations for these inconsistencies given by the complainant, and reiterates its jurisprudence that complete accuracy is seldom to be expected from victims of torture. The Committee finds it impossible to verify the authenticity of some of the documents provided by the complainant. However, in view of the substantive reliable documentation he has provided, including medical records, a support letter from Amnesty International, Sweden, and an attestation from the Al-Nahdha chairman, the complainant should be given the benefit of the doubt, since he has provided sufficient reliable information for the burden of proof to shift. The Committee attaches importance to the medico-legal reports of past torture, and an assessment of the risk that the complainant may be subjected to torture if he is returned to Tunisia and detained, pursuant to the judgement of 15 September 1999, or consequent to his record of being a member of

the Al-Nahdha and a political opponent to the existing Government in Tunisia.

11. In the circumstances, the Committee considers that substantial grounds exist for believing that the complainant may risk being subjected to torture if returned to Tunisia.

12. The Committee against Torture...concludes that the removal of Mr. Karoui to Tunisia would constitute a breach of article 3 of the Convention.

- *L. M. T. D. v. Sweden* (164/2000), CAT, A/57/44 (15 May 2002) 147 at paras. 2.1-2.5, 4.3, 4.4 and 7-10.

...

2.1 The complainant worked as a procurator for juveniles in the office of the Attorney-General of the Republic of Venezuela from 1988 to 1997. One of her functions was to regularize the registration of children in the civil registers so that they might later obtain an identity card. This procedure took place on the basis of an authorization by a civil court.

2.2 In 1995, the complainant discovered that some Chinese nationals had obtained Venezuelan identity cards and passports by using forged documents, such as copies of registration decisions bearing her signature and stamp and the stamp of the Civil Court. The complainant reported this fact to the Attorney-General of the Republic for the latter to institute an investigation to determine who was responsible for the forgery. On 22 February 1995, the complainant filed a complaint with Caracas Criminal Court of First Instance No. 15. In 1996, she requested a judicial or eyewitness inspection of the National Identification Office (ONI) and of the files of the Aliens' Department (DEX), where the forged documents were found. The inspection was never carried out because, according to the complainant, the heads of the two bodies in question were linked to the Convergencia political party, which received large amounts of money for granting Venezuelan nationality to Chinese nationals.

2.3 In March 1997, the complainant was dismissed from the Office of the Attorney-General of the Republic with no explanation, but still continued with the investigation. From then on, she started receiving threats by telephone and anonymous threats pushed under her door. Her daughter was the victim of a kidnapping attempt and her husband was brutally pistol whipped on the head and back. She was also warned that she had to stop investigating and filing complaints.

2.4 In August 1997 and as a result of what had happened, the complainant and her family moved from Caracas to Maracaibo. In December 1997, the complainant's car was stolen and later burned. She was also harassed by telephone and told that, if she filed any more

complaints, she was the one who would be accused of being responsible for the forgeries. As a result, she and her family fled to the city of Maracay in January 1998. That was when they decided to sell everything they owned and leave the country for Sweden.

2.5 The complainant and her family applied for political asylum in Sweden on 19 March 1998. The Swedish National Migration Board rejected the application on 24 August 1998, claiming that the facts did not in any way constitute grounds for asylum in Sweden and that, in addition, the complainant could prove her innocence through legal channels. An appeal against that decision was submitted to the Aliens' Commission, which upheld the initial decision on 3 March 2000. An application for inhibition was later filed with the Aliens' Commission, but it was denied on 14 March 2000.

...

4.3 With regard to the merits of the complaint, the State party draws a distinction between the general human rights situation in Venezuela and the personal situation of the complainant if she were returned to Venezuela.

(a) The State party affirms that, with regard to the general human rights situation in Venezuela, although the human rights situation continues to be poor in some respects, there are no grounds for stating that there is a consistent pattern of gross, flagrant or mass violations of human rights. The State party recalls that, although some reports of human rights violations in Venezuela, such as the 1999 United States State Department report on human rights in Venezuela, the 1999 Human Rights Watch report on Venezuela and the 2000 Amnesty International report, refer to extrajudicial executions by the army and the police, as well as to an increase in cases of torture and ill-treatment of detainees, women detainees are held in separate prisons, where conditions are better than in prisons for men. The State party also reports that, in February 1999, the administration of President Cháávez re-established the articles of the Constitution relating to the prohibition of arrests without a warrant and to freedom of movement. The State party lastly recalls that such reports refer to torture, indicating that the security forces continue to torture and ill-treat detainees both physically and mentally. However, although the general human rights situation in Venezuela leaves much to be desired, particularly with regard to conditions of detention, that does not constitute sufficient grounds for concluding that a person will be tortured if he or she is returned to Venezuela.

(b) With regard to the complainant's personal situation, the State party recalls that, unlike many other authors of complaints submitted to the Committee, the complainant has not belonged to any party or political organization. Her complaint is based on the fact that she was wrongfully suspected of being involved in a bribery scandal, for which she could be sentenced to imprisonment if she returned to

Venezuela, in poor conditions of detention. Moreover, she does not claim that she was ever subjected to torture in the past and, more importantly, has not explicitly demonstrated how she would be subjected to torture if she returned to Venezuela. The State party also points out that Venezuela has not requested the complainant's extradition and that there are no grounds for believing that the Venezuelan authorities intend to imprison her. On the contrary, the State party was able to ascertain that the head of the ONI, the primary suspect in the bribery scandal, has not been arrested.

4.4 The State party reports that, in their decisions of 24 August 1998 and 14 March 2000, respectively, the National Migration Board and the Aliens' Commission argued that the fact of being in danger of being tried for a crime or of being subjected to harassment in Venezuela is not a reason for granting asylum in Sweden. Both bodies also ascertain that, if she was tried, the complainant would have a fair trial and would have a good chance of winning her case. The State party adds that it does not question the complainant's testimony about the bribery scandal and the subsequent harassment. However, it does trust the arguments put forward by the two bodies.

...

7. In accordance with article 3, paragraph 1, of the Convention, the Committee must decide whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture if she returned to Venezuela. In order to reach its conclusion, the Committee must take account of all relevant considerations, in accordance with article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim is, however, to determine whether the individual concerned would personally be in danger of torture in the country to which he or she would return. The existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient grounds for determining whether a person would be in danger of being subjected to torture upon his or her return to that country; additional grounds must be adduced to show that the individual concerned would be in danger. In the present case, the Committee must determine whether the expulsion of the complainant to Venezuela would entail a *foreseeable, real and personal* risk of being arrested and tortured.

8. The Committee notes the State party's arguments that, although the human rights situation in Venezuela remains poor, particularly with regard to prison conditions, there are no grounds for stating that a consistent pattern of gross, flagrant or mass violations of human rights exists in Venezuela. The Committee also notes the exchange of arguments between the complainant and the State party concerning the alleged risk to the complainant of being subjected to torture and considers that the complainant has not provided sufficient evidence to show that she runs a foreseeable, real and personal risk of being tortured in Venezuela.

9. The Committee agrees with arguments put forward by the State party and takes the view that the information submitted does not show substantial grounds for believing that the complainant would personally be in danger of being subjected to torture if she was returned to Venezuela.

10. The Committee against Torture...concludes that the decision of the State party to return the complainant to Venezuela does not constitute a violation of article 3 of the Convention.

- *V. N. I. M. v. Canada* (119/1998), CAT, A/58/44 (12 November 2002) 75 (CAT/C/29/D/119/1998) at paras. 1.1, 2.1-2.3, 8.1, 8.3-8.5 and 9.

...
1.1 The complainant is Mr. V. N. I. M., a national of Honduras born in 1966. He is currently living in Canada, where he requested asylum on 27 January 1997. This request was rejected and he claims that his enforced repatriation to Honduras would be a violation by Canada of article 3 of the Convention against Torture...
...
2.1 The complainant claims that, in April 1988, he was accused by the military of having planted a bomb in a building where he was arrested, being the only person on the scene at the time of the explosion on 19 April 1988. While seriously injured, he was interrogated the day after his arrest and claims that doctors amputated his arm under pressure from the military in order to make him reveal the names of his alleged accomplices. An army officer reportedly told a nurse and a doctor that removing part of his arm was a way of sending a warning to other "leftists".

2.2 Following his arrest, he was detained for three years and four months until 8 August 1991. Meanwhile, a decision by San Pedro Sula Criminal Court No. 3 of 13 January 1989 dismissed the proceedings against him for lack of evidence.1/ The complainant claims that during his detention, he was treated by the military as if he was guilty of the bombing and was tortured and ill-treated many times.

2.3 With the help of the Pentecostalist Church, the author then contacted the Canadian authorities to obtain refugee status in Canada, but was informed that he had to be present himself in Canada for an application to be valid. In April 1992, he fled to Costa Rica. During this period, his brothers and sisters were constantly harassed by the military to make them say where he was hiding. In May 1992, his brother was detained illegally for five days for that purpose. He was then released, but only after having again been threatened with death. The complainant then contacted the Canadian Embassy in Costa Rica once more to obtain help, but this was refused because the political situation was delicate, on account of terrorist

acts carried out by Honduran citizens during that period and the Canadian authorities could not assist him. For lack of resources, the complainant returned to Honduras in March 1993, where he hid in a small village near the border with El Salvador until 1995.

...

8.1 The Committee must decide whether the claimant's return to Honduras would be a breach of the State party's obligation under article 3 of the Convention not to expel or return a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

...

8.3 The Committee draws attention to its General Comment on the implementation of article 3, which reads: "Bearing in mind that the State party and the Committee are obliged to assess whether there are substantial grounds for believing that the author would be in danger of being subjected to torture were he/she to be expelled, returned or extradited, the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable" (A/53/44, annex IX, para. 6).

8.4 In the present case, the Committee takes note of the State party's observations that the claimant's statements about the risks of torture are not credible and not corroborated by objective evidence.

8.5 On the basis of the information submitted to it, the Committee considers that the complainant has not demonstrated that he is an opponent of the regime who is wanted for terrorist activities. The Committee notes that he was acquitted of responsibility for the 1988 explosion and that he has not been accused of other opposition activities since then. He has thus not shown that there is a personal risk of being subjected to torture if he returns to Honduras. Accordingly, the Committee takes the view that it is not necessary to examine the general human rights situation in Honduras and that the claimant has not demonstrated that there are substantial grounds, in accordance with article 3 of the Convention, for believing that he would be in danger of being subjected to torture if he returned to his country of origin.

9. Consequently, the Committee against Torture...concludes that the return of the complainant to Honduras would not constitute a breach of article 3 of the Convention.

Notes

1/ He claims that he was not released on the day of the decision because of an appeal filed by the opposing party.

TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

- *H. K. H. v. Sweden* (204/2002), CAT, A/58/44 (19 November 2002) 98 (CAT/C/29/D/204/2002) at paras. 2.1-2.5, 2.7, 2.8, 6.3 and 7.

...

2.1 While living in Iran, the complainant belonged to and worked for the political organization Cherikhaj Fadai Schalg. The complainant alleges that he was arrested several times between 1983 and 1988 as a suspect for illegal political activities. In or around September 1989, he alleges that he accidentally killed a revolutionary guard in the following circumstances. The complainant was having a relationship with a girl of Armenian origin. On taking a walk together in a park in central Tehran, they met a group of revolutionary guards. These guards "interfered" with the complainant and his girlfriend because she wore a Christian cross around her neck. The guards threw acid at his girlfriend's face. When one of the guards threatened the complainant with a knife, the complainant managed to grab the knife and stab the guard. He and his girlfriend then fled.

2.2 After this incident, the complainant hid at different places around Tehran. During this period in hiding, he was informed that the guard had died from his wounds and that his girlfriend had committed suicide. He was also informed that some of his relatives' houses had been searched. On 26 October 1989, the complainant succeeded in leaving Iran illegally and arrived in Sweden, where he applied for asylum to the National Immigration Board (now Migration Board and hereinafter referred to as such). On 17 September 1990, the Migration Board rejected the complainant's application as he had given contradictory information about his political activities. The complainant appealed his decision to the Aliens Appeals Board which rejected his application for similar reasons and refused to grant him refugee status. He was later granted a residence permit on the basis of a general amnesty for asylum applicants.

2.3 According to the complainant, his mother was murdered in 1996. In his view, it is likely that the murder was a consequence of his actions. One of his brothers, committed suicide in 1996 and another brother was killed in 2000. His two other brothers fled Iran and were granted asylum in Canada. The complainant also alleges that he received oral information that he has been sentenced to death in Iran. A representative of the Revolutionary Guard had told the complainant’s mother about the verdict before her death.

2.4 In 1994, the complainant was prosecuted for drug smuggling. He was sentenced to 10 years' imprisonment and ordered deported, as he was considered a danger to the public. The complainant failed in his efforts to appeal his case to the Appellation Court for Middle Sweden and then the Supreme Court. The complainant alleges that his need for protection was not considered through this court procedure. The National Board of Corrections Institutions reduced the complainant's sentence so that he would be released on 8 March

2002.

2.5 On 10 January 2002, the complainant lodged an application with the Government arguing that the Court's decision to expel him from Sweden should be revoked as he had the same need of protection as he had previously maintained in his claim to the Migration Board. In addition, he claimed that the contradictions in the information he had supplied to the Migration Board were related to the fact that he was suffering from the effects of torture which he had suffered during his arrests and interrogations in Iran.1/ Although the author provided information on further documents taken into account by the Government in assessing the complainant's case, this information was provided to the author under the Swedish Secrecy Act and, at the complainant's request, is not provided herein.

2.6 In a decision dated 21 March 2002, the Government decided that there was no reasonable risk that the complainant would be subjected to torture if returned to Iran. On 10 April 2002, the complainant was released from custody by decision of the Minister of Justice, who decided to stay the enforcement of the complainant's expulsion until further notice.

2.7 According to the complainant, the use of torture is common in Iran. Police, the Revolutionary Guard and other Security Services frequently practise grave forms of torture, with various methods during investigations. Torture is also used in the prison system after a verdict. In this regard, the complainant refers to reports from UNOHCHR's Special Rapporteur for Iran the Secretary-General's Special Representative on Iran, the United States State Department's Country Reports on Human Rights's report and Amnesty International.s report. Even the The Iranian Parliament itself, he states, has found that torture and excess of violence are used in Iranian prisons.

...

6.3 The Committee notes that the main reason the complainant fears a personal risk of torture if returned to Iran is because he allegedly killed a guard in a park in Tehran prior to his departure. The complainant admits that he provided inconsistent information to the State party on his alleged involvement in political activities, which he attributes to the effects of torture, but argues that he was never inconsistent in describing the incident in the park. The Committee notes that the complainant has provided a medical report which indicates that he has marks on his body, but does not support the allegation that he suffers from post traumatic stress disorder resulting from being subjected to torture. Indeed, the Committee notes the State party's argument that the complainant did not mention any instances of torture until the appeal to the Aliens Appeal Board and even then provided no details of the alleged torture. Neither has the complainant provided details of any torture in his submission to the Committee. Consequently, the Committee finds it difficult to believe that inconsistencies in the information provided to the State party and to the Committee resulted from the effects of torture. In addition, and contrary to the complainant's claim, the Committee notes that the

complainant was inconsistent in his description of the incident in the park including his failure to mention his girlfriend's presence until his application to the Government in 2002. The Committee also observes that the complainant has failed to sufficiently explain many other inconsistencies in his claim including the circumstances of his mother's death, and his departure from Iran, which raise doubts with the Committee as to his credibility. In light of the foregoing, and while recognising the ongoing widespread violations of human rights in Iran, the Committee finds that the complainant has not established that he himself would face a foreseeable, real and personal risk of being tortured within the meaning of article 3 of the Convention.

7. The Committee against Torture...concludes that the complainant's removal to Iran by the State party would not constitute a breach of article 3 of the Convention.

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Notes

1/ The complainant provided a medical report, dated 23 May 1996, indicating that he had scars on his body alleged to have been caused by cigarette burns and whipping. The complainant provided no details of the alleged torture.

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- *Hajrizi Dzemajl et al. v. Serbia and Montenegro* (161/2000), CAT, A/58/44 (21 November 2002) 85 (CAT/C/29/D/161/2000) at paras. 2.1-2.24, 9.2-9.6, 10, 11 and Individual Opinion by Mr. Fernando Mariño and Mr. Alejandro González Poblete (concurring), 97.

...

2.1 On 14 April 1995 at around 10 p.m., the Danilovgrad Police Department received a report indicating that two Romani minors had raped S.B., a minor ethnic Montenegrin girl. In response to this report, around midnight, the police entered and searched a number of houses in the Bozova Glavica Roma settlement and brought into custody all of the young male Romani men present in the settlement (all of them presently among the complainants to this Committee).

2.2 The same day, around midnight, two hundred ethnic Montenegrins, led by relatives and neighbours of the raped girl, assembled in front of the police station and publicly demanded that the Municipal Assembly adopt a decision expelling all Roma from Danilovgrad. The crowd shouted slogans addressed to the Roma, threatening to "exterminate" them and "burn down" their houses.

2.3 Later, two Romani minors confessed under duress. On 15 April, between 4 and 5 a.m.,

all of the detainees except those who confessed were released from police custody. Before their release, they were warned by the police to leave Danilovgrad immediately with their families because they would be at risk of being lynched by their non-Roma neighbours.

2.4 At the same time, police officer Ljubo Radovic came to the Bozova Glavica Roma settlement and told the Romani residents of the settlement that they must evacuate the settlement immediately. The officer's announcement caused panic. Most residents fled towards a nearby highway, where they could take buses for Podgorica. Only a few men and women remained in the settlement to safeguard their homes and livestock. At approximately 5 a.m., police officer Ljubo Radovic returned to the settlement, accompanied by police inspector Branko Micanovic. The officers told the remaining Roma still in their homes (including some of the complainants) to leave Danilovgrad immediately, as no one could guarantee their safety or provide them with protection.

2.5 At around 8 a.m. the same day, a group of non-Roma residents of Danilovgrad entered the Bozova Glavica Roma settlement, hurling stones and breaking windows of houses owned by the complainants. Those Roma who had still not left the settlement (all of them presently among the complainants) hid in the cellar of one of the houses from which they eventually managed to flee through the fields and woods towards Podgorica.

2.6 In the course of the morning of 15 April, a police car repeatedly patrolled the deserted Bozova Glavica settlement. Groups of non-Roma residents of Danilovgrad gathered in different locations in the town and in the surrounding villages. Around 2 p.m. the non-Roma crowd arrived in the Bozova Glavica settlement - in cars and on foot. Soon a crowd of at least several hundred non-Roma (according to different sources, between 400 and 3,000 persons were present) assembled in the then deserted Roma settlement.

2.7 ...Shortly after 3 p.m., the demolition of the settlement began. The mob, with stones and other objects, first broke windows of cars and houses belonging to Roma and then set them on fire. The crowd also destroyed and set fire to the haystacks, farming and other machines, animal feed sheds, stables, as well as all other objects belonging to the Roma. They hurled explosive devices and "Molotov" cocktails that they had prepared beforehand, and threw burning cloths and foam rubbers into houses through the broken windows. Shots and explosions could be heard amid the sounds of destruction. At the same time, valuables were looted and cattle slaughtered. The devastation endured unhindered for hours.

2.8 Throughout the course of the destruction, police officers present failed to act in accordance with their legal obligations. Shortly after the attack began, rather than intervening to halt the violence, these officers simply moved their police car to a safe distance and reported to their superior officer. As the violence and destruction unfolded, police officers

did no more than feebly seek to persuade some of the attackers to calm down pending a final decision of the Municipal Assembly with respect to a popular request to evict Roma from the Bozova Glavica settlement.

2.9 The outcome of the anti-Roma rage was the levelling of the entire settlement and the burning or complete destruction of all properties belonging to its Roma. Although the police did nothing to halt the destruction of the Roma settlement, they did ensure that the fire did not spread to any of the surrounding buildings, which belonged to the non-Roma.

2.10 The police and the investigating magistrate of the Basic Court in Danilovgrad subsequently drew up an on-site investigation report regarding the damage caused by those who took part in the attack.

2.11 Official police documents, as well as statements given by a number of police officers and other witnesses, both before the court and in the initial stage of the investigation, indicate that the following non-Roma residents of Danilovgrad were among those who took part in the destruction of the Bozova Glavica Roma settlement: Veselin Popovic, Dragisa Makocevic, Gojko Popovic, Bosko Mitrovic, Joksim Bobicic, Darko Janjusevic, Vlatko Cacic, Radojica Makocevic.

2.12 Moreover, there is evidence that police officers Miladin Dragas, Rajko Radulovic, Dragan Buric, Djordjije Stankovic and Vuk Radovic were all present as the violence unfolded and did nothing or not enough to protect the Roma residents of Bozova Glavica or their property.

2.13 Several days following the incident, the debris of the Roma settlement was completely cleared away by heavy construction machines of the Public Utility Company. All traces of the existence of the Roma in Danilovgrad were obliterated.

2.14 Following the attack, and pursuant to the relevant domestic legislation, on 17 April 1995, the Podgorica Police Department filed a criminal complaint with the Basic Public Prosecutor's Office in Podgorica. The complaint alleged that a number of unknown perpetrators had committed the criminal offence of causing public danger under article 164 of the Montenegrin Criminal Code and, inter alia, explicitly stated that there are "reasonable grounds to believe that, in an organized manner and by using open flames … they caused a fire to break out ... on 15 April 1995 … which completely consumed dwellings … and other propert[ies] belonging to persons who used to reside in … [the Bozova Glavica] settlement".

2.15 On 17 April 1995 the police brought in 20 individuals for questioning. On 18 April 1995, a memorandum was drawn up by the Podgorica Police Department which quoted the

statement of Veselin Popovic as follows: "... I noticed flames in a hut which led me to conclude that the crowd had started setting fire to huts so I found several pieces of foam rubber which I lit with a lighter I had on me and threw them, alight, into two huts, one of which caught fire."

2.16 On the basis of this testimony and the official police memorandum, the Podgorica Police Department ordered, on 18 April 1995, that Veselin Popovic be remanded into custody, on the grounds that there were reasons to believe that he had committed the criminal offence of causing public danger in the sense of article 164 of the Montenegrin Criminal Code.

2.17 On 25 April 1995, and with respect to the incident at the origin of the present complaint, the Public Prosecutor instituted proceedings against one person only - Veselin Popovic.

2.18 Veselin Popovic was charged under article 164 of the Montenegrin Criminal Code. The same indictment charged Dragisa Makocevic with illegally obtaining firearms in 1993 - an offence unrelated to the incident at issue notwithstanding the evidence implicating him in the destruction of the Roma Bozova Glavica settlement.

2.19 Throughout the investigation, the investigating magistrate of the Basic Court of Danilovgrad heard a number of witnesses all of whom stated that they had been present as the violence unfolded but were not able to identify a single perpetrator. On 22 June 1995, the investigating magistrate of the Basic Court of Danilovgrad heard officer Miladin Dragas. Contrary to the official memorandum he had personally drawn up on 16 April 1995, officer Dragas now stated that he had not seen anyone throwing an inflammable device, nor could he identify any of the individuals involved.

2.20 On 25 October 1995, the Basic Public Prosecutor in Podgorica requested that the investigating magistrate of the Basic Court of Danilovgrad undertake additional investigation into the facts of the case. Specifically, the prosecutor proposed that new witnesses be heard, including officers from the Danilovgrad Police Department who had been entrusted with protecting the Bozova Glavica Roma settlement. The investigating magistrate of the Basic Court of Danilovgrad then heard the additional witnesses, all of whom stated that they had seen none of the individuals who had caused the fire. The investigating magistrate took no further action.

2.21 Due to the "lack of evidence", the Basic Public Prosecutor in Podgorica dropped all charges against Veselin Popovic on 23 January 1996. On 8 February 1996, the investigating magistrate of the Basic Court of Danilovgrad issued a decision to discontinue the investigation. From February 1996 up to and including the date of filing of the present

complaint, the authorities took no further steps to identify and/or punish those individuals responsible for the incident at issue - "civilians" and police officers alike.

2.22 In violation of domestic legislation, the complainants were not served with the court decision of 8 February 1996 to discontinue the investigation. They were thus prevented from assuming the prosecution of the case themselves, as was their legal right.

2.23 Even prior to the closing of the proceedings, on 18 and 21 September 1995, the investigating magistrate, while hearing witnesses (among them a number of the complainants), failed to advise them of their right to assume the prosecution of the case in the event that the Public Prosecutor should decide to drop the charges. This contravened domestic legislation which explicitly provides that the Court is under an obligation to advise ignorant parties of avenues of legal redress available for the protection of their interests.

2.24 On 6 September 1996, all 71 complainants filed a civil claim for damages, pecuniary and non-pecuniary, with the first instance court in Podgorica - each plaintiff claiming approximately US$ 100,000. The pecuniary damages claim was based on the complete destruction of all properties belonging to the plaintiffs, while the non-pecuniary damages claim was based on the pain and suffering of the plaintiffs associated with the fear they were subjected to, and the violation of their honour, reputation, freedom of movement and the right to choose their own place of residence. The plaintiffs addressed these claims against the Republic of Montenegro and cited articles 154, 180 (1), 200, and 203 of the Federal Law on Obligations. More than five years after the submission of their claim, the civil proceedings for damages are still pending.

...

9.2 As to the legal qualification of the facts that have occurred on 15 April 1995, as they were described by the complainants, the Committee first considers that the burning and destruction of houses constitute, in the circumstances, acts of cruel, inhuman or degrading treatment or punishment. The nature of these acts is further aggravated by the fact that some of the complainants were still hidden in the settlement when the houses were burnt and destroyed, the particular vulnerability of the alleged victims and the fact that the acts were committed with a significant level of racial motivation. Moreover, the Committee considers that the complainants have sufficiently demonstrated that the police (public officials), although they had been informed of the immediate risk that the complainants were facing and had been present at the scene of the events, did not take any appropriate steps in order to protect the complainants, thus implying "acquiescence" in the sense of article 16 of the Convention. In this respect, the Committee has reiterated on many instances its concerns about "inaction by police and law-enforcement officials who fail to provide adequate protection against racially motivated attacks when such groups have been threatened" ... Although the acts referred to by the complainants were not committed by public officials

themselves, the Committee considers that they were committed with their acquiescence and constitute therefore a violation of article 16, paragraph 1, of the Convention by the State party.

9.3 Having considered that the facts described by the complainants constitute acts within the meaning of article 16, paragraph 1 of the Convention, the Committee will analyse other alleged violations in the light of that finding.

9.4 Concerning the alleged violation of article 12 of the Convention, the Committee, as it has underlined in previous cases (see *inter alia, Encarnacion Blanco Abad v. Spain*, Case No. 59/1996, decided on 14 May 1998), is of the opinion that a criminal investigation must seek both to determine the nature and circumstances of the alleged acts and to establish the identity of any person who might have been involved therein. In the present case, the Committee notes that, despite the participation of at least several hundred non-Roma in the events of 15 April 1995 and the presence of a number of police officers both at the time and at the scene of those events, no person nor any member of the police forces has been tried by the courts of the State party. In these circumstances, the Committee is of the view that the investigation conducted by the authorities of the State party did not satisfy the requirements of article 12 of the Convention.

9.5 Concerning the alleged violation of article 13 of the Convention, the Committee considers that the absence of an investigation as described in the previous paragraph also constitutes a violation of article 13 of the Convention. Moreover, the Committee is of the view that the State party's failure to inform the complainants of the results of the investigation by, *inter alia*, not serving on them the decision to discontinue the investigation, effectively prevented them from assuming "private prosecution" of their case. In the circumstances, the Committee finds that this constitutes a further violation of article 13 of the Convention.

9.6 Concerning the alleged violation of article 14 of the Convention, the Committee notes that the scope of application of the said provision only refers to torture in the sense of article 1 of the Convention and does not cover other forms of ill-treatment. Moreover, article 16, paragraph 1, of the Convention while specifically referring to articles 10, 11, 12, and 13, does not mention article 14 of the Convention. Nevertheless, article 14 of the Convention does not mean that the State party is not obliged to grant redress and fair and adequate compensation to the victim of an act in breach of article 16 of the Convention. The positive obligations that flow from the first sentence of article 16 of the Convention include an obligation to grant redress and compensate the victims of an act in breach of that provision. The Committee is therefore of the view that the State party has failed to observe its obligations under article 16 of the Convention by failing to enable the complainants to obtain redress and to provide them

with fair and adequate compensation.

10. The Committee...is of the view that the facts before it disclose a violation of articles 16, paragraph 1, 12 and 13 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

11. In pursuance of rule 111, paragraph 5, of its rules of procedure, the Committee urges the State party to conduct a proper investigation into the facts that occurred on 15 April 1995, prosecute and punish the persons responsible for those acts and provide the complainants with redress, including fair and adequate compensation and to inform it, within 90 days from the date of the transmittal of this decision, of the steps it has taken in response to the views expressed above.

Individual Opinion by Mr. Fernando Mariño and Mr. Alejandro González Poblete

We are issuing this opinion to emphasize that, in our judgement, the illegal incidents for which the Yugoslav State is responsible constitute "torture" within the meaning of article 1, paragraph 1, of the Convention, not merely "cruel, inhuman or degrading treatment" as covered by article 16. The failure of the State authorities to react to violent evictions, forced displacement and the destruction of homes and property by individuals amounts to unlawful acquiescence which, in our judgement, violates article 1, paragraph 1, particularly when read in conjunction with article 2, paragraph 1, of the Convention.

We believe that, in fact, the suffering visited upon the victims was severe enough to qualify as "torture", because:

(a) The inhabitants of the Bozova Glavica settlement were forced to abandon their homes in haste given the risk of severe personal and material harm;

(b) Their settlement and homes were completely destroyed. Basic necessities were also destroyed;

(c) Not only did the resulting forced displacement prevent them from returning to their original settlement, but many members of the group were forced to live poorly, without jobs or fixed places of abode;

(d) Thus displaced and wronged, these Yugoslav nationals have still not received any compensation, seven years after the fact, although they have approached the domestic authorities;

(e) All the inhabitants who were violently displaced belong to the Romani ethnic group, which is known to be especially vulnerable in many parts of Europe. In view of this, States must afford them greater protection;

The above amounts to a presumption of "severe suffering", certainly "mental" but also inescapably "physical" in nature even if the victims were not subjected to direct physical aggression.

We thus consider that the incidents at issue should have been categorized as "torture".

- *P. E. v. France* (193/2001), CAT, A/58/44 (21 November 2002) 135 (CAT/C/29/D/193/2001) at paras. 2.1-2.4, 2.6-2.9, 2.13 and 6.2-6.7.

...

2.1 In November 1996, 2/ the complainant was arrested in the Landes region in the company of her partner, Juan Luis Agirre Lete, during a French customs check, and placed in pre-trial detention in Paris. Following her arrest, she was sentenced to 30 months' imprisonment on 23 February 1999 on charges of participating in a conspiracy as an alleged member of the Basque separatist organization, Euskadi Ta Askatasuna (ETA). 3/

2.2 As soon as she was arrested, the Spanish authorities made a first request for her extradition, but the request was later withdrawn on grounds of mistaken identity. A second request for extradition was lodged by the Spanish authorities a year later, alleging cooperation with an armed group, on the basis of evidence that was claimed to be questionable but was given a favourable reception by the French authorities.

2.3 A third request for extradition 4/ was lodged by Spain on the basis of a statement made by a certain Mikel Azurmendi Penagarikano, who was arrested in Seville on 21 March 1998 by the Spanish Civil Guard and who is alleged to have suffered a variety of treatments in breach of the Convention while being held. The complainant adds that Mr. Azurmendi's partner was arrested at the same time as he was and also suffered treatment in breach of the Convention.

2.4 While in custody, Mikel Azurmendi is reported to have made two statements under duress to the Civil Guard on 23 and 24 March 1998. In these statements, which are said to contain many contradictions and implausibilities, the complainant was implicated, with some 30 others, as a member of ETA's "Madrid Commando", and accused of carrying out, together with others, surveillance and checks on the route taken in Madrid by a van belonging to the general staff of the Spanish air force, with the aim of carrying out an act of violence, and of

participating, together with others, in the preparation of an explosive device placed on board a vehicle that was used by other members of the commando in an attempted act of violence on 25 January 1994. The complainant nevertheless maintains that she had long since left Madrid at the time of the events.

...

2.6 At the end of his period in custody, on 25 March 1998, Mr. Azurmendi appeared before examining magistrate No. 6 of the National High Court in Madrid. He lodged a complaint relating to the torture to which he had been subjected during his time in custody and retracted his earlier statements. This complaint is still being investigated.

2.7 While in Madrid prison, Mr. Azurmendi was also examined by the prison medical services, and a court-ordered medical report was delivered on 18 October 1998. These medical reports and the testimony of a number of detainees arrested on the same day as Mr. Azurmendi corroborate his allegations of torture and ill-treatment.

2.8 After the complainant had been implicated in the statements made by Mr. Azurmendi on 23 and 24 March 1998, the Spanish procurator's office stipulated that proceedings against the complainant would be subject to the evidence. As the results were negative, Mr. Ismael Moreno Chamaro, central examining magistrate No. 2 attached to the National High Court in Madrid, issued an order on 29 October 1998 that the complainant should be imprisoned and committed for trial. On that basis, the judge issued a request for the extradition of the complainant on 22 December 1998. By means of a note verbale dated 10 March 1999, the Spanish Government, through its embassy, requested the French authorities to extradite the complainant. On 15 June 1999, she was placed in detention pending extradition in Fresnes prison. The request for extradition was heard in public session on 24 May 2000 by the first indictment division of the Paris Court of Appeal which, on 21 June 2000, ruled partially 5/ in favour of extradition in respect of the acts described by Spain as 19 attempted terrorist murders.

2.9 The complainant emphasizes that the request for extradition did not contain a copy of the statement that Mr. Azurmendi made on 25 March 1998 to the examining magistrate of the National High Court. In that regard, the complainant's counsel argued before the indictment division of the Paris Court of Appeal that it was unacceptable that, since the charges carried very severe prison terms, the requesting State had not mentioned the statement in which Mr. Azurmendi retracted everything that he had said and also stated that he did not know the complainant.

...

2.13 On 29 September 2000, the French Government issued a decree granting extradition of the complainant to the Spanish authorities. On 3 January 2001, the complainant appealed against the decree to the Council of State...The Council of State rejected this appeal by a

decision dated 7 November 2001. The complainant was handed over to the Spanish authorities on the same day.

...

6.2 The Committee notes the complainant's allegations concerning the circumstances in which Mr. Azurmendi's statements were made, the evidence that she adduced in support of the allegations and the arguments put forward by the parties concerning the obligations of States parties under article 15 of the Convention.

6.3 The Committee considers in this regard that the generality of the provisions of article 15 derive from the absolute nature of the prohibition of torture and imply, consequently, an obligation for each State party to ascertain whether or not statements constituting part of the evidence of a procedure for which it is competent have been made as a result of torture. The Committee finds that the statements at issue constitute part of the evidence of the procedure for the extradition of the complainant, and for which the State party is competent. In this regard, in the light of the allegations that the statements at issue, which constituted, at least in part, the basis for the additional extradition request, were obtained as a result of torture, the State party had the obligation to ascertain the veracity of such allegations.

6.4 The Committee notes that the French authorities, both judicial and administrative, examined the complainant's allegations and found that they had not been sufficiently substantiated. The Committee also notes that Mr. Azurmendi's complaint concerning the treatment to which he was allegedly subjected during custody is still being considered by the Spanish judicial authorities, which are expected to rule, at the end of the judicial proceedings, on whether Mr. Azurmendi's confession was obtained in an unlawful manner. The Committee considers that only this judicial ruling should be taken into consideration, and not the simple retraction by Mr. Azurmendi of a confession which he had previously signed in the presence of counsel.

6.5 The Committee reiterates in this regard that it is for the courts of the States parties to the Convention, and not the Committee, to evaluate facts and evidence in a particular case. It is for the appellate courts of States parties to the Convention to examine the conduct of the trial, unless it can be ascertained that the manner in which the evidence was evaluated was clearly arbitrary or amounted to a denial of justice, or that the trial judge had clearly violated his obligation of impartiality.

6.6 The Committee, bearing in mind that it is for the author to demonstrate that her allegations are well founded, considers that, on the basis of the facts before it, it cannot conclude that it has been established that the statements at issue were obtained as a result of torture.

6.7 Accordingly, the Committee is of the opinion that the facts before it do not enable it to establish that there has been a violation of article 15 of the Convention.

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Notes

...

2/ The complainant does not specify the exact date of her arrest.

3/ In this regard, the complainant stresses that her relations with her partner have always remained strictly at the personal level.

4/ This is the request referred to by the State party as an "additional request" - see paragraphs 4.4 ff.

5/ The State party explains in its observations (see paragraphs 4.1 ff.) why the ruling is partially in favour of extradition.

_____

- *H. B. H., T. N. T., H.J.H., H. O. H., H. R. H. and H. G. H. v. Switzerland* (192/2001), CAT, A/58/44 (29 April 2003) 126 (CAT/C/30/D/192/2001) at paras. 1.1, 2.1-2.8, 6.2 and 6.5-6.11.

1.1 The complainants, Mr. H.B.H., his wife, Mrs. T.N.T., and their children H.J.H., H.O.H., H.R.H. and H.G.H. - are Syrian nationals of Kurdish origin. They are currently in Switzerland, where they submitted an application for asylum. The application was rejected, and the complainants maintain that their return to the Syrian Arab Republic would constitute a violation by Switzerland of article 3 of the Convention. They have therefore asked the Committee to deal with the case as a matter of urgency, as they were facing imminent expulsion when they submitted their complaint. They are represented by counsel.

...

2.1 Mr. H. states that he was arrested while performing his compulsory military service owing to his refusal to join the ruling Baath party. He claims to have been imprisoned in Tadmur prison from 1 November 1987 to 31 March 1988, and to have been ill-treated.

2.2 He also states that he has been a committed Yekiti party sympathizer since 1992, and that he became a member of the party in 1995. In this connection, he explains that he has distributed pamphlets and newspapers and taken part in party meetings. He asserts that on 5 November 1996 the Syrian political security service accused him of handing out prohibited leaflets and arrested him, releasing him owing to lack of evidence on 20 November 1996.

2.3 On 18 July 1998 a meeting attended by some 45 to 50 people, including senior officials of the Yekiti party, was held at his home in Al Qamishli, at which he roundly criticized government policy. Following the meeting, on the advice of the organizer, the complainant went to stay with his sister for fear that the authorities would be told about his remarks. Shortly after the meeting, members of the Syrian security service in fact went to his home to look for him. Over the next few days he heard that the security forces had reportedly made several attempts to arrest him. He first hid at his sister's home in Al Qamishli, then at his uncle's home, near to the border with Turkey. There he met up with his family, which had meanwhile also fled Al Qamishli. The complainants state that they left Syria together, in early August 1998, and crossed Turkey en route to Switzerland.

2.4 Mr. H. affirms that, after he fled, he remained in contact with organizations of party exiles in Europe. He also states that he took part in a demonstration against the Syrian regime in the spring of 2000 in Geneva.

2.5 The complainants applied for asylum in Switzerland on 17 August 1998; the application was rejected on 21 January 1999. The Swiss Asylum Appeal Commission (CRA), ruling on the appeal submitted by the complainants on 20 February 2001, confirmed the initial decision to reject the application on 11 April 2001. In a letter dated 23 April 2001 the complainants were given a deadline for departure of 23 July 2001.

2.6 On the basis of a new document intended to demonstrate that the fear of persecution cited was well founded - an internal memorandum from the Al Hasakah political security division, dated 21 August 1998, addressed to the Al Qamishli political security division for the arrest of Mr. H. for prohibited political propaganda on behalf of the Kurdish cause - the complainant, on 21 June 2001, submitted to CRA an application for review of the decision of 11 April 2001. By an interlocutory decision of 28 June 2001 CRA rejected a request for the applications for review to have suspensive effect and for expulsion to be deferred.

2.7 In a letter dated 27 August 2001 a copy of a judgement of 20 May 1999 by an Al Hasakah court sentencing Mr. H. to three years' imprisonment for belonging to a prohibited organization was sent to CRA. The Commission did not consider it appropriate to overturn its interlocutory decision.

2.8 On 31 August 2001 a report from the Swiss section, Berne, of Amnesty International was sent to CRA; the report concluded that the complainants would very probably be imprisoned, interrogated under torture and subjected to arbitrary detention if they returned to Syria. CRA did not change its original decision.

...

6.2 The issue before the Committee is whether the return of the complainants to the Syrian

Arab Republic would violate the obligation of the State party under article 3 of the Convention not to expel or return a person to a State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

...

6.5 In this case the Committee notes that the State party draws attention to blatant inconsistencies and contradictions in the accounts and submissions by the complainants, casting doubt on the veracity of their allegations. It also takes note of the information supplied in this regard by the complainants.

6.6 Regarding the allegations of ill-treatment and torture in Syria, the Committee notes that only Mr. H. states that he suffered such treatment while imprisoned in Tadmur prison between 1 November 1987 and 31 March 1988, and that he remained in the country undisturbed until his departure in 1998.

6.7 Regarding the complainants' political activities, the Committee notes, firstly, that only Mr. H. reports such an involvement in Syria. Secondly, in view of the complainants' contradictions and inconsistencies and the serious doubts as to the authenticity of the internal memorandum from the Syrian security service of 21 August 1998 and of the Al Hasakah court judgement of 20 May 1999, the Committee considers that the complainant has not established, either in his statements or by means of the documents produced, his active membership in the Yekiti party and opposition to the Syrian authorities. Lastly, the Committee considers that the complainants have not shown involvement in opposition political activities in Switzerland.

6.8 The Committee considers that the above-mentioned documents were produced by the complainants only in response to decisions by the Swiss authorities to reject their application for asylum, and that the complainants have failed to offer any coherent explanation of the delay in making submissions.

6.9 Regarding the 2001 Amnesty International report, in addition to the contradictions pointed out by the State party concerning the conclusions drawn regarding the complainants' political activities in Syria, the Committee notes that the information relating to measures that might affect persons returning to Syria after a long stay abroad is invoked in general terms without being linked in a relevant manner to the specific cases of the complainants, and is contradicted by the information transmitted by the State party, in submissions which the complainants have not subsequently contested. It is also apparent that the Kurdish origin of the complainants would not in itself constitute a reason for ill-treatment or torture in Syria.

6.10 Lastly, the Committee notes that the complainant Mrs. T. has submitted no arguments as to the risk of her being subjected to ill-treatment in the event of return to Syria.

6.11 Consequently the Committee considers that the complainants have not demonstrated the existence of serious grounds suggesting that their return to Syria would expose them to real, specific and personal risk of torture.

- *A. A. v. The Netherlands* (198/2002), CAT, A/58/44 (30 April 2003) 161 (CAT/C/30/D/198/2002) at paras. 1.1, 2.1-2.4, 4.6, 4.17, 4.19, 4.20 and 7.4-7.7.

1.1 The complainant is A.A., a Sudanese citizen, born on 11 November 1968, currently residing in the Netherlands, where he has requested asylum. He claims that his removal to the Sudan would constitute a violation of article 3 of the Convention by the Netherlands. He is represented by counsel.

...

2.1 The complainant was a practising lawyer in the Sudan. He alleges that his sister, Zakia, is the widow of Bashir Mustafa Bashir, who was one of the 28 persons involved in the *coup d'état* in the Sudan in 1989, for which Mr. Bashir was executed. The complainant's sister later became active in an opposition organization for the relatives of martyrs. Since 1993, the complainant had been active in the banned Democratic Unionist Party (DUP) belonging to al-Tajammu' al-Watani li'adat al-Dimuqratiya (the National Democratic Alliance, a coalition of opposition parties). He has been a member of the Sudanese Bar Association since 1992.

2.2 In the summer of 1997, a pro-government party competed with DUP in elections for the Sudanese Bar Association. During preparations for the elections, DUP organized a meeting for its supporters. The complainant participated as one of the organizers and speakers. He claims that the meeting was attended by so many people that Sudanese authorities intervened and arrested several persons, among them the complainant. He alleges that he was subsequently kept in a detention centre of the State security service in Al Khartoum-Bahri for 10 days, during which he was questioned, mistreated and tortured. He was then conditionally released (travel ban).

2.3 While travelling to Port Sudan to participate in activities for the opposition party in September 1997, the complainant was arrested for the second time. He was kept in detention in Sawakin, where he was questioned and allegedly threatened with death. After three days in detention, he claims that he was thrown into the sea and was picked up after about 15 minutes. He was then brought to a prison where he was detained for a week. Upon release, he was told to stop his political activities.

2.4 On the day of the elections, a conflict erupted between the government party and the supporters of the opposition over allegations of election fraud. The complainant was once

again arrested and kept in detention for three days, during which he claims to have been tortured. On 30 January 1998, he again was arrested while attending a mass demonstration that he had helped to organize. He was brought to a secret underground prison, a so-called "ghost house", where he was kept in detention for about two months. He managed to escape from the prison and fled to the Netherlands, where he arrived on 13 April 1998.

...

4.6 The State party argues that according to the above report, political prisoners were mainly detained in the Khartoum North Central Prison (Kober prison). By European standards, the living conditions in that prison were poor, but the prohibition of torture was respected. The military and security services had their own detention centres where torture and detention without charge were frequent. "Ghost houses" were unofficial detention centres not subjected to any form of oversight. Detention generally lasted from a few days to three weeks. The purpose was to intimidate suspected political adversaries; detainees were subjected to mental and physical abuse and torture. The armed attacks in eastern Sudan led to increased use of these centres in the first half of 1997, but once the Government established greater control over the situation later in 1997, their use declined. The Minister concluded that since 1997, some positive changes in the Sudan were discernible. The situation was not such as to imply that it would be irresponsible to return a Sudanese national whose application for admission as a refugee or for a residence permit on humanitarian grounds had been refused after careful consideration.

...

4.17 For the State party, the fact that the complainant was a lawyer and a member of DUP does not in itself constitute sufficient grounds for assuming that if he were returned to the Sudan, he would be in danger of being subjected to treatment contrary to article 3 of the Convention. The State party invokes the country reports of the Minister for Foreign Affairs...Though complete freedom for activists of political parties has yet to arrive, there are no longer any cases of detention lasting longer than a day, or other serious abuse. Furthermore, in response to the "Motherland Call" and the proclamation of an amnesty, important members of the northern opposition have returned to the Sudan.

...

4.19 The State party dismisses as implausible the complainant's allegation that he was detained from 30 January 1998 to 23 March 1998. His statements allegedly were contradictory, vague and imprecise. In particular, he gave contradictory accounts of the number of people present at his interrogations.

4.20 The complainant was unable, according to the State party, to provide details about the prison in which he was held and, despite having been detained for over two months, could not describe his cell in any detail. The State party dismisses as implausible his statement that obstacles in the cell made it impossible for him to walk. It is unimaginable, in the State party's opinion, that during a detention of almost two months, he would not have

investigated his surroundings. He should have been able to describe his cell in more detail, at least because he alleges that food was thrown into his cell daily.

...

7.4 In the instant case, the Committee notes the inconsistencies in the complainant's account, as pointed out by the State party, as well as the general failure by the complainant to substantiate his allegations that he was subjected to torture.

7.5 The Committee further notes the State party's remarks that the complainant failed to give any information on the conditions of detention in a so-called "ghost house", and that he failed to describe the cell in which he alleges to have been detained for several weeks. The complainant has not responded to these arguments other than by noting that it is insufficient for the State party to manifest "some doubts" about the credibility of his statements. The Committee also notes that the complainant failed to respond to the doubts voiced by the State party concerning the ease with which he claims to have been able to leave the prison.

7.6 The Committee finally notes the State party's observations on the evolution of the political system in the Sudan over the last few years, in particular the legalization of the political parties, the presidential amnesty of political refugees of 3 June 2000 and the "Motherland Call" under which important members of the opposition have returned to the Sudan. The Committee notes that the complainant has not challenged any of these arguments in his comments.

7.7 On the basis of the above, the Committee considers that the information made available by the complainant does not show that substantial grounds exist for believing that he would be personally in danger of being subjected to torture in the event of his return to the Sudan.

- *U. S. v. Finland* (197/2002), CAT, A/58/44 (1 May 2003) 153 (CAT/C/30/D/197/2002) at paras. 2.1-2.7, 7.2 and 7.4-7.8.

...

2.1 The complainant was a member of the People's Liberation Organization of Tamil Eelam (PLOTE) until 1985, when the organization was forbidden by the Liberation Tigers of Tamil Eelam (LTTE). In 1985, LTTE arrested the complainant and detained him for four months, during which he was interrogated about the location of PLOTE weapons. Subsequently, LTTE interrogated him on several occasions.

2.2 During this period, the complainant was working as a bus conductor and travelling between areas controlled by LTTE and by the Sri Lankan army. In view of his occupation and the fact that he was no longer a member, PLOTE suspected him of cooperating with

LTTE and informed the Sri Lankan army of their suspicion.

2.3 In March 1987, the complainant was arrested by the Sri Lankan army and detained for almost two years. During his detention, the complainant was allegedly tortured on a regular basis for a period of six months. He was beaten, kicked, hung in the "chicken position" where he was left to hang from his left shoulder, his genitals were "injured", his hands were burned with a hot object, and he was given electrical shocks while cold water was poured over him.

2.4 After his release on 2 January 1989, the complainant was rearrested and interrogated three or four times, for up to three days each, by the Indian Peace Keeping Force (IPKF). He was also interrogated by the LTTE in order to find out what he had told IPKF about members of LTTE.

2.5 In June 1989, the complainant escaped to Germany, where he applied for asylum. His application was rejected, and he immediately attempted to go to France. French police arrested him and returned him to Germany. From Germany, he was returned to Sri Lanka in July 1989. On his return, he stayed in the LTTE-controlled area of Jaffna until 1995. He was interrogated several times by LTTE to find out whether he had any connections with PLOTE.

2.6 In 1996, after the Sri Lankan army occupied Jaffna, the complainant escaped to Vanni, where he lived with relatives, and then moved on to Hatton. During his time in Hatton, he was arrested twice by the Sri Lankan army, as he was new in the area. In 1998, he was arrested by the Sri Lankan police and detained for three months on suspicion of being an LTTE member. During his detention he was severely beaten; he remains scarred on his lips and behind his ear, as a result of being hit by a gun. In March 1998, after bribing the police, he was released.

2.7 After his release, the complainant escaped through Russia to Finland where he arrived on 21 December 1998. He immediately applied for asylum. On 12 February 2001, the Directorate of Immigration rejected his application and issued a deportation order against him. On 13 November 2001, the Helsinki Administrative Court rejected his appeal. The complainant then applied for leave to appeal and suspension of the deportation order to the Supreme Administrative Court. On 31 December 2001, his application was rejected.

...

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

TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

...

7.4 The Committee refers its general comment No. 1 on the implementation of article 3 in the context of article 22, paragraph 6, of which reads:

> "Bearing in mind that the State party and the Committee are obliged to assess whether there are substantial grounds for believing that the petitioner would be in danger of being subjected to torture were he/she to be expelled, returned or extradited, the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable."

7.5 The Committee observes that the State party's obligation to refrain from forcibly returning a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture is directly linked to the definition of torture as found in article 1 of the Convention. For the purposes of the Convention, according to article 1, "the term 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity".

7.6 As to the possibility of the complainant suffering torture at the hands of the State upon his return to Sri Lanka, the Committee has taken due note of the complainant's claim that he was previously detained and tortured by members of the Sri Lankan army. It further observes that the complainant provided medical reports attesting to injuries that were "possibly caused by torture", though none of the reports conclusively confirms that he was tortured during his detention in 1998. The State party does not challenge the authenticity of these reports but notes that the reports themselves attest to a gradual improvement of the author's health and that treatment for his current medical condition would be available in Sri Lanka. The State party does not concede that such torture as the complainant might have been subjected to was suffered at the hands of the Sri Lankan army - in any case, such events would have occurred years ago.

7.7 The Committee notes the relevance of the ongoing peace process, which led to the conclusion of the February 2002 ceasefire agreement between the Government and LTTE, and the negotiations between the parties to the conflict which have taken place since. It further recalls the results of the proceedings concerning its inquiry on Sri Lanka under article 20 of the Convention and its conclusion that, although a disturbing number of cases of torture

and ill-treatment as defined by articles 1 and 16 of the Convention are taking place, its practice is not systematic in the State party.e/ It finally notes the opinion of UNHCR of March 1999, according to which those who do not fulfil the refugee criteria, including those of Tamil origin, may be returned to Sri Lanka, and that a large number of Tamil refugees returned to Sri Lanka in 2001 and 2002. In this context, it should also be noted that the complainant has not been politically active since the mid-1980s.

7.8 The Committee recalls that, for article 3 of the Convention to apply, the individual concerned must face a foreseeable and real risk of being subjected to torture in the country to which he/she is being returned, and that this danger must be personal and present. In the light of the observations in paragraphs 7.6 and 7.7 above, the Committee does not consider that the existence of a personal and real risk has been established by the complainant.

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Notes

...

e/ [Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 44 (A/56/44)] chap. IV, sect. B, para. 181.

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- *M. V. v. The Netherlands* (201/2002), CAT, A/58/44 (2 May 2003) 170 (CAT/C/30/D/201/2002) at paras. 2.1-2.3, 6.2, 7.1, 7.3 and 8.

...

2.1 The complainant states that he and his wife are related to Kurdish Workers Party (PKK) leader Abdullah Öçalan, who also comes from his home town, Ömerli, in the Kurdish part of Turkey. The complainant's grandfather is a nephew of Abdullah Öçalan's mother. The grandmother of the complainant's wife is a sister of Abdullah Öçalan's father. He contends that he belongs to a politically active family and that he himself is politically active.

2.2 In 1997, the complainant joined the pro-Kurdish People's Democracy Party (HADEP). He also collected information for the Human Rights Association (IHD) about alleged human rights abuses by Turkish authorities. He alleges that he was arrested several times and ill-treated in connection with these activities, and that the Turkish authorities sought information from him concerning PKK, HADEP and IHD. In May 1998 (after also being approached in 1993 and 1995), he was allegedly threatened with death if he did not provide this information. His family was also threatened with harm if he fled. Thereafter, he left his home village, departed Turkey by truck on 11 June 1998 and arrived in the Netherlands on 17 June 1998, where he alleges he continued his political activities.a/

2.3 On 18 June 1998, the complainant requested asylum and residence. After an interview had taken place in the presence of an interpreter, the State Secretary of Justice decided, on 8 February 2000, that his request for asylum was manifestly unfounded and, further, denied his request for residence on humanitarian grounds.

...

6.2 To the extent that the complainant suggests that such ill-treatment as he might face in Turkey falls within article 3 of the Convention...the Committee notes that the scope of article 3 extends only to torture and does not encompass treatment that falls short of that serious threshold. Those parts of the complaint, therefore, are inadmissible *ratione materiae* as falling outside the scope of article 3. With respect to the complainant's claim under article 3 of the Convention concerning as such, the Committee does not identify further obstacles to the admissibility of the complaint, and accordingly proceeds with the consideration of the merits.

7.1 The issue before the Committee is whether removal of the complainant to Turkey would violate the State party's obligation under article 3 of the Convention not to expel or to return a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

...

7.3 In the present case, the Committee observes that, based on the information before it, the political activity that the complainant engaged in was confined to (unspecified) involvement with the political party HADEP and the IHD organization, including the collection of information, and the complainant himself stated that he did not flee for these reasons. There is no suggestion that he was active in or involved with PKK. Nor has the complainant detailed in any manner his political activities in the Netherlands, and how that might strengthen his claim under article 3. Given some measure of documented progress in the human rights situation in Turkey since the complainant's departure in 1998, and the well-known development of the apprehension by Turkish authorities of the PKK leadership, the Committee considers that the complainant has failed to establish that either his past sporadic contact with the authorities, which did not include any allegation of torture, or his family ties of some distance with the PKK leadership are such that there are substantial grounds for believing that any interest the authorities would take in him at the present time would amount to torture.

8. The Committee against Torture...considers that the complainant has not substantiated his claim that he would be subjected to torture upon return to Turkey and therefore concludes that the complainant's removal to that country would not constitute a breach by the State party of article 3 of the Convention.

Notes

a/ No further details are supplied as to these activities.
...

- *S. S. v. The Netherlands* (191/2001), CAT, A/58/44 (5 May 2003) 115 (CAT/C/30/D/191/2001) at paras. 2.1-2.4 and 6.2-6.7.

...
2.1 The complainant lived in the Jaffna peninsula from 1989 until 1995, where he worked as a karate teacher. He also gave lessons to members of the Liberation Tigers of Tamil Eelam (LTTE) but, although he sympathized with LTTE, he refused to give lessons at their military camps. When the Sri Lankan army took over Jaffna in late 1995, he fled to Chavakachchery, and thereafter to Killinochi, together with his wife and children.

2.2 On 7 April 1996, the complainant's mother died in Trincomalee, which was controlled partly by LTTE, partly by the Sri Lankan army. The complainant wanted to travel to Trincomalee to pay tribute to his deceased mother but was refused a travel pass by LTTE because he did not have anyone to vouch for him. a/ In June 1996, in return for free karate lessons for some LTTE members, he finally managed to obtain permission to travel to Mullaitivu - still located in the LTTE-controlled area - together with a guide. After staying in Mullaitivu for two months at the house of a fisherman, he travelled to the Trincomalee district on a fishing boat. He hid for two to three months with a Tamil in the Anbuvelipuram district of Trincomalee before he went to his sister's house in the centre of Trincomalee...

2.3 On 13 December 1996, two days after LTTE bombed a Sri Lankan army camp, the army overran Trincomalee and arrested a large number of people, including the complainant. Everyone above the age of 12 had to stand in front of a temple where a masked man picked out the complainant and other men. The complainant was brought to a military camp in Trincomalee where he was detained for approximately two months. He was locked with four other men in a narrow cell with little light and a concrete floor and without any furniture. He was given one daily meal of poor quality. Since the cell did not have a toilet, the prisoners had to relieve themselves in the corners of the room, excrement being removed from the cell occasionally. Reportedly, the soldiers entered the cell regularly, especially following armed attacks by LTTE, to kick and beat the prisoners, sometimes asking questions at the same time. The complainant states that he was asked whether he was a karate teacher, which he denied. He and the other men were often naked or dressed only in underwear. Frequently, the soldiers poured water on them before beating them. The complainant was beaten with the flat of the hand, the fist, the butt of a rifle and a rubber rod. Once he was allegedly beaten on the soles of his feet with a round stick, causing severe pain

in his feet for several days. Another time, he was put against a cupboard with his hands up and was hit on the back with a rubber rod, causing him chronic pain in the back which allegedly persists to date. He was punched on the eye, leaving an injury on one eyebrow. Soldiers also beat him on the genitals and on the kidneys, which resulted in a swollen testicle and blood in his urine. Moreover, he was allegedly burned with a hot stick on his left arm, leaving scars. The big toe of his right foot was severely injured when his torturers stamped on that foot with their boots. When the soldiers hit his right hand with a broken bottle and asked him "Aren't you a karate teacher?", he lost consciousness. b/

2.4 The complainant woke up in a hospital in the military camp where he stayed for a few days until an unknown Muslim man named Nuhuman managed to organize his escape. The complainant suspects that his sister had paid money to Nuhuman who bribed the guards in front of his hospital room. The complainant states that, together with Nuhuman, he was able to leave the hospital and the military camp without any difficulty.

...

6.2 The Committee must decide whether the forced return of the complainant to Sri Lanka would violate the State party's obligation, under article 3, paragraph 1, of the Convention, not to expel or return (refouler) an individual to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture...

6.3 With respect to the general human rights situation in Sri Lanka, the Committee recalls that, in its concluding observations on the initial report of Sri Lanka, it expressed grave concern about "information on serious violations of the Convention, particularly regarding torture linked with disappearances".g/ The Committee also notes from recent reports on the human rights situation in Sri Lanka h/ that, although efforts have been made to eradicate torture, instances of torture continue to be reported, and that complaints of torture are often not dealt with effectively by police, magistrates and doctors. However, the Committee equally notes the ongoing peace process in Sri Lanka which led to the conclusion of the ceasefire agreement between the Government and LTTE of February 2002 and the - albeit currently interrupted - negotiations between the parties to the conflict which have taken place since. The Committee further recalls that, on the basis of the proceedings concerning its inquiry on Sri Lanka under article 20 of the Convention, it concluded that the practice of torture is not systematic in the State party. i/ The Committee finally notes that a large number of Tamil refugees returned to Sri Lanka in 2001 and 2002.

6.4 With regard to the complainant's claim that he would be in danger of being subjected to torture by LTTE for having left the LTTE-controlled area of Sri Lanka without express permission to do so and without designating someone to vouch for him, the Committee recalls that the State party's obligation to refrain from forcibly returning a person to another State where there are substantial grounds for believing that he or she would be in danger of

being subjected to torture is directly linked to the definition of torture as found in article 1 of the Convention. For the purposes of the Convention, according to article 1, "the term 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity". The Committee observes that the issue of whether the State party has an obligation to refrain from expelling a person who might risk pain or suffering inflicted by a non-governmental entity, without the consent or acquiescence of the Government, falls outside the scope of article 3 of the Convention, unless the non-governmental entity occupies and exercises quasi-governmental authority over the territory to which the complainant would be returned. j/ Since the complainant can be returned to territory other than that under the control of LTTE, the issue, on which he bases part of his claim, that he would suffer retribution from LTTE upon his return to Sri Lanka cannot be considered by the Committee.

6.5 With respect to the risk that the complainant might be subjected to torture at the hands of State agents upon return to Sri Lanka, the Committee has noted the complainant's claim that he is at high personal risk owing to his previous activities as a karate teacher, that he has allegedly already been severely maltreated by soldiers of the Sri Lankan army, and that he bears scars which the authorities would likely assume to have been caused by fighting for LTTE. It has considered the claim that, because of the failure by IND to take a decision on the complainant's refugee application within the prescribed time limit, the complainant was precluded from filing an objection regarding the merits of the IND final decision, dated 20 May 1999. The Committee has further noted that IND took this decision before BMA gave its advice on the complainant's medical condition. Similarly, the Committee has noted the attention drawn by the State party to a number of inconsistencies and contradictions in the complainant's account which are said to cast doubt on the complainant's credibility and the veracity of his allegations.

6.6 The Committee notes that the medical evidence submitted by the complainant confirms physical as well as psychological symptoms which might be attributed to his alleged maltreatment at the hand of the Sri Lankan army. However, the Committee observes that, even if the complainant's allegation that he was severely tortured during his detention at the Trincomalee military camp in 1996 were sufficiently substantiated, these alleged acts of torture did not occur in the recent past.

6.7 In the Committee's view, the complainant has not demonstrated any other

circumstances, other than the fact that he worked as a karate teacher in Jaffna until 1996 and the presence of scars on his body, which would appear to make him particularly vulnerable to the risk of torture if he were to be returned to Sri Lanka. Moreover, the Committee again notes that the positive development of the peace negotiations between the Government of Sri Lanka and LTTE and the implementation of the peace process under way give reason to believe that a person in the situation of the complainant would not be under such risk upon return to Sri Lanka. The Committee therefore finds that the complainant has not provided sufficient evidence for substantiating that he would be in danger of being subjected to torture were he to be returned to Sri Lanka, and that such danger is present and personal.

...

Notes

a/ Counsel submits that the travel pass system applies to everyone wishing to leave the LTTE-controlled area and is intended to raise funds for the armed struggle of LTTE. In order to ensure that the departure of Tamils does not result in a loss of contributions, each Tamil planning to leave the LTTE-controlled area needs someone with sufficient assets to guarantee his return.

b/ The complainant's description of most of the details of his torture is documented in a medical report, dated 14 June 2001, by the medical examination group of the Dutch Section of Amnesty International.

...

g/ *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44* (A/53/44), para. 249.

h/ See Amnesty International Report 2002, Sri Lanka, AI index: POL 10/001/2002; Amnesty International, Sri Lanka: Torture prevails despite reforms, AI index: ASA 37/14/1999.

i/ *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 44* (A/57/44), chap. IV, sect. B, para. 181.

j/ See *Sadi Shek Elmi v. Australi*a, communication No. 120/1998, ibid., *Fifty-fourth Session, Supplement No. 44* (A/54/44), annex VII, sect. A, para. 6.5; *M.P.S. v. Australi*a, ibid., *Fifty-seventh Session, Supplement No. 44* (A/57/44), annex VII, sect. A, para. 7.4; *S.V. et al. v. Canad*a, ibid., *Fifty-sixth Session, Supplement No. 44* (A/56/44), annex VII, sect. A, para. 9.5.

TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

- *G. K. v. Switzerland* (219/2002), CAT, A/58/44 (7 May 2003) 177 (CAT/C/30/D/219/2002) at paras. 1.1, 2.1-2.3, 2.6, 2.8 and 6.3-6.12.

...

1.1 The complainant is G. K., a German national, born on 12 January 1956, at the time of the submission of the complaint held at the police detention centre at Flums (Switzerland), awaiting extradition to Spain. She claims that her extradition to Spain would constitute a violation by Switzerland of articles 3 and 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. She is represented by counsel.

...

2.1 In 1993, the complainant worked as a language teacher in Barcelona, Spain, where she became involved with one Benjamin Ramos Vega, a Spanish national. During that time, the complainant and Mr. Ramos Vega both rented apartments in Barcelona, one at Padilla Street, rented on 21 April 1993 in Mr. Ramos Vega's name, and one at Aragón Street, rented on 11 August 1993 in the complainant's name for the period of one year. According to counsel, the complainant had returned to Germany by October 1993.

2.2 On 28 April 1994, Felipe San Epifanio, a convicted member of the "Barcelona" commando of the Basque terrorist organization Euskadi Ta Askatasuna (Basque Fatherland and Liberty) (ETA), was arrested by Spanish police in Barcelona. The judgement of the Audiencia Nacional, dated 24 September 1997, sentencing him and other ETA members to prison terms states that, upon his arrest, Mr. San Epifanio was thrown to the floor by several policemen after he had drawn a gun, thereby causing him minor injuries which reportedly healed within two weeks. Based on his testimony, the police searched the apartment at Padilla Street a/ on 28 April 1994, confiscating firearms and explosives stored there by the commando. Subsequent to this search, Mr. Ramos Vega left Spain for Germany.

2.3 The Juzgado Central de Instrucción No. 4 de Madrid issued an arrest warrant, dated 23 May 1994, against both Mr. Ramos Vega and the complainant on suspicion of collaboration with ETA as well as possession of firearms and explosives. A writ was issued on 6 February 1995 by the same examining judge indicting the complainant and Mr. Ramos Vega for having rented, "under their name, the apartments at Padilla and Aragón streets, respectively, places which served as a refuge and for the hiding of arms and explosives, which the members of the commando had at their disposal for carrying out their actions".b/

...

2.6 The complainant was arrested by Swiss police when crossing the Austrian-Swiss border at St. Margrethen on 14 March 2002, on the basis of a Spanish search warrant dated 3 June 1994. She was provisionally detained, pending a final decision on her extradition to Spain. During a hearing on 20 March 2002, she refused to consent to a simplified extradition procedure. By diplomatic note of 22 April 2002, the Government of Spain submitted an

extradition request to the State party, based on an international arrest warrant dated 1 April 2002, issued by the Juzgado Central de Instrucción No. 4 at the Audiencia Nacional. This warrant is based on the same charges as the original arrest warrant and the writ of indictment against both the complainant and Mr. Ramos Vega.

...

2.8 By decision of 8 August 2002, the Federal Office of Justice granted the Spanish extradition request, subject to the condition that the complainant would not be tried for having committed the alleged offences for political motives and that the severity of the punishment would not to be increased on the basis of such motive...

...

6.3 The Committee recalls that during the consideration of the fourth periodic report submitted by Spain under article 19 of the Convention, it noted with concern the dichotomy between the assertion of the Government that, isolated cases apart, torture and ill-treatment do not occur in Spain, and the information received from non-governmental sources which is said to reveal instances of torture and ill-treatment by the State security and police forces.n/ It also expressed concern about the fact that *incommunicado* detention for up to a maximum of five days has been maintained for specific categories of particularly serious offences, given that during this period, the detainee has no access to a lawyer or to a doctor of his choice, nor is he/she able to contact his family.o/ The Committee considered that the *incommunicado* regime facilitates the commission of acts of torture and ill-treatment.p/

6.4 Notwithstanding the above, the Committee reiterates that its primary task is to determine whether the individual concerned would personally risk torture in the country to which he or she would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient grounds for determining that the particular person would be in danger of being subjected to torture upon his/her return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

6.5 As to the complainant's personal risk of being subjected to torture following extradition to Spain, the Committee has noted the complainant's arguments that the Spanish extradition request was based on false accusations; that, as an ETA suspect, she was at a personal risk of being tortured during *incommunicado* detention, in the absence of access to a lawyer of her choice during that time; that other persons had been subjected to torture in circumstances that she considers to be similar to her case; and that consular protection by Germany as well as the prior designation of a lawyer constituted protection against possible abuse during *incommunicado* detention in theory only. It has equally noted the State party's submission that, in addition to the above-mentioned protection, the international attention drawn to the

complainant's case, as well as the possibility for her to claim torture or ill-treatment by the Spanish authorities before the Committee and other international instances, constitute further guarantees preventing Spanish police from subjecting her to such treatment.

6.6 Having regard to the complainant's reference to the Committee's views in the case of Josu Arkauz Arana, the Committee observes that the specific circumstances of that case, which led to the finding of a violation of article 3 of the Convention, differ markedly from the circumstances in the present case. The deportation of Josu Arkauz Arana "was effected under an administrative procedure, which the Administrative Court of Pau had later found to be illegal, entailing a direct handover from police to police, without the intervention of a judicial authority and without any possibility for the author to contact his family or his lawyer".g/ By contrast, the complainant's extradition to Spain was preceded by a judicial review by the Swiss Federal Tribunal of the decision of the Federal Office of Justice to grant the Spanish extradition request. The Committee notes that the judgement of the Federal Court, as well as the decision of the Federal Office, both contain an assessment of the risk of torture that the complainant would be exposed to following an extradition to Spain. The Committee, therefore, considers that, unlike in the case of Josu Arkauz Arana, the legal guarantees were sufficient, in the complainant's case, to avoid placing her in a situation where she was particularly vulnerable to possible abuse by the Spanish authorities.

6.7 The Committee observes that possible inconsistencies in the facts on which the Spanish extradition request was based cannot as such be construed as indicating any hypothetical intention of the Spanish authorities to inflict torture or ill-treatment on the complainant, once the extradition request was granted and executed. Insofar as the complainant claims that the State party's decision to extradite her violated articles 3 and 9 of the European Convention on Extradition of 1957, the Committee observes that it is not competent *ratione materiae* to pronounce itself on the interpretation or application of that Convention.

6.8 Lastly, the Committee notes that, subsequent to the complainant's extradition to Spain, it has received no information on torture or ill-treatment suffered by the complainant during *incommunicado* detention. In the light of the foregoing, the Committee finds that the complainant's extradition to Spain did not constitute a violation by the State party of article 3 of the Convention.

6.9 With regard to the alleged violation of article 15 of the Convention, the Committee has noted the complainant's arguments that, in granting the Spanish extradition request, which was, at least indirectly, based on testimony extracted by torture from Felipe San Epifanio, the State party itself had relied on this evidence, and that article 15 of the Convention applied not only to criminal proceedings against her in Spain, but also to the extradition proceedings before the Swiss Federal Office of Justice as well as the Federal Court. Similarly, the

Committee has noted the State party's submission that the admissibility of the relevant evidence was a matter to be decided by the Spanish courts.

6.10 The Committee observes that the broad scope of the prohibition in article 15, proscribing the invocation of any statement which is established to have been made as a result of torture as evidence "in any proceedings", is a function of the absolute nature of the prohibition of torture and implies, consequently, an obligation for each State party to ascertain whether or not statements admitted as evidence in any proceedings for which it has jurisdiction, including extradition proceedings, have been made as a result of torture.r/

6.11 At the same time, the Committee notes that, for the prohibition in article 15 to apply, it is required that the statement invoked as evidence be "established to have been made as a result of torture". As the complainant herself stated, criminal proceedings initiated by Felipe San Epifanio against his alleged torturers were discontinued by the Spanish authorities. Considering that it is for the complainant to demonstrate that her allegations are well founded, the Committee concludes that, on the basis of the facts before it, it has not been established that the statement of Mr. San Epifanio, made before Spanish police on 28 April 1994, was obtained by torture.

6.12 The Committee reiterates that it is for the courts of the States parties to the Convention, and not for the Committee, to evaluate the facts and evidence in a particular case, unless it can be ascertained that the manner in which such facts and evidence were evaluated was clearly arbitrary or amounted to a denial of justice. The Committee considers that the State party's decision to grant the Spanish extradition request does not disclose a violation by the State party of article 15 of the Convention.

...

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Notes

a/ Apparently, the apartment was rented but not inhabited by Mr. Ramos Vega.

b/ Translation by the secretariat.

...

n/ See chap. III, para. 60 of [*Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 44* (A/58/44)].

o/ [*Ibid*.], See chap. III, para. 62...

p/ *Ibid*.

q/ *Josu Arkauz Arana v. France*, [Communication No. 63/1997, Views adopted on 9 November 1999. *Official Records of the General Assembly, Fortieth Session, Supplement No. 44* (A/55/44), annex VIII, sect. A], para. 11.5.

r/ See *P.E. v. France*, Communication No. 193/2001, in section A of annex VI to [*Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 44* (A/58/44)].

- *K. S. Y. v. The Netherlands* (190/2001), CAT, A/58/44 (15 May 2003) 107 (CAT/C/30/D/190/2001) at paras. 2.1, 2.2, 2.4, 2.5 and 7.1-7.5.

...

2.1 The complainant states that he has encountered problems in Iran on account of his homosexuality and because of the political activities of his brother, A.A.

2.2 The complainant had difficulties with Iranian authorities since his brother was recognized as a refugee in the Netherlands in the early 1980s. He was interrogated by the Monkerat (Special Unit of the Revolutionary Committee) four or five times and, after each interrogation, had to sign the next convocation.

...

2.4 In Iran, the complainant had a homosexual relationship with one K.H., whose homosexuality allegedly was evident due to his "female" behaviour. Because of his homosexuality, he separated from his wife, with whom he had three children.

2.5 On 10 August 1992, the complainant was arrested in Shiraz by the Monkerat on account of complaints by neighbours about his homosexual activities. His partner was not arrested as he went into hiding. The complainant was taken to a prison in the Lout desert and interrogated about his homosexuality and his brother's activities. During his detention, he allegedly was tortured, beaten with cables on the soles of his feet, on his legs and in the face, and hung from the ceiling by one arm for half a day over three weeks. The complainant was later sentenced to death a/ but never received a written copy of the verdict. After five months of detention, he succeeded in escaping with the help of the prison cleaning services who hid him in the garbage truck. The escape was facilitated by the absence of guards in the evening, the prisoners all being confined in their cell.

...

7.1 The Committee must decide whether the forced return of the complainant to the Islamic Republic of Iran would violate the State party's obligation, under article 3, paragraph 1, of the Convention, not to expel or return (refouler) an individual to another State where there are substantial grounds for believing that he would be in danger of being subjected to

torture...

7.2 In the present case, the Committee notes that the political activities of the complainant's brother took place more than 17 years ago and that they may not in themselves constitute a risk that the complainant himself would be subjected to torture if he were returned to Iran.

7.3 Concerning the alleged difficulties faced by the complainant because of his sexual orientation, the Committee notes a number of contradictions and inconsistencies in his account of past abuses at the hands of the Iranian authorities, as well as the fact that part of his account has not been adequately substantiated or lacks credibility.

7.4 The Committee also notes from different and reliable sources that there currently is no active policy of prosecution of charges of homosexuality in Iran.

7.5 In the light of the arguments presented by the complainant and the State party, the Committee finds that it has not been given enough evidence by the complainant to conclude that the latter would run a personal, present and foreseeable risk of being tortured if returned to his country of origin.

...

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Notes

a/ The complainant explains that he has never received a copy of the judgment and that he was only informed of his death sentence through a document that was pushed under his cell door and then immediately pulled back. He is therefore not in a position to give the date of the judgment.

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- *Z. T. v. Australia* (153/2000), CAT, A/59/44 (11 November 2003) 132 at paras. 1.1, 2.1-2.3, 2.7-2.11, 3.1-3.3 and 6.2-6.4.

1.1 The complainant in the case dated 4 January 2000 is Z.T. She submits the case on behalf of her brother, R.T., an Algerian citizen born on 16 July 1967. She claims that her brother is a victim of violations by Australia of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment...

...

2.1 On 27 November 1997, the complainant, who held a visitor's visa, visited Mecca in Saudi Arabia. He stayed there for seven months. He then "purchased" an Australian visa and left for South Africa, to collect the Australian visa.

TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

2.2 On 21 August 1998, the complainant arrived in Australia from South Africa. He destroyed his travel documents at the airport of arrival. He immediately applied for refugee status at the airport, where he was interviewed by an officer of the Department of Immigration and Multicultural Affairs (DIMA). As undocumented arrival, he was refused immigration clearance under s172 of the Australian Immigration Act. On the same day, he was detained and escorted to Westbridge Immigration Detention Centre.

2.3 On 26 August 1998, the complainant applied for a protection visa. He was assisted by a solicitor from the Legal Aid Commission of New South Wales. On 16 October 1998, his application was rejected by DIMA. On 16 October 1998, he appealed to the Refugee Review Tribunal. The appeal was rejected on 11 November 1998. He further appealed to the Federal Court of Australia, which dismissed his appeal on 10 March 1999.

...

2.7 The complainant alleges that he was not notified of the decision to remove him from Australia. He was effectively removed to South Africa on 26 January 2000.

2.8 In an additional letter dated 12 April 2000, Ms. T. provides further information about her brother. She states that her brother, after his expulsion from Australia, was held for one or two days at an airport hotel in Johannesburg. He was then handed over to South African government officials and was detained as an illegal arrival in the Lindela detention centre for more than 30 days.

2.9 On or about 7 February 2000 he filed an asylum application and was granted a temporary visa, which allowed him to be released from detention.

2.10 On or about 30 January 2000, the complainant was told to expect a visit from the Algerian Ambassador to South Africa. The purpose of the visit was to provide documentation for onwards travel to Algeria. The visit did not take place, after interventions from the complainant's lawyer.

2.11 The complainant claims that he does not feel safe in South Africa after his expulsion from Australia. He argues that there is no guarantee under South African law that he cannot be expelled at any time. His concern about the actions of the South African Government include the notification of the Algerian Ambassador of his presence in South Africa; accepting and then revoking acceptance of an asylum application and revoking the grant of temporary visa; his detention beyond the statutory limit of 30 days in the Lindela detention centre. He claims that because of arms trade between the Governments of South Africa and Algeria, he fears his application will be rejected in deference to trade imperatives.

...

3.1 The complainant claims that there are substantial grounds for believing that he would

be in danger of being subjected to torture upon return to Algeria and that, therefore, Australia would be violating article 3 of the Convention if he were returned there. He claims that he fears prosecution in Algeria on account of his political opinions and membership of the Islamic Salvation Front (FIS). He also fears having to serve in the Algerian army, and claims that members of his family were accused by the Algerian authorities of supporting armed Islamic groups. As a consequence he and other members of his family were targeted by the Algerian army.

3.2 It is submitted that the complainant is personally at risk of being subjected to torture because of his support of the FIS and his close family relationship with several people who have been targeted because of their membership of the FIS and, in some cases, their history of standing as FIS candidates.

3.3 Finally, it is submitted that the complainant is personally at risk of being subjected to torture due to the publication of the decision of the Federal Court. The decision provides personal details and family details, his claims, and the process of his application for protection in Australia. The complainant claims that such publication rendered him personally at risk if he is forcibly returned to Algeria because of the probability that the Algerian authorities are aware of the published decision and of the details of his application for protection.

...

6.2 The Committee notes that the petitioner invokes protection under article 3 of the Convention on the ground that he is personally at danger of being arrested and tortured in connection with his and his relatives' support for the FIS. His alleged connections with the FIS date back to 1992, when he was detained and interrogated for 45 minutes. It is not submitted that the complainant was tortured or prosecuted for his connections with the FIS before leaving for Saudi Arabia. The complainant has not satisfied the burden placed upon him to support his claim that there are substantial grounds for believing that he would be in danger of being subjected to torture, and that Algeria is a country where a consistent pattern of gross, flagrant or mass violations of human rights exist.

6.3 In the present case, the Committee also notes that the political activities of the complainant's brother-in-law took place about 10 years ago, and that they may not in themselves constitute a risk for the complainant himself to be subjected to torture, should he be returned to Algeria. It further observes that the complainant's alleged fear for military recall is not relevant to the issue under consideration.

6.4 The Committee recalls that, for the purposes of article 3 of the Convention, a foreseeable, real and personal risk must exist of being tortured in the country to which a person is returned or, as in this case, a third country where it is foreseeable that he

subsequently may be expelled. On the basis of the above considerations, the Committee considers that the complainant has not presented sufficient evidence to convince it that he would face a personal risk of being subjected to torture in the event of his return to Algeria.

- *K. K. v. Switzerland* (186/2001), CAT, A/59/44 (11 November 2003) 159 (CAT/C/31/D/186/2001) at paras. 2.1-2.6 and 6.2-6.9.

...

2.1 The complainant is from Jaffna in the north of Sri Lanka. When his parents' house was bombed by the Sri Lankan army in October 1995, he and his family fled to the then LTTE a/ -controlled city of Killinochi, from where he left for Colombo in May 1996, together with his mother. On their way to Colombo, he was separated from his mother and arrested, at a checkpoint of the Sri Lankan army and the Eelam People's Revolutionary Liberation Front (EPRLF) near Vavuniya, together with several other Tamil men suspected of LTTE-membership.

2.2 The complainant was subsequently detained in a room of a school from where he was brought to the Criminal Investigation Department (CID) in Thandikulam for interrogations about his LTTE connection. During that time, he was allegedly tortured by Tamil members of the EPRLF who burned his genitals with cigarettes, while he was naked with his hands tied behind his back. The complainant also received blows with a rod and was threatened with execution if he refused to admit his LTTE-membership. During detention, he was only given sandy rice to eat and smelly water, or urine, to drink. After 12 days, the complainant was released because of repeated interventions of his mother and because a remote relative from Colombo, Mr. J.S., had provided guarantees for him.

2.3 Shortly after his arrival in Colombo, where he stayed in a [Tamil] lodge, the complainant was arrested and handed over by the army to the police. The following day, he was brought before a judge who, by decision of 2 August 1996, acquitted him of all charges of terrorist activity, for lack of evidence. Despite his acquittal, he was kept in detention at the CID, in a cell occupied by Singhalese drug addicts and alcoholics who allegedly beat him. After one week, he was brought before court again, where he managed to secure his release with the assistance of a lawyer.

2.4 Shortly thereafter, the complainant was again arrested by the CID on grounds of being a suspected LTTE activist. At the CID office in Boralle, he allegedly was given half an hour to confess his LTTE-membership, failing which the CID officer threatened to execute him. During his subsequent interrogation with two other suspects, Mr. J.S. and his sister, K.S., the complainant received blows on his head with a sand-filled plastic pipe ("S'Lon Pipe"). He

was then detained at the CID building for seven days until he was released, together with the two other suspects, after they had paid 15,000 rupees as a bribe.

2.5 In September 1996, the complainant was again arrested by the CID, after a bomb attack on a train in Dehiwala, Colombo, and after weapons and explosives had been found next to the house of his relatives and co-suspects, J.S. and K.S. During detention, where he was allegedly beaten, forced to exhibit his genitals and given poor food, the complainant was twice visited by delegates of the International Committee of the Red Cross (9 and 19 September 1996). When the police arrested the real perpetrator of the bomb blast, he was released after 22 days' detention, together with Mr. and Ms. Selvarasa, after his mother had paid a bribe of 45,000 rupees. He was told to leave Colombo within one month.

2.6 On 29 October 1996, the complainant left Sri Lanka using a false passport. He arrived in Switzerland on 30 October 1996, where he applied for asylum the same day. After two hearings by the Federal Office for Refugees (BFF) on 14 November 1996 and 6 March 1997, and one hearing by the immigration police in Zug on 9 December 1996, the Federal Office rejected his asylum application by decision of 23 October 1998, at the same time ordering his deportation to Sri Lanka. While considering documents submitted by the complainant as evidence b/ as being authentic, the BFF observed that several contradictions in his statements undermined his credibility. In particular, while he had told the immigration police in Zug that the ICRC delegates had visited him during his second detention in Colombo, he stated during his second hearing by the BFF that he had received these visits during his third and final detention in Colombo. This incoherence, which he could not explain, raised doubts as to whether he had actually been detained three times in Colombo. His statement during the second BFF hearing that he had left Colombo only 12 days after his final release from detention was considered unrealistic, thereby further undermining his credibility. Moreover, the fact that the complainant had been acquitted by a Sri Lankan court and released from police detention several times indicated that he was at no real risk of persecution. The instances of torture alleged by him could not be attributed to the Sri Lankan Government, which had made considerable efforts to improve the domestic human rights situation, but constituted abuses of authority by individual policemen. The medical problems claimed by the complainant (problems to urinate, stomach ache, loss of memory) had not affected his ability to travel.

...

6.2 The Committee must decide whether the forced return of the complainant to Sri Lanka would violate the State party's obligation, under article 3, paragraph 1, of the Convention, not to expel or return (*refouler*) an individual to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. In reaching its conclusion, the Committee must take into account all relevant considerations, including the existence, in the State concerned, of a consistent pattern of gross, flagrant or mass

violations of human rights (article 3, paragraph 2, of the Convention).

6.3 The Committee has taken note of the reports cited by the complainant as well as the State party, which deny or confirm significant improvements in the protection of the rights of Tamils during identity controls, arrest and detention in Sri Lanka. The Committee notes from recent reports on the human rights situation in Sri Lanka that, although efforts have been made to eradicate torture, instances of torture continue to be reported, and that complaints of torture are often not dealt with effectively by police, magistrates and doctors. However, the Committee equally notes the ongoing peace process in Sri Lanka which led to the conclusion of the ceasefire agreement between the Government and the LTTE of February 2002, and the negotiations between the parties to the conflict which have taken place since. The Committee further recalls that, on the basis of the proceedings concerning its inquiry on Sri Lanka under article 20 of the Convention, it concluded that the practice of torture is not systematic in the State party.d/ The Committee finally notes that a large number of Tamil refugees returned to Sri Lanka in 2001 and 2002.e/

6.4 The Committee recalls, however, that the aim of its examination is to determine whether the complainant would personally risk torture in the country to which he would return. It follows that, irrespective of whether a consistent pattern of gross, flagrant or mass violations of human rights can be said to exist in Sri Lanka, such existence would not as such constitute sufficient grounds for determining that the complainant would be in danger of being subjected to torture upon his return to Sri Lanka. Additional grounds must be adduced to show that he would be personally at risk. Conversely, the absence of a consistent pattern of gross violations of human rights does not necessarily mean that the complainant cannot be considered to be in danger of being subjected to torture in the specific circumstances of his case.

6.5 As regards the personal risk of the complainant to be subjected to torture at the hands of the Sri Lankan security forces, the Committee has noted his claim that the fact that he was arrested and tortured in the past as a suspected LTTE activist, as well as the after-effects of this torture, would expose him to an increased risk of renewed arrest and torture, based on his uncontrolled behaviour in stressful situations, and the suspicion likely to be created by such behaviour, as well as the scars on his body. It has noted the State party's arguments about the contradictions in the complainant's statements before the Swiss immigration authorities, his acquittal by a Sri Lankan court due to lack of evidence of LTTE involvement, and the legal safeguards introduced by the new Committee of Inquiry into Undue Arrest and Harassment since 1998...

6.6 The Committee considers that, assuming that, based on the medical and psychiatric evidence submitted by the complainant, his case has been made out, considerable weight

must be given to his allegations that he was tortured during past detention at the CID. However, the Committee notes that these alleged instances of torture did not occur in the recent past.f/

6.7 Insofar as the complainant argues that his post-traumatic stress disorder would result in uncontrolled behaviour in stressful situations, thereby increasing his risk of arrest by the Sri Lankan police, the Committee observes that the fact that the complainant benefited from a court decision which acquitted him of terrorism charges, as well as his low political profile, can in turn be adduced as factors which are likely to lower any risk of serious consequences should he be arrested again.

6.8 With regard to the alleged absence of adequate psychiatric treatment for the complainant's post-traumatic stress disorder in Sri Lanka, the Committee considers that the aggravation of the complainant's state of health possibly resulting from his deportation to Sri Lanka would not amount to torture within the meaning of article 3, read in conjunction with article 1, of the Convention, which could be attributed to the State party itself.g/

6.9 The Committee therefore is of the view that the complainant has not adduced sufficient grounds which would allow the Committee to conclude that he would be in danger of being subjected to a substantial, present and personal risk of torture if returned to Sri Lanka.
...

_____

Notes

a/ Liberation Tigers of Tamil Eelam.

b/ The documents include the Sri Lankan court decision of 2 August 1996 acquitting the complainant and a prison card issued by ICRC.
...
d/ *Official Records of the General Assembly*, *Fifty-seventh Session, Supplement No. 44* (A/57/44), chap. IV, sect. B, para. 181.

e/ See communication No. 191/2001, *S.S. v. The Netherlands*, decision adopted 5 May 2003, para. 6.3.

f/ See the Committee's general comment No. 1 at 8 (b).

g/ See, *mutatis mutandis*, communication No. 83/1997, *G.R.B. v. Sweden*, decision adopted 15 May 1998, para. 6.7.

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TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

- *J. A. G. v. Sweden* (215/2002), CAT, A/59/44 (11 November 2003) 288 (CAT/C/31/D/215/2002) at paras. 2.1-2.5, 7.2, 7.4 and 7.5.

...

2.1 The complainant asserts that he was a member of the Fuerzas Armadas Revolucionarias de Colombia (Revolutionary Armed Forces of Colombia, FARC) and of the United Confederation of Workers (CUT). He maintains that he was arrested and tortured on several occasions during the 1990s a/ by officers of the Colombian police who, he alleges, beat him, applied electric shocks to his genitals until he lost consciousness and placed plastic bags filled with water on his head, covering his nose and mouth. He asserts that he escaped from prison several times.

2.2 The complainant says that he succeeded in leaving Colombia on a false passport, since he was wanted by the police, and arrived in Sweden under an identity other than his own on 25 March 1998.

2.3 On 26 May 1998, the complainant applied for a permanent residence permit in Sweden under the identity of Celimo Torres Romero. Subsequently, on 24 July 1998, he was arrested under that name as a suspect in a drug-trafficking case. His true identity was revealed during the police investigations.

2.4 On 24 September 1998, the Solletuna District Court sentenced the complainant to six years' imprisonment and expulsion from the territory of the State party, after finding him guilty of a drug-trafficking offence,b/ committed in Sweden. The complainant appealed to the Appeal Court of Svea which, in a decision of 26 February 1999, rejected his application. He entered prison that day and on 23 July 2002 was released on parole.

2.5 On 13 October 1998, the complainant applied for asylum under the identity of José Ángel Grueso Vargas. On 25 March 1999 the Swedish Migration Board rejected his application, on the grounds that he had applied for asylum only after being sentenced to deportation from Swedish territory. The complainant appealed to the Swedish Aliens Appeals Board, but his appeal was rejected in a decision of 20 November 2000.c/

...

7.2 The Committee must decide whether the deportation of the complainant to Colombia constituted a violation of the State party's obligation under article 3 of the Convention not to expel or return an individual to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

...

7.4 In the present case, the Committee notes the observations of the State party to the effect

that the complainant did not produce evidence of having been involved in political activities in Colombia, and that he did not run a real and personal risk of being subjected to torture, since it had also received information from the Colombian authorities reporting that the complainant had been briefly detained, and notes that there is no evidence that he was tortured subsequent to his return to Colombia. The Committee further observes that his counsel reports that the complainant is currently on parole.

7.5 The Committee moreover notes the circumstances which gave rise to doubts on the part of the State party's authorities concerning the need to grant the complainant protection. It is aware that the complainant has not adduced sufficient evidence to prove that he was subjected to torture in Colombia.i/ Bearing in mind the foregoing, the Committee considers that the information provided by the complainant does not provide substantial grounds for believing that he was personally in danger of being tortured when returned to Colombia.

Notes

a/ The complainant does not indicate in his initial communication or in his subsequent comments when or where these acts of torture allegedly took place.

b/ The offence involved smuggling a kilogramme of cocaine from Colombia to Sweden with the intention of selling it in the territory of the State party.

c/ The Swedish Aliens Appeals Board further considered that the complainant had entered Swedish territory under a false identity, and that under that identity he had applied in 1998 for a work permit, claiming that he was involved with a Swedish woman, although he was married and had a family in Colombia. In the Board's opinion, all of this seriously undermined his credibility when it came to requiring the protection of the State party.

...

i/ Note: medical certificates only.

- *A. T. A. v. Switzerland* (236/2003), CAT, A/59/44 (11 November 2003) 323 (CAT/C/31/D/236/2003) at paras. 2.1-2.4 and 4.2.

...

2.1 In 1996, the complainant, who belongs to the Ewé ethnic minority, joined the "Union des Forces du Changement" (UFC).

2.2 On 27 April 2000, the complainant played for the UFC soccer team in a match against

the team of the ruling political party. The UFC team won the game after the complainant had scored the decisive goal. The same evening, two soldiers came to his residence looking for him. While attempting to escape, he allegedly had to dodge bullets fired by soldiers; however, he managed to escape.

2.3 The complainant argues that the security forces in Togo are controlled by the Khabyé ethnic majority and frequently violate human rights, the Togolese Constitution and domestic laws which protect the rights and freedoms of the individual.

2.4 The complainant left Togo, he arrived in Europe and requested asylum in Switzerland on 30 May 2000. On 11 October 2000, the Federal Refugee Office refused his application and ordered his deportation from Switzerland. On 19 November 2001, the Asylum Appeals Commission dismissed his appeal and, on 15 July 2003, it confirmed the decision of the Federal Refugee Office ordering the complainant's deportation. On 18 September 2003, the Asylum Appeals Commission rejected his request to review its decision of 15 July 2003.

...

4.2 The Committee notes that the information submitted by the complainant in substantiation of his claim is general and vague and does not reveal the existence of any personal and foreseeable risk of torture to which the complainant might be subjected in the event of his return in Togo. The bare assertion of membership in a political party, in the instant case of the UFC, and the vague allegation that he was shot at while attempting to escape, do not satisfy the Committee that the threshold of admissibility has been met in the complainant's case. In the circumstances, the Committee observes that the complaint, as formulated, does not give rise to any arguable claim under the Convention.

- *M. O. v. Denmark* (209/2002), CAT, A/59/44 (12 November 2003) 254 (CAT/C/31/D/209/2002) at paras. 2.1-2.5 and 6.4-6.6.

...

2.1 The complainant served in the Algerian army between approximately 1991 and 1998, where he served as a corporal in a weapons store. He claims that in 1994, he was contacted by representatives of the Groupe Islamique Algérien (GIA), who asked him to work for them. He refused. In 1994, for reasons not specified, he was sent to a military prison. There is no indication as to whether the complainant was tried or convicted, or of precisely when he was released from prison.

2.2 The complainant claims that in 1996, the authorities learned of the GIA's previous contact with him, and that in 1998 he was again arrested and sent to prison, on suspicion of having supplied the GIA with weapons, ammunition and food. He was allegedly interrogated

and tortured by the Algerian security forces, and, unable to bear the torture, admitted to having worked for the GIA. He claims, amongst other things, that he was kicked forcefully in the genitals, that electric shocks were applied to his genitals, shoulders, hands and feet, and that he was threatened with reprisals against his mother if he did not cooperate. He contends that his physical condition became so critical that he had to be transferred to a military hospital, from which he managed to escape. As he was still a member of the armed forces at the time of his escape, this made him a deserter.

2.3 The complainant arrived in Denmark in 1999, and applied for asylum with the Danish Immigration Service (DIS) on 28 December 1999. His application was rejected on 2 March 2001, and on 21 August 2001, the Refugee Review Board (Review Board) upheld the DIS's decision. The Review Board found that the complainant's testimony about his reasons for seeking asylum was unreliable, and that there were discrepancies in his account of events. It found insufficient evidence to establish that the complainant had been tortured in Algeria. The Review Board noted a report prepared by Amnesty International, which found no signs of mental trauma, although marks on the complainant's body were consistent with some of the types of torture described. The Review Board concluded that the evidence did not justify a decision to grant him asylum.

2.4 The complainant subsequently underwent a psychological examination, which concluded that he suffered from post-traumatic stress disorder and displayed the signs of dissociation often seen in a person who had been subjected to torture. The report noted that the complainant would cease participating in conversation when emotional topics were raised, and that he experienced flashbacks. It noted that the complainant was not able to concentrate on certain questions, because of his fear of being tortured again, and that he found it difficult being questioned by men, as his torturers had been men. The report also concluded that his ability to present a story in an interview had been affected by his post-traumatic stress disorder. On 14 September 2002, based on the psychologist's report, he applied to the Refugee Board to reopen his case. The application was refused on 24 January 2003.

2.5 The complainant attributes the inconsistencies in his story to several factors. First, he says that the interpreter provided to him spoke an "eastern" form of Arabic which he did not properly understand. His first language is said to be French. Secondly, he claims that, as demonstrated by the psychologist's report, he suffers from post-traumatic stress disorder, and states that, in telling his story to the Danish authorities, he relived his experiences of torture, which caused him great anxiety. He claims that being kept in detention by the Danish authorities traumatized him and made it much more difficult for him to provide a cogent and consistent account of his experiences. He refers to the psychologist's report, which concluded that his apparent untrustworthiness could be attributable to his psychological

dissociation.

...

6.4 In assessing the risk of torture in the present case, the Committee notes that the complainant claims to have been tortured and imprisoned previously by the Algerian authorities. The findings of the medical examination carried out on him are consistent with these claims, although they do not discount other possible causes for the complainant's injuries. In relation to the psychologist's report, the Committee notes that the complainant was found to suffer from post-traumatic stress disorder, and that this was said to be consistent with his claim of having been subjected to torture in the past. The report also found that past torture could account for the discrepancies in the complainant's story. The Committee notes the complainant's submission that this report constitutes the only formal psychological evidence about his mental condition. It also notes that this report was considered by the Danish authorities in connection with the complainant's application to have his case reopened, and was found not to contain new information.

6.5 The relevant evidence in the case was fully considered by the Danish authorities. And, consistent with the Committee's case law, due weight must be accorded to findings of fact made by government authorities. In the present case, the complainant's account of his experiences to the Danish authorities contained numerous discrepancies. The Danish authorities made conclusions about the complainant's credibility which, in the Committee's view, were reasonable and by no reckoning arbitrary. In this regard, the Committee notes paragraph 8 of its general comment No. 1, pursuant to which questions about the credibility of a complainant, and the presence of relevant factual inconsistencies in his claim, are pertinent to the Committee's deliberations as to whether the complainant would be in danger of being tortured upon return.

6.6 The complainant's initial submission and his subsequent explanations of his inconsistencies noted by the State party in its submission do not permit the Committee to make any informed decision on the likelihood of him being subjected to torture on his return to Algeria. In light of the foregoing, the Committee finds that the complainant has not established that he would face a foreseeable, real and personal risk of being tortured, within the meaning of article 3 of the Convention.

- *Dhaou Belgacem Thabti v. Tunisia* (187/2001), CAT, A/59/44(14 November 2003) 167 (CAT/C/31/D/187/2001) at paras. 2.1-2.3, 2.11-2.16, 10.4-10.8, 11 and 12.

...

2.1 The complainant states that he was an active member of the Islamist organization ENNAHDA (formerly MTI). Following a wave of arrests in Tunisia, which commenced in

1990 and was targeted in particular against members of this organization, he went into hiding from 27 February 1991. On 6 April 1991, at 1 a.m., he was arrested and severely beaten by the police, who kicked, slapped and punched him and struck him with truncheons.

2.2 Incarcerated in the basement cells in the Interior Ministry (DST) building in Tunis and deprived of sleep, the complainant was taken, the following morning, to the office of the Director of State Security, Ezzedine Jneyeh. According to the complainant, this official personally ordered his interrogation under torture.

2.3 The complainant provides a detailed description, accompanied by sketches, of the different types of torture to which he was subjected until 4 June 1991 in the premises of the Interior Ministry (DST).

...

2.11 On 4 June 1991, the complainant appeared before the military examining magistrate, Major Ayed Ben Kayed. The complainant states that, during the hearing, he denied the charges against him of having attempted a *coup d'état*, and that he was refused the assistance of counsel.

2.12 The complainant claims that he was then placed in solitary confinement in the premises of the Ministry of the Interior (DST), from 4 June to 28 July 1991, and refused all visits, mail, medicine and necessary medical attention, except for one visit, on 18 July 1991, by Dr. Moncef Marzouki, President of the Tunisian Human Rights League. The complainant adds that he was not fed properly, that he was denied the right to practise his religion and that he was once again subjected to torture.

2.13 From 28 July 1991, when his period of police custody ended, the complainant was repeatedly transferred between different prison establishments in the country - in Tunis, Borj Erroumi (Bizerte), Mahdia, Sousse, Elhaoireb and Rejim Maatoug - which transfers, he maintains, were designed to prevent him having any contact with his family.

2.14 The complainant describes the bad conditions in these detention facilities, such as overcrowding, with 60-80 persons in the small cells in which he was held, and the poor hygiene, which caused sickness: he maintains that, as a result, he developed asthma and suffered skin allergies and that his feet are now disfigured. He states that on several occasions he was placed in solitary confinement, partly because of the hunger strikes he mounted in the 9 April prison in Tunis over 12 days in July 1992, and in Mahdia over 8 days in October 1995 and 10 days in March 1996, as a protest against the conditions in which he was being held and the ill-treatment to which he was subjected, and partly by arbitrary decision of the prison warders. He also stresses that he was stripped naked and beaten in public.

2.15 On 9 July 1992 the complainant's case was heard by the Bouchoucha military court in Tunis. He maintains that he was only able to have one meeting with his counsel, on 20 July 1992, and that it was conducted under the surveillance of the prison warders. On 28 August 1992, he was sentenced to a term of six years' imprisonment.

2.16 On completion of his sentence on 27 May 1997, as indicated in the prison discharge papers he submits, the complainant was placed under administrative supervision for a period of five years, which effectively meant that he was placed under house arrest in Remada, 600 km from Tunis, where his wife and children were living. Four months later, on 1 October 1997, he fled Tunisia for Libya then made his way to Switzerland, where he obtained political refugee status on 15 January 1999. In support of his statements, the complainant submits a copy of the report issued on 10 March 1996 by the Tunisian Committee for Human Rights and Freedoms, describing his condition after his release, and a certificate from the Swiss Federal Office for Refugees, on the granting of his political refugee status. The complainant adds that, after he had fled from the country, he was sentenced in absentia to 12 years' non-suspended imprisonment.

...

10.4 The Committee notes that article 12 of the Convention places an obligation on the authorities to proceed automatically to a prompt and impartial investigation whenever there is reasonable ground to believe that an act of torture or ill-treatment has been committed, no special importance being attached to the grounds for the suspicion.o/

10.5 The Committee notes that the complainant complained of acts of torture committed against him to the Bouchoucha military court at his trial from 9 July 1992 onwards, in the presence of the national press and international human rights observers. It also notes that the State party acknowledges that the complainant reiterated his allegations of ill-treatment several times before the court, in order, according to the State party, to focus the attention of the observers attending the hearing. The Committee also takes note of the detailed and substantiated information provided by the complainant regarding his hunger strikes in the 9 April prison over 12 days in July 1992 in Tunis, and in Mahdia over 8 days in October 1995 and 10 days in March 1996, as a protest against the conditions in which he was being held and the ill-treatment to which he was subjected. The Committee notes that the State party did not comment on this information, and considers that these elements, taken together, should have been enough to trigger an investigation, which was not held, in breach of the obligation to proceed to a prompt and impartial investigation under article 12 of the Convention.

10.6 The Committee observes that article 13 of the Convention does not require either the formal lodging of a complaint of torture under the procedure laid down in national law or an express statement of intent to institute and sustain a criminal action arising from the offence,

and that it is enough for the victim simply to bring the facts to the attention of an authority of the State for the latter to be obliged to consider it as a tacit but unequivocal expression of the victim's wish that the facts should be promptly and impartially investigated, as prescribed by this provision of the Convention.p/

10.7 The Committee notes, as already indicated, that the complainant did complain of ill-treatment to the Bouchoucha military court, and resorted to hunger strikes in protest at the conditions imposed on him. Yet notwithstanding the jurisprudence under article 13 of the Convention, the Committee notes the State party's position maintaining that the complainant should have made formal use of domestic remedies in order to lodge his complaint, for example by presenting to the court a certificate proving that a complaint had been lodged with the office of the public prosecutor, or displaying obvious traces of torture or ill-treatment, or submitting a medical report. On this latter point, to which the Committee wishes to draw its attention, it is clear that the complainant maintains that the president of the Bouchoucha court ignored his complaints of torture on the grounds that he had no medical report in his possession, that the complainant was informed only during his trial of the medical checks carried out on a portion of the accused during remand, and that the president of the court ignored his demands for his right to a medical report to be respected. On the other hand, the State party maintains that the complainant voluntarily opted not to request a medical examination although the court had ordered such examinations for all prisoners who wished to undergo one. The Committee refers to its consideration of the report submitted by Tunisia in 1997, at which time it recommended that the State party should ensure that medical examinations are provided automatically following allegations of abuse, and thus without any need for the alleged victim to make a formal request to that effect.

10.8 In the light of its practice relating to article 13 and the observations set out above, the Committee considers that the breaches enumerated are incompatible with the obligation stipulated in article 13 to proceed to a prompt investigation.

...

11. The Committee against Torture, acting under article 22, paragraph 7, of the Convention, is of the view that the facts before it disclose a violation of articles 12 and 13 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

12. Pursuant to rule 112, paragraph 5 of its rules of procedure, the Committee urges the State party to conduct an investigation into the complainant's allegations of torture and ill-treatment, and to inform it, within 90 days from the date of the transmittal of this decision, of the steps it has taken in response to the views expressed above.

Notes

...

o/ Communication No. 59/1996 (*Encarnación Blanco Abad v. Spain*).

p/ Communications No. 6/1990 (*Henri Unai Parot v. Spain*) and No. 59/1996 (*Encarnación Blanco Abad v. Spain*).

See also:

- *Imed Abdelli v. Tunisia* (188/2001), CAT, A/59/44 (14 November 2003) 187 (CAT/C/31/D/188/2001) at paras. 10.4-10.9.
- *Bouabdallah Ltaief v. Tunisia* (189/2001), CAT, A/59/44 (14 November 2003) 207 (CAT/C/31/D/189/2001) at paras. 10.4-10.9.

- *A. R. v. The Netherlands* (203/2002), CAT, A/59/44 (14 November 2003) 247 (CAT/C/31/D/203/2002) at paras. 1.1, 2.1-2.6, 7.3-7.6 and 8.

...

1.1 The complainant is A.R., an Iranian national, born on 30 June 1966, currently residing in the Netherlands and awaiting deportation to Iran. He claims that his forcible return to Iran would constitute a violation by the Netherlands of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel.

...

2.1 Counsel submits that, after the Iranian revolution in 1979, the complainant became associated with a political party, the Fedayeen Khalg-Iran. He became active in the organization whilst in secondary school. In January 1983 he was arrested on suspicion of distributing illegal pamphlets and causing disorder, and was detained for 25 days. During this time, he alleges that he was severely beaten. Upon release he was removed from his school.

2.2 The complainant continued his political activities. These consisted of handing out illegal pamphlets and attending illegal gatherings. He was arrested again in July 1983, and brought before a Revolutionary Court, which sentenced him to two years' imprisonment. During his first two weeks in prison he was interrogated, tortured and maltreated. He was twice taken out for a mock execution, for which he was blindfolded and put against a wall, with shots being fired. He was then kept in solitary confinement for a month and a half. At the end of his term of imprisonment, the complainant was required to sign a statement that he would not engage in political activities, on pain of death.

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2.3 After his release, the complainant was required to carry out his military service, during which time he claims he was discriminated against, in that he had to perform dangerous tasks at the front. After completing his military service, he took up tertiary studies at a private university, as he was not permitted to study at a regular university, and then obtained employment. In 1989 he resumed his political activities with a group of people associated with the Fedayeen-e-Khalg. The group distributed pamphlets and a political periodical, wrote slogans on walls, and collected financial aid for families of political detainees.

2.4 On the evening of 30 April 1994, the group distributed pamphlets and wrote slogans in certain areas of Tehran. The following morning, the complainant noticed that some of the slogans were unfinished, and learned that two members of the group had not notified them that they had finished work. Fearing that the activities of his group had been detected, the complainant fled Tehran. He later learned that officials had searched his apartment and taken away his belongings, including illegal pamphlets and other political material. He also learned that his father had been detained and interrogated by officials, and released on condition that he keep the authorities informed about the complainant's whereabouts. The complainant fled Iran on 21 June 1994.

2.5 After arriving in the Netherlands, the complainant became involved in a number of political activities, including co-founding an organization called Nabard, an organization of Iranian refugees which comments on the human rights situation in Iran. He was involved in writing and publishing reports for this group, although his name did not appear in them. Nabard has close connections with a Fedayeen group in France, and opposition groups in Iran. In 1996, the complainant was told by his brother, who had obtained asylum in Sweden, that a letter from the complainant to his father had been intercepted by the authorities, and that his father had been detained for not apprising the authorities about receiving the letter.

2.6 On 14 July 1994 the complainant applied for asylum in the Netherlands. His application was rejected by the State Secretary of the Department of Justice on 30 August 1994. An internal review of this decision, requested by the complainant, confirmed the original decision, and a subsequent appeal to the District Court in The Hague was dismissed on 11 February 1997. The Court found that the complainant had had no problems with the Iranian authorities between 1985 and 1994, and that there was no objective evidence regarding the supposed arrest of his fellow group members in May 1994.

...

7.3 The Committee recalls its general comment on article 3, which states that the Committee is to assess whether there are "substantial grounds for believing that the author would be in danger of torture" if returned, and that the risk of torture "must be assessed on grounds that go beyond mere theory or suspicion". The risk need not be "highly probable", but it must be "personal and present".c/ In this regard, in previous decisions, the Committee

has determined that the risk of torture must be "foreseeable, real and personal".d/

7.4 In assessing the risk of torture in the present case, the Committee notes that the complainant claims to have been tortured and imprisoned previously by the Iranian authorities, because of his involvement with the Fedayeen Khalg-Iran. This is not contested by the State party. However, the alleged acts of torture occurred in 1983, some 20 years ago. The Committee notes that, in accordance with its general comment on article 3, information which is considered pertinent to risk of torture includes whether the complainant has been tortured in the past, and if so, whether this was in the *recent* past.e/ This cannot be said to be the case in the author's complaint.

7.5 The Committee's general comment also directs the inquiry at whether the author of the communication has engaged in any political or other activity within or outside the State concerned which appear to make him or her "particularly vulnerable" to the risk of torture.f/ In the current case, the complainant contends that he signed a form upon his release, to the effect that he would not engage in further political activities, and that he was harassed by the authorities after his release. He claims that, despite this, he did continue to engage in political activities in Iran, that he had good reason to flee Iran in 1994, and that he has continued his political activities in the Netherlands, of which the Iranian authorities might be aware. The complainant further alleges that he submitted to the authorities Iranian documents, issued by the Revolutionary Prosecutor's Office, which attest to the Iranian authorities' interest in him and the dangers confronting him in Iran.

7.6 The Committee notes that the complainant's arguments, and his evidence to support them, have all been considered by the State party's courts. The Committee recalls its jurisprudence to the effect that it is not an appellate, quasi-judicial or administrative body. Consistent with its general comment, whilst the Committee has the power of free assessment of the facts arising in the circumstances of each case, it must give considerable weight to findings of fact made by the organs of the State party. In this case, the Committee cannot determine that the State party's review of the complainant's case was deficient in this respect. On the basis of the above, the Committee considers that the complainant has not substantiated that he would face a foreseeable, real and personal risk of being subjected to torture upon his return to Iran.

8. The Committee against Torture...concludes that the removal of the complainant to Iran would not constitute a breach of article 3 of the Convention.

Notes

...

c/ General comment No. 1 (1996).

d/ Views of the Committee on Communication No. 204/2002, *H.K.H. v. Sweden*, 28 November 2002.

e/ Paragraph 8 (b).

f/ Paragraph 8 (e).

- *E. J. V. M. v. Sweden* (213/2002), CAT, A/59/44 (14 November 2003) 267 (CAT/C/31/D/213/2002) at paras. 1.1, 2.1-2.5, 2.8-2.11, 8.4-8.7 and 9.

...

1.1 The complainant is E.J.V.M., a Costa Rican citizen, born in 1956, currently residing clandestinely in Sweden, following the rejection by Sweden on 19 February 2002 of his application for asylum. He claims that his deportation to Costa Rica would constitute a violation by Sweden of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (henceforth referred to as "the Convention")...

...

2.1 The complainant joined the Youth Section of the Popular Vanguard Party (Communist) of Costa Rica in 1975, when he was a drama student at the University of Costa Rica. As an active member of Costa Rica's Vanguard Youth (JVC), he participated in various student political and cultural activities.

2.2 The complainant was arrested for the first time in 1975 during a student political meeting. Along with the other participants he was taken to a prison in San Juan de Tibás, where he alleges that he was physically and mentally tortured - insulted, threatened, kicked, his hair pulled, beaten on the ribs and spat on.

2.3 The complainant managed to escape from prison and made for the province of Limón. He alleges that he was arrested several times and imprisoned in inhumane conditions, among convicted criminals, in rat-infested premises, with neither food nor a blanket nor anywhere to sleep. He alleges that he was arrested and released on numerous occasions, being allowed to leave and then being arrested again after 50 metres. He was finally able to escape and return to San José.

2.4 In San José, the complainant again became involved in political activities at university. He alleges that he was arrested several times; while in detention he received death threats and was beaten and burned with cigarettes. He says that on one occasion he was taken to the General Detention Facility of the Ministry of Public Security, where he was subjected to

numerous types of physical and mental ill-treatment, including being severely kicked and beaten, immersed in cold water in the early morning and forced to perform sexual acts with his captors.

2.5 The complainant claims that, because of his Communist affiliations, he was prevented from working in the National Theatre Company and suspended from his acting classes. He also alleges that he was publicly attacked because he was bisexual.

...

2.8 Between 1992 and 1993, as a result of his participation in the defence of the rights of Limón peasants who were under pressure to sell their land cheaply, the complainant alleges that he was arrested in an operation coordinated by the national police and paramilitary groups opposed to the peasants. He says that he was taken to Limón prison, put in a cell swimming in urine and excrement, beaten and drenched with cold water. On his release, he found that his house had been raided and his personal belongings destroyed.

2.9 The complainant claims that between 1994 and 1997 he was detained on more than 30 occasions and taken to court four times, accused, *inter alia*, of illegal possession of firearms, manufacture of explosives, occupation of land, aggravated threats and attempted homicide.

2.10 He also says that his life and that of his partner, P. A. M., a female to male transsexual, with whom he shared his political activities, was in danger. He says that their house was shot at on several occasions and that although they asked for police protection their requests were ignored. He asserts that they had to install a metal stockade in the living room of their house for protection.

2.11 The complainant alleges that in 1995 there was an attempt to murder him: he received a bullet wound to his left hand from an individual to whom a uniformed police officer had given a gun.

...

8.4 In the present case, the Committee takes note of the State party's observations on the general situation of human rights in Costa Rica and of the fact that Costa Rica has made a declaration under article 22 of the Convention. It further takes note of reports which indicate an improvement in the situation of peasants involved in land disputes. The Committee observes that the information contributed by the complainant to rebut this opinion comes mainly from his own writings.

8.5 The Committee takes note of the discrepancies and grey areas in the complainant's account, as indicated by the State party, which were not clarified by the complainant. It further observes that the complainant has not provided sufficient evidence to corroborate his assertions of having been subjected to torture in Costa Rica.

8.6 The Committee also notes the observations of the State party to the effect that the most serious incident alleged by the complainant took place in 1995, but that the complainant nevertheless did not leave Costa Rica until May 1997. It observes that the complainant's reply is vague in this regard, and that while he contends that the government institutions in Costa Rica have not protected him in the past, he has not provided evidence to corroborate his assertion.

8.7 On the issue of the complainant's alleged difficulties in Costa Rica on account of his bisexuality, the Committee observes that the danger of being subjected to torture in Costa Rica in future is not based on grounds that go beyond mere theory or suspicion. In the Committee's opinion, the reports submitted by the complainant do not demonstrate substantial grounds for believing that he is personally and currently in danger of being tortured if returned to Costa Rica. In the light of the foregoing, the Committee considers that the information furnished by the complainant does not provide substantial grounds for believing that he would personally be in danger of being tortured if returned to Costa Rica.

9. The Committee against Torture...considers that the complainant has not substantiated his claim that he would be subjected to torture upon his return to Costa Rica, and therefore concludes that the complainant's removal to that country would not constitute a breach by the State party of article 3 of the Convention.

- *Hanan Ahmed Fouad Abd El Khalek Attia v. Sweden* (199/2002), CAT, A/59/44 (17 November 2003) 234 (CAT/C/31/D/199/2002) at paras. 2.1-2.5 and 12.1-12.3.

...

2.1 In 1982, the complainant's husband, Mr. A., was arrested on account of his family connection to his cousin, who had been arrested for suspected involvement in the assassination of the former Egyptian President, Anwar Sadat. Before his release in March 1983, Mr. A. was allegedly subjected to "torture and other forms of physical abuse". Mr. A., active in the Islamic movement, completed his studies in 1986 and married the complainant. He avoided various police searches, but suffered difficulties, such as the arrest of his attorney, upon bringing a civil claim in 1991 against the Ministry of Home Affairs, for suffering during his time in prison.

2.2 In 1992, Mr. A. left Egypt on security grounds for Saudi Arabia, and thereafter to Pakistan, where the complainant and her children joined him. After difficulties with passport non-renewal and confiscation by the Egyptian Embassy in Pakistan, the family left for Syria under assumed Sudanese identities. There they were visited by family members from Egypt, who were arrested and had their passports confiscated upon their return to Egypt, in order to

determine Mr. A.'s whereabouts. In December 1995, the family moved to Iran under the same Sudanese identities.

2.3 In 1998, Mr. A. was tried for terrorist activity in absentia before a higher military court in Egypt, along with 100 other accused. He was found guilty of belonging to an Islamic fundamentalist group, Al-Gihad, having intention to overthrow the Egyptian Government, and was sentenced, without possibility of appeal, to 25 years' imprisonment. In 2000, concerned that warming ties between Egypt and Iran might result in his being returned to Egypt, Mr. A. and his family purchased air tickets under Saudi Arabian identities for Canada, and claimed asylum during a transit stop in Stockholm, Sweden, on 23 September 2000.

2.4 In his asylum application, he claimed that he had been sentenced to "penal servitude for life" in absentia, and that if returned, he would be executed as other accused allegedly had been. The complainant contended that, if returned, she would be detained for many years, on account of her status as Mr. A.'s wife and corresponding guilt by association. On 23 May 2001, the Migration Board invited the Swedish National Police Board (Special Branch) to submit its opinion in the matter, and the Special Branch subsequently conducted an interview with Mr. A. On 3 October 2001, with legal representation, the Migration Board held a "major inquiry" with Mr. A. and the complainant. On 30 October 2001, the Swedish National Police Board (Special Branch) informed the Migration Board that Mr. A. had a leading position in an organization guilty of terrorist acts and was responsible for activities of the organization. The case of Mr. A. and the complainant was thus remitted, on 12 November 2001, to the Government for decision pursuant to chapter 7, section 11 (2) (2) of the Aliens Act. In the Board's view, on the information before it, Mr. A. could be considered entitled to refugee status, however the Special Branch assessment, which the Board saw no reason to question, pointed in a completely different direction. The necessary weighing of Mr. A.'s possible need for protection, as against the Special Branch's assessment, was thus to be made by the Government. On 13 November 2001, the Aliens Appeals Board, to which the case had been forwarded, shared the Migration Board's assessment of the merits and was also of the view that the Government should decide the matter.

2.5 On 18 December 2001, the Government rejected the asylum applications of Mr. A. and the complainant. The reasons for these decisions are omitted from the text of this decision at the State party's request and with the agreement of the Committee. Accordingly, it was ordered that Mr. A. be deported immediately and the complainant as soon as possible. On 18 December 2001, Mr. A. was deported, while the complainant evaded police custody; her whereabouts remain unknown.

...

12.1 The issue before the Committee is whether removal of the complainant to Egypt would violate the State party's obligation under article 3 of the Convention not to expel or to return

a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected by the Egyptian authorities to torture. In so doing, the Committee refers to its consistent practice of deciding this question as presented at the time of its consideration of the complaint, rather than as presented at the time of submission of the complaint.c/ It follows that intervening events transpiring between submission of a complainant and its consideration by the Committee may be of material relevance for the Committee's determination of any issue arising under article 3.

12.2 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to Egypt. It follows from this framing at the issue that the Committee is not asked to decide whether or not Mr. A.'s expulsion from Sweden violated its obligations under article 3, or any other articles of the Convention, much less whether he has or has not endured torture at the hands of the Egyptian authorities. In assessing the risk to the complainant, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of the determination is to establish whether the individual concerned would be personally at risk of being subjected to torture in the country to which he would be returned. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his return to that country; additional grounds must exist to show that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

12.3 In the present case, the Committee observes that the complainant's husband, Mr. A., was returned to Egypt in December 2001, almost two years prior to the Committee's consideration of the case. The Committee observes that Mr. A.'s detention has since been monitored by regular visits from the State party's Ambassador, Embassy staff and high-level representatives of the State party, as well as his family, and that his medical care and conditions of detention were reported to be adequate. The Committee observes that the complainant founds her allegation of a risk of torture solely on her relationship with her husband, Mr. A., and contends that she will be exposed to torture as a result of this link. The Committee refers in this respect to its previous jurisprudence where it rejected a claim of torture arising by virtue of a family relationship to the leadership of an allegedly terrorist organization - such family ties, of themselves, are generally insufficient to ground a claim under article 3.d/ In light of the passage of time, the Committee is also satisfied by the provision of guarantees against abusive treatment,e/ which also extend to the complainant

and are, at the present time, regularly monitored by the State party's authorities *in situ*. It is also relevant to the Committee's consideration of the case that Egypt, a State party to the Convention, is directly bound properly to treat prisoners within its jurisdiction, and any failure to do so would be a breach of the Convention. In the light of the above circumstances, the Committee considers that there is not, at this time, a substantial personal risk of torture of the complainant in the event of her return to Egypt.

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Notes

...

c/ See, for example, *H.M.H.I. v. Australia* case No. 177/2001, decision adopted 1 May 2002.

d/ See, for example, *M.V. v. The Netherlands* case No. 201/2002, decision adopted 30 May 2003.

e/ The Committee against Torture has viewed and considered the provisions of the guarantees provided.

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- *V. R. v. Denmark* (210/2002), CAT, A/59/44 (17 November 2003) 260 (CAT/C/31/D/210/2002) at paras. 2.1-2.3, 3.1, 3.2, 4.6, 4.7, 6.3 and 6.4.

...

2.1 On 6 November 1992, the complainant and his wife entered Denmark and immediately applied for asylum. On 5 November 1993, the Danish Refugee Board upheld a previous decision of the Directorate of Immigration according to which the complainant and his family had to leave Denmark by 20 November 1993. The complainant and his family left Denmark and returned to Russia. a/

2.2 On 26 July 1994, and upon returning to the Russian Federation from Denmark, the complainant alleges that he was arrested and charged with unlawfully crossing the border, participating in subversive offences and defaming persons representing authority. He alleges that he was detained by the authorities from 26 July 1994 to 20 January 1998 and was subjected to various forms of torture, including having gas passed up through his windpipe until he vomited and forcing him to swallow soup straight from a bowl with his hands tied behind his back. In January 1996, he alleges to have been sentenced to three and a half years' imprisonment for having unlawfully crossed the border, and having participated in subversive offences. Upon release, he became a member of the Citizens' Union where he carried out activities on civil rights issues. As a result of these activities, he alleges to have

come into conflict with the authorities, which again deprived him of his liberty and subjected him to torture.

2.3 On 15 July 1999, the complainant and his wife and child entered Denmark for the second time; the next day, they applied for asylum. On 19 December 2001, the Danish Immigration Service refused asylum. On 21 March 2002, the Refugee Board upheld this decision and the complainant and his family were asked to leave Denmark. The complainant requested the Refugee Board to reopen the case, as he claimed that an opinion of the Department of Forensic Medicine of 21 December 2000 ("opinion of 21 December 2000") was defective. He also stated that his wife had been subjected to torture and that she had had flashbacks during the Board hearing, as one of the Board members reminded her of a Russian police officer. On 27 June 2002, the Refugee Board considered his application but refused to reopen the asylum case.

3.1 The complainant claims that as there is a real risk that he will be subjected to torture on return to the Russian Federation, his forced return would constitute a violation of article 3 of the Convention. He supports his fear of torture with the allegation that he was previously tortured, was an active member of the Citizens' Union, and was convicted of a criminal offence.

3.2 According to the complainant, the opinion of 21 December 2000 on which the Refugee Board largely based its decision not to grant him asylum was not thorough and was open to interpretation. He claims that this opinion does not deny that he suffers from chronic post-traumatic stress disorder caused by the effects of torture. He also contends that the opinion refers to scars on his body caused by previous acts of torture.

...

4.6 A translation of the opinion of 21 December 2000 has not been provided but is interpreted by the State party. b/ During the examination, the author claimed to have been subjected to various forms of torture. The examination concluded that there were no signs of fresh violence. As signs of older violence, were found a small non-specific scar on his back and on his left foot. Moreover, there were depressions on the outer side of his front teeth. It is stated that these changes might be due to corrosive burns, but were not otherwise specific. The author was found to suffer from a substantial personality change, which could be seen as a chronic development of a post-traumatic stress disorder, but most likely the disorder should be diagnosed as a paranoid psychosis (mental disorder with delusions of persecution). By way of conclusion, the Department of Forensic Medicine stated that no obvious physical or mental effects of torture as stated in the case had thus been found directly.

4.7 In setting aside the statement that the author had been subjected to torture, the Board

found that this decisively weakened the author's case. It further noted that the statement of the author's wife was less convincing, and that despite repeated questioning - she had only been able to explain about the reason for the final decision on the departure in general terms. The Board concluded that it could not accept either the author's statement or his wife's statement about their asylum motive. Although it did not entirely reject their statements to the effect that the author had carried out activities for the Citizens Union concerning civil rights issues, that he had certain conflicts with the authorities and that a search had been carried out of their home, upon an overall assessment of the information provided it found that the author and his wife had not rendered probable in a convincing and credible way that after their return in 1994 and until their departure in 1999 they were subjected to asylum-related outrages, or that upon their return they will be at such risk thereof.

...

6.3 The Committee notes that the complainant's main argument relates to the way in which the Refugee Board reached its decision not to grant him asylum, in particular its interpretation of the medical opinion of 21 December 2000 addressing the question of whether the complainant had been subjected to torture. The Committee is not persuaded by the complainant's arguments that he faces a real and personal risk of torture if returned to the Russian Federation at the present time.

6.4 Consequently, the Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the deportation of the complainant to the Russian Federation would not constitute a breach of article 3 of the Convention.

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Notes

a/ The exact date of their return is not provided.

b/ On 5 November 2003, the State party provided a copy of the decision in English for the Committee's consideration.

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- *T. M. v. Sweden* (228/2002), CAT, A/59/44 (18 November 2003) 294 (CAT/C/31/D/228/2003) at paras. 2.1-2.3, 2.6, 2.7, 7.1 and 7.3.

...

2.1 The complainant entered Sweden on 26 September 1999 and immediately applied for asylum. During an Immigration Board interview on the same day, he stated he had been become a member of the Bangladesh Freedom Party (hereafter "BFP") in 1991, an allegedly

illegal political party, and in 1994 started actively working for the party, including by organizing, and participating in, meetings and demonstrations. In 1997, upon release on bail three days after being arrested for illegal possession of weapons, he claimed to have gone into hiding for two years. As the political situation worsened, he paid a smuggler to arrange departure from Bangladesh.

2.2 On 29 September 1999, the Immigration Board held a second interview with the complainant. He stated that from 1994 to 1997 he was joint secretary of the party in the Dhaka city party district. He claimed Government members harass and abuse party members, and that he too, as a known party figure, suffered harassment. He claimed to have been falsely accused of murder, possession of weapons and taking bribes in 1997. While he was under arrest, he claimed to have been tortured with kicks and truncheons, and he adds that he continues to suffer from a back injury as a result. The party arranged for his release on bail, whereupon he went into hiding outside Dhaka. He allegedly was unaware whether he had been convicted of the offences of which he had been accused. By subsequent written submissions and seeking to clarify "misunderstandings", the complainant's counsel observed that the party was legal but due to Government impediments of its activities, its activities were "underground". Counsel stated that the bribe charges were in fact charges to the effect that the complainant had unlawfully extorted money, charges which had been brought by police upon pressure from the party then in Government, the Awami League.

2.3 On 8 October 1999, the Immigration Board denied his application. The Board established a variety of credibility problems related to documentation, and that he had not established his identity. On the substance of the claim, it found that the BFP was legal in Bangladesh, and that the complainant had not engaged in any impermissible political activity. While aware of some politically-motivated charges, the Board considered that the criminal justice system in Bangladesh provided sufficient guarantees for fair trial in respect of any criminal charges. The Board observed that the complainant had been released after 3 days in custody, had not been able to provide any documentary evidence supporting his allegations of charges against him and had provided very vague information as to any legal proceedings after his release. It thus concluded that the complainant had not shown reason to believe he was at risk of punishment for political reasons.

...

2.6 On 20 December 2002, the complainant lodged a new application with the Aliens Appeals Board, arguing that during his detention in January 1997, he had been subjected to different forms of severe torture that resulted in physical and mental injuries. His family had allegedly been threatened by Awami League members after his departure. If he returned, he would be arrested, and given allegedly widespread torture during criminal investigations it was "very improbable" that he would be able to avoid such treatment. As a result of the torture allegedly suffered, he suffered from post-traumatic stress syndrome (PTSS), such that

return would place him at "great risk" of taking his own life. He presented psychiatric certificates on his state of mental health as well as detailed forensic reports undertaken in Sweden, which assessed that the complainant had been subjected to torture in 1997.

2.7 On 16 January 2003, the Board rejected the application, applying the standards of article 3 of the Convention and the Committee's general comment on its implementation. It observed that the complainant had waited three years since the expulsion order became final before first complaining about acts of torture during his detention in 1997. Applying an appropriately low burden of proof, however, it found that the medical evidence supported a claim of torture. As to whether there was a current risk of torture, the Board found that in the light of the passage of six years, of the complainant's inability to show he was still being sought by Bangladeshi authorities, and of the fall from power of the party allegedly persecuting him, there was no reason presently to fear such treatment. As to his health, the Board observed that he had at no previous point complained of the psychological problems suddenly alleged, nor had he shown that he had been in contact with any mental health-care provider in Sweden. It thus concluded that his mental health status was primarily due to his unsettled life in Sweden resulting from his failure to comply with the expulsion order and continued illegal presence in the country.

...

7.1 The issue before the Committee is whether the removal of the complainant to Bangladesh violated the State party's obligation under article 3 of the Convention not to expel or to return a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

...

7.3 In the present case, the Committee observes that the Aliens Appeals Board accepted the complainant's (belated) contention that he had been subjected to torture in January 1997. The Committee notes, however, that the complainant's case was based on the contention that, as a political activist for the BFP, false charges were brought against him, and that he suffered abuse at the hands of the police, as a result of political pressure from the government authorities then in power. The Committee notes that this practice has been documented by several sources. In the light of the six years that have passed since the alleged torture took place, however, and, more pertinently, given that the complainant's political party now participates in government in Bangladesh, the Committee considers that the complainant has failed to show that substantial grounds existed, at the time of his removal, that he was at a real and personal risk of being subjected to torture.

TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

- *A. K. v. Australia* (148/1999), CAT, A/59/44 (5 May 2004) 123 at paras. 1.1, 2.1, 2.2, 2.4-2.11 and 6.1-6.6.

1.1 The complainant is A.K., a Sudanese national, currently detained at the Immigration Detention Centre, New South Wales. He claims that his forcible return to Sudan would constitute a violation of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment by Australia...

2.1 The complainant alleges that he is Ansari and a member of the Umma Party, which is one of the two traditionalist parties of the North opposing the current Government. From 1990 to 1995, the complainant attended Cairo University, Khartoum Branch, where he completed a law degree. The Umma Party had about 100 members at Cairo University, and the complainant became the leader of this group.

2.2 In April 1992, the complainant alleges to have organized rallies and demonstrations against the Government. Following one of these rallies, he was detained by members of the security forces. He was threatened, forced to sign an undertaking that he would not participate in political activities and then released. Following this incident, the security forces kept him under surveillance.

...

2.4 In 1994, the Government sent students who were seen as troublemakers and opponents of the regime to fight in Southern Sudan. On 1 June 1996, the complainant allegedly received a summons stating that he had to report to the PDF [People's Defence Force] within 72 hours as he had been chosen "to fulfil the duty of Jihad". As he did not want to fight against his own people or to clear minefields, he decided to flee the country. He was unable to use his passport because of the summons and therefore used his older brother's passport. After his departure the military allegedly visited his home.

2.5 On 10 December 1997, the complainant arrived in Australia without valid travel documents and was detained pending final resolution of his asylum claims. On 12 December 1997, he filed an application for a protection visa (refugee status) with the Department of Immigration and Multicultural Affairs (the DIMA). In support of his application, he submitted, *inter alia*, the following: a letter from the Umma Party confirming his membership; a letter from the Commander of the Popular Forces to the Manager of the Department of Prisons to release the complainant and present himself to the PDF; and a statement from a member of the Australian Sudanese community who stated that she had no doubt that the complainant was a Sudanese citizen and belonged to a family known to be strong supporters of the Ansar group, which supports the Umma Party.

2.6 On 5 January 1998, a delegate of the DIMA denied the complainant's application for a

protection visa, finding that he was not a citizen of Sudan and that his claims lacked credibility. On 5 February 1998, the complainant sought administrative review of the delegate's decision before the Refugee Review Tribunal (the RRT). By decision of 7 July 1998, the RRT refused the complainant's application. The complainant lodged an application for judicial review with the Federal Court of Australia. On 25 August 1998, the Court remitted the application back to the RRT for a second determination.

2.7 On 25 November 1998, the newly constituted RRT denied the complainant's application. The matter was appealed to the Federal Court, at which the complainant was unrepresented. During the hearing, he said that the interpreter who had assisted him at the RRT hearing was inadequate and that he had been misunderstood. The hearing was adjourned so that the complainant could obtain legal representation. On 9 August 1999, the Federal Court dismissed the appeal. Several subsequent requests for ministerial intervention were denied.

2.8 The complainant outlines the recent political history of Sudan and claims that there is a consistent pattern of gross, flagrant and mass violations of human rights. He refers, *inter alia*, to the adoption of a country resolution in April 1997 by the United Nations Commission on Human Rights, according to which human rights violations in Sudan included "extrajudicial killings, arbitrary arrests, detentions without due process, enforced or involuntary disappearances, violations of the rights of women and children, slavery and slavery-like practices, forced displacement of persons and systematic torture, and denial of the freedoms of religion, expression, association and peaceful assembly".

2.9 In January 1998, the United Nations Special Rapporteur on Sudan reported that the authorities, security forces and militia were responsible for a broad range of human rights violations. In April 1998, the United Nations Commission on Human Rights again expressed deep concern over continued serious human rights violations. For the fourth year running, the Commission recommended deploying human rights field officers to monitor human rights.

2.10 The complainant alleges that although much of the religious persecution has been directed against non-Muslims, the fundamentalist nature of the current regime is such that many Muslims, including the Sufis, are not free to practise their own brand of Islam under the NIF regime. The Ansar (consisting largely of Sufis) have been subjected to government control with the confiscation of their mosques. In addition, Muslim groups critical of the Government continue to suffer harassment. b/ On the political level, the complainant submits that contrary Islamist political opinions, including centrist Islamic parties such as the Umma are not tolerated.

2.11 According to the complainant, there is evidence that military deserters will face torture

and death. Amnesty International reported in April 1998 that: "Scores of student conscripts died as hundreds of youths broke out of a military training camp at al-Ayfun near Khartoum. The authorities announced that more than 50 deserters had drowned trying to cross the Blue Nile. However, other reports said that over 100 were killed, many of whom had been shot and others beaten to death." He also submits that both the UNHCR and Amnesty International have reported on the detention centres in Sudan and on the risk of ill-treatment and torture, in particular during interrogation in security offices. c/ According to the complainant, "a failed Sufi", Umma Party asylum-seeker, who has spent considerable time in the West, and who has qualified in law, whether or not his military service has been completed, would face considerable difficulty on return to Sudan.

...

6.1 The Committee must decide whether the forced return of the complainant to Sudan would violate the State party's obligation, under article 3, paragraph 1, of the Convention, not to expel or return (*refouler*) an individual to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture...

6.2 In assessing the risk of torture in the complainant's case, the Committee notes the substantial inconsistencies in the complainant's evidence throughout the proceedings, highlighted by the State party, which, in this case, was considered in depth by the Refugee Review Tribunal on two separate occasions. It observes that the complainant has not explained nor given any reasons for these inconsistencies and notes paragraph 8 of its general comment No. 1, pursuant to which questions about the credibility of a complainant, and the presence of relevant factual inconsistencies in his claim, are pertinent to the Committee's deliberations as to whether the complainant would be in danger of being tortured upon return.

6.3 Concerning the allegations of political involvement and previous ill-treatment at the hands of the Sudanese authorities as grounds for fearing that the complainant would be subjected to torture on return, the Committee notes that even if it were to discount the above-mentioned inconsistencies and accept these claims as true, the complainant does not claim to have been politically involved since 1992, and at no time during the domestic proceedings nor in his complaint to the Committee did he claim to have been tortured by the Sudanese authorities.

6.4 On the issue of his alleged desertion, the Committee notes that the State party did examine the letter, dated 1 June 1996, in which the complainant was allegedly drafted by the PDF, but considered it not to be genuine. The Committee considers that due weight must be accorded to findings of fact made by domestic, judicial or competent government authorities unless it can be demonstrated that such findings are arbitrary or unreasonable. Even if the Committee were to consider that the complainant is a deserter or evaded the draft, he has not demonstrated that he would be subjected to torture upon his return to Sudan. The

Committee observes that the State party considered a significant amount of information from various different sources before arriving at this conclusion.

6.5 The Committee notes the claim that if returned to Sudan, the complainant would be compelled to perform military service, despite the fact that he is a conscientious objector, and the implication that this would amount to torture, as defined by article 3 of the Convention. The Committee considers that the letter of 1 June 1996, the veracity of which has been challenged, as well as the complainant's allegation that opponents of the regime are called up to fight in the civil war, is insufficient to demonstrate that he either is a conscientious objector or that he would be drafted on return to Sudan. As with the other reasons for claiming a fear of torture on return, the State party's evaluation of the facts in this respect has not been shown to be unreasonable or arbitrary.

6.6 On the basis of the foregoing, the Committee considers that the complainant has not provided a verifiable basis to conclude that substantial grounds exist for believing that he would face a foreseeable, real and personal risk of being subjected to torture upon his return to Sudan, within the meaning of article 3 of the Convention.

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Notes

...

b/ The complainant refers to Amnesty's Annual Report of 1999 in which it reported that those detained in 1997 included five imams who were reported to have cast doubt on the religious credentials of Hassan al-Turabi, Secretary-General of the National Congress and ideological mentor of the Government.

c/ He refers to Amnesty International's Urgent Action of 21 January 1997.

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- *S. G. v. The Netherlands* (135/1999), CAT, A/59/44 (12 May 2004) 115 at paras. 2.1-2.3, 2.5-2.9, 6.2 and 6.4-6.7.

...

2.1 The complainant is a Turkish national of Kurdish ethnic origin from the city of Batman in eastern Turkey. In 1993 he became a supporter of the National Liberation Front of Kurdistan (ERNK), the political wing of the PKK. In 1994 the complainant became a member of the People's Democratic Party (HADEP). He participated in meetings, and collected money and food for Kurds who were forced a/ to leave their villages and relocate to Batman.

2.2 On 19 March 1995, the complainant was arrested with seven others, for reasons unspecified, and detained for 15 days. During this time he claims to have been subjected to torture on several occasions, which left scars on his back and left leg. b/

2.3 On 10 May 1997, the complainant was arrested by four policemen whilst on his way to a meeting of the Turkish Human Rights Association (IHD). He was blindfolded and taken to a field, where the policemen threatened to kill him if he did not become a police informer and provided them with names of PKK, ERNK and HADEP sympathizers. The complainant was frightened and agreed to cooperate, upon which he was released. He then went into hiding, and fled to Istanbul on 14 May 1997. From there, he left Turkey for the Netherlands on 29 May 1997, with a false passport.

...

2.5 On 29 May 1997, the complainant applied for asylum in the Netherlands. This was rejected by the Secretary of the Ministry of Justice on 13 August 1997. On 25 August 1997, the complainant requested the Secretary of Justice to review his decision, but this was declined on 29 September 1997. An appeal against the refusal of the Secretary to grant asylum was dismissed by the District Court of The Hague on 23 July 1998. Thereafter, the complainant left the Netherlands for Denmark, d/ and applied for asylum in that country.e/

2.6 The complainant left Denmark on 14 February 1999 and returned to the Netherlands on 15 February 1999. Shortly afterwards, f/ he participated in a demonstration against the role of the Greek Government in the arrest of Abdullah Ocalan, resulting in the occupation of the Greek ambassador's residence in The Hague by approximately 200 Kurds, including the complainant. The occupation received considerable international attention. The Turkish media described the occupation as a "PKK activity", and labelled the participants as "terrorists". After the occupation ended, the complainant was arrested in connection with his involvement in the occupation, and on 20 February 1999, he was placed in alien detention, and subsequently prosecuted. g/

2.7 On 23 February 1999, whilst in alien detention, the complainant filed a second application for asylum with the Dutch authorities. On 19 March 1999, the Secretary of Justice held the application for asylum to be inadmissible. h/ An appeal from this decision to the District Court of The Hague was rejected on 7 May 1999.

2.8 The complainant claims that, in addition to his participation in the occupation of the Greek ambassador's residence in The Hague, he participated in other Kurdish political activities. In the Netherlands he took part in: meetings in The Hague and in Arnhem in 1997; i/ a "celebration" on 15 August 1997 in Middelburg; the "Newroz celebration" on 21 March 1998 in Middelburg; the International Labour Day celebration on 1 May 1998 in Rotterdam; and the "Mazlum Dogan" Youth festivals in 1998 in several Dutch cities. In

Denmark, he participated in meetings in Copenhagen where unspecified leaflets were handed out, and in what he describes as "different 'Abdullah Ocalan related' activities".j/ He also refers to his participation in several "Kurdish activities" in Germany, France and Belgium.

2.9 The complainant refers to the general human rights situation in Turkey, and in particular to reports from a number of non-governmental organizations and Governments concerning the practice of torture in Turkey. He refers to the reports of Amnesty International and Human Rights Watch published in 1999, which indicated that torture in Turkey was "commonplace" and "widespread". Reference is made to a report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment dated 23 February 1999, which refers to a visit by that body to Turkey in 1997 and notes that the existence and extent of the problem of torture in Turkey had been established beyond doubt. In particular, the author refers to a 1999 report by the Swiss Refugee Assistance Association (*Schweizerische Flüchtlingshilfe*), which describes the "deteriorating human rights situation in Turkey due to the arrest of the PKK leader Abdullah Ocalan", and notes that groups at risk of torture upon return to Turkey included members and sympathizers of HADEP, and persons involved with illegal parties and organizations.
...
6.2 The Committee must determine whether the forced return of the complainant to Turkey would violate the State party's obligations under article 3, paragraph 1, of the Convention not to expel or return (*refouler*) an individual to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture...

6.4 In assessing the risk of torture in the present case, the Committee notes that the complainant claims to have been detained and tortured previously by the Turkish authorities. However, the alleged acts of torture occurred in 1995. The Committee notes that, in accordance with its general comment on article 3, information which is considered pertinent to risk of torture includes whether the complainant has been tortured in the past, and if so, whether this was in the recent past. The incidents referred to took place nine years ago, a lapse of time which cannot be described as recent.

6.5 The Committee must also consider whether the complainant has engaged in any political or other activity within or outside his own country which would make him particularly vulnerable to any risk of torture upon return to Turkey. In relation to his activities inside Turkey, the complainant's political activities included collecting money and food for displaced Kurdish villagers. Although he claims to have been detained on two occasions, the complainant does not establish that he was in fact, or was regarded by the Turkish authorities as, a significant Kurdish opposition figure. Nor does he allege to have had any special role within the relevant organizations. As to his activities abroad, the complainant has listed instances of participation in political activities and meetings. Some of these are

referred to in very general terms, although particular reference is made to the complainant's participation in the occupation of the Greek ambassador's residence in The Hague in 1999. However, it has not been established that the Turkish authorities are aware of the complainant's participation in this event or any of the other matters referred to. The Committee notes in this regard that proceedings against the author in connection with the occupation of the residence in The Hague were discontinued for lack of evidence. Nor has it been established that, if the Turkish authorities were indeed aware of these actions, this would place the complainant at particular risk of torture upon his return to Turkey.

6.6 The relevant evidence regarding the complainant's history in Turkey, together with his activities inside and outside Turkey, has been considered by the Dutch authorities. The Committee is not in a position to challenge their findings of fact, nor to resolve the question of whether there were inconsistencies in the complainant's account. Consistent with the Committee's case law, due weight must be accorded to findings of fact made by government authorities.

6.7 In light of the foregoing, the Committee finds that the complainant has not established that he would face a foreseeable, real and personal risk of being tortured in the event of his return to Turkey, within the meaning of article 3 of the Convention.

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Notes

a/ No details are provided.

b/ Reference is made to a very brief medical report in Dutch (untranslated), which is again referred to in the complainant's comments on the State party submissions. There, a description of the medical report is provided in English (see page 3 of that document, under the heading "Ad 2&3").

...

d/ No date is provided.

e/ No details are provided.

f/ No date is provided.

g/ There are no details of the charges, or of any conviction or sentence.

h/ No details are provided.

i/ No details are provided.

j/ No details are provided.

- *A. I. v. Switzerland* (182/2001), CAT, A/59/44 (12 May 2004) 139 at paras. 1.1, 2.1-2.5 and 6.2-6.9.

1.1 The complainant is A.I., a Sri Lankan national of Tamil origin, born in 1977, currently residing in Switzerland, and awaiting his deportation to Sri Lanka. He claims that his forcible return to Sri Lanka would amount to a violation by Switzerland of article 3 of the Convention against Torture...

2.1 The complainant is from Chankanai in the north of Sri Lanka. In July 1995, he and his family fled the hostilities between combatants in the civil war, and temporarily stayed in a refugee camp near Navaly. During the bombing of a Catholic church in Navaly by the Sri Lankan Air Force, he witnessed the killing of numerous refugees who had sought shelter in that church, including some of his remote relatives. The complainant and his family subsequently went to the then LTTEa/-controlled Chavakachcheri, where his younger brother, S., joined the LTTE.

2.2 In January 1996, the complainant and his mother travelled to Colombo to make arrangements for his departure from Sri Lanka. Following a bomb attack on a bank in Colombo, in which a neighbour was involved, the complainant and his mother were arrested by security forces on 31 January 1996, and detained at the Pettah police station. On 8 and 16 February 1996, the complainant was visited by a delegation of the International Committee of the Red Cross (ICRC) and, on 22 February 1996, he and his mother were released from detention upon payment of a bribe.

2.3 On 30 March 1996, the complainant was arrested during an identity check by an army patrol that brought him to Welikade prison, where he was interrogated about his connection with the LTTE. After his release on 1 January 1997, he was returned to Chankanai. Meanwhile, his younger brother had died, on 18 July 1996, during an LTTE attack against an army camp near Mullaitivu.

2.4 Following his return to Chankanai, the complainant and his second brother, T., were arrested six or seven times, between April and June 1997, by militia of the EPRLF b/ and TELO. c/ They were taken to a camp near Puttur, where they were interrogated about their links with the LTTE. During interrogation, they were allegedly beaten; in one case, they received blows with an iron chain and were burnt on their back with a hot piece of iron, in order to extract a confession. In July 1997, T. was once again arrested by militia; he has

disappeared since.

2.5 Thereafter, the complainant returned to Colombo, from where he left for Switzerland via Turkey and Italy on 22 August 1997, using a false passport.

...

6.2 The Committee must decide whether the forced return of the complainant to Sri Lanka would violate the State party's obligation, under article 3, paragraph 1, of the Convention, not to expel or return (*refouler*) an individual to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. In reaching its conclusion, the Committee must take into account all relevant considerations, including the existence, in the State concerned, of a consistent pattern of gross, flagrant or mass violations of human rights (article 3, paragraph 2, of the Convention).

6.3 The Committee notes from recent reports on the human rights situation in Sri Lanka that, although efforts have been made to eradicate torture, instances of torture continue to be reported, and complaints of torture are often not dealt with effectively by the police, judicial officers and doctors. However, the Committee equally notes the conclusion of a formal ceasefire agreement between the Government and the LTTE in February 2002. While recent political developments and changes in Government may have created impediments to the effective pursuit of the ongoing peace process, it remains that the process itself has not been abandoned. The Committee further recalls that, after conducting its inquiry on Sri Lanka under article 20 of the Convention, it concluded that the practice of torture was not systematic in the State party. The Committee finally notes that a large number of Tamil refugees have returned to Sri Lanka in recent years.

6.4 The Committee recalls, however, that the aim of its examination is to determine whether the complainant would personally risk torture in the country to which he would return. It follows that, irrespective of whether a consistent pattern of gross, flagrant or mass violations of human rights can be said to exist in Sri Lanka, such existence would not as such constitute sufficient grounds for determining that the complainant would be in danger of being subjected to torture upon his return to Sri Lanka. Additional grounds must be adduced to show that he would be personally at risk. Conversely, the absence of a consistent pattern of gross violations of human rights does not necessarily mean that the complainant cannot be considered to be in danger of being subjected to torture in the specific circumstances of his case.

6.5 As regards the personal risk the complainant would run to be subjected to torture at the hand of the Sri Lankan security forces, the Committee has noted his claim that he was tortured, in 1997, by the EPRLF and TELO, which had operated in cooperation with the Sri Lankan army. Even if these allegations were assumed to be true, the Committee considers

that it does not necessarily follow that the complainant would presently be at risk of being subjected to torture again, given the ongoing peace process in Sri Lanka and the fact that many Tamil refugees have returned to that country in recent years.

6.6 Insofar as the complainant argues that his post-traumatic stress disorder would result in uncontrolled reactions in stressful situations, thereby increasing the risk of his arrest by the Sri Lankan police, the Committee observes that the absence of any criminal proceedings against the complainant in the past, as well as his low political profile, can in turn be adduced as factors likely to lower any risk of serious consequences, should he be arrested again.

6.7 The Committee considers it unlikely that the Sri Lankan authorities, or the militia groups allegedly acting with their consent or acquiescence, remain interested in the LTTE involvement of the complainant's younger brother, who died almost eight years ago.

6.8 With regard to the question of whether the complainant would be able to receive adequate psychiatric treatment for his post-traumatic stress disorder in Sri Lanka, the Committee recalls that the aggravation of the complainant's state of health possibly resulting from his deportation to Sri Lanka would not amount to torture within the meaning of article 3, read in conjunction with article 1 of the Convention, which could be attributed to the State party itself.

6.9 The Committee therefore is of the view that the complainant has not adduced sufficient grounds which would lead the Committee to conclude that he would run a substantial, present and personal risk of torture if returned to Sri Lanka.

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Notes

a/ Liberation Tigers of Tamil Eelam.

b/ Eelam People's Revolutionary Liberation Front.

c/ Tamil Eelam Liberation Organization.

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- *B. S. S. v. Canada* (183/2001), CAT, A/59/44 (12 May 2004) 146 at paras. 2.1-2.4, 3.1, 11.1-11.6 and 11.8.

...

2.1 The complainant is from the Punjab province in India. His religion is Sikh. His wife

and three children continue to live in the Punjab.

2.2 According to an "investigation report" dated 12 March 1993 by Mr. S.S., a human rights lawyer at Patiala (Punjab), which substantially relies on the testimony of the complainant's father, his daughter and other villagers, two armed men came to the home of the complainant's family in April 1991 asking the complainant for food while pointing a gun at him. They remained for half an hour. Later that night, the police arrested the complainant accusing him of harbouring terrorists. He was allegedly detained in a special torture cell where he was interrogated and beaten by the police. He was released after two days when his father paid a bribe.

2.3 Pursuant to the same report, the complainant was arrested a second time in September 1991 after six family members of a police officer had been killed in a nearby village. The complainant was detained in an unknown place where he was allegedly subjected to torture by the police again. He was released at the intervention of a local politician and subsequently went to Jaipur (Rajasthan) in order to hide from the Punjab police. The police reportedly continued to harass his family, and on one occasion arrested the complainant's brother. When the police started to investigate his whereabouts in Jaipur, the complainant decided to leave the country following his father's advice.

2.4 On 1 September 1992, the complainant left India for Brazil, then travelled to Mexico, and entered the United States on 22 September 1992. On 30 October 1992, he entered Canada and applied for refugee status. When he was returned to the United States, the United States immigration authorities asked him to leave the country before 29 November 1992. The complainant subsequently remained illegally within the United States. He failed to report for an examination of his refugee application which was scheduled for 17 August 1993 at the Canadian border post at Lacolle.

...

3.1 Counsel claims that the complainant would be at a risk of torture in India and, therefore, Canada would be violating article 3 of the Convention if he were to be returned to that country. Moreover, owing to the complainant's post-traumatic stress disorder, he would be subject to severe emotional trauma upon return to India without the possibility of obtaining appropriate medical treatment, which in itself would constitute inhuman and degrading treatment, in violation of article 16 of the Convention.

...

11.1 The Committee must evaluate whether there are substantial grounds for believing that the author would be personally in danger of being subjected to torture upon return to India. In assessing the risk, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights.

11.2 In this regard, the Committee takes note of the reports submitted by the complainant, confirming that incidents of torture in police custody have continued after the end of the militancy period in Punjab in the mid-1990s, and that perpetrators have not been brought to justice in most cases. It also notes the State party's argument that the human rights situation in the Punjab has improved during the 11 years following the complainant's departure from India.

11.3 However, the Committee recalls that the aim of the determination is to establish whether the complainant would be personally at risk of being subjected to torture in India. It follows that, even if a consistent pattern of gross, flagrant or mass violations of human rights could be said to exist in that country, such a finding would not as such constitute a sufficient ground for determining that the complainant would be in danger of being subjected to torture upon his return to India; additional grounds must exist to show that he would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

11.4 The Committee notes that the complainant submitted evidence in support of his claim that he was tortured during his detention in 1991, including medical and psychiatric reports, as well as written testimony corroborating this allegation. However, the Committee considers that, even if it were assumed that the complainant was tortured by the Punjabi police, it does not automatically follow that, 13 years after the alleged events occurred, he would still be at risk of being subjected to torture if returned to India.

11.5 Insofar as the complainant claims that he currently remains at risk of being tortured in India, the Committee notes that, while confirming the risk of him being subjected to torture, as well as his family's continuing harassment, by the Punjabi police, the evidence produced by the complainant, including affidavits, letters and a document which is said to contain a resolution adopted by the municipal council of his home village, merely refers to his risk of being tortured *in Punjab*. The Committee considers that the complainant has failed to substantiate that he would be unable to lead a life free of torture in another part of India. Although resettlement outside Punjab would constitute a considerable hardship for the complainant, the mere fact that he may not be able to return to his family and his home village does not as such amount to torture within the meaning of article 3, read in conjunction with article 1, of the Convention.

11.6 Regarding the effectiveness of judicial remedies available under the Canadian immigration review scheme, the Committee notes that the final decision on the complainant's deportation was taken after a lengthy and detailed assessment of the risk of returning the complainant to India, in four subsequent proceedings. The Committee also

observes that, prior to that decision, the State party agreed to review the complainant's humanitarian and compassionate application when it became apparent that the evidence submitted by him had not been duly considered. Similarly, the Committee takes note of the fact that the Federal Court did not hesitate to refer the case back for reconsideration on the basis that the reviewed decision on the complainant's humanitarian and compassionate application also lacked an appropriate evaluation of the evidence.

11.8 In the light of the foregoing, the Committee concludes that the complainant has failed to establish a personal, present and foreseeable risk of being tortured if he were to be returned to India.

- *M. A. K. v. Germany* (214/2002), CAT, A/59/44 (12 May 2004) 275 at paras. 1.1, 2.1-2.9 and 13.1-13.9.

1.1 The complainant is M.A.K., a Turkish national of Kurdish origin, born in 1968, currently residing in Germany and awaiting expulsion to Turkey. He claims that his forcible return to Turkey would constitute a violation by the Federal Republic of Germany of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

...

2.1 The complainant arrived in Germany in December 1990 and claimed political asylum on 21 January 1991, stating that he had been arrested for a week in 1989 and tortured by the police in Mazgirt because of his objection to the conduct of superiors during military service. As a PKK sympathizer, he was being persecuted and his life was in danger in Turkey. On 20 August 1991, the Federal Agency for the Recognition of Foreign Refugees (*Bundesamt für die Anerkennung ausländischer Flüchtlinge*) rejected the complainant's application on the basis of inconsistencies in his counts.

2.2 The complainant appealed the decision of the Federal Agency before the Wiesbaden Administrative Court which dismissed the appeal on 7 September 1999. On 17 April 2001, the Higher Administrative Court of Hessen refused leave to appeal from that judgement.

2.3 On 7 December 2001, the City of Hanau issued an expulsion order against the complainant, together with a notification of imminent deportation. The expulsion was based on the fact that the complainant had been sentenced by penal order, dated 16 January 1995, of the District Court of Groβ-Gerau to a suspended prison term of four months for participation in a highway blockade organized by PKK sympathizers in March 1994.

2.4 On 17 January 2001, the complainant applied to the Federal Agency to reopen

proceedings in his case, arguing that he had been trained by the PKK in a camp in the Netherlands in 1994, with a view to joining the PKK's armed forces in south-east Turkey, a duty from which he had been exempted at his subsequent request. He further claimed that the Turkish authorities knew about his PKK activities and, in particular, his participation in the highway blockade, on the basis of his conviction for joint coercion of road traffic.

2.5 By decision of 6 February 2002, the Federal Agency rejected the application to reopen asylum proceedings, stating that the complainant could have raised these fresh arguments in the initial proceedings, and that his submissions lacked credibility. On 26 February 2002, the complainant appealed this decision before the Frankfurt Administrative Court, where proceedings were still pending in this regard at the time of the initial submission of the complaint.

2.6 The complainant's application for provisional court relief against his deportation to Turkey was rejected by the Frankfurt Administrative Court on 21 March 2002, essentially based on grounds identical to those of the Federal Agency.

2.7 On 16 April 2002, an informational hearing of the complainant was held at the Federal Agency, during which the complainant stated that, prior to his training at the Dutch PKK camp, he had been introduced to the public of the Kurdish Halim-Dener-Festival, celebrated in September 1994 in the Netherlands, as part of a group of 25 "guerrilla candidates". He had not raised the issue during initial asylum proceedings since he feared punishment for PKK membership (the PKK is illegal under German law).

2.8 The complainant's application to reconsider its decision denying provisional court relief was rejected by the Frankfurt Administrative Court on 18 June 2002. The court reiterated that the late submission, as well as various details in the description of his alleged PKK activities, undermined the complainant's credibility. Thus, it was considered questionable whether the PKK would publicly present its guerrilla candidates, knowing that the Turkish secret service observed events such as the Halim-Dener-Festival. Moreover, following political and ideological training in Europe, PKK members were generally obliged to undergo immediate military training in south-east Turkey.

2.9 On 22 July 2002, the complainant lodged a constitutional complaint with the Federal Constitutional Court against the decisions of the Frankfurt Administrative Court of 21 March and 18 June 2002, claiming violations of his constitutionally protected rights to life and physical integrity, equality before the law as well as his right to be heard before the courts. In addition, he filed an urgent application for an interim decision granting protection from deportation for the duration of the proceedings before the Federal Constitutional Court. By decision of 30 August 2002 of a panel of three judges, the Federal Constitutional Court

dismissed the complaint as well as the urgent application, on the basis that "the complainant solely objects to the assessment of facts and evidence by the lower courts without specifying any violation of his basic rights or rights equivalent to basic rights".

...

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

13.2 The Committee must decide, pursuant to paragraph 1 of article 3, whether there are substantial grounds for believing that the author would be in danger of being subjected to torture upon return to Turkey. In reaching this decision, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. In this regard, the Committee notes the State party's argument that the Turkish Government acted to improve the human rights situation, including through the enactment of the Reintegration into Society Act in 2003 and the discontinuance of numerous criminal proceedings against PKK supporters. It also notes the complainant's argument that recent legislative changes have not reduced the number of reported incidents of torture in Turkey (770 cases in 2003), and further recalls its conclusions and recommendations on the second periodic report of Turkey, in which it expressed concern about "[n]umerous and consistent allegations that torture and other cruel, inhuman or degrading treatment of detainees held in police custody are apparently still widespread in Turkey".c/

13.3 The aim of the present determination, however, is to establish whether the complainant would be personally at risk of being subjected to torture in Turkey after his return. Even if a consistent pattern of gross, flagrant or mass violations of human rights existed in Turkey, such existence would not as such constitute a sufficient ground for determining that the complainant would be in danger of being subjected to torture after his return to that country; specific grounds must exist indicating that he would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

13.4 In the present case, the Committee notes that the State party draws attention to a lack of evidence about the complainant's participation in a PKK training camp in the Netherlands in 1994, and to his failure to raise this claim until late in the asylum proceedings. It equally notes the complainant's explanations relating to the difficulty of presenting witnesses from the PKK, his fear to reveal his claimed PKK membership, punishable under German law, as well as the documentation and testimony he submitted in support of his claims.

13.5 On the burden of proof, the Committee recalls that it is normally for the complainant to present an arguable case and that the risk of torture must be assessed on grounds that go beyond mere theory and suspicion. Although the risk does not have to meet the test of being highly probable, the Committee considers that the complainant has not provided sufficiently reliable evidence which would justify a shift of the burden of proof to the State party. In particular, it observes that the affidavit by F.S. merely corroborates the complainant's claim that he was introduced as a "guerrilla candidate" at the Halim-Dener-Festival, without proving this claim, his participation in the training camp or PKK membership. Similarly, the letter dated 16 February 2003 of the International Association for Human Rights of the Kurds, while stating that it was not implausible that the complainant had temporarily been exempted from military PKK training in Turkey, falls short of proving these claims. In the absence of a *prima facie* case for his participation in the PKK training camp, the Committee concludes that the complainant cannot reasonably claim the benefit of the doubt regarding these claims. Moreover, the Committee observes that it is not competent to pronounce itself on the standard of proof applied by German tribunals.

13.6 With regard to the complainant's conviction for participation in a highway blockade by PKK sympathizers in March 1994, the Committee considers that, even if the Turkish authorities knew about these events, such participation does not amount to the type of activity which would appear to make the complainant particularly vulnerable to the risk of being subjected to torture upon return to Turkey.

13.7 Regarding the complainant's allegation that he was tortured during police arrest in Mazgirt (Turkey), the Committee observes that these allegations refer to events dating from 1989 and thus to events which did not occur in the recent past.d/ In addition, the complainant has not submitted any medical evidence which would confirm possible after-effects or otherwise support his claim that he was tortured by Turkish police.

13.8 The Committee emphasizes that considerable weight must be attached to the findings of fact by the German authorities and courts and notes that proceedings are still pending before the Frankfurt Administrative Court with regard to his application to reopen asylum proceedings. However, taking into account that the Higher Administrative Court of Hessen dismissed the complainant's first asylum application by a final decision, the complainant's fresh claims relating to his alleged participation in a PKK training camp have not been sufficiently corroborated (see paragraph 13.5) to justify further postponing the Committee's decision on his complaint, pending the outcome of the proceedings before the Frankfurt Administrative Court. In this regard, the Committee notes that both parties have requested the Committee to make a final determination on the complaint...and emphasizes that the complainant exhausted domestic remedies in the proceedings for interim relief and that only this part of the second set of asylum proceedings had suspensive effect.

13.9 The Committee concludes that, in the specific circumstances of the case, the complainant has failed to establish a foreseeable, real and personal risk of being tortured if he were to be returned to Turkey. The Committee welcomes the State party's readiness to monitor the complainant's situation following his return to Turkey and requests it to keep the Committee informed about said situation.

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Notes

...

c/ Committee against Torture, thirtieth session (28 April-16 May 2003), Conclusions and recommendations of the Committee against Torture: Turkey, UN Doc. CAT/C/CR/30/5, 27 May 2003, para. 5 (a).

d/ See CAT, general comment No. 1: Implementation of article 3 of the Convention in the context of article 22, 21 November 1997, para. 8 (b).

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- *M. A. M. v. Sweden* (196/2002), CAT, A/59/44 (14 May 2004) 227 at paras. 1.1, 2.1-2.5 and 6.2-6.6.

1.1 The complainant is M.A.M., a Bangladeshi citizen, born on 1 January 1968, currently residing in Sweden, where he has sought asylum. He claims that his removal to Bangladesha/ if his refugee claim is rejected would constitute a violation of article 3 of the Convention by Sweden.b/...

2.1 The complainant belongs to a minority in Bangladesh and lobbied for their rights through a political organization, the Shanti Bahini. During a meeting of the Shanti Bahini in November 1989, in which the claimant participated, the army attacked, and several of the participants were injured or killed. On 7 May 1990, the police arrested the claimant and detained him for six days. During police interrogations, he was allegedly tortured by use of electricity, burned with cigarettes, stuck with needles and kicked and beaten unconscious. On 19 November 1990 he fled the country for Sweden where he applied for asylum. On 4 October 1991, the Migration Board rejected the complainant's application. He appealed the decision to the Aliens Appeals Board, which, on 8 April 1993, rejected his application and ordered him deported to Bangladesh. After that, the complainant went into hiding, and it was not until 5 August 1995 that the decision to expel him could be enforced.

2.2 Upon his return to Bangladesh, the complainant was arrested and accused of political activity in Sweden. During four days of detention, he was allegedly beaten unconscious and a policeman poured warm water through his nose. The complainant also alleges having been

subjected to ill-treatment of his genitals, being forced to drink urine, and that police threatened to kill him with a knife.

2.3 The complainant became a member of the Bangladesh National Party's (hereinafter referred to as the BNP) Youth Wing in 1996. He distributed pamphlets, organized demonstrations and in other ways protested against the politics of the Awami League government. He was also a board member in the BNP Mirpur department.

2.4 The complainant submits that because of his political activities for the BNP, he was falsely accused of different crimes, and that this is common treatment of political opponents to the Government. On 10 November 1998, there was a clash between the Awami League supporters and the police against the BNP supporters. The complainant was arrested and detained for five days for using violence against the police and for preventing policemen from carrying out their duties. During the interrogations, the police allegedly tied the complainant to a chair, kicked and beat him with rifles and sticks. He claims to have lost consciousness several times during these interrogations. He was released against bail after a hearing by a local court. On 18 August 1999, the complainant was convicted and sentenced to 20 months' imprisonment and a fine of 50,000 Thaka. The complainant subsequently escaped to Sweden, where he applied for asylum to the National Immigration Board (now Migration Board and hereinafter referred to as such) on 4 November 1999.c/

2.5 On 18 October 2000, the Migration Board rejected the complainant's application for asylum. The complainant appealed to the Aliens Appeals Board, which, on 18 May 2001, rejected his refugee claim, and decided to deport him to Bangladesh. The Aliens Appeals Board based its decision on the finding that the complainant's political participation and alleged political persecution did not provide sufficient grounds for asylum since there is freedom of political expression in Bangladesh and the BNP is a legal political party. Although the Board did not question that the complainant was subjected to torture in 1990, 1995 and 1998, he resided in Sweden at the time of the alleged torture in 1992 and could therefore not have been subjected to torture at that time. This made the Board doubt the complainant's credibility. Moreover, although the Board members were aware of the incidents of police violence against persons in detention in Bangladesh, it did not consider that the complainant in particular risks being subjected to violence as part of a political persecution, and that the general treatment of prisoners as such did not justify asylum.

...

6.2 The Committee must decide whether the forced return of the complainant to Bangladesh would violate the State party's obligation, under article 3, paragraph 1, of the Convention, not to expel or return (*refouler*) an individual to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture...

6.3 The Committee takes note of the information received from the complainant about the general human rights situation in Bangladesh, in particular recurrent incidents of police violence against prisoners and political opponents. The Committee notes that the State party, while agreeing that there are repeated reports of police torture, nevertheless considers that the judiciary displays a significant degree of independence.

6.4 The Committee observes that the main reason the complainant fears a personal risk of torture if returned to Bangladesh is that he was previously subjected to torture for his membership in Shanty Bahini and in the opposition party BNP, and that he risks being imprisoned upon his return to Bangladesh pursuant to his alleged sentence to life imprisonment.

6.5 The Committee also notes that the grounds for which the complainant was previously tortured no longer exist, since he was first tortured in 1990 for belonging to an organization (the Shanti Bahini) but he has not submitted evidence to substantiate that he still belongs to that organization, and later on for participating in the activities of the BNP, which was then in opposition and is now the ruling party in Bangladesh. This fact has added importance in the case since the events that allegedly prompted his departure from Bangladesh were directly related to his activities in support of that party. Furthermore, although reports of human rights violations in Bangladesh still refer to a widespread practice of ill-treatment of prisoners by the police, the complainant has not submitted information or arguments to substantiate that he personally risks such treatment if he were to be imprisoned upon return to Bangladesh. Moreover, the Committee is not convinced that the complainant risks imprisonment upon his return, since he has failed to substantiate his claim regarding the alleged judgement of 3 September 2001, or in relation to the allegation that he is investigated for murder.

6.6 In light of the foregoing, the Committee finds that the complainant has not established that he himself would face a foreseeable, real and personal risk of being tortured within the meaning of article 3 of the Convention.

Notes

a/ The Convention entered into force for Bangladesh on 4 November 1998, but the State party has not ratified article 22 of the Convention.

b/ The Convention entered into force for Sweden on 26 June 1987, and the State party has ratified the Committee's competence under article 22 of the Convention.

c/ Counsel states on page 2, paragraph 2, of the initial submission that the complainant

applied for asylum on 4 November 1999, but then in paragraph 4 that he applied for asylum on 20 November 1990.

- *R. S. v. Denmark* (225/2003), CAT, A/59/44 (19 May 2004) 314 at paras. 1.1, 2.1-2.6 and 6.2.

1.1 The complainant is Mr. R.S., an Indian citizen, who at the time of the initial submission resided in Denmark, where he sought asylum. His current whereabouts are unknown. He claims that his return to India after the rejection of his refugee claim would constitute a violation by Denmark of article 3 of the Convention...

2.1 The complainant grew up in Bilga (India), in the Philour area, in the district of Punjab, where he lived together on a farm with his parents and two brothers. All family members are Sikhs. The complainant went to school for seven years, before entering into the family farming business. While his uncle and older brother became members of the Sikh Students Federation and the Khalistan Commando Force (KCF), the complainant did not himself participate in any political or religious organizations. In 1994, the complainant's uncle was killed by the police. The avowed aim of the KCF is to obtain independence for Punjab.

2.2 In 1995, the complainant's older brother returned to India from Germany, where he had applied for asylum. The police arrested and detained him for about 10-12 days after his arrival, and detained him further on several occasions, until he disappeared on an unspecified date. On 15 September 1997, the police contacted the complainant and asked for information on the whereabouts of his brother. When he replied that he did not know his brother's whereabouts, he was arrested and detained for 10 days. He contends that he was subjected to torture in detention. In April 1998, the complainant was again questioned about the whereabouts of his brother by the police; he was allegedly threatened with death if he did not provide this information.

2.3 The complainant was subsequently detained by the police on several occasions, and subjected to torture when in detention. This included beating with a cane, being subjected to electrical shocks, and being hung upside down. According to the complainant, his problems with the police arose from the fact that he transmitted messages sent between his brother and other people from a neighbour village. He was detained 10 to 12 times in total before, in June 1999, he escaped to Denmark, with the assistance of a paid agent.

2.4 The complainant arrived in Denmark on 17 July 1999 without valid travel documents. He applied for asylum the next day. A brother of his already resided in Denmark since 1998,

and had been granted a residence permit pursuant to article 7, paragraph 1, of the Immigration Act. The complainant applied for a residence permit under the same regulations, but the Danish Immigration Board rejected his application on 12 February 2001.

2.5 The complainant then appealed to the Danish Refugee Board, which rejected his claim on 28 June 2001. The majority of the Board members did not believe that the complainant risked persecution if returned to India. They considered that the complainant had not been a member of a political organization in India, nor that he had performed any political activity of importance. Furthermore, they considered it unlikely that he had been subjected to torture while in detention, since his description of the events was unclear, and his allegations were not supported by the findings of the Institute for Forensic Medicine (IFM) in Denmark, in a report dated 16 November 2000. The IFM report concluded that the complainant displayed several physical injuries which did not relate to the torture described, but that he felt pain in his left shoulder which could have been caused by the described torture. They also concluded that the complainant suffered from organic brain damage, but no symptoms of a post-traumatic stress syndrome. This finding was supported by a report from the Forensic Psychiatric Clinic dated 30 October 2000.

2.6 When applying for a reopening of his case, the complainant's counsel provided another medical report, from the Amnesty International Medical Group, dated 28 September 2001, which concluded that some physiological findings were compatible with the complainant's description of torture. On 22 July 2002, the Danish Refugee Board rejected the request for review, and the complainant thus is not entitled to stay legally in Denmark.

...

6.2 In respect of the State party's contention that the claim under article 3 should be declared inadmissible, since the complainant fails to establish a *prima facie* case, the Committee notes the complainant's information about his political activities, that he transmitted messages between his politically active brother and inhabitants of a neighbouring village in Punjab, and that he was detained and tortured by police as a consequence of his family members' political involvement and his own activities. It also takes notes of the medical reports, which are inconclusive about the reasons underlying the complainant's physical and psychological symptoms, and cannot be considered as strong evidence in support of his claim. The complainant has not supported his claim that he was politically active by any documentary or other pertinent evidence, nor has he submitted evidence to explain why the political group he claims to have transmitted messages for was itself targeted by the police. Even if considering that the complainant has been subjected to torture in the past, the Committee finds no reason to consider that he currently is at personal risk of being subjected to such treatment by the police if returned to India. In the circumstances, the Committee observes that the complaint, as formulated, does not give rise to any arguable claim under the Convention.

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- *S. U. A. v. Sweden* (223/2002), CAT, A/60/44 (22 November 2004) 180 at paras. 1.1, 2.1-2.4, 6.2-6.6 and 7.

1.1 The complainant is S.U.A., a Bangladeshi citizen born in 1972 currently awaiting deportation from Sweden. He claims that his expulsion to Bangladesh would constitute a violation by Sweden of article 3 of the Convention...

...

2.1 The complainant belongs to the Ershad faction of the Jatiya Party in Bangladesh, which is not part of the present Government coalition. He claims to have participated in activities organized by the Party in Mithapur, including meetings, demonstrations, distribution of pamphlets, construction of roads and schools and charity work. Because of his involvement with the Party he was kidnapped about 20 times by members of the governing Bangladesh Nationalist Party (BNP) who kept him for periods ranging from a few hours to one week and beat him. Those incidents were reported to the police who took no action.

2.2 The complainant was reportedly arrested by police on three occasions and taken to the Madariapur police station, where he was tortured. He was subjected, *inter alia*, to beatings, rape attempts, electric shocks, cigarette burns, beatings on the soles of the feet, was hanged from the ceiling and forced to drink dirty water. On one occasion he was accused of unspecified crimes and on the other two he was accused, respectively, of murder and violence in the course of a demonstration. He denies the facts of which he was accused and claims that the purpose of the arrests was to bring his political activities to an end. Counsel states that, because of his mental condition, the complainant cannot recall the exact dates but it seems that such arrests took place in August 1996 and November 1998. The complainant also claims to have been convicted of attempted murder and sentenced to eight years' imprisonment.

2.3 Copies of the medical reports issued by three Swedish doctors in 2001 are attached to the complaint. They indicate that the complainant suffers from post-traumatic stress disorder, that the scars on his body are consistent with the acts of torture that he described and that he requires medical treatment.

2.4 The complainant argues that he has exhausted domestic remedies. His asylum application was rejected by the Swedish Migration Board on 21 February 2001 and his appeal of that decision was rejected by the Aliens Appeals Board on 3 June 2002.

...

6.2 The issue before the Committee is whether the removal of the complainant to Bangladesh would violate the State party's obligation under article 3 of the Convention not to expel or return a person to another State where there are substantial grounds for believing

that he or she would be in danger of being subjected to torture.

6.3 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to Bangladesh. In assessing the risk the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights in the return country...

6.4 The Committee has noted the medical reports certifying that the complainant suffers from post-traumatic stress disorder, as well as the doctors' assessment that the scars in his body are consistent with the acts of torture described by the complainant. It also notes the State party's doubts as to the identity of the perpetrators of such acts as well as the reports about the use of torture in Bangladesh and the frequent incidents of violence between supporters of different political parties.

6.5 Nevertheless, the complainant's account of his experiences to the Swedish authorities contained contradictions and lacked clarity on issues that are relevant to assessing his claim. The Swedish authorities drew conclusions about the complainant's credibility which, in the Committee's view, were reasonable and by no reckoning arbitrary.

6.6 The Committee finds that the information submitted by the complainant, including the local and low-level nature of his political activities in Bangladesh, does not contain evidence to support the claim that he will run a substantial risk of being subjected to torture if he returns to Bangladesh.

7. In the light of the above, the Committee against Torture...concludes that the decision of the State party to return the complainant to Bangladesh would not constitute a breach of article 3 of the Convention.

- *Falcon Ríos v. Canada* (133/1999), CAT, A/60/44 (23 November 2004) 103 at paras. 2.1-2.6, 8.1-8.6 and 9.

...
2.1 The complainant lived and worked on the farm of his uncle, his father's half-brother, a soldier, in the State of Chiapas. His uncle, who had bought the farm in February 1995, had deserted from the army in December 1996, without telling his family; he had also been accused of having links with the Ejército Zapatista de Liberación Nacional (EZLN) and of treason against the homeland.

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2.2 On 29 December 1996, the complainant and his family were taken by soldiers to a military camp for questioning about, in particular, the whereabouts of the complainant's uncle. They were released at 7 a.m. but were ordered not to leave their home. On 15 February 1997 the army returned, soldiers smashed the door and the windows of the house and again took the family to a military camp for further questioning. This time, however, they were mistreated, and the complainant's mother and sister were raped in the presence of the complainant and his father. The soldiers then tortured the father, hitting him on the temple with a pistol butt until he lost consciousness. The complainant's hands were tied behind his back and he was hit in the stomach; a hood was put over his head to induce a feeling of asphyxiation. The soldiers continued to question him about where his uncle was hiding; since the complainant could not reply, they stripped him and cut him near the genitals with a knife; they then tied his testicles and yanked them while continuing to question him. Lastly, they dipped his head in a tub filled with excrement in an attempt to obtain the information they wanted.

2.3 The complainant states that when he and his family returned to the farm they were kept under military surveillance. On 20 March 1997 the soldiers returned; the complainant, his father, his mother and his elder sister were taken to different military camps. The two younger sisters, aged 6 and 9, were left alone in the house. It was the last time that the complainant saw his family. The complainant was again tortured: the soldiers placed a bag over his head and beat him severely, including around the head, thereby causing problems with his sight. They burned his arms to make him sign documents proving he had links with EZLN. The complainant finally signed the documents when the soldiers began to burn his face. They then photographed him, took his fingerprints and falsified an EZLN identity document.

2.4 The complainant states that he lost consciousness after drinking a glass of water containing an unknown substance. When he came to, he had been set free in an unknown location. He claims he was in an armed conflict zone when he regained consciousness.

2.5 Subsequent to these events, the complainant decided to leave his country on 22 March 1997. He arrived in Canada on 2 April 1997 and immediately applied for asylum.

2.6 On 20 March 1998 the Refugee Protection Division of the Immigration and Refugee Board determined that the complainant was not a refugee within the meaning of the Convention relating to the Status of Refugees as defined in the Immigration Act, because his account was not credible. It was particularly critical of the implausible circumstances attending his uncle's desertion and the falsification of an EZLN card, there being no evidence that the movement issues identity cards to its members. On 17 April 1998 the complainant submitted an application for judicial review of the Board's decision. In a decision issued on

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30 April 1999, the Federal Court of Canada (First Instance Division) rejected the application for judicial review of the decision by the Refugee Protection Division, as the complainant had been unable to demonstrate any error that would justify intervention by the Court.

...

8.1 As provided in article 3, paragraph 1, the Committee must decide whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture if he were returned to Mexico. In order to take this decision, the Committee must take into account all relevant considerations, in accordance with article 3, paragraph 2, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights...

8.2 The Committee draws attention to its general comment No. 1 on the implementation of article 3, which reads: "Bearing in mind that the State party and the Committee are obliged to assess whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture were he/she to be expelled, returned or extradited, the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable" (para. 6).

8.3 The Committee recalls the report on its visit to Mexico from 23 August to 12 September 2001 (CAT/C/75), and stresses that recent reports on the human rights situation in Mexico have concluded that although efforts have been made to eliminate torture, many cases of torture are still reported. However, in line with the reasoning previously advanced, although it might be possible to assert that there still exists in Mexico a pattern of human rights violations, that in itself would not constitute sufficient cause for finding that the complainant was likely to be subjected to torture on his return to Mexico; additional reasons must exist indicating that the complainant would be personally at risk.

8.4 The Committee notes that the State party has at no time challenged the authenticity of the medical and psychological reports on the complainant's case. In the Committee's view, those reports lend considerable weight to his allegation that he was tortured during the interrogations he underwent in a military camp. According to the medical report, Mr. Falcon Ríos bore numerous scars from cigarette burns on various parts of his body, and scars from knife wounds to both legs. The conclusion of the reporting physician was that "the marks on the patient's body are compatible with the torture that he states he suffered".

8.5 The Committee notes the State party's point that the Refugee Protection Division concluded that the complainant's testimony contained significant gaps. However, it also notes that, according to the psychologist's report, the complainant displayed "great psychological vulnerability" as a result of the torture to which he had allegedly been subjected. The same report states that Mr. Falcon Ríos was "very destabilized by the current

situation, which presents concurrent difficulties", and that he was "bruised, weakened by the torture he had undergone and events associated with trauma". In the Committee's view, the vagueness referred to by the State party can be seen as a result of the psychological vulnerability of the complainant mentioned in the report; moreover, the vagueness is not so significant as to lead to the conclusion that the complainant lacks credibility. In considering the foregoing and formulating its opinion, the Committee has had due regard for its established practice, according to which it is not the Committee's place to question the evaluation of evidence by the domestic courts unless the evaluation amounts to a denial of justice.

8.6 The Committee also takes note of, and attaches due weight to, the evidence and arguments put forward by the complainant concerning his personal risk of being subjected to torture: the fact that he has been arrested and tortured in the past because he was suspected of having links with EZLN; the scars he continues to bear as a result of acts of torture which he suffered; the fact that the conflict between the Government of Mexico and the Zapatista movement is not yet over and that some members of his family are still missing. In the light of the foregoing, and after due deliberation, the Committee considers that there is a risk of the complainant being arrested and tortured again on returning to Mexico.

9. In the light of the foregoing, the Committee concludes that removal of the complainant to Mexico would constitute a violation by the State party of article 3 of the Convention.

- *Dimitrijevic v. Serbia and Montenegro* (207/2002), CAT, A/60/44 (24 November 2004) 142 at paras. 2.1-2.5, 5.3-5.5 and 6.

...

2.1 The complainant was arrested on 27 October 1999 at around 11 a.m. at his home in Kragujevac, Serbia, in connection with the investigation of a crime. He was taken to the local police station located in Svetozara Markovica Street. Upon arrival he was handcuffed to a radiator and beaten up by several police officers, some of whom the complainant knew by their first names or their nicknames. The police officers kicked and punched him all over his body while insulting his ethnic origins and cursing his "Gypsy mother". One of the officers struck the complainant with a large metal bar. Some time later the officers unfastened the complainant from the radiator and handcuffed him to a bicycle. Then they continued punching and beating him with their nightsticks and the metal bar. Although the complainant began to bleed from his ears, the beating continued until he was released at about 4.30 p.m.

2.2 As a result of the ill-treatment the complainant had to stay in bed for several days. He

sustained injuries on both arms and legs, an open wound on the back of his head and numerous injuries all over his back. For several days following the incident he bled from his left ear, and his eyes and lips remained swollen. Fearing reprisals by the police, the complainant did not go to hospital for treatment. Consequently, there is no official medical certificate documenting the injuries. The complainant, however, has provided the Committee with written statements from his mother, his sister and a cousin indicating that he was in good health when he was arrested and severely injured at the time of his release.

2.3 On 31 January 2000, the complainant, through counsel, filed a criminal complaint with the Kragujevac Municipal Public Prosecutor's Office alleging that he had been the victim of the crimes of slight bodily harm and civil injury, as provided for under articles 54 (2) and 66 of the Serbian Criminal Code, respectively. As there was no response for almost six months following the submission of the complaint, the complainant wrote a letter to the Public Prosecutor's Office on 26 July 2000 requesting an update on the status of the case and invoking, in particular, article 12 of the Convention. At the time the complainant submitted his case to the Committee, i.e. more than 23 months after the submission of the criminal complaint, no response had been received from the Public Prosecutor.

2.4 The complainant claims that he has exhausted available domestic criminal remedies and refers to international jurisprudence according to which only a criminal remedy can be considered effective and sufficient in addressing violations of the kind at issue in the instant case. He also refers to the relevant provisions of the State party's Criminal Procedure Code (CPC) setting forth the obligation of the Public Prosecutor to undertake measures necessary for the investigation of crimes and the identification of the alleged perpetrators.

2.5 Furthermore, under article 153 (1) of CPC, if the Public Prosecutor decides that there is no basis for the institution of a formal judicial investigation he must inform the complainant, who can then exercise his prerogative to take over the prosecution in the capacity of a "private prosecutor". However, CPC sets no time limit within which the Public Prosecutor must decide whether to request a formal judicial investigation. In the absence of such a decision the victim cannot take over the prosecution of the case on his own behalf. Prosecutorial inaction following a complaint filed by the victim therefore amounts to an insurmountable impediment in the exercise of the victim's right to act as a private prosecutor and to have his case heard before a court. Finally, even if there were a legal possibility for the victim himself to file for a formal judicial investigation because of the inaction of the Public Prosecutor, it would in effect be unfeasible if the police and the Public Prosecutor had failed to identify all of the alleged perpetrators beforehand, as in the instant case. Article 158 (3) of CPC provides that the person against whom a formal judicial investigation is requested must be identified by name, address and other relevant personal data. *A contrario*, such a request cannot be filed if the alleged perpetrator is unknown.

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...

5.3 The complainant alleges violations by the State party of article 2, paragraph 1, in connection with article 1, and of article 16, paragraph 1, of the Convention. The Committee notes in this respect the description made by the complainant of the treatment he was subjected to while in detention, which can be characterized as severe pain or suffering intentionally inflicted by public officials in the context of the investigation of a crime, and the written testimonies of witnesses to his arrest and release that the complainant has provided. The Committee also notes that the State party has not contested the facts as presented by the complainant, which took place more than five years ago. In the circumstances, the Committee concludes that due weight must be given to the complainant's allegations and that the facts, as submitted, constitute torture within the meaning of article 1 of the Convention.

5.4 Concerning the alleged violation of articles 12 and 13 of the Convention, the Committee notes that the Public Prosecutor never informed the complainant about whether an investigation was being or had been conducted after the criminal complaint was filed on 31 January 2000. It also notes that the failure to inform the complainant of the results of such investigation, if any, effectively prevented him from pursuing "private prosecution" of his case before a judge. In these circumstances the Committee considers that the State party has failed to comply with its obligation, under article 12 of the Convention, to carry out a prompt and impartial investigation wherever there is reasonable ground to believe that an act of torture has been committed. The State party also failed to comply with its obligation, under article 13, to ensure the complainant's right to complain and to have his case promptly and impartially examined by the competent authorities.

5.5 As for the alleged violation of article 14 of the Convention, the Committee notes the complainant's allegations that the absence of criminal proceedings deprived him of the possibility of filing a civil suit for compensation. In view of the fact that the State party has not contested this allegation and given the passage of time since the complainant initiated legal proceedings at the domestic level, the Committee concludes that the State party has also violated its obligations under article 14 of the Convention in the present case.

6. The Committee...is of the view that the facts before it disclose a violation of articles 2, paragraph 1, in connection with article 1, and articles 12, 13 and 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

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- *R. D. v. Sweden* (220/2002), CAT, A/60/44 (2 May 2005) 153 at paras. 1.1, 2.1-2.9, 7.2, 8.1-8.3 and 9.

1.1 The complainant is R.D., a Bangladeshi citizen, currently awaiting deportation from Sweden to Bangladesh. He claims to be a victim of violations of articles 3 and 16, by Sweden, of the Convention against Torture...

...

2.1 The complainant is a Christian and lived in a village about 10 km from Barisal City, Bangladesh, where his father worked as a clergyman. On 7 April 1986, his father was abducted from his house by unknown men. A few days later, he was found dead and his body mutilated. Shortly thereafter, the same men returned, beat his mother and warned her and the rest of the family not to complain to the authorities. The complainant's uncle was also murdered and his family was persecuted because of their religion. As a result of this persecution, he moved with his family to Barisal City.

2.2 The complainant states that he was subjected to threats and intimidation because of his religion. In 1988, he was recruited to the Bangladesh Freedom Party (BFP) and was politically active from 1990 to 1996. In 1991, he took up the post of deputy coordinator. In 1995, when the Bangladesh Nationalist Party (BNP) was in power, he was arrested after being falsely accused of anti-State activities and kept in custody for five days. On release, he continued with his political activities. After the Awami League came to power in June 1996, he ceased his political activities, as the police had started arresting members of BFP. Several attempts were made to stop him from working with BFP and to induce him to join the Awami League. At the end of 1996, he went into hiding in another part of the city, before finally moving away.

2.3 In 1998 his mother told him that the police had been looking for him, and that he was accused of murder and anti-State activities. In 1999, when he visited his family in the city, he was warned that the police were going to arrest him, and he fled. Sometime in the same year, when the police could not find the complainant, they arrested his brother, tortured him in the police station and released him after two days. On another occasion in 1999, the complainant was attacked by members of the Awami League while on his way to visit his mother.

2.4 On 5 February 2000, the complainant entered Sweden and applied for asylum on the same day, on the grounds that he had been persecuted because of his religion and his involvement in BFP. Under the terms of the two arrest warrants issued in 1997, the complainant had been sentenced to life imprisonment for murder and anti-State activities and would be arrested if returned to Bangladesh. On 27 March 2001, the Migration Board denied his application.

2.5 On 18 June 2001, the complainant appealed the decision before the Aliens Appeal Board, stating that he had been subjected to torture, including rape and beatings for two days, while under arrest in 1997 or 1998. Thereafter, he was treated for a week, under police supervision, at Barisal Medical College. He claims that he was released after his mother had promised that he would join the Awami League.

2.6 The following medical information was provided referring to the conclusions of several Swedish doctors. Dr. Edston concluded that the complainant had been subjected to the following torture: hit with blunt instruments; stabbed with a screwdriver and a police truncheon; burned with cigarettes, a heated screwdriver and possibly a branding iron; beaten systematically on the soles of his feet; attempted suffocation by introducing hot water into his nose; "rolling" of the legs with bamboo rods; sexual violence including rape. He found that the complainant had suffered permanent physical damage in the form of pain in his left knee, reduction of mobility in his right shoulder, functional reduction in the movement of his left hand, and pain when defecating. Dr. Soendergaard found that there was no doubt that the complainant suffered from post-traumatic stress disorder. Dr. Hemingstam, a psychiatrist, stated that his symptoms were characterized by: difficulties in concentrating; lack of appetite; feelings of agony; restlessness; nightmares; and hallucinations with impulses to commit suicide. She concluded that there is a great risk of the complainant committing suicide if he were subjected to pressure and if he lost his supportive and nursing contacts. According to a certificate from the Fittja Clinic, the complainant feels confused, "disappears" and is difficult to reach during sessions, and that he has flashbacks of the torture to which he was subjected. Another psychiatrist, Dr. Eriksson, confirmed that the complainant was admitted to hospital in May 2001 because of a risk of suicide. She confirmed that he was deeply depressed and suicidal.

2.7 On 4 March 2002, the Aliens Appeals Board, although acknowledging that the scars could have been the result of beatings inflicted by his political opponents, found after consideration of the case as a whole that it was not probable that he was a refugee. It cited the fact that the information about the torture to which the complainant had been subjected had not been disclosed prior to the Aliens Appeal Board as one of the reasons for questioning the complainant's claims. a/

2.8 In May 2002, another application for a residence permit was submitted, together with further medical information. In two new medical reports of 2 and 9 April 2002, the doctors criticized the Aliens Appeal Board's decision and, as an explanation for the introduction of information on torture at a late stage in the proceedings, suggested that the support the complainant had been receiving from his psychiatrist had given him the confidence to talk openly about his torture. On 5 July 2002, the Board refused his appeal on the grounds that the new evidence provided did not demonstrate that he was a person in need of protection.

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2.9 The complainant invokes reports by Amnesty International and the United States Department of State b/ which he claims support the conclusion that police torture of political opponents to extract information and to intimidate is often instigated and supported by the executive.

...

7.2 Concerning the claim under article 16 relating to the complainant's expulsion in light of his mental health, the Committee recalls its prior jurisprudence that the aggravation of the condition of an individual's physical or mental health by virtue of a deportation is generally insufficient, in the absence of additional factors, to amount to degrading treatment in violation of article 16. h/ The Committee notes the medical evidence presented by the complainant demonstrating that he suffers from severe post-traumatic stress syndrome, most probably as the consequences of the torture suffered by him in 1997. The Committee considers, however, that aggravation of the complainant's state of health that might be caused by his deportation is in itself insufficient to substantiate this claim, which is accordingly considered inadmissible.

...

8.1 The issue before the Committee is whether the removal of the complainant to Bangladesh would violate the State party's obligation, under article 3 of the Convention, not to expel or to return a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

8.2 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to Bangladesh. In assessing this risk, the Committee must take into account all relevant considerations, including the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights...

8.3 The Committee observes that the State party has not contested the complainant's claim that he was tortured and notes that the Aliens Appeal Board was of the view that the complainant's political opponents may have been responsible for this torture. However, the Committee notes that seven years have passed since the torture took place, that the complainant's alleged level of responsibility in the Bangladesh Freedom Party was low and that his participation was at the local level only. In addition, it observes that the complainant has provided no evidence, documentary or otherwise, either to the State party or to the Committee, to demonstrate that he had been convicted and sentenced to life imprisonment for murder. In fact, it is clear from the judgement provided by the State party on 22 April 2005 that the complainant's name is not among the list of those convicted. For these reasons, and considering the fact that the Government has changed since the alleged torture, the Committee considers that the complainant has failed to show that substantial grounds exist to prove that he would be at a real and personal risk of being subjected to torture if

removed from Sweden.

9. The Committee against Torture...considers that the complainant has not substantiated his claim that he would be subjected to torture upon return to Bangladesh and therefore concludes that the complainant's removal to that country would not constitute a breach by the State party of article 3 of the Convention.

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Notes

a/ No further information is provided on the reasoning of the Aliens Appeal Board.

b/ Amnesty International, Report 2002 and Bangladesh: Torture and Impunity (ASA 13/011/2000); Amnesty International, Bangladesh: Politically-motivated detention of opponents must stop, press release issued 6 September 2002 (ASA 13/012/2002); United States Department of State, Country Reports on Human Rights Practices.

...

h/ Communication No. 83/1997, decision adopted on 15 May 1998; communication No. 49/1996, decision adopted on 15 May 2001; and communication No. 228/2003, decision adopted on 18 November 2003.

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- *Dimitrov v. Serbia and Montenegro* (171/2000), CAT, A/60/44 (3 May 2005) 112 at paras. 2.1-2.5, 7.1-7.3, 8 and 9.

...

2.1 In the early hours of 5 February 1996, the complainant was arrested at his home in Novi Sad, in the Serbian Province of Vojvodina, and taken to the police station in Kraljevica Marka Street. The arresting officer presented no arrest warrant nor did he inform the complainant why he was being taken into custody. The complainant himself made no attempt to resist arrest. During the ensuing interrogation, the arresting officer struck the complainant repeatedly with a baseball bat and a steel cable, and kicked and punched him all over his body. The complainant lost consciousness on several occasions. Apart from brief breaks, the ill-treatment lasted from 6.30 a.m. to 7.30 p.m., leaving the complainant with numerous injuries on his buttocks and left shoulder. After 7.30 p.m., the complainant was released, again without being shown an arrest warrant or a release order, nor was he told the reason for his arrest and detention. According to the complainant, this was in contravention of articles 192 (3), 195 and 196 (3) of the Criminal Procedure Code (CPC), which deals with police powers of arrest and detention.

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2.2 Following his release, the complainant returned home and spent the next 10 days in bed, being nursed by his sister. On 9 February 1996, he went to see a doctor who examined him and ordered continued bed rest. He prepared a report describing his injuries as follows: "Left upper arm: livid-red and brown discoloration 10 x 8 cm with slightly raised red edges; right shoulder blade and shoulder: livid-red discolorations in the form of stripes 3 x 11 cm, and 4 x 6 cm on the shoulders; gluteal part of the body: blue-livid discolorations of the size of a man's palm on both sides; outside of the left mid-thigh: distinct red stripe 3x5 cm; inside of right knee: light blue swelling 5x5 cm; area around ankle and soles (both legs): slight, light blue swelling." The conclusions and opinion was that the "patient should be referred to a neurologist and a laboratory for tests". The complainant also provides a statement from his sister, who states that he was arrested at 6.30 in the morning on 5 February, held in detention until 7.30 p.m., and that upon return his face was swollen, and he had bruises on his shoulders, back, legs and over his kidneys. There was clotted blood on his legs and his backside was dark blue all over. He had to stay in bed for 10 days and put on compresses, and take pills for the pain. He told her that he had been beaten with a steel wire and baseball bats and had fainted from the beating.

2.3 Fearing possible reprisals by police and not fully aware of his legal rights, the complainant did not file a criminal complaint with the Novi Sad Municipal Public Prosecutor's Office until 7 November 1996. In the complaint he alleged that an unidentified police officer had committed the crime of extracting a statement by force in violation of 65 of the Serbian Criminal Code (SCC). According to the complainant, he had been arrested several times prior to the incident in question and had been interrogated about several unrelated criminal offences. The complainant considers that the ill-treatment to which he was subjected was intended to obtain his confession for one or more of these crimes.

2.4 The complaint was immediately registered by the Public Prosecutor's Office. But only on 17 September 1999 (more than 3½ years after the incident and 34 months since the complainant had filed the criminal complaint) did the Public Prosecutor's Office request the investigating judge of the Novi Sad Municipal Court to undertake preliminary "investigatory actions". Such an investigation precedes the possible institution of formal judicial investigations, for which the identity of the suspect must be ascertained. The investigating judge of the Novi Sad Municipal Court accepted the Public Prosecutor's request and opened a case file. Since that date, the prosecuting authorities have taken no concrete steps with a view to identifying the police officer concerned. According to the complainant, if the intent of the investigating judge was really to identify the police officer in question, he could have heard other police officers present at the police station at the time of the abuse, and especially the on-duty shift commander, who must have known the names of all officers working that particular shift. Finally, the complainant indicated in his criminal complaint that during his detention in the police station he was taken to the Homicide Division, which in and of itself

could have served as one of the starting points for an official investigation into the incident at issue. No investigation has been undertaken.

2.5 According to the complainant, under article 153 (1) of CPC, if the Public Prosecutor finds on the basis of the evidence that there is reasonable suspicion that a certain person has committed a criminal offence, he should request the investigating judge to institute a formal judicial investigation further to articles 157 and 158 of CPC. If he decides that there is no bases for the institution of a formal judicial investigation, he should so inform the complainant, who can then exercise his prerogative to take over the prosecution of the case on his own behalf - i.e. in his capacity of a "private prosecutor". As the Public Prosecutor failed formally to dismiss his complaint, the complainant concludes that he was denied the right personally to take over the prosecution of the case. As CPC sets no time limit in which the Public Prosecutor must decide whether to request a formal judicial investigation into the incident, this legal provision is open to abuse.

...

7.1 The complainant alleges violations by the State party of article 2, paragraph 1, in connection with article 1, and of article 16, paragraph 1, of the Convention. The Committee notes the complainant's description of the treatment to which he was subjected during his detention, which can be characterized as severe pain or suffering intentionally inflicted by public officials in the context of the investigation of a crime, as well as his sister's statement and the medical report. It also notes the State party's failure to adequately address this claim and respond to the complainant's allegations. In the circumstances, the Committee concludes that due weight must be given to the complainant's allegations and that the facts, as submitted, constitute torture within the meaning of article 1 of the Convention.

7.2 Concerning the alleged violation of articles 12 and 13 of the Convention, the Committee notes that the Public Prosecutor did not request the judge to initiate a preliminary investigation until 34 months after the criminal complaint was filed on 7 November 1996, and that no further action was taken by the State party to investigate the complainant's allegations. The State party has not contested this claim. The Committee also notes that the failure to inform the complainant of the results of any investigation effectively prevented him from pursuing a "private prosecution" of his case before a judge. In these circumstances, the Committee considers that the State party has failed to comply with its obligation, under article 12 of the Convention, to carry out a prompt and impartial investigation wherever there is reasonable ground to believe that an act of torture has been committed. In the same vein, it also disregarded its obligation, under article 13, to ensure the complainant's right to complain and to have his case promptly and impartially examined by the competent authorities.

7.3 As for the alleged violation of article 14 of the Convention, the Committee notes the

complainant's allegations that the absence of criminal proceedings deprived him of the possibility of filing a civil suit for compensation. In view of the fact that the State party has not contested this allegation, and given the passage of time since the complainant initiated legal proceedings at the domestic level, the Committee concludes that the State party has also violated its obligations under article 14 of the Convention in the present case.

8. The Committee...is of the view that the facts before it disclose a violation of articles 2, paragraph 1, in connection with articles 1, 12, 13 and 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

9. The Committee urges the State party to conduct a proper investigation into the facts alleged by the complainant...

- *L. S. D. v. France* (194/2001), CAT, A/60/44 (3 May 2005) 118 at paras. 2.1-2.9 and 9.1-9.5.

...
2.1 The complainant states that in 1997, fearing arrest and torture by the Spanish security forces, she took refuge in France. In November 1997, she was arrested by the French police, who brought her before the examining magistrate in the Paris Procurator's Anti-Terrorist Section. She was later charged with possession of false administrative documents and participation in a criminal association and was immediately imprisoned.

2.2 On 12 February 1999, the complainant was sentenced to three years' imprisonment, one of them suspended, for the above-mentioned offences. She appealed to the Paris Court of Appeal.

2.3 On 31 August 1999, the Minister of the Interior issued an order for her expulsion from French territory as a matter of absolute urgency, which was not served on her immediately.

2.4 On 12 October 1999, the Paris Court of Appeal sentenced her without the right to appeal to three years' imprisonment, one of them suspended, and five years' ban on entry into France, in respect of the charges against her.

2.5 The complainant was due to be released on 28 October 1999. She says that, fearing torture by the Spanish security forces and in order to prevent her expulsion to Spain, she began a hunger strike on 28 September 1999. She states that, as a result of her very poor state of health following her long hunger strike, she weighed only 39 kg and was therefore taken to the Fresnes prison hospital.

2.6 At 6 a.m. on 28 October 1999, the day of the complainant's release, the French police served her with the expulsion order issued on 31 August 1999 by the Minister of the Interior, as well as a second decision taken on 27 October 1999 by the Prefect of Val de Marne, specifying Spain as the country of destination. The complainant was immediately taken in an ambulance by the French police from Fresnes prison to the Franco-Spanish border post of La Junquera for expulsion to Spain, and then taken to the Bellvitge hospital in Barcelona.

2.7 The complainant alleges that she was arrested by the Spanish Civil Guard at her home in Hernani, Gipúzcoa, on 30 March 2001 and that on the following day, while being held in custody, she was urgently transferred to the San Carlos hospital in Madrid, where she remained until 7 p.m., because of torture inflicted on her: beatings, *la bolsa*, a/ touching and attachment of electrodes to her body. She adds that she was subjected to 16 hours of questioning and continuous violence, and held in custody without contact with her lawyer or her family for more than five days before being brought before a judge.

2.8 The complainant alleges that on the same day, 31 March 2001, in the presence of an examining magistrate and a court-appointed lawyer, she was obliged to make a statement which the Civil Guards had forced her to learn by heart, by threatening further torture.

2.9 The complainant points out that on 4 April 2001, before the National High Court, she refused to enter a plea and complained of the torture she had suffered. An order to imprison her then arrived, and she was taken to the Soto del Real prison. Following her arrest, she was accused of participating in several acts of violence.

...

9.1 The Committee must determine whether the expulsion of the complainant to Spain violated the State party's obligation under article 3, paragraph 1, of the Convention not to expel or return ("*refouler*") an individual to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. In reaching its conclusion, the Committee must take into account all relevant considerations in order to establish whether the individual concerned would be at personal risk.

9.2 The Committee must determine whether the expulsion of the complainant to Spain constituted a failure by the State party to fulfil its obligation under that article not to expel or return ("*refouler*") an individual to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. In reaching its conclusion, the Committee must, pursuant to article 3, paragraph 2, of the Convention, take into account all relevant considerations, including the existence in the State to which the complainant would be sent of a consistent pattern of gross, flagrant or mass violations of human rights, enabling the Committee to establish whether she was at personal risk...

9.3 The issue before the Committee is whether, on the date of the enforcement of the removal measure, the French authorities could have considered that the complainant would be exposed to real risks in the event of her expulsion. In making a determination, the Committee takes into consideration all the facts submitted by the complainant and the State party. Consideration of the facts shows that the complainant has failed to satisfy the burden of proof and demonstrate in that expulsion to Spain placed her at personal risk of torture at the time of her expulsion. In this regard the evidence submitted by the complainant is insufficient, in that the primary focus is an allegation that she was tortured 17 months after being expelled from the State party.

9.4 The fact of torture does not, of itself, necessarily violate article 3 of the Convention, but it is a consideration to be taken into account by the Committee. The facts as submitted to the Committee show that the complainant, on her return to Spain, recovered her health without any interference and took an active part in political developments in the country, promoting her views without any need for secrecy or flight. Some 17 months went by before the alleged acts of torture. The complainant offers no convincing explanation of why her certain risk of torture, *inter alia* because of her familiarity with intelligence of vital importance to the security of the Spanish State, did not lead to immediate action against her. Neither does the complainant submit evidence concerning events in Spain prior to her expulsion from French territory that might lead the Committee to establish the existence of a substantiated risk. The complainant has not demonstrated any link between her expulsion and the events that took place 17 months later.

9.5 There being insufficient evidence of a causal link between the expulsion of the complainant in 1999 and the acts of torture to which she claims to have been subjected in 2001, the Committee considers that the State party cannot be said to have violated article 3 of the Convention in enforcing the expulsion order.

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Notes

a/ This form of torture consists in covering the head with a plastic bag to cause asphyxia.

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- *M. M. K. v. Sweden* (221/2002), CAT, A/60/44 (3 May 2005) 162 at paras. 1.1, 2.1-2.13 and 8.1-8.8.

1.1 The complainant is Mr. M.M.K., a Bangladeshi citizen currently residing in Sweden, where he has requested asylum. He claims that his removal to Bangladesh in the event of the rejection of his refugee claim would constitute a violation of articles 3 and 16 of the

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Convention by Sweden...

...

2.1 In 1993, while living in Bangladesh, the complainant was appointed as the local welfare secretary of the Jatiya Party in Mymensingh. He held that position until going to Sweden in 2002. His duties included informing Bangladeshi citizens about their rights and about the widespread corruption in the country. In 1995, the complainant received kidnapping and death threats by followers of the Bangladesh Nationalist Party (BNP), and thereafter from 1999 to 2002 by followers of the Awami League.

2.2 Between 1993 and 1996, the complainant studied in India and went back to Bangladesh during holidays and whenever his duties with the Jatiya Party demanded it. For almost a year during 1995 to 1996, he was not in Bangladesh at all out of fear of being kidnapped and because of death threats.

2.3 In 1995, while on holidays in Bangladesh, the complainant was kidnapped by followers of BNP and held for four days. During this time he was allegedly severely maltreated and his arms and hands were slashed with knives. The purpose was to make him stop his political activities and his fight against corruption. After four days he was left in the street, and passers-by brought him to hospital. He reported the incident to the police, but was not able to name any of his kidnappers as he had been blindfolded during the ill-treatment. The police were unable to arrest anyone involved.

2.4 In June 1995, the complainant was falsely accused of murder in his home town, Mymensingh. For this reason, and because the police were looking for him, he did not stay at home, but mostly in Dhaka. He continued to carry out his political activities in other parts of the country.

2.5 In September/October 1999, the complainant was arrested while taking part in a demonstration in Dhaka. He was accused of kidnapping. He states that the accusation was false and that according to the police report the Awami League was responsible for it. He was released on bail in January/February 2000 after complaining of torture. Throughout his custody, the complainant was subjected to torture, at least once a week for two or three days at a time. He describes the torture as follows: his hair was shaved and water was dropped on his head and poured through his nostrils; he was subjected to electric shocks; and he was hit with clubs, truncheons and long sticks. He was also subjected to electric shocks by being forced to urinate in hot water into which electric cables had been plunged. The purpose was to obtain a confession and to stop him from being politically active. According to the complainant's counsel in Bangladesh, the responsible authorities acknowledged that he had been subjected to maltreatment but not to "more severe forms of torture", and that sometimes a little force or torture was necessary to obtain "the truth". The case against the complainant

is still pending.

2.6 After his release, the complainant was treated for some time in a private clinic for his mental and physical *sequellae* of the torture. In May/June 2000, although the complainant had only regained about 70 per cent of his former capacity, he resumed his political activities.

2.7 In July 2000, the complainant was again arrested and falsely accused of illegal possession of arms and drug dealing. He was refused bail on account of the seriousness of the charges and remanded in custody for two and a half months awaiting trial. He indicates that his father "arranged" for his pending case not to be joined with the murder case. While on remand he was subjected to mental torture, and forced to watch while others were tortured. Upon release on bail in September 2000, he again received medical treatment.

2.8 In February 2001, the complainant left Bangladesh, not because of an isolated incident but because of everything that had happened to him since 1995 and because he feared being killed either by followers of the Awami League or BNP, and of being subjected to torture again. That BNP and its coalition partners won the elections in October 2001 did not allay his fear.

2.9 On 14 February 2001, the complainant entered Sweden, and requested asylum on the same day. Counsel requested a delay of the examination of the case until 31 January 2002, to obtain documentary evidence of the complainant's case from Bangladesh. The Migration Board rejected counsel's request for such a delay.

2.10 While in Sweden, the complainant was informed that the police in Bangladesh had been looking for him and that they had a warrant for his arrest, as he had not appeared in court. He requested medical assistance in Sweden at the clinic for asylum-seekers in Fittja.

2.11 On 19 December 2001, the Migration Board denied his application. The Board did not consider credible that the complainant had been persecuted by Bangladeshi authorities since, although wanted for murder, he had been able to travel back and forth between Bangladesh and India. It also noted that one page of the complainant's passport had been torn out, and that it was not probable that he was released on bail given the serious charges against him. In its conclusion, the Board also stated that it did not consider it probable that the complainant had been subjected to torture, or that he had a well-founded fear of being subjected to torture or corporal punishment.

2.12 The complainant appealed to the Aliens Appeal Board. The Board was presented with documentary evidence from Bangladesh, including two medical reports. A third medical report from the clinic for asylum-seekers in Fittja was also submitted by counsel. Counsel

suggested that if the Board had had doubts about the authenticity of the documents, it should investigate the matter through the Swedish Embassy in Dhaka. The Board did not initiate such an investigation. Counsel requested the Board to consider another medical investigation; this was not deemed necessary.

2.13 On 6 August 2002, the Aliens Appeal Board upheld the decision of the Migration Board, arguing that it is easy to obtain false documents in Bangladesh and therefore they had to be considered of low evidentiary value. It concluded that the complainant's information about his political activities and that he had been subjected to "torture" did not justify the conclusion that he would risk political persecution or torture in Bangladesh if returned there.

...

8.1 The Committee must decide whether the forced return of the complainant to Bangladesh would violate the State party's obligation, under article 3, paragraph 1, of the Convention, not to expel or return an individual to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. It follows that, in conformity with the Committee's jurisprudence, the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient ground for determining whether the particular person would be in danger of being subjected to torture upon his return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.

8.2 The Committee takes note of the complainant's information about the general human rights situation in Bangladesh, in particular recurrent incidents of police violence against prisoners and political opponents. The State party, while conceding the occurrence of police torture and violent clashes between political opponents, nevertheless considers that the higher levels of the judiciary display a significant degree of independence.

8.3 The Committee observes that the main reason the complainant's fears to be at personal risk of torture if returned to Bangladesh is that he was previously subjected to torture by the police, and that he risks detention upon return to Bangladesh because of criminal charges pending against him.

8.4 The Committee notes that the Swedish immigration authorities have thoroughly evaluated the complainant's case and considered whether the complainant risked torture or persecution in Bangladesh; they concluded that he was not at risk.

8.5 With regard to the complainant's allegations of torture, the Committee considers that

while the other medical certificates submitted in this case do not clearly support the complainant's version, the medical report from Sweden submitted in March 2004 does support Mr. M.M.K.'s contention that he was subjected to torture and ill-treatment. The fact that the medical examination took place several years after the alleged incidents of torture and ill-treatment does not, in the present case, allay the importance of this medical report. However, the Committee considers that while it is probable that the complainant was subjected to torture, the question is whether he risks torture upon return to Bangladesh at present.

8.6 In response to this question, the Committee notes the State party's contention that since the Awami League is currently in political opposition, the risk of being exposed to harassment on the part of the authorities instigated by members of that party has diminished. The State party further argues that the complainant does not have anything to fear from the political parties now in power, since he is a member of one of the coalition parties. While noting the complainant's explanation that he supports a faction of the Jatiya Party that is opposed to that part of the party in Government, the Committee does not consider that this fact *per se* justifies the conclusion that the complainant would be at risk of persecution and torture at the hand of supporters of the Government faction of the Jatiya Party or BNP.

8.7. Finally, with regard to the complainant's allegation that since he risks detention in respect of the pending criminal charges against him and that detention is inevitably followed by torture, the Committee concludes that the existence of torture in detention as such does not justify a finding of a violation of article 3, given that the complainant has not demonstrated how he personally would be at risk of being tortured.

8.8 In light of the foregoing, the Committee finds that the complainant has not established that he himself would face a foreseeable, real and personal risk of being tortured within the meaning of article 3 of the Convention.

- *Z. E. v. Switzerland* (222/2002), CAT, A/60/44 (3 May 2005) 172 at paras. 1.1, 2.1-2.4, 3.1-3.4 and 6.2-6.9.

1.1 The complainant, Mr. Z.E., a Pakistani national, is currently in Switzerland, where he applied for asylum on 27 September 1999. His application was rejected, and he maintains that sending him back to Pakistan would constitute a violation by Switzerland of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment...

...

2.1 The complainant, baptized a Roman Catholic, converted to Islam in 1990 while at

university under the influence of his fellow students and in order to improve his career prospects. His conversion was not based on genuine conviction and, conscience-riven, he reverted openly to Christianity in 1996 and had himself rebaptized by a Catholic priest.

2.2 At the University of Lahore, however, the complainant was still regarded as a Muslim and was appointed President of the Muslim Students Federation in 1997. At the same time he was visiting Christian prisoners as a member of the Christian "Prison Fellowship" prisoner aid association. Discovering this in December 1998, Muslim Students Federation officials threatened to kill him and the complainant had to leave the university. Federation officials also pressed the police to bring criminal proceedings against the complainant under article 295c of the Pakistani Criminal Code.

2.3 In early January 1999 the complainant was detained at a police station, where he was ill-treated and threatened with death. He was lucky enough to be able to escape through the lavatory window. He then went into hiding and arranged to flee to Switzerland.

2.4 The complainant submitted an application for asylum in Switzerland on 27 September 1999. The application was rejected by the Federal Office for Refugees by decision dated 10 January 2002. An appeal by the complainant was also rejected, by the Swiss Asylum Review Commission, in a ruling dated 5 August 2002. In a letter dated 9 August 2002, the Federal Office for Refugees set 4 October 2002 as the date on which he should leave Switzerland. On 26 September 2002, the applicant lodged an application for review with suspensive effect with the Swiss Asylum Review Commission. The Commission found the application manifestly groundless in a decision dated 10 October 2002. It rejected the application in a ruling dated 13 November 2002. The complainant is no longer authorized to live in Switzerland and may be expelled to Pakistan at any time.

...

3.1 The complainant asserts that he is in danger of being immediately arrested by the police, tortured or ill-treated or even condemned to death or summarily executed if he is deported to Pakistan.

3.2 In justification of his fear, the complainant points out that the Muslim Students Federation has brought proceedings for blasphemy against him. He supports this assertion with a letter from the President of the Christian Lawyers Association (CLA) dated 17 August 2002, stating that proceedings under article 295c of the Pakistani Criminal Code have been instituted against Z.E. and suspended for the time being owing to the absence of the individual concerned, but that they will be immediately resumed upon his return to Pakistan. The President of CLA also refers to three death sentences passed on Christians under article 295c of the Pakistani Criminal Code. The complainant draws attention, with particular reference to reports by Amnesty International and the Asian Human Rights Commission, to

the risks that declared apostates face when they come before the Pakistani justice system.

3.3 The complainant also submits a letter from his father dated 20 June 2002, explaining that under pressure from the Muslim Students Federation the police have been going to his home every month to try and arrest his son pursuant to article 295c of the Criminal Code. The letter makes it plain that the complainant is accused of having insulted the Prophet, cast the Koran into disrepute and spurned Islam, and can therefore expect the death penalty.

3.4 The complainant explains that, even if he were not to be arrested, his life and physical safety would be in danger because the police would afford him no protection against threats from his former fellow students and supporters of the Muslim Students Federation.

...

6.2 The Committee must determine whether sending the complainant back to Pakistan would violate the State party's obligation under article 3 of the Convention not to expel or return (*refouler*) an individual to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

6.3 The Committee must decide, as called for in article 3, paragraph 1, of the Convention, whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture if sent back to Pakistan. In doing so, it must take into account all relevant considerations, pursuant to article 3, paragraph 2, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights...

6.4 The Committee recalls its general comment No. 1 on the application of article 3, which reads:

> "Bearing in mind that the State party and the Committee are obliged to assess whether there are substantial grounds for believing that the complainant would be in danger of being subjected to torture were he/she to be expelled, returned or extradited, the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable" (para. 6).

6.5 In the present case, the Committee notes that the State party has drawn attention to inconsistencies and serious contradictions in the complainant's accounts and submissions which call into question the truthfulness of his claims. The Committee also takes note of the information furnished by the complainant on these points.

6.6 As regards the first part of the complaint, which concerns the risk of arrest by the police if the complainant returns to Pakistan, the complainant argues that there are criminal proceedings pending against him for blasphemy. f/ Yet the Committee observes that the

letters from the complainant's father dated 20 June 2002 and the President of CLA dated 17 August 2002 which mention those proceedings are contradicted by the CLA President in the e-mail he sent on 28 October 2002; this has, incidentally, been remarked upon by the State party, but the complainant has made no comment. Similarly, the fact that the complainant spent seven months at his father's second home, then two months at his uncle's home without being troubled by the police when the police were supposed to be searching for him for blasphemy, particularly after he had escaped from a police station, does not seem plausible. The same can be said of the complainant's acquisition of a new passport and untroubled departure from Karachi airport. The complainant's later comments on these points...do not satisfactorily address these inconsistencies.

6.7 The second ground put forward by the complainant for his arrest has to do with his apostasy in 1996. The Committee observes that this argument was only put forward as a reaction to the Swiss authorities' decisions to turn down the complainant's application for asylum, and the complainant - who had a lawyer in attendance throughout the proceedings - has been unable to provide a consistent and convincing explanation for its tardy appearance. The complainant does not contest this point in his comments of 4 August 2002.

6.8 As regards the second part of the complaint, which concerns threats to the complainant's physical safety, the Committee finds, first, that the complainant has not substantiated his allegation of ill-treatment while in detention in early January 1999. Similarly, the assertion by the complainant that he is in danger of being tortured by the police and condemned to death if sent back to Pakistan are contradicted by the Committee's observations concerning the risks of arrest. This assertion, too, is supported by inadequately substantiated, not to say contradictory, arguments from the complainant in his comments of 4 August 2002.

6.9 In the light of the foregoing, the Committee concludes that the complainant has not demonstrated that there are substantial grounds for believing that sending him back to Pakistan would expose him to real, substantial and personal danger of being tortured within the meaning of article 3 of the Convention.

Notes

...

f/ Following a complaint to the police from the Muslim Students Federation when it learned of the complainant's Christian activities while he was serving as President of the Federation.

TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

- *T. A. v. Sweden* (226/2003), CAT, A/60/44 (6 May 2005) 188 at paras. 1.1, 2.1-2.11, 7.1-7.4 and 8.

1.1 The complainant is T.A., a Bangladeshi citizen, who acts on behalf of herself and her daughter, S.T. born in 1996. Both are awaiting deportation from Sweden to Bangladesh. T.A. complains that their expulsion to Bangladesh would amount to a violation by Sweden of articles 3 and 16, and possibly of article 2, of the Convention...

...

2.1 The complainant and her daughter arrived in Sweden on 13 October 2000 on a tourist visa, to visit the complainant's sister residing in Sweden. They applied for asylum on 9 November 2000. On 24 September 2001, the Migration Board denied the application and ordered their expulsion. On 25 February 2002, the Aliens Appeals Board upheld the decision of the Migration Board. Two new applications for a resident permit on humanitarian grounds were subsequently denied by the Aliens Appeals Board. A third application was submitted on 17 December 2002. However, on 19 December 2002, the Aliens Appeals Board denied the application for a stay of execution of the expulsion order. The complainant alleges that she has exhausted all domestic remedies.

2.2 Before the Migration Board, the complainant stated that she became an active member of the Jatiya Party in Bangladesh in 1994, and that her husband had been active in the same party long before that. In 1996, she was appointed women's secretary in the local women's association of the party in Mirpur Thana, where the family lived. Her tasks were to inform people about the work done by the party, to speak at meetings and to participate in demonstrations. In 1999, after the split of the party, she and her husband remained in the faction led by Mr. Ershad.

2.3 On 7 September 1999, the police arrested the complainant in connection with a demonstration in which a grenade was thrown. She was mistreated and suffered injury to her toenail. She was released the next day. On 23 November 1999, members of the Awami League mistreated both the complainant and her husband. They accused him of the murder of one of the members of the League, which occurred during a demonstration in which he had participated. On around 21 January 2000 someone left a cut-off hand in front of their home. On 10 April 2000, members of the League vandalized their home while asking about the whereabouts of her husband, who had by then gone into hiding. She reported the case to the police, who refused to investigate the complaint when it was made clear to them that the perpetrators belonged to the Awami League.

2.4 On 16 August 2000, the police, accompanied by members of Awami League, arrested the complainant and her daughter at her parents' home, where she had moved. Her daughter, then 4 years old, was pushed so hard that she fell and injured her forehead. The complainant

was taken to the police station, accused of illegal arm trading, and subjected to torture including rape, to make her confess the crime. She was hit with a rifle belt, strung up upside down until she started to bleed from her nose, stripped and burned with cigarette butts. Water was poured into her nose. She then was raped and lost consciousness. She was released the next day, after her father had paid a bribe to the police. She was forced to sign a document by which she promised not to take part in any political activity and not to leave her town or the country. After her release, the complainant was treated at a private clinic in Bangladesh. After her arrival in Sweden she was in contact with her relatives, who informed her that the Bangladeshi police had continued to search for her.

2.5 As evidence of her political activities, the complainant submitted to the Migration Board a receipt for the payment of the membership fee and a certificate from the Jatiya Party, which stated that she had joined the party in 1994 and was elected Joint Secretary in January 1996. She also submitted a medical report from a hospital in Bangladesh, dated 17 August 2000, which confirmed that she has been physically assaulted and raped. The report stated that there were several cigarette burns on her right thigh and hand, bruises on her wrist, a small incised wound on her right finger, a bluish mark on the back, and bleeding from the vagina and over the vulva. She also submitted a medical certificate, issued by a psychologist on 22 May 2001, which stated that her mental condition had worsened, that she had insomnia, nausea, vomiting, cold sweats, difficulties in concentrating and talking, feebleness, and strong memories of the rape. Another certificate, issued by a Swedish psychologist on 7 September 2001, showed that she had developed post-traumatic stress disorder syndrome accompanied by nightmares, flashbacks and severe corporal symptoms. The same certificate stated that her daughter suffered from constipation, lacked appetite, and had difficulties in sleeping. The child suffered from particular trauma as a consequence of being kept waiting for a decision on the residence permits.

2.6 The complainant points out that the Migration Board did not dispute that she had been tortured and raped. However, the Board concluded that these acts could not be considered to be attributable to the State of Bangladesh but had to be regarded as the result of the actions of individual policemen. The Board also stated that the Jatiya Party was in alliance with the Bangladesh National Party (BNP), which was currently in Government.

2.7 Before the Aliens Appeals Board, the complainant contested the findings of the Migration Board. She denied that the Ershad faction of the Jatiya Party was allied to BNP, and pointed out that, at the time of the appeal, the leader of her faction, Mr. Ershad, had left Bangladesh. Regarding the acts of torture and rape, she alleged that the police were part of the State of Bangladesh, that it was futile to complain against the police because the institution never investigated such complaints, and that the situation of the victim usually worsened if he or she decided to complain. She invoked reports of the United States

Department of State and Amnesty International according to which torture was frequent and a matter of routine in Bangladesh. She also submitted three certificates dated 20 and 22 November 2001 and 22 February 2002, respectively, stating that the post-traumatic stress syndrome had grown worse and that there was a serious risk of suicide. One certificate stated that her daughter had nightmares and flashbacks of the incident in which their home was vandalized in Bangladesh, and that her emotional development had been impaired as a result.

2.8 By its decision of 25 February 2002, the Aliens Appeals Board considered that her torture and rape were not attributable to the State but to the isolated action of some policemen, that the complainant had been working for a legal party and had been an ordinary member without noticeable influence, and that because of the political change in Bangladesh there were no reasonable grounds for believing that she would be subjected to arrest and torture by the police if returned to her country.

2.9 As attachments to the new applications for a resident permit on humanitarian grounds, filed on 20 May and 1 July 2002, the complainant submitted additional medical evidence of her declining mental health and that of her daughter. The medical certificates, dated 19 and 22 April 2002 and 7 May 2002, showed that the complainant's mental health deteriorated after the decision of the Aliens Board. She suffered from a dissociated state of mind, experiencing a feeling of being present in the trauma she had been subjected to. She displayed increasing suicidal tendencies. Her daughter showed symptoms of serious trauma. On 26 May 2002, the complainant tried to commit suicide and was admitted to the psychiatric ward of St. Goran's Hospital in Stockholm on the same day for compulsory psychiatric treatment, on the basis of the risk of suicide. On 26 March 2002, a psychiatrist certified that she suffered from a serious mental disturbance, possibly from psychosis. According to another expert, the complainant's mental health further deteriorated after her release from hospital on 6 August 2002. She could no longer care for her daughter, who had been placed with another family. The expert suggested, however, that she receive ambulatory treatment, because while in hospital her mental health had worsened. As regards the complainant's daughter, the medical certificate stated that she had fallen into a serious and threatening state and that she would need a long period of psychotherapeutic treatment.

2.10 The Aliens Appeals Board denied the new applications on the basis that the evidence presented, as well as an assessment of the personal situation of the complainant as a whole, were insufficient to justify the issuance of residence permits. Regarding the complainant's daughter, the Board concluded that she had a network in Bangladesh consisting of her father, her maternal grandparents and her mother's siblings, that the complainant and her daughter had been in Sweden only for two years, and that it was in the best interests of the child to return to a well-known environment and that her need for treatment would be best satisfied in such environment.

2.11 On 17 December 2002, a new application for humanitarian residence permits was filed. The new evidence consisted of reports of experts who had been in contact with the complainant and her daughter, as well as a report from the family unit of the social security authority in Rinkeby to Bromstergarden, an institution entrusted with the tasks of evaluating the needs of the child, the ability of the mother to take care of the child and whether the mother and child should be reunited, and of conducting support sessions. According to this evidence, the complainant's mental health was so bad that she could no longer connect with her daughter. This state of alienation not only had prevented her from giving her daughter the support she needed, but also had seriously threatened her daughter's mental equilibrium. Furthermore, one report concluded that the complainant had decided to take her own life and that of her daughter if she were forced to return to Bangladesh. Both the complainant and her daughter were in need of continuous psychotherapeutic contact.

...

7.1 The first issue before the Committee is whether the removal of the complainant to Bangladesh would violate the State party's obligation under article 3 of the Convention not to expel or to return a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

7.2 The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to Bangladesh. In assessing the risk, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights...

7.3 The Committee has noted the State party's contention that since the Awami League is currently in political opposition, the risk that the complainant would be exposed to harassment by the authorities at the instigation of members of the party no longer exists. The State party further argues that the complainant does not have anything to fear from the political parties now in power, since she is a member of one of the parties represented in Parliament. However, the State party has not contested that the complainant had in the past been persecuted, detained, raped and tortured. The Committee notes the complainant's statement that she belongs to a faction of the Jatiya Party which is in opposition to the ruling party, and that torture of political opponents is frequently practised by State agents. Furthermore, the acts of torture to which the complainant was subjected appear not only to have been inflicted as a punishment for her involvement in political activities, but also as retaliation for the political activities of her husband and his presumed involvement in a political crime. The Committee also notes that her husband is still in hiding, that the torture to which she was subjected occurred in the recent past and has been medically certified, and that the complainant is still being sought by the police in Bangladesh.

7.4 In the circumstances, the Committee considers that substantial grounds exist for believing that T.A. may risk being subjected to torture if returned to Bangladesh. Having concluded this, the Committee does not need to examine the other claims raised by the complainant.

8. The Committee against Torture...concludes that, given the specific circumstances of the case, the deportation of the complainant and her daughter would amount to a breach of article 3 of the Convention.

- *Brada v. France* (195/2002), CAT, A/60/44 (17 May 2005) 127 at paras. 1.1-1.3, 2.1-2.7, 6.1, 6.2, 13.1-13.6, 14 and 15.

1.1 The complainant, Mr. Mafhoud Brada, a citizen of Algeria, was residing in France when the present complaint was submitted. He was the subject of a deportation order to his country of origin. He claims that his forced repatriation to Algeria constitutes a violation by France of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment...

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee brought the complaint to the State party's attention by *note verbale* dated 19 December 2001. At the same time, the Committee, acting in accordance with rule 108, paragraph 9, of its rules of procedure, requested the State party not to deport the complainant to Algeria while his complaint was being considered. The Committee reiterated its request in a *note verbale* dated 26 September 2002.

1.3 In a letter dated 21 October 2002 from the complainant's counsel, the Committee was informed that the complainant had been deported to Algeria on 30 September 2002 on a flight to Algiers and that he had been missing since his arrival in Algeria.

...

2.1 The complainant, a fighter pilot since 1993, was a member of the Algerian Air Force squadron based in Bechar, Algeria. From 1994, the squadron was regularly used as a back-up for helicopter operations to bomb Islamist maquis areas in the region of Sidi Bel Abbes. The fighter aircraft were equipped with incendiary bombs. The complainant and other pilots were aware that the use of such weapons was prohibited. After seeing the destruction caused by these weapons on the ground in photographs taken by military intelligence officers - pictures of dead men, women, children and animals - some pilots began to doubt the legitimacy of such operations.

2.2 In April 1994, the complainant and another pilot declared, during a briefing, that they

would not participate in bombing operations against the civilian population, in spite of the risk of heavy criminal sanctions against them. A senior officer then waved his gun at the complainant's colleague, making it clear to him that refusal to carry out missions "meant death". When the two pilots persisted in their refusal to obey orders, the same officer loaded his gun and pointed it at the complainant's colleague, who was mortally wounded as he tried to escape through a window. The complainant, also wishing to escape, jumped out of another window and broke his ankle. He was arrested and taken to the interrogation centre of the regional security department in Bechar third military region. The complainant was detained for three months, regularly questioned about his links with the Islamists and frequently tortured by means of beatings and burning of his genitals.

2.3 The complainant was finally released owing to a lack of evidence of sympathy with the Islamists and in the light of positive reports concerning his service in the armed forces. He was forbidden to fly and assigned to Bechar airbase. Explaining that servicemen who were suspected of being linked to or sympathizing with the Islamists regularly "disappeared" or were murdered, he escaped from the base and took refuge in Ain Defla, where his family lived. The complainant also alleges that he received threatening letters from Islamist groups, demanding that he desert or risk execution. He forwarded the threatening letters to the police.

2.4 Later, when the complainant was helping a friend wash his car, a vehicle stopped alongside them and a submachine was fired in their direction. The complainant's friend was killed on the spot; the complainant survived because he was inside the car. The village police officer then advised the complainant to leave immediately. On 25 November 1994, the complainant succeeded in fleeing his country. He arrived at Marseille, France, and met one of his brothers in Orléans (Indre). In August 1995, the complainant made a request for asylum, which was later denied by the French Office for the Protection of Refugees and Stateless Persons (OFPRA). Since the complainant had made the request without the assistance of counsel, he was unable to appeal the decision to the Refugee Appeals Commission.

2.5 The complainant adds that, since he left Algeria, his two brothers have been arrested and tortured. One died in police custody. Moreover, since his desertion, two telegrams from the Ministry of Defence have arrived at the complainant's home in Abadia, demanding that he report immediately to Air Force headquarters in Cheraga in connection with a "matter concerning him". In 1998, the complainant was sentenced in France to eight years' imprisonment for a rape committed in 1995. The sentence was accompanied by a 10-year ban from French territory. As the result of a remission of sentence, the complainant was released on 29 August 2001.

2.6 Meanwhile, on 23 May 2001, the Prefect of Indre issued an order for the deportation of the complainant. In a decision taken on the same day, he determined that Algeria would be the country of destination. On 12 July 2001, the complainant lodged an appeal with the Limoges Administrative Court against the deportation order and the decision to return him to his country of origin. In an order dated 29 August 2001, the court's interim relief judge suspended enforcement of the decision on the country of return, considering that the risks to the complainant's safety involved in a return to Algeria raised serious doubts as to the legality of the deportation decision. Nevertheless, in a judgement dated 8 November 2001, the Administrative Court rejected the appeal against the order and the designated country of return.

2.7 On 4 January 2002, the complainant appealed against this judgement to the Bordeaux Administrative Court of Appeal. He points out that such an appeal does not have suspensive effect. He also refers to recent case law of the Council of State which he maintains demonstrates the inefficacy of domestic remedies in two similar cases. a/ In those cases, which involved deportation to Algeria, the Council of State dismissed the risks faced by the persons concerned, but the Algerian authorities subsequently produced death sentences passed *in absentia*. On 30 September 2002, the complainant was deported to Algeria on a flight to Algiers and has been missing since.

...

6.1 The Committee observed that any State party which made the declaration provided for under article 22 of the Convention recognized the competence of the Committee against Torture to receive and consider complaints from individuals who claimed to be victims of violations of one of the provisions of the Convention. By making this declaration, States parties implicitly undertook to cooperate with the Committee in good faith by providing it with the means to examine the complaints submitted to it and, after such examination, to communicate its comments to the State party and the complainant. By failing to respect the request for interim measures made to it, the State party seriously failed in its obligations under article 22 of the Convention because it prevented the Committee from fully examining a complaint relating to a violation of the Convention, rendering action by the Committee futile and its comments worthless.

6.2 The Committee concluded that the adoption of interim measures pursuant to rule 108 of the rules of procedure, in accordance with article 22 of the Convention, was vital to the role entrusted to the Committee under that article. Failure to respect that provision, in particular through such irreparable action as deporting an alleged victim, undermined protection of the rights enshrined in the Convention.

...

13.1 The Committee must decide, pursuant to article 3, paragraph 1, of the Convention, whether there are substantial grounds for believing that the complainant would be in danger

of being subjected to torture upon return to Algeria. The Committee observes, at the outset, that in cases where a person has been expelled at the time of its consideration of the complaint, the Committee assesses what the State party knew or should have known at the time of expulsion. Subsequent events are relevant to the assessment of the State party's knowledge, actual or constructive, at the time of removal.

13.2 In reaching this decision, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim of the determination, however, is to establish whether the individual concerned would be personally at risk of being subjected to torture in the country to which he would return. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his return to that country; additional grounds must exist to show that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances. In deciding a particular case, the Committee recalls that, according to its general comment No. 1 on article 3 of the Convention, it gives "considerable weight" to the findings of national authorities.

13.3 At the outset, the Committee observes that at the time of his expulsion on 30 September 2002, an appeal lodged by the complainant with the Bordeaux Administrative Court of Appeal on 4 January 2002 was still pending. This appeal contained additional arguments against his deportation that had not been available to the Prefect of Indre when the decision of expulsion was taken and of which the State party's authorities were, or should have, been aware still required judicial resolution at the time he was in fact expelled. Even more decisively, on 19 December 2001, the Committee had indicated interim measures to stay the complainant's expulsion until it had had an opportunity to examine the merits of the case, the Committee having established, through its Special Rapporteur on interim measures, that in the present case the complainant had established an arguable risk of irreparable harm. This interim measure, upon which the complainant was entitled to rely, was renewed and repeated on 26 September 2002.

13.4 The Committee observes that the State party, in ratifying the Convention and voluntarily accepting the Committee's competence under article 22, undertook to cooperate with it in good faith in applying and giving full effect to the procedure of individual complaint established thereunder. The State party's action in expelling the complainant in the face of the Committee's request for interim measures nullified the effective exercise of the right to complaint conferred by article 22, and has rendered the Committee's final

decision on the merits futile and devoid of object. The Committee thus concludes that in expelling the complainant in the circumstances that it did the State party breached its obligations under article 22 of the Convention.

13.5 The Committee observes, turning to the issue under article 3 of the Convention, that the Bordeaux Administrative Court of Appeal, following the complainant's expulsion, found upon consideration of the evidence presented that the complainant was at risk of treatment in breach of article 3 of the European Convention, a finding which would/could encompass torture...The decision to expel him was thus, as a matter of domestic law, unlawful.

13.6 The Committee observes that the State party is generally bound by the findings of the Court of Appeal, with the State party observing simply that the Court had not considered the State's brief to the Court, which arrived after the relevant litigation deadlines. The Committee considers, however, that this default on the part of the State party cannot be imputed to the complainant and, moreover, that whether the Court's consideration would have been different remains speculative. As the State party itself states...and with which the Committee agrees, the judgment of the Court of Appeal, which includes the conclusion that his expulsion occurred in breach of article 3 of the European Convention, cannot, on the basis of the information before the Committee, be regarded as clearly arbitrary or tantamount to a denial of justice. As a result, the Committee also concludes that the complainant has established that his removal was in breach of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

14. The Committee against Torture...considers that the deportation of the complainant to Algeria constituted a breach of articles 3 and 22 of the Convention.

15. Pursuant to rule 112, paragraph 5, of its rules of procedure, the Committee wishes to be informed, within 90 days, of the steps the State party has taken in response to the views expressed above, including measures of compensation for the breach of article 3 of the Convention and determination, in consultation with the country (also a State party to the Convention) to which the complainant was returned, of his current whereabouts and state of well-being.

Notes

a/ The complainant refers to the *Chalabi* and *Hamani* cases.

- *Guridi v. Spain* (212/2002), CAT, A/60/44 (17 May 2005) 147 at paras. 2.1-2.6, 6.6-6.8, 7 and 8.

...

2.1 On 22 January 1992, the Spanish Civil Guard launched a police operation in Vizcaya Province to dismantle the so-called "Bizkaia combat unit" of the organization Euskadi Ta Askatasuna (ETA). In all, 43 people were arrested between then and 2 April 1992; many of them have reportedly been tortured and held *incommunicado*. The complainant was arrested on 22 January 1992 by Civil Guard officers as part of these operations.

2.2 The complainant alleges that, in the course of his transfer to the Civil Guard station, the officers took him to open ground where they subjected him to severe abuse. He was stripped, handcuffed, dragged along the ground and beaten. He states that after six hours of interrogation, he had to be taken to hospital because his pulse rate was very high, he could not speak, he was exhausted and unconscious, and was bleeding from his mouth and nose. The hospital doctors ascertained that he had injuries to his head, face, eyelids, nose, back, stomach, hip, arms and legs. He also had a neck injury which left him unable to move. The complainant maintains that this serious ill-treatment can be categorized as torture within the meaning of article 1 of the Convention.

2.3 The complainant filed suit with the Vizcaya Provincial Court alleging that he had been tortured, and on 7 November 1997 the Court found three Civil Guards guilty of torture. Each officer received a prison sentence of four years, two months and one day, was disqualified from serving in State security agencies and units for six years and one day, and suspended from duty for the duration of his prison sentence. Under the terms of the sentence, the Civil Guards were ordered to pay compensation of 500,000 pesetas to the complainant. The Court held that the injuries sustained by the complainant had been caused by the Civil Guards in the area of open country where he was taken following his arrest.

2.4 The Public Prosecutor's Office appealed the sentence to the Supreme Court, asking for the charges to be reviewed and the sentences reduced. In its judgement of 30 September 1998, the Supreme Court decided to reduce the Civil Guards' prison sentence to one year. In its judgement, the Court held that the Civil Guards had assaulted the complainant with a view to obtaining a confession about his activities and the identities of other individuals belonging to the Bizkaia combat unit. It took the view that "fact-finding" torture of a degree exceeding cruel or degrading treatment had been established, but held that the injuries suffered by the complainant had not required medical or surgical attention: the first aid the complainant had received was sufficient. The Court considered that a sentence of one year's imprisonment was in proportion to the gravity of the offence.

2.5 While the appeal was pending before the Supreme Court, one of the Civil Guards continued to work in French territory as an anti-terrorism coordinator with the French security forces, and with the authorization of the Ministry of the Interior embarked on studies with a view to promotion to the grade of Civil Guard commander.

2.6 The Ministry of Justice initiated proceedings to have the three convicted Civil Guards pardoned. The Council of Ministers, at its meeting of 16 July 1999, granted pardons to the three Civil Guards, suspending them from any form of public office for one month and one day. Notwithstanding this suspension, the Ministry of the Interior kept one of the Civil Guards on active duty in a senior post. The pardons were granted by the King in decrees published in Spain's Official Gazette.

...

6.6 As to the alleged violation of article 2 of the Convention, the Committee notes the complainant's argument that the obligation to take effective measures to prevent torture has not been honoured because the pardons granted to the Civil Guards have the practical effect of allowing torture to go unpunished and encouraging its repetition. The Committee is of the view that, in the circumstances of the present case, the measures taken by the State party are contrary to the obligation established in article 2 of the Convention, according to which the State party must take effective measures to prevent acts of torture. Consequently, the Committee concludes that such acts constitute a violation of article 2, paragraph 1, of the Convention. The Committee also concludes that the absence of appropriate punishment is incompatible with the duty to prevent acts of torture.

6.7 With regard to the alleged violation of article 4, the Committee recalls its previous jurisprudence to the effect that one of the purposes of the Convention is to avoid allowing persons who have committed acts of torture to escape unpunished. The Committee also recalls that article 4 sets out a duty for States parties to impose appropriate penalties against those held responsible for committing acts of torture, taking into account the grave nature of those acts. The Committee considers that, in the circumstances of the present case, the imposition of lighter penalties and the granting of pardons to the Civil Guards are incompatible with the duty to impose appropriate punishment. The Committee further notes that the Civil Guards were not subject to disciplinary proceedings while criminal proceedings were in progress, though the seriousness of the charges against them merited a disciplinary investigation. Consequently, the Committee considers that there has been a violation of article 4, paragraph 2, of the Convention.

6.8 As to the alleged violation of article 14, the State party indicates that the complainant received the full amount of compensation ordered by the trial court and claims that the Convention has therefore not been violated. However, article 14 of the Convention not only recognizes the right to fair and adequate compensation but also imposes on States the duty

to guarantee compensation for the victim of an act of torture. The Committee considers that compensation should cover all the damages suffered by the victim, which includes, among other measures, restitution, compensation and rehabilitation of the victim, as well as measures to guarantee the non-repetition of the violations, always bearing in mind the circumstances of each case. The Committee concludes that there has been a violation of article 14, paragraph 1, of the Convention.

7. The Committee against Torture...decides that the facts before it constitute a violation of articles 2, 4 and 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

8. In pursuance of rule 112, paragraph 5, of its rules of procedure, the Committee urges the State party to ensure in practice that persons responsible for acts of torture are appropriately punished, to ensure that the complainant receives full redress and to inform it, within 90 days from the date of the transmittal of this decision, of all steps taken in response to the views expressed above.

- *Agiza v. Sweden* (233/2003), CAT, A/60/44 (20 May 2005) 197 at paras. 1.1, 2.1-2.6, 13.1-13.10 and 14.

1.1 The complainant is Ahmed Hussein Mustafa Kamil Agiza, an Egyptian national born on 8 November 1962, detained in Egypt at the time of submission of the complaint. He claims that his removal by Sweden to Egypt on 18 December 2001 violated article 3 of the Convention...

...

2.1 In 1982, the complainant was arrested on account of his family connection to his cousin, who had been arrested for suspected involvement in the assassination of the former Egyptian President, Anwar Sadat. Before his release in March 1983, he was allegedly subjected to torture. The complainant, active at university in the Islamic movement, completed his studies in 1986 and married Ms. Hanan Attia. He avoided various police searches, but encountered difficulties, such as the arrest of his attorney, when he brought a civil claim in 1991 against the Ministry of Home Affairs for suffering during his time in prison.

2.2 In 1991, the complainant left Egypt for Saudi Arabia for security reasons, and thereafter went to Pakistan, where his wife and children joined him. After the Egyptian Embassy in Pakistan refused to renew their passports, the family left in July 1995 for the Syrian Arab Republic under assumed Sudanese identities, in order to continue on to Europe. This plan failed, and the family moved to the Islamic Republic of Iran, where the complainant was granted a university scholarship.

2.3 In 1998, the complainant was tried *in absentia* in Egypt for terrorist activity directed against the State before a "Superior Court Martial", along with over 100 other accused. He was found guilty of belonging to the terrorist group "Al Gihad", and was sentenced, without possibility of appeal, to 25 years' imprisonment. In 2000, concerned that improving relations between Egypt and Iran would result in his being returned to Egypt, the complainant and his family bought air tickets, using Saudi Arabian identities, to Canada, and claimed asylum during a transit stop in Stockholm on 23 September 2000.

2.4 In his asylum application, the complainant claimed that he had been sentenced to "penal servitude for life" *in absentia* on charges of terrorism linked to Islamic fundamentalism, b/ and that, if returned, he would be executed, as others accused in the same proceedings allegedly had been. His wife contended that, if returned, she would be detained for many years, as the complainant's wife. On 23 May 2001, the Migration Board sought the opinion of the Swedish Security Police on the case. On 14 September 2001, the Migration Board held a "major inquiry" with the complainant, with a further inquiry following on 3 October 2001. During of the same month, the Security Police questioned the complainant. On 30 October 2001, the Security Police advised the Migration Board that the complainant held a leading position in an organization guilty of terrorist acts and was responsible for the activities of the organization. The Migration Board thereupon forwarded the complainant's case, on 12 November 2001, to the Government for a strength of the decision under chapter 7, section 11 (2) (2), of the Aliens Act. In the Board's view, on the basis of the information before it, the complainant could be considered entitled to claim refugee status; however, the Security Police's assessment, which the Board saw no reason to question, pointed in a different direction. The balancing of the complainant's possible need for protection against the Security Police's assessment thus had to be made by the Government. On 13 November 2001, the Aliens Appeals Board, whose view the Government had sought, shared the Migration Board's assessment of the merits and also considered that the Government should decide the matter. In a statement, the complainant denied belonging to the organization referred to in the Security Police's statement, arguing that one of the designated organizations was not a political organization but an Arabic-language publication. He also claimed that he had criticized Usama Bin Laden and the Taliban in a letter to a newspaper.

2.5 On 18 December 2001, the Government rejected the asylum applications of the complainant and of his wife. The reasons for these decisions are omitted from the text of the present decision at the State party's request and with the agreement of the Committee. Accordingly, it was ordered that the complainant be deported immediately and his wife as soon as possible. On 18 December 2001, the complainant was deported, while his wife went into hiding to avoid police custody.

2.6 On 23 January 2002, the Swedish Ambassador to Egypt met the complainant at Mazraat

Tora prison outside Cairo. c/ The same day, the complainant's parents visited him for the first time. They allege that they when they met him in the warden's office, he was supported by an officer and was near breakdown, hardly able to shake his mother's hand, pale and in shock. His face, particularly the eyes, and his feet were swollen, with his cheeks and bloodied nose seemingly thicker than usual. The complainant allegedly said to his mother that he had been treated brutally upon arrest by the Swedish authorities. During the eight-hour flight to Egypt, in Egyptian custody, he allegedly was bound by his hands and feet. Upon arrival, he was allegedly subjected to "advanced interrogation methods" at the hand of Egyptian State security officers, who told him that the guarantees provided by the Government of Egypt concerning him were useless. The complainant told his mother that a special electric device with electrodes was connected to his body, and that that he received electric shocks if he did not respond properly to orders.

...

13.1 The Committee has considered the merits of the complaint, in the light of all information presented to it by the parties, pursuant to article 22, paragraph 4, of the Convention. The Committee acknowledges that measures taken to fight terrorism, including denial of safe haven, deriving from binding Security Council resolutions are both legitimate and important. Their execution, however, must be carried out with full respect to the applicable rules of international law, including the provisions of the Convention, as affirmed repeatedly by the Security Council. s/

Substantive assessment under article 3

13.2 The issue before the Committee is whether removal of the complainant to Egypt violated the State party's obligation under article 3 of the Convention not to expel or to return a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected by the Egyptian authorities to torture. The Committee observes that this issue must be decided in the light of the information that was known, or ought to have been known, to the State party's authorities *at the time* of the removal. Subsequent events are relevant to the assessment of the State party's knowledge, actual or constructive, at the time of removal.

13.3 The Committee must evaluate whether there were substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to Egypt. The Committee recalls that the aim of the determination is to establish whether the individual concerned was personally at risk of being subjected to torture in the country to which he was returned...

13.4 The Committee considers at the outset that it was known, or should have been known, to the State party's authorities at the time of the complainant's removal that Egypt resorted

to consistent and widespread use of torture against detainees, and that the risk of such treatment was particularly high in the case of detainees held for political and security reasons.t/ The State party was also aware that its own security intelligence services regarded the complainant as implicated in terrorist activities and a threat to its national security, and for these reasons its ordinary tribunals referred the case to the Government for a decision at the highest executive level, from which no appeal was possible. The State party was also aware of the interest in the complainant by the intelligence services of two other States: according to the facts submitted by the State party to the Committee, the first foreign State offered through its intelligence service an aircraft to transport the complainant to the second State, Egypt, where, to the State party's knowledge, he had been sentenced *in absentia* and was wanted for alleged involvement in terrorist activities. In the Committee's view, the natural conclusion from these combined elements, that is, that the complainant was at a real risk of torture in Egypt in the event of expulsion, was confirmed when, immediately preceding expulsion, the complainant was subjected on the State party's territory to treatment in breach of, at least, article 16 of the Convention by foreign agents but with the acquiescence of the State party's police. It follows that the State party's expulsion of the complainant was in breach of article 3 of the Convention. The procurement of diplomatic assurances, which, moreover, provided no mechanism for their enforcement, did not suffice to protect against this manifest risk.

13.5 In light of this assessment, the Committee considers it appropriate to observe that its decision in the current case reflects a number of facts which were not available to it when it considered the largely analogous complaint of *Hanan Attia*,u/ where, in particular, it expressed itself satisfied with the assurances provided. The Committee's decision in that case, given that the complainant had not been expelled, took into account the evidence made available to it up to the time the decision in that case was adopted. The Committee observes that it did not have before it the actual report of mistreatment provided by the current complainant to the Ambassador at his first visit and not provided to the Committee by the State party (see paragraph 14.10); the mistreatment of the complainant by foreign intelligence agents on the territory of the State party and acquiesced in by the State party's police; the involvement of a foreign intelligence service in offering and procuring the means of expulsion; the progressively wider discovery of information as to the scope of measures undertaken by numerous States to expose individuals suspected of involvement in terrorism to risks of torture abroad; the breach by Egypt of the element of the assurances relating to guarantee of a fair trial, which addresses the question of the weight that can be attached to the assurances as a whole; and the unwillingness of the Egyptian authorities to conduct an independent investigation despite appeals from the State party's authorities at the highest levels. The Committee observes, in addition, that the calculus of risk in the case of the wife of the complainant, whose expulsion would have taken place some years after that of the complainant, raised issues differing from the present case.

Procedural assessment under article 3

13.6 The Committee observes that the right to an effective remedy for a breach of the Convention underpins the entire Convention, for otherwise the protections afforded by the Convention would be rendered largely illusory. In some cases, the Convention itself sets out a remedy for particular breaches of the Convention,v/ while in other cases the Committee has interpreted a substantive provision to contain within it a remedy for its breach.w/ In the Committee's view, in order consistently to reinforce the protection of the norm in question and the understanding of the Convention, the prohibition on *refoulement* contained in article 3 should be interpreted as encompassing a remedy for its breach, even though it may not contain on its face such a right to remedy for a breach thereof.

13.7 The Committee observes that in the case of an allegation of torture or cruel, inhuman or degrading treatment having occurred, the right to remedy requires, after the event, an effective, independent and impartial investigation of such allegations. The nature of *refoulement* is such, however, that an allegation of breach of that article relates to a future expulsion or removal; accordingly, the right to an effective remedy contained in article 3 requires, in this context, an opportunity for effective, independent and impartial review of the decision to expel or remove, once that decision is made, when there is a plausible allegation that article 3 issues arise. The Committee's previous jurisprudence has been consistent with this view of the requirements of article 3, having found an inability to contest an expulsion decision before an independent authority, in that case the courts, to be relevant to a finding of a violation of article 3.x/

13.8 The Committee observes that, in the normal course of events, the State party provides, through the operation of the Migration Board and the Aliens Appeals Board, for review of a decision to expel satisfying the requirements of article 3 of an effective, independent and impartial review of a decision to expel. In the present case, however, owing to the presence of national security concerns, these tribunals relinquished the complainant's case to the Government, which took the first and at once final decision to expel him. The Committee emphasizes that there was no possibility for review of any kind of this decision. The Committee recalls that the Convention's protections are absolute, even in the context of national security concerns, and that such considerations emphasize the importance of appropriate review mechanisms. While national security concerns might justify some adjustments to be made to the particular process of review, the mechanism chosen must continue to satisfy the requirements of article 3 of effective, independent and impartial review. In the present case, therefore, on the strength of the information before it, the Committee concludes that the absence of any avenue of judicial or independent administrative review of the Government's decision to expel the complainant constitutes a failure to meet the procedural obligation to provide for effective, independent and impartial

review required by article 3 of the Convention.

Frustration of the right under article 22 to exercise the right of complaint to the Committee

13.9 The Committee observes, moreover, that by making the declaration under article 22 of the Convention, the State party undertook to confer upon persons within its jurisdiction the right to invoke the complaints jurisdiction of the Committee. That jurisdiction includes the power to indicate interim measures, if necessary, to stay the removal and preserve the subject matter of the case pending final decision. In order for this exercise of the right of complaint to be meaningful rather than illusory, however, an individual must have a reasonable period of time before execution of a final decision to consider whether, and if so to in fact, seize the Committee under its article 22 jurisdiction. In the present case, however, the Committee observes that the complainant was arrested and removed by the State party immediately upon the Government's decision of expulsion being taken; indeed, the formal notice of decision was only served upon the complainant's counsel the following day. As a result, it was impossible for the complainant to consider the possibility of invoking article 22, let alone seize the Committee. As a result, the Committee concludes that the State party was in breach of its obligations under article 22 of the Convention to respect the effective right of individual communication conferred thereunder.

The State party's failure to cooperate fully with the Committee

13.10 Having addressed the merits of the complaint, the Committee must address the failure of the State party to cooperate fully with the Committee in the resolution of the current complaint. The Committee observes that, by making the declaration provided for in article 22 extending to individual complainants the right to complain to the Committee alleging a breach of a State party's obligations under the Convention, a State party assumes an obligation to cooperate fully with the Committee, through the procedures set forth in article 22 and in the Committee's rules of procedure. In particular, article 22, paragraph 4, requires a State party to make available to the Committee all information relevant and necessary for the Committee appropriately to resolve the complaint presented to it. The Committee observes that its procedures are sufficiently flexible and its powers sufficiently broad to prevent an abuse of process in a particular case. It follows that the State party committed a breach of its obligations under article 22 of the Convention by neither disclosing to the Committee relevant information, nor presenting its concerns to the Committee for an appropriate procedural decision.

14. The Committee against Torture...decides that the facts before it constitute breaches by the State party of articles 3 and 22 of the Convention.

Notes

...

b/ Counsel explains the deviation from the actual sentence on the basis that a 25-year sentence amounted to the same, as few could be expected to survive that length of time in prison.

c/ Counsel states that the following information concerning the complainant's whereabouts and well-being originates from Swedish diplomatic sources, the complainant's parents, a Swedish radio reporter and the complainant's Egyptian attorney.

...

s/ Security Council resolution 1566 (2004), third and sixth paragraphs; resolution 1456 (2003), para. 6, and resolution 1373 (2001), para. 3 (f).

t/ See, among other sources, *Official Records of the General Assembly, Fifty-first Session, Supplement No. 44* (A/51/44), paras. 180-222 and *ibid*., Fifty-eighth Session, Supplement No. 44 (A/58/44, paras. 37-44).

u/ Communication No. 199/2002, [decision adopted on 17 November 2003].

v/ See articles 12-14 in relation to an allegation of torture.

w/ See *Dzemajl v. Yugoslavia*, communication No. 161/2000, decision adopted on 21 November 2002, para. 9.6: "The positive obligations that flow from the first sentence of article 16 of the Convention include an obligation to grant redress and compensate the victims of an act in breach of that provision. The Committee is therefore of the view that the State party has failed to observe its obligations under article 16 of the Convention by failing to enable the complainants to obtain redress and to provide them with fair and adequate compensation."

x/ *Arkauz Arana v. France*, communication No. 63/1997, decision adopted on 9 November 1999, paras. 11.5 and 12.

For dissenting opinion in this context, see *Agiza v. Sweden* (233/2003), CAT, A/60/44 (20 May 2005) 197 at Individual Opinion of Mr. Alexander Yakovlev (partly dissenting), 232.