

## PART III

# JURISPRUDENCE OF THE HUMAN RIGHTS COMMITTEE



In this section, we analyse the jurisprudence from OP cases, General Comments, and Concluding Observations of the HRC, with regard to torture, cruel, inhuman or degrading treatment or punishment. The most relevant provision of the ICCPR is Article 7, discussed directly below. We also analyse the jurisprudence under Article 10, a related provision, which imposes duties upon States to ensure that detainees are treated humanely.

### 3.1 Article 7

Article 7 of the ICCPR states:

“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.”

This Article creates three types of prohibited behaviour against another person. Namely, a person may not be subjected to:

- Torture
- Treatment or punishment which is cruel and inhuman
- Treatment or punishment which is degrading.

#### 3.1.1 Absolute Nature of Article 7

The provisions of Article 7 are absolute.<sup>362</sup> No exceptions to the prohibition on torture and cruel, inhuman or degrading treatment and punishment are permitted. Article 7 is a non-derogable right under Article 4(2).<sup>363</sup> No crisis, such as a terrorist emergency or a time of war, justifies departure from the standards of Article 7.<sup>364</sup>

---

362 See also General Comment 20, § 3.

363 Under Article 4, States may ‘derogate’ from, or suspend, their ICCPR duties in times of public emergency so long as such derogation is justified ‘by the exigencies of the situation’. Certain rights however may never be the subject of derogation, including Article 7.

364 For general discussion of the absolute nature of the prohibition under international law, see above Section 1.1.

### 3.1.2 The Scope of Article 7

The General Comments and case law of the HRC have clarified the scope of Article 7.<sup>365</sup> A detailed overview of the jurisprudence starts below from Section 3.2. A summary of general points begins here.

In General Comment 20, the HRC expands upon the meaning of Article 7. It confirmed the following regarding the scope of the provision:

- Article 7 aims to protect the dignity of individuals as well as their physical and mental integrity, thus the prohibition extends to acts causing mental suffering as well as physical pain.<sup>366</sup>
- The State must provide protection against all acts prohibited by Article 7, whether these acts are committed by individuals acting in their official capacity, outside their official capacity or in a private capacity.<sup>367</sup> States must take reasonable steps to prevent and punish acts of torture by private actors.<sup>368</sup> As noted below,<sup>369</sup> this may significantly extend the scope of the ICCPR in this regard beyond that of the CAT.
- Article 7 extends to both acts and omissions. That is, a State can breach Article 7 by its failure to act as well as its perpetration of acts. For example, it may fail to act by failing to punish a person for torturing another person, or by withholding food from a prisoner.<sup>370</sup>
- Article 7 can be breached by an act that unintentionally inflicts severe pain and suffering on a person. It is however likely that “intention” is necessary in order for a violation to be classified as “torture” as opposed to one of the other prohibited forms of bad treatment.<sup>371</sup> The HRC itself has said that the various treatments are distinguishable on the basis of the “purpose” of such treatment.<sup>372</sup> However, a violation of Article 7, seeing as it prohibits acts other than torture, can certainly be entailed in unintentional behaviour.

---

365 See also Joseph, Schultz, and Castan, above note 31, §§ 9.03-9.40.

366 General Comment 20, §§ 2, 5.

367 General Comment 20, § 2.

368 See also Concluding Observations on the Russian Federation, (2003) UN doc. CCPR/CO/79/RUS, § 13.

369 See Section 4.1.2(e).

370 Joseph, Schultz, and Castan, above note 31, § 9.08.

371 See Section 4.1.2(b) for interpretation of this aspect of the CAT definition of torture.

372 General Comment 20, § 4.

In *Rojas Garcia v. Colombia* (687/96), a search party mistakenly stormed the home of the author at 2am, verbally abusing and terrifying the complainant and his family, including young children. A gunshot was fired during the search, and the complainant was forced to sign a statement without reading it. It turned out that the search party meant to search another house, and the search party had no particular intention to harm the complainant or his family. Nevertheless, a violation of Article 7 was found.

There are both subjective and objective components to the determination of whether a violation of Article 7 has taken place. In *Vuolanne v. Finland* (265/87), the HRC stated that whether an act falls under the scope of Article 7:

“depends on all the circumstances of the case...the duration and manner of the treatment, its physical or mental effects as well as the sex, age and state of health of the victim”.<sup>373</sup>

Therefore the personal characteristics of the victim are taken into account in determining whether the treatment in question constitutes inhuman or degrading treatment under Article 7. For example, treatment inflicted on a child may constitute a breach of Article 7 in a situation where the same treatment may not classify as a breach if inflicted upon an adult.<sup>374</sup>

### **3.1.3 Definitions of Torture and Cruel, Inhuman or Degrading Treatment**

The HRC has not issued specific definitions of these three types of prohibited behaviour under Article 7.<sup>375</sup> In most cases where a breach of Article 7 has been found, the HRC has not specified which part of Article 7 has been breached. In General Comment 20, the HRC remarked at paragraph 4:

“The Covenant does not contain any definition of the concepts covered by article 7, nor does the Committee consider it necessary to draw up a list of prohibited acts or to establish sharp distinctions between the different types of punishment or treatment; the distinctions depend on the nature, purpose and severity of the treatment applied”.

---

373 *Vuolanne v. Finland* (265/87), § 9.2.

374 See, e.g., section 3.2.11.

375 The European Court of Human Rights takes a different approach in discussing violations of its equivalent provision, Article 3 of the ECHR and generally indicates in its decisions which category of mistreatment has occurred.

The categorisation of the act is not without significance, particularly for the reprimanded State for whom a finding of torture will carry particular weight and stigma.<sup>376</sup> Article 1 of the CAT provides a more specific definition of torture. Although this definition is not binding upon the HRC in its application of Article 7, it “can be drawn upon as an interpretational aid.”<sup>377</sup>

### a) Findings of Torture

The HRC rarely differentiates between the types of prohibited behaviour in Article 7. In most cases where a breach of Article 7 has been found, the HRC will simply find that an act has violated Article 7 without specifying the actual part of Article 7 that has been violated. However, it has specified the relevant limb of Article 7 on a few occasions. For example, combinations of the following acts have been explicitly found by the HRC to constitute “torture”:

- “Systematic beatings, electric shocks to the fingers, eyelids, nose and genitals when tied naked to a metal bedframe or in coiling wire around fingers and genitals, burning with cigarettes, extended burns, extended hanging from hand and/or leg chains, often combined with electric shocks, repeated immersion in a mixture of blood, urine, vomit and excrement (“submarino”), standing naked and handcuffed for great lengths, threats, simulated executions and amputations”.<sup>378</sup>
- “beatings, electric shocks, mock executions, deprivation of food and water and thumb presses”.<sup>379</sup>
- Beatings to induce confession, as well as beatings of and ultimately the killing of the victim’s father on police premises.<sup>380</sup>

The HRC will also give due weight to acts which cause permanent damage to the health of the victim. This element may be a crucial factor in the HRC’s

---

376 Nowak, above note 97, p. 160. See also *Aydin v. Turkey*, No. 23178/94, Eur. Ct. of Hum. Rts. (25 September 1997), § 82.

377 Nowak, above note 97, p. 161; see section 4.1 for the definition of Article 1 of CAT.

378 Nowak, above note 97, p. 162, drawing from the cases of *Grille Motta v. Uruguay* (11/1977), *Bleier v. Uruguay* (30/1978), *Lopez Burgos v. Uruguay* (52/1979), *Sendic v. Uruguay* (63/1979), *Angel Estrella v. Uruguay* (74/1980), *Arzuaga Gilboa v. Uruguay* (147/1983), *Caribon v. Uruguay* (159/1983), *Berterretche Acosta v. Uruguay* (162/1983), and *Rodriguez v. Uruguay* (322/1988).

379 Nowak, above note 97, p. 163, citing *Muteba v. Zaire* (124/82), *Miango Muiyo v. Zaire* (194/85) and *Kanana v. Zaire* (366/89).

380 *Khalilova v. Tajikistan* (973/01), § 7.2.

decision to elevate to “torture” a violation which would otherwise have been defined as cruel and inhuman treatment.<sup>381</sup>

### **b) Findings of Cruel and Inhuman Treatment**

Generally both “cruel” and “inhuman” treatment will be established concurrently: it seems the terms describe the same type of treatment and there is no meaningful distinction between the two. Furthermore, there appears to be a fine line between what constitutes “torture” and “cruel and inhuman treatment”.<sup>382</sup> Nowak suggests that these latter two terms:

“include all forms of imposition of severe suffering that are unable to be qualified as torture for lack of one of its essential elements [as identified in the CAT definition in Article 1]...they also cover those practices imposing suffering that does not reach the necessary intensity”.<sup>383</sup>

The HRC has found the following to constitute “cruel and inhuman” treatment:

- The victim was beaten unconscious, subjected to a mock execution and denied appropriate medical care.<sup>384</sup>
- The victim was beaten repeatedly with clubs, iron pipes and batons and left without medical care for his injuries.<sup>385</sup>
- The victim was severely beaten by prison warders and also received death threats from them.<sup>386</sup>
- The victim was imprisoned in a cell for 23 hours per day, without mattress or bedding, integral sanitation, natural light, recreational facilities, decent food or adequate medical care.<sup>387</sup>

### **c) Findings of Degrading Treatment**

Degrading treatment arises where the victim has been subjected to particularly humiliating treatment. Of the Article 7 “limbs” of prohibited treatment,

---

381 Nowak, above note 97, pp. 162-164, citing *Massera v. Uruguay* (5/77).

382 See, e.g., R. B. Schechter, “Intentional starvation as torture: exploring the gray area between ill-treatment and torture” (2003) 18 *American University International Law Review* 1233-1270.

383 Nowak, above note 97, p. 163.

384 *Linton v. Jamaica* (255/87).

385 *Bailey v. Jamaica* (334/1988).

386 *Hylton v. Jamaica* (407/90).

387 *Deidrick v. Jamaica* (619/95). See Model Complaint, *Textbox ii*, § 51.

degrading treatment seems to require the lowest threshold of suffering. The humiliation itself, or the affront to the victim's dignity, is the primary consideration, "regardless of whether this is in the eyes of others or those of the victim himself or herself"<sup>388</sup> and thus may have both an objective and subjective element. Treatment which may be seen as degrading in one set of circumstances may not be seen to be so where the circumstances are different. Nowak gives the following example:

"whereas...controlled use of rubber truncheons in connection with an arrest...may seem a necessary, restrained and therefore justified use of force, the Austrian Constitutional Court has deemed mere handcuffing, slapping or hair pulling to be degrading treatment when this contradicts the principle of proportionality in light of the specific circumstances of the case".<sup>389</sup>

The HRC has found the following acts to constitute "degrading treatment".

- The victim was "assaulted by soldiers and warders who beat him, pushed him with a bayonet, emptied a urine bucket over his head, threw his food and water on the floor and his mattress out of the cell."<sup>390</sup>
- The victim was beaten with rifle butts and denied medical attention for injuries sustained.<sup>391</sup>
- The victim was imprisoned in a very small cell, allowed few visitors, assaulted by prison warders, had his effects stolen and his bed repeatedly soaked.<sup>392</sup>
- The victim was placed into a cage and then displayed to the media.<sup>393</sup>
- The State failed to provide medical care and treatment for a prisoner on death row, whose mental health had severely deteriorated.<sup>394</sup>

Where a prisoner is subjected to treatment which is humiliating, but which may not be as harsh as those described above, a violation of other ICCPR provisions

---

388 Nowak, above note 97, p165 drawing on the judgment of the European Court of Human Rights in *Tyler v. UK*, No. 5856/72, Eur. Ct. of Hum. Rts. (25 April 1978).

389 Nowak, above note 97, pp. 165-166; see also Joseph, Schultz, and Castan, above note 31, § 9.32. 390 *Francis v. Jamaica* (320/88).

391 *Thomas v. Jamaica* (321/1988).

392 *Young v. Jamaica* (615/95).

393 *Polay Campos v. Peru* (577/94).

394 *Williams v. Jamaica* (609/95).

may be found. For example, such treatment might violate Article 10 (see section 3.3), or breach one's right to privacy under Article 17.

### 3.1.4 Application of Article 7 to “Punishment”

“Punishment” is a specific type of “treatment”. It is therefore arguable that punishment would be covered by Article 7 even if not explicitly mentioned. Nevertheless, it is important that Article 7 specifically applies to punishments to ensure that it unambiguously applies to acts which are prescribed by a State's laws as penalties for criminal behaviour.<sup>395</sup>

Every punishment inflicted upon a person will in some way impact upon a person's liberty and dignity. It is therefore essential that punishments are closely and carefully monitored to ensure that they are appropriately applied. Furthermore, the emergence of a global human rights culture has influenced the way in which punishment is inflicted by a State. This phenomenon is particularly evident in relation to the growing rejection and re-evaluation of corporal punishment and the death penalty. The “recognition of human dignity as the principal value underlying human rights” has meant that “most traditional punishments have been re-evaluated and gradually restrained”.<sup>396</sup>

In *Vuolanne v. Finland* (265/87), the HRC examined the nature of degrading punishment in the context of deprivation of personal liberty. The HRC stated:

“[i]t must involve a certain degree of humiliation or debasement. Depriving an individual of their liberty could not be enough to constitute such punishment.”<sup>397</sup>

In this case, the complainant was held in military detention for a period of ten days for disciplinary reasons. During his detention he was in almost complete isolation and his movement was very restricted, he wrote small notes which were confiscated and read aloud by the guards. The HRC found that this form of military discipline did not violate Article 7.<sup>398</sup>

---

395 Note for example that the prohibition on torture and other ill-treatment in Article 8 of the Arab Charter of Human Rights does not explicitly apply to ‘punishment’; see also Section 4.1.2(f).

396 Nowak, above note 97, p. 167.

397 *Vuolanne v. Finland* (265/87), § 9.2.

398 The detention was found to breach Article 9(4) of the ICCPR, as the complainant was not able to challenge his detention in a court.

## 3.2 Jurisprudence under Article 7

### 3.2.1 Police Brutality

In exercising their duties, police may be expected to occasionally use force, for example in arresting a person who is resisting arrest, or in dispersing a crowd at a riot. However, this does not mean that police are free to use any amount of force in such situations.

Cases on this issue have generally arisen under Article 6, regarding the right to life, rather than Article 7.<sup>399</sup> For example, in *Suárez de Guerrero v. Colombia* (45/79), Colombian police shot and killed seven persons suspected of kidnapping a former Ambassador. The evidence indicated that the victims, including one María Fanny Suárez de Guerrero, were shot in cold blood, rather than, as had initially been claimed by police, whilst resisting arrest. The case is a very clear example of a disproportionate use of force which blatantly breached Article 6. The HRC, in finding such a violation, stated:

“There is no evidence that the action of the police was necessary in their own defence or that of others, or that it was necessary to effect the arrest or prevent the escape of the persons concerned.”<sup>400</sup>

Therefore, the death of Ms Suárez de Guerrero was found to be “disproportionate to the requirements of law enforcement in the circumstances of the case”.<sup>401</sup> Therefore, the case confirms that the principle of proportionality applies in the context of the use of force for the purpose of arrest. Clearly, the police should not kill someone in disproportionate circumstances, nor should they utilise a disproportionate and therefore excessive amount of force in effecting an arrest. Such a latter use of force would breach Article 9 ICCPR, which includes the right to “security of the person”. If the relevant use of force was extreme enough, it would amount to a breach of Article 7.

The issue of police brutality has been raised in numerous Concluding Observations. For example, regarding the use of force in controlling crowds, the HRC has stated with regard to Togo:

---

399 See also Section 3.2.16.

400 *Suárez de Guerrero v. Colombia* (45/79), § 13.2.

401 *Suárez de Guerrero v. Colombia* (45/79), § 13.3; see also *Baboeram et al v. Suriname* (146, 148-154/83).

“The Committee expresses concern at the consistent information that law enforcement personnel make excessive use of force in student demonstrations and various gatherings organized by the opposition. ... The Committee regrets that the State party has made no mention of any inquiry having been opened following these allegations.”<sup>402</sup>

Regarding Belgium, the HRC expressed concern over allegations of the use of excessive force in effecting the deportation of aliens.<sup>403</sup> Other examples of inappropriate uses of force that might inflict harm contrary to Article 7, or even death contrary to Article 6, would include the inappropriate use of dogs,<sup>404</sup> chemical irritants, or plastic bullets.<sup>405</sup> The HRC delivered one of its most detailed statements in this regard to the U.S. in 2006:

“The Committee reiterates its concern about reports of police brutality and excessive use of force by law enforcement officials. The Committee is concerned in particular by the use of so called less lethal restraint devices, such as electro-muscular disruption devices (EMDs), in situations where lethal or other serious force would not otherwise have been used. It is concerned about information according to which police have used tasers against unruly schoolchildren; mentally disabled or intoxicated individuals involved in disturbed but non-life-threatening behaviour; elderly people; pregnant women; unarmed suspects fleeing minor crime scenes and people who argue with officers or simply fail to comply with police commands, without in most cases the responsible officers being found to have violated their departments’ policies.

The State party should increase significantly its efforts towards the elimination of police brutality and excessive use of force by law enforcement officials. The State party should ensure that EMDs and other restraint devices are only used in situations where greater or lethal force would otherwise have been justified, and in particular that they are never used against vulnerable persons. The State party should bring its policies into line with the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.”<sup>406</sup>

---

402 Concluding Observations on Togo, (2003) UN doc. CCPR A/58/40, § 11. See also, eg, Concluding Observations on Belarus, (1998) UN doc. A/53/50, § 145; Concluding Observations on Kosovo (Republic of Serbia), (2006) UN doc. CCPR/C/UNK/CO/1, § 15.

403 Concluding Observations on Belgium, (2004) UN doc. CCPR/CO/81/BEL, § 14.

404 See e.g., Concluding Observations on Denmark, (1997) UN doc. CCPR/C/79/Add. 68, § 14; Concluding Observations on Thailand, (2005) UN doc. CCPR/CO/84/THA, § 24.

405 Such tactics would also breach Article 21 ICCPR, which protects freedom of assembly.

406 Concluding Observations on the U.S., (2006) UN doc. CCPR/C/USA/CO/3, § 30.

As with the above example regarding the U.S., the HRC has commonly recommended to States that its law enforcement officers adhere to the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.<sup>407</sup> While these Principles mainly focus on the restriction of lethal force, they have application to the use of all types of force. For example, Principle 5(a) requires law enforcement officials to exercise restraint in the use of force if it is unavoidable, “and act in proportion to the seriousness of the offence and the legitimate objective to be achieved”. Under Principle 5(b), damage and injury should be minimised, along with loss of life. If a person is injured whilst being arrested or restrained, law enforcement officers should ensure that they receive appropriate medical attention (Principle 5(c)), and that relatives or close friends of the injured person are informed as soon as is practicable (Principle 5(d)).

### 3.2.2 Ill-treatment in Custody

Most violations of Article 7 have arisen in the context of ill-treatment in places of detention, such as police cells or prisons. Such treatment often occurs in the context of interrogation, where the authorities may be trying to force a person to confess to an act, or to reveal other information. Alternatively, it may arise in the context of enforcing discipline in custody. A number of findings in this regard are listed above at Section 3.1.3. In this section, we list more examples of abuses in detention that were found to breach Article 7:

- a person was held for:
 

“10 months incommunicado including solitary confinement chained to a bed spring for three and a half months with minimal clothing and severe food rations, followed by a further month’s detention incommunicado in a tiny cell, followed by detention with another in a three by three metre cell without external access for eighteen months.”<sup>408</sup>

---

407 The Basic Principles are reprinted in Appendix 10. See e.g., Concluding Observations on Israel, (1998) UN doc. CCPR/C/79/Add.93, § 15; Concluding Observations on the U.S., (1995) UN doc. CCPR A/50/40, § 297; Concluding Observations on Cyprus, (1995) UN doc. CCPR/C/79/Add. 39, § 6; Concluding Observations on Portugal, (2003) UN doc. CCPR/CO/78/PRT, § 9; Concluding Observations on Paraguay, (2006) UN doc. CCPR/C/PRY/CO/2, § 11. The CAT Committee has also commonly referred to these principles in its Concluding Observations.

408 *White v. Madagascar* (115/82), §§ 15.2, 17.

- salt water was rubbed into the victim's nasal passages and he was then left for a night handcuffed to a chair without food or water.<sup>409</sup>
- Brutal beatings by at least six soldiers; being tied up and beaten all over the body until loss of consciousness; being 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; jaw broken. Despite the victim's condition, and in particular his loss of mobility, he was not allowed to see a doctor.<sup>410</sup>
- Victim was subjected to electric shocks and being hung with his arms tied behind him. He was also taken to the beach, where he was subjected to mock drownings.<sup>411</sup>
- Use of interrogation techniques such as prolonged stress positions and isolation, sensory deprivation, hooding, exposure to cold or heat, sleep and dietary adjustments, 20 hour interrogations, removal of clothing and of all comfort items including religious items, forced grooming, and exploitation of a detainee's personal phobias.<sup>412</sup>
- Victim was severely beaten on his head by prison officers (requiring several stitches).<sup>413</sup>
- Beatings were so severe as to cause the victim to be hospitalised<sup>414</sup>
- Withholding of food and water for five consecutive days<sup>415</sup>
- Soldiers blindfolded and dunked the author in a canal.<sup>416</sup>
- Severe beatings by prison guards, along with the burning of the complainant's personal belongings, including legal documents. The treatment was inflicted to punish all persons, including the complainant, who had been involved in an escape attempt. His beatings were so bad that he "could hardly walk".<sup>417</sup>

---

409 *Cañon Garcia v. Ecuador* (319/1988), § 5.2.

410 *Mulezi v. Congo* (962/01).

411 *Vargas Más v. Peru* (1058/02).

412 Concluding Observations on the U.S., (2006) CCPR/C/USA/CO/3, § 13. It is not clear if each of these techniques individually breach Article 7 but the combination of a few of these techniques at the same time does.

413 *Henry v. Trinidad and Tobago* (752/97), § 2.1.

414 *Sirageva v. Uzbekistan* (907/00).

415 *Bee and Obiang v. Equatorial Guinea* (1152 and 1190/03), § 6.1.

416 *Vicente et al v. Colombia* (612/95), § 8.5.

417 *Howell v. Jamaica* (798/98), § 2.5.

In *Wilson v. Philippines* (868/99), the complainant was charged with rape and remanded in prison. His account of ill-treatment in prison was as follows:

“There he was beaten and ill-treated in a «concrete coffin». This sixteen by sixteen foot cell held 40 prisoners with a six inch air gap some 10 foot 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).”<sup>418</sup>

These acts were found to constitute a combination of violations of both Article 7 and Article 10(1).

As noted above, the HRC has commonly recommended the adherence by State authorities to the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.<sup>419</sup> Principle 15 thereof states:

“Law enforcement officials, in their relations with persons in custody or detention, shall not use force, except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened” (emphasis added).

The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials are reprinted in full in Appendix 10.

### 3.2.3 Conditions of Detention

The HRC has dealt with many cases in which people have complained about poor conditions in places of detention, particularly prisons. In most such cases, the HRC has dealt with the case under Article 10 rather than Article 7.<sup>420</sup> While

---

418 *Wilson v. Philippines* (868/99), § 2.1.

419 The Basic Principles are reprinted in “UN Human Rights – A Compilation of International Instruments”, (1990) UN doc. A/CONF.144/28. See, e.g., Concluding Observations on Israel, (1998) UN doc. CCPR/C/79/Add.93, § 15; Concluding Observations on the U.S., (1995) UN doc. CCPR/C/79/Add.50, § 297; Concluding Observations on Cyprus, (1995) UN doc. CCPR/C/79/Add. 39, § 6; Concluding Observations on Portugal, (2003) UN doc. CCPR/CO/78/PRT, § 9. The CAT Committee has also commonly referred to these principles in its Concluding Observations.

420 See Section 3.3.2.

very poor prison conditions may generally breach Article 10, it seems that there must be an aggravating factor in order for the violation to be elevated to a breach of Article 7. Such aggravating factors include the perpetration of violence within places of detention, such as those described directly above in section 3.2.2, and situations where the relevant victim is singled out for especially bad treatment. However, it must be noted that there is no clear dividing line between Articles 7 and 10 on this issue: the HRC has not been consistent in this area.<sup>421</sup>

The following types of prison conditions have been found by the HRC to be so bad as to violate Article 7:

- Over a two year period, the victim was variously subjected to incommunicado detention, threats of torture and death, intimidation, food deprivation, being locked in a cell for days without any possibility of recreation.<sup>422</sup>
- Deprivation of food and drink for several days.<sup>423</sup>
- Victims subjected to electric shocks, hanging by his hands, immersion of his head in dirty water near to the point of asphyxia.<sup>424</sup>
- Detention in a cell for fifty hours:

“measuring 20 by 5 metres, where approximately 125 persons accused of common crimes were being held, and where, owing to lack of space, some detainees had to sit on excrement. He received no food or water until the following day”.<sup>425</sup>

- Being locked up in a cell for 23 hours a day, with no mattress or other bedding, no adequate sanitation, ventilation or electric lighting, exercise, medical treatment, adequate nutrition or clean drinking water. Furthermore, the victim’s belongings (including medication) were destroyed by the warders, and he had been denied prompt assistance in the case of an asthma-attack.<sup>426</sup>
- Beatings resulting in injuries to the victim’s head, back, chest and legs, because he and others disobeyed an order by the warders to leave their cell.

---

421 Joseph, Schultz, and Castan, above note 31, §§ 9.139-9.143.

422 *Mikong v. Cameroon* (458/91), § 9.4.

423 *Tshiesekedi v. Zaire* (242/1987), § 13b, and *Miha v. Equatorial Guinea* (414/1990), § 6.4.

424 *Weismann v. Uruguay* (8/77), § 9.

425 *Portorreal v. Dominican Republic* (188/84), § 9.2.

426 *Brown v. Jamaica* (775/97), § 6.13. It is not clear from the record of the case how long these conditions had lasted for.

Though force may be used to enforce discipline in prison, such force must be proportionate; the treatment here was not a proportionate response to the relevant disobedience.<sup>427</sup>

- Shackling of female detainees during childbirth.<sup>428</sup>

The length of time for which the detainee is held in sub-standard conditions may be a factor in determining whether a violation of Article 7 has occurred. In *Edwards v. Jamaica* (529/93), the HRC noted the “deplorable conditions of detention”<sup>429</sup> over a ten year period. The complainant was held in a cell “measuring 6 feet by 14 feet, let out only three and half hours a day, was provided with no recreational facilities and received no books.”<sup>430</sup>

### 3.2.4 Solitary Confinement

In General Comment 20, the HRC stated that “prolonged solitary confinement may amount to acts prohibited by Article 7.”<sup>431</sup> In *Polay Campos v. Peru* (577/94), the HRC found that solitary confinement for over three years violated Article 7.<sup>432</sup> However in *Kang v. Republic of Korea* (878/99), where the complainant was held for 13 years, the HRC did not find a breach of Article 7, but only a breach of Article 10 (1). The complainant in this case did not raise Article 7 so it is possible that this is why it was not addressed by the HRC.<sup>433</sup> It is nevertheless arguable that the HRC should have found a violation of Article 7 in this case.

### 3.2.5 Detention Incommunicado

If one is detained incommunicado, that means that one is unable to communicate with the outside world, and therefore cannot communicate with one’s family, friends and others, such as one’s lawyer. One year of detention incommunicado was held to constitute “inhuman treatment” in *Polay Campos v.*

---

427 *Robinson v. Jamaica* (731/97), § 10.3.

428 Concluding Observations on the U.S., (2006) UN doc. CCPR/C/USA/CO/3, § 33.

429 *Edwards v. Jamaica* (529/93), § 8.3.

430 *Edwards v. Jamaica* (529/93), § 8.3.

431 General Comment 20, § 6; see also § 11.

432 *Polay Campos v. Peru* (577/94), § 8.7. See also *Marais v. Madagascar* (49/79) and *El-Megreisi v. Libyan Arab Jamahiriya* (440/90).

433 Joseph, Schultz, and Castan, above note 31, § 9.97.

*Peru* (577/94).<sup>434</sup> In *Shaw v. Jamaica* (704/96), the author was held incommunicado for 8 months, in damp and overcrowded conditions; the HRC accordingly found that “inhuman or degrading treatment” had taken place.<sup>435</sup> Shorter periods of incommunicado detention have been found to violate Article 10, rather than Article 7.<sup>436</sup>

### 3.2.6 Disappearances

Disappearances are a particularly heinous form of incommunicado detention, as the victim’s family and friends have no idea of his or her whereabouts. “Enforced disappearance” is defined in Article 7(2)(i) of the Rome Statute of the International Criminal Court as:

“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.”

In *Laureano v. Peru* (540/1993) and *Tshishimbi v. Zaire* (542/1993), the HRC held that “the forced disappearance of victims” constituted “cruel and inhuman treatment” contrary to Article 7.<sup>437</sup> In *Bousroual v. Algeria* (992/01), the HRC stated:

“The Committee recognises the degree of suffering involved in being held indefinitely without contact with the outside world. ... In the circumstances, the Committee concludes that the [victim’s] disappearance ... and the prevention of contact with his family and with the outside world constitute a violation of Article 7.”<sup>438</sup>

In *Mojica v. Dominican Republic* (449/91), the HRC stated that “the disappearance of persons is inseparably linked to treatment that amounts to a violation of Article 7.”<sup>439</sup> That is, people who “disappear” are often tortured.<sup>440</sup> It is very

---

434 *Polay Campos v. Peru* (577/94), § 8.6.

435 *Shaw v. Jamaica* (704/96), §7.1.

436 See Section 3.3.3.

437 *Laureano v. Peru* (540/1993) and *Tshishimbi v. Zaire* (542/1993), § 8.6.

438 *Bousroual v. Algeria* (992/01), § 9.8; see also, e.g., *Sarma v. Sri Lanka* (950/00), § 9.5.

439 *Mojica v. Dominican Republic* (449/91), §5.7.

440 Joseph, Schultz, and Castan, above note 31, § 9.106.

difficult to hold persons accountable for such acts of torture as it is difficult to discover or prove the facts surrounding acts perpetrated upon disappeared persons. Indeed, disappearances often result in breaches of the right to life, as disappearance is often a precursor to the extrajudicial killing of the victim. In General Comment 6 on the right to life, the HRC stated at paragraph 4:

“States parties should also take specific and effective measures to prevent the disappearance of individuals, something which unfortunately has become all too frequent and leads too often to arbitrary deprivation of life. Furthermore, States should establish effective facilities and procedures to investigate thoroughly cases of missing and disappeared persons in circumstances which may involve a violation of the right to life.”

Disappearances that led to the murder of the disappeared person have arisen in a number of OP cases, including *Herrera Rubio v. Colombia* (161/83), *Sanjuán Arévalo v. Colombia* (181/84), *Miango Muiyo v. Zaire* (194/85), *Mojica v. Dominican Republic* (449/91), *Laureano v. Peru* (540/93),<sup>441</sup> and *Bousroual v. Algeria* (992/01). In a number of cases, the HRC has found that there are serious reasons to believe that a breach of Article 6 has occurred, but has been unable to make a final decision in that regard in the absence of confirmation of death.<sup>442</sup> Alternatively, the HRC may refrain from such a finding out of respect for the disappeared person’s family (if they have not requested such a finding), who may not have abandoned hope of finding their loved one alive: in such circumstances “it is not for [the HRC] to presume the death of [the disappeared person]”.<sup>443</sup>

The stress, anguish, and uncertainty caused to the relatives of disappeared persons also breaches Article 7. This type of Article 7 breach is discussed in the next section.

### 3.2.7 Mental Distress

Mental distress is clearly recognised by the HRC as an equally valid form of suffering for the purposes of findings under Article 7, as physical pain. For example, in *Quinteros v. Uruguay* (107/81), government security forces

---

441 *Ibid.*, § 8.13.

442 See, e.g., *Bleier v. Uruguay* (30/78), § 14.

443 *Sarma v. Sri Lanka* (950/00), § 9.6

abducted the author's daughter. The mental anguish suffered by the mother, in not knowing the whereabouts of her daughter, was acknowledged by the HRC as constituting a violation of Article 7.<sup>444</sup> Similarly, in *Schedko v. Belarus* (886/99), the HRC found a violation in the case of a mother who was not informed of the date, time or location of her son's execution and was denied access to his body and gravesite. This "complete secrecy" had the "effect of intimidating or punishing families by intentionally leaving them in a state of uncertainty and mental distress" and "amounts to inhuman treatment of the author in violation of Article 7."<sup>445</sup> In *Sankara et al v. Burkina Faso* (1159/03), the mental anguish entailed in the State party's failure to properly investigate the assassination of the victim's husband, to inform the family of the circumstances of the death, to reveal the precise location of the remains of the deceased, or to change the death certificate which listed "natural causes" (a blatant lie) as the cause of death, all amounted to breaches of Article 7.<sup>446</sup>

Of course, mental harm must reach a certain threshold before constituting a violation of Article 7. Indeed, in some situations, such as that of incarceration in reasonable circumstances, mental suffering is perhaps inevitable but is justifiable. Regarding incarceration, the HRC has suggested that there must be some aggravating factor or incident, related to the incarceration, which causes the suffering in order to be admitted for consideration by the HRC. In *Jensen v. Australia* (762/97), the complainant claimed that his transfer to a prison far away from his family had caused a high degree of mental suffering. The HRC found that the claim was not admissible as the treatment accorded to the author did not depart "from the normal treatment accorded to a prisoner."<sup>447</sup>

However, there may be circumstances in which the mental anguish caused by incarceration will fall within the scope of Article 7, as in *C v. Australia* (900/99). The complainant sought asylum in Australia, and was detained as an illegal immigrant for two years while his asylum claim was considered. Over these two years his mental health deteriorated rapidly. The State was aware of the decline in his mental health from an early stage and was also aware of the growing medical consensus that "there was a conflict between the author's

---

444 See also, eg, *Bousroual v. Algeria* (992/01), § 9.8; *Sarma v. Sri Lanka* (950/00), § 9.5.

445 *Schedko v. Belarus* (886/99), § 10.2; see also *Shukarova v. Tajikistan* (1044/02), § 8.7; *Bazarov v. Uzbekistan* (959/00), § 8.5.

446 *Sankara et al v. Burkina Faso* (1159/03), § 12.2.

447 *Jensen v. Australia* (762/97), §§ 3.4, 6.2.

continued detention and his sanity”.<sup>448</sup> It was only after two years that the relevant Minister exercised his power to release the complainant from detention on medical grounds. The HRC found that the delay in release constituted a violation of Article 7. It is important to note here that the actual detention itself was found to be arbitrary and unreasonable and therefore a violation of Article 9(1) ICCPR, unlike the case in *Jensen*. It seems unlikely that the HRC would require the release of the detainee, even if he or she was severely ill, if the fact of detention itself was reasonable, though it may require release to a more appropriate place of detention, such as a psychiatric unit.<sup>449</sup>

### 3.2.8 Unauthorised Medical Experimentation and Treatment

Subjecting an individual to medical or scientific experimentation, without his or her free consent, is expressly prohibited in Article 7. This provision presents an underlying difficulty “in finding a formulation that prohibits criminal experimentations while not ruling out at the same time legitimate scientific and medical practices”.<sup>450</sup> It seems that “only experiments that are by their very nature to be deemed torture or cruel, inhuman or degrading treatment”<sup>451</sup> are caught within this limb of Article 7. Other experiments which fall below this threshold are probably not included.<sup>452</sup>

In *Viana Acosta v. Uruguay* (110/1981), the HRC found that psychiatric experiments and tranquilizer injections against the will of the imprisoned victim constituted inhuman treatment in violation of Article 7.<sup>453</sup> Nowak also suggests that:

“medical experiments which lead to mutilation or other severe physical or mental suffering are definitely impermissible...this applies...to experiments with inseminated ova...that lead to the birth of children with disabilities who thus must ensure physical or mental suffering.”<sup>454</sup>

---

448 *C v. Australia* (900/99), § 8.4.

449 S. Joseph, “Human Rights Committee: Recent Cases”, (2003) 3 *Human Rights Law Review* 91, p. 98. In *Madafferi v Australia* (1011/01), the complainant was placed in immigration detention, and suffered declining mental health. As he was placed in home detention soon after his mental illness was diagnosed, no breach of article 7 was found. His later return to immigration detention, against medical advice, was found to breach article 10(1): see 3.3.2.

450 Nowak, above note 97, p. 188.

451 Nowak, above note 97, p. 191.

452 Such experiments, if unauthorised by the subject, would probably breach other rights, such as the right to privacy in Article 17 ICCPR, or the right to security of the person in Article 9(1) ICCPR.

453 *Viana Acosta v. Uruguay* (110/1981), § 15.

454 Nowak, above note 97, p. 191.

Consent to medical experimentation must be free and informed, and not for example obtained under duress. However, the wording of Article 7 seems to allow for a person to genuinely consent to medical or scientific experimentation, even if it objectively could amount to torture, and for such experimentation to be carried out without violating the ICCPR. This interpretation is challenged by Professor Dinstein, who assumes that such an act would still violate the prohibition on torture.<sup>455</sup> However, “both the wording of the provision and the *travaux préparatoires* tend to indicate the contrary”.<sup>456</sup>

In General Comment 20, the HRC addressed the issue of “free consent”:

“[S]pecial protection in regard to such experiments is necessary in the case of persons not capable of giving valid consent, and in particular those under any form of detention or imprisonment. Such persons should not be subjected to any medical or scientific experimentation that may be detrimental to their health.”<sup>457</sup>

This comment acknowledges the particularly vulnerable status of those who are detained, and the difficulty in assessing whether consent given by such individuals is “free”.

In Concluding Observations on the U.S., the HRC stated:

“The Committee notes that (a) waivers of consent in research regulated by the U.S Department of Health and Human Services and the Food and Drug Administration may be given in case of individual and national emergencies; (b) some research may be conducted on persons vulnerable to coercion or undue influence such as children, prisoners, pregnant women, mentally disabled persons, or economically disadvantaged persons; (c) non-therapeutic research may be conducted on mentally ill persons or persons with impaired decision-making capacity, including minors; and (d) although no waivers have been given so far, domestic law authorises the President to waive the prior informed-consent requirement for the administration of an investigational new drug to a member of the U.S. Armed Forces, if the President determines that obtaining consent is not feasible, is contrary to the best interests of the military members, or is not in the interests of U.S. national security. ...

---

455 Y. Dinstein, “The Rights to Life, Physical Integrity and Liberty” in L. Henkin (ed), *The International Bill of Rights : the Covenant on Civil and Political Rights*, Columbia University Press, 1981, at p. 125.

456 Nowak, above note 97, p. 191. The *travaux préparatoires* refer to the preparatory work of the ICCPR. See M. J Bossuyt, *Guide to the Travaux Préparatoires of the International Covenant on Civil and Political Rights*, Martinus Nijhoff, 1987.

457 General Comment 20, § 7.

The State party should ensure that it meets its obligation under Article 7 of the Covenant not to subject anyone without his/her free consent to medical or scientific experimentation. The Committee recalls in this regard the non derogable character of this obligation under Article 4 of the Covenant. When there is doubt as to the ability of a person or category of persons to give such consent, e.g. prisoners, the only experimental treatment compatible with Article 7 would be treatment chosen as the most appropriate to meet the medical needs of the individual.<sup>7458</sup>

Regarding the Netherlands, the HRC was concerned that the practice of balancing the risk of relevant research against the probable value of the research potentially meant that the high scientific value of particular research could be used to justify severe risks to the subjects of the research. The HRC also stated that certain vulnerable people, namely minors and others who are unable to give genuine consent, must not be subjected to any medical experiments that do not directly benefit them.<sup>459</sup>

The difference between “medical experimentation” and the broader category of “medical treatment” must be noted. Unexceptional medical treatment is not captured under the prohibition and a patient’s consent is not required under this Article.<sup>460</sup> Such “exempt” medical treatment probably includes compulsory vaccinations to fight the spread of contagious diseases, and mandatory diagnostic or therapeutic measures, such as pregnancy tests or compulsory treatment of the mentally ill, drug addicts or prisoners.<sup>461</sup> In *Brough v. Australia* (1184/03), the prescription of an anti-psychotic drug to the complainant without his consent was found not to breach Article 7; the drug was prescribed at the recommendation of professionals to stop the complainant’s self-destructive behaviour.<sup>462</sup> For medical treatment to fall within the scope of Article 7 it would “have to reach a certain level of severity”.<sup>463</sup> An example of the kind of “medical treatment” which would violate Article 7 would be the sterilization of women without consent.<sup>464</sup>

---

458 Concluding Observations on the U.S., (2006) UN doc. CCPR/C/USA/CO/3, § 31.

459 Concluding Observations on the Netherlands, (2001) UN doc. CCPR/CO/72/NET, § 7.

460 Unauthorised medical treatment may however give rise to other breaches of the ICCPR, such as the right to privacy in Article 17.

461 Nowak, above note 97, pp. 190-192.

462 *Brough v. Australia* (1184/03), § 9.5. No breach of the ICCPR at all was found in respect of this treatment.

463 Joseph, Schultz, and Castan, above note 31, § 9.101.

464 Concluding Observations on Japan, (1998) UN doc. CCPR/C/79/Add.102, § 31. See also *A.S. v. Hungary*, Comm. No. 4/2004, Comm. on the Elimination of Discrimination against Women (14 August 2006).

### 3.2.9 Corporal Punishment

The HRC has taken a very strict view of corporal punishment. In General Comment 20, the HRC stated that:

“the prohibition [in Article 7] must extend to corporal punishment, including excessive chastisement ordered as punishment for a crime or as an educative or disciplinary measure. It is appropriate to emphasize in this regard that Article 7 protects, in particular, children, pupils and patients in teaching and medical institutions.”<sup>465</sup>

In *Higginson v. Jamaica* (792/98), the HRC added:

“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 or degrading treatment contrary to Article 7.”<sup>466</sup>

In *Higginson*, the HRC found that the imposition, rather than only the execution, of a sentence involving whipping with a tamarind switch, violated Article 7.<sup>467</sup>

The strict approach of the HRC regarding corporal punishment has also been highlighted in a number of its Concluding Observations.<sup>468</sup> In Concluding Observations on Iraq, the HRC confirmed that corporal punishments as (arguably) prescribed under Islamic *shariah* law were breaches of Article 7.<sup>469</sup>

In Concluding Observations on Sri Lanka, the HRC condemned the use of corporal punishment in prisons and in schools.<sup>470</sup>

### 3.2.10 Death Penalty

While the HRC has taken a strict view regarding the imposition of corporal punishments, its hands are somewhat tied with regard to the death penalty.

---

465 General Comment 20, § 5.

466 *Higginson v. Jamaica* (792/98), § 6.

467 See also *Sooklal v. Trinidad and Tobago* (928/00).

468 See, e.g., Concluding Observations on Cyprus, (1998) UN doc. CCPR/C/79/Add.88, § 16 and Concluding Observations on Lesotho, (1999) UN doc. CCPR/C/79/Add. 106, § 20.

469 Concluding Observations on Iraq, (1997) UN doc. CCPR/C/79/Add. 84, § 12. Death by stoning and amputation were condemned in Concluding Observations on Yemen, (2005) UN doc. CCPR/CO/84/YEM, §§ 15-16.

470 Concluding Observations on Sri Lanka, (2003) UN doc. CCPR/CO/79/LKA, § 11.

The death penalty is specifically permitted in narrow circumstances under Article 6 of the ICCPR, the right to life. It is prohibited under the Second Optional Protocol to the ICCPR, but of course retentionist States have not ratified that treaty. Ironically, the death penalty can be compliant with the ICCPR whereas corporal punishment is not.<sup>471</sup>

Nevertheless, some aspects of the death penalty have been challenged under the ICCPR, as detailed directly below.

### **a) Method of Execution**

The HRC has stated that the imposition of the death penalty must be conducted “in such a way as to cause the least possible physical and mental suffering.”<sup>472</sup> In *Ng v. Canada* (469/91), the victim faced the possibility of being extradited to the U.S., where he faced execution by gas asphyxiation in California. The HRC found, on the basis of evidence submitted regarding the agony caused by cyanide gas asphyxiation, that such a method of execution did not constitute the “least possible physical pain and suffering” and would constitute cruel and inhuman treatment in violation of Article 7.<sup>473</sup> In *Cox v. Canada* (539/93), the HRC held that death by lethal injection would not breach Article 7.<sup>474</sup>

The act of performing an execution in public has been deplored by the HRC and constitutes inhuman or degrading treatment.<sup>475</sup>

### **b) Death Row Phenomenon**

The “death row phenomenon” is experienced by inmates who are detained on death row for an extended amount of time; the term describes the “ever increasing mental anxiety and mounting tension over one’s impending death”.<sup>476</sup> The European Court of Human Rights, in the case of *Soering v. UK*,<sup>477</sup> as well as the Judicial Committee of the Privy Council, have acknowledged the inhuman or degrading nature of the death row phenomenon. For

---

471 Joseph, Schultz, and Castan, above note 31, § 9.90. See, regarding the death penalty and CAT, Section 4.5.

472 General Comment 20, § 6.

473 *Ng v. Canada* (469/91), § 16.4.

474 *Cox v. Canada* (539/93) § 17.3. See however Section 4.5.

475 Concluding Observations on the Islamic Republic of Iran, (1993) UN doc. CCPR/C/79/Add. 25, § 8.

476 Joseph, Schultz, and Castan, above note 31, § 9.53.

477 *Soering v. UK*, No. 14038/88, Eur. Ct. of Hum. Rts. (7 July 1989).

example, in *Pratt and Morgan v. Attorney General for Jamaica*,<sup>478</sup> the Judicial Committee of the Privy Council found that detention on death row should last for no longer than five years. Nevertheless, the HRC has thus far refused to recognise that this type of suffering breaches Article 7.

The HRC's most extensive discussion of the death row phenomenon, at the time of writing, arose in *Johnson v. Jamaica* (588/94), where the complainant had been on death row for "well over 11 years".<sup>479</sup> The HRC rejected the idea that the death row phenomenon of itself constitutes a breach of Article 7 for the following reasons:

- The ICCPR permits the death penalty in certain circumstances. Detention on death row is an inevitable consequence of the imposition of the death penalty.
- The HRC does not wish to set "deadlines" which encourage a State to carry out a death penalty within a certain time period.
- The HRC does not wish to encourage the expeditious carrying out of the death penalty.
- The HRC does not wish to discourage States from adopting policies which are positive, yet may have the effect of extending stays on death row, such as moratoriums on executions.

The HRC conceded that it was not acceptable to keep a condemned prisoner on death row for many years. However, "the cruelty of the death row phenomenon is first and foremost a function of the permissibility of the death penalty under the Covenant".<sup>480</sup> Therefore, for pragmatic reasons, the HRC decided that extended time on death row of itself does not breach the ICCPR.

However, there may be aggravating factors which render a person's detention on death row a breach of Article 7. For example, in *Clive Johnson v. Jamaica* (592/94), the complainant was a minor who was placed on death row in breach of Article 6(5) of the ICCPR.<sup>481</sup> The HRC also found a breach of Article 7 and stated that:

---

478 *Pratt and Morgan v. Attorney-General for Jamaica* [1993] 2 AC 1.

479 *Johnson v. Jamaica* (588/94), § 8.1.

480 *Johnson v. Jamaica* (588/94), § 8.4.

481 Article 6(5) prohibits the imposition or application of the death penalty to persons under the age of 18.

“[t]his detention ... may certainly amount to cruel and inhuman punishment, especially when the detention lasts longer than is necessary for the domestic legal proceedings required to correct the error involved in imposing the death sentence”.<sup>482</sup>

Furthermore, the issuing of a death warrant, to a person who is mentally ill constitutes a breach of Article 7. The individual does not have to be mentally incompetent at the time of imposition of the death penalty for a violation to be found: he or she need only to be ill at the time that the warrant for actual execution is issued.<sup>483</sup>

In *Chisanga v. Zambia* (1132/02), the complainant was led to believe that his death sentence was commuted, and he was removed from death row for two years. After two years, he was returned to death row without explanation from the State. The HRC found that such treatment “had such a negative psychological impact and left him in such continuing uncertainty, anguish and mental distress as to amount to cruel and inhuman treatment” in breach of Article 7.<sup>484</sup>

Mental distress and strain increases when the warrant for execution is actually issued and the inmate is transferred to a special death cell whilst awaiting execution. In *Pennant v. Jamaica* (647/95), the HRC found that a two week detention in a death cell after the warrant of execution was read, pending application for a stay, violated Article 7 of the ICCPR. Therefore, detention in a death cell should not be unduly extended, and is distinguishable from extended detention on death row.

Where a stay is issued in the case of a pending execution the prisoner should be told as soon as possible. In *Pratt and Morgan v. Jamaica* (210/86, 225/87), a gap of 24 hours was held to constitute a violation of Article 7. In *Thompson v. St Vincent and the Grenadines* (806/98), the complainant was removed from the gallows only 15 minutes before the scheduled execution on the basis that a stay had been granted. As he was informed as soon as possible of the stay, no breach of Article 7 was found.

In *Persaud and Rampersaud v. Guyana* (812/98), a complainant who had spent 15 years on death row again tried to argue that the death row phenomenon was of itself a breach of Article 7. The HRC found that the mandatory imposition

---

482 *Clive Johnson v. Jamaica* (592/94), concurring opinion of Mr Kretzmer.

483 *R.S v. Trinidad and Tobago* (684/96), § 7.2; see also Concluding Observations on the U.S., (2006) UN doc. CCPR/C/USA/CO/3, § 7.

484 *Chisanga v. Zambia* (1132/02), § 7.3.

of the death penalty in this case breached the right to life in Article 6. Having found a breach of Article 6, the HRC added:

“As regards the issues raised under Article 7 of the Covenant, the Committee would be prepared to consider that the prolonged detention of the author on death row constitutes a violation of Article 7. However, having also found a violation of Article 6, paragraph 1, it does not consider it necessary in the present case to review and reconsider its jurisprudence that prolonged detention on death row, in itself and in the absence of other compelling circumstances, does not constitute a violation of Article 7.”<sup>485</sup>

In this case, decided in early 2006, the HRC does not reject the Article 7 claim, and seems to open the door for a possible challenge to the *Johnson* precedent in a future case. Therefore, it is possible that the HRC might find the death row phenomenon to be in breach of Article 7 in the near future.<sup>486</sup>

### 3.2.11 Cruel Sentences

Outside of the context of corporal or capital punishments, it is still possible for a sentence to be so cruel as to breach Article 7. In regard to the U.S., the HRC recommended that no child offender ever be sentenced to a life sentence without parole, and that all such existing sentences be reviewed. Such sentences breach Article 7 in conjunction with Article 24, which recognises the right of special protection for children in light of their special vulnerability.<sup>487</sup>

### 3.2.12 Extradition, Expulsion and Refoulement

In General Comment 20, the HRC stated:

“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.”<sup>488</sup>

The ICCPR therefore casts a wider net than CAT in relation to mistreatment from which an individual must be protected, as Article 3 of CAT only prohibits return where there is danger of torture. Despite the broader apparent

---

485 *Persaud and Rampersaud v. Guyana* (812/98), § 7.3.

486 See also Concluding Observations on Benin, (2004) UN doc. CCPR/CO/82/BEN, § 13.

487 Concluding Observations on the U.S., (2006) UN doc. CCPR/C/USA/CO/3, § 34.

488 General Comment No. 20, § 9.

scope of the ICCPR, most cases on this issue have come before the CAT Committee.<sup>489</sup>

In *C v. Australia* (900/99), the complainant was granted refugee status in Australia and issued with a protection visa on the basis that he had a well-founded fear of persecution on the basis of his race and his religion if returned to Iran. The complainant then committed a number of serious crimes over a six month period for which he was convicted and sentenced to imprisonment. Upon his release, the relevant Minister ordered that he be deported from Australia to Iran. The complainant challenged the proposed deportation on the basis that he faced a substantial risk of torture, cruel or inhuman treatment if returned to Iran. The HRC agreed that the complainant's deportation would breach Article 7 in two ways. First, he faced persecution as an Assyrian Christian, and a real risk of torture. Second, the complainant was mentally ill, and it was doubtful that he could access the necessary medicine to control his illness in Iran.

Both findings were influenced by unique features of this case. First, with regard to the finding of likely persecution, the HRC emphasised that Australia had already accepted that the author faced persecution upon his return to Iran by originally granting him refugee status. Given that the State party had previously acknowledged the danger facing the author, the HRC was less inclined to "accept the State's arguments that conditions had changed so much as to supersede its own decision".<sup>490</sup> Regarding the finding on the availability of medicine, the HRC emphasized that the relevant illness was largely caused by the complainant's original incarceration in immigration detention, and therefore was caused by the actions of the State party itself.<sup>491</sup>

In Concluding Observations on Canada, the HRC expressed concern over "allegations that the State party may have cooperated with agencies known to resort to torture with the aim of extracting information from individuals detained in foreign countries".<sup>492</sup> Therefore, "rendition" is impermissible under Article 7 of the ICCPR.<sup>493</sup>

---

489 See Section 4.3.

490 S. Joseph, "Human Rights Committee: Recent Cases", (2003) 3 *Human Rights Law Review* 91, p. 99.

491 See Section 3.2.7.

492 Concluding Observations on Canada, (2006) UN doc. CCPR/C/CAN/CO/5, § 15.

493 See, e.g., Concluding Observations on the U.S., (2006) UN doc. CCPR/C/USA/CO/3, § 15, and Section 4.3.8.

A State must ensure that its procedures for deciding whether to deport a person take Article 7 rights into account. If a deportation proceeding is procedurally inadequate, a breach of Article 7 may ensue even in the absence of a substantive finding by the HRC that there is a real risk of torture upon deportation.<sup>494</sup> In this respect, it may be noted that the mere receipt of diplomatic assurances from a recipient State that it will not torture a deportee is not sufficient:

“States should exercise the utmost care in the use of diplomatic assurances and adopt clear and transparent procedures with adequate judicial mechanisms for review before individuals are deported, as well as effective mechanisms to monitor scrupulously and vigorously the fate of the affected individuals. [States] should further recognise that the more systematic the practice of torture or cruel, inhuman or degrading treatment or punishment, the less likely it will be that a real risk of such treatment can be avoided by such assurances, however stringent any agreed follow-up procedures may be.”<sup>495</sup>

As noted in Section 3.2.9, the HRC has confirmed that corporal punishment breaches Article 7. Therefore, expulsion of a person to a State where he or she might face corporal punishment presumably breaches the ICCPR. In *G.T. v. Australia* (706/1996) and *A.R.J v. Australia* (692/1996), the HRC affirmed that where there was a foreseeable risk of corporal punishment, any such extradition would violate Article 7. However, the risk “must be real, i.e. be the necessary and foreseeable consequence of deportation”.<sup>496</sup> In both cases, the complainants failed to establish that the risk was sufficiently real and foreseeable, so the HRC found that the deportations, if carried out, would not breach Article 7.

A number of cases have come before the HRC from persons fighting extradition to States where they face a real risk of execution. These authors claimed that such extradition breached Article 6, the right to life, in exposing them to the death penalty, or Article 7, in exposing them to a cruel execution or the death row phenomenon. The HRC’s original position was that such extradition did not breach the ICCPR unless it was foreseeable that the death penalty would somehow be carried out in a way that breached the ICCPR.<sup>497</sup> However,

---

494 See e.g., *Ahani v. Canada* (1051/02).

495 Concluding Observations on the U.S., (2006) UN doc. CCPR/C/USA/CO/3, § 16. See also Section 4.3.9.

496 *A.R.J v. Australia* (692/96), § 6.14.

497 See *Kindler v. Canada* (470/91).

the HRC's position on this matter has changed. Such extradition will now often be found to breach Article 6, the right to life, even though Article 6(2) explicitly permits the imposition of the death penalty. In *Judge v. Canada* (829/98), the HRC found that the death penalty exception explicitly does not apply to States such as Canada that have abolished the death penalty. Therefore, such States may not apply the death penalty, nor may they expose a person to the death penalty by extraditing them. In *Judge*, the proposed extradition was to have been from Canada to the U.S. Ironically, the deportation may have entailed a breach of the ICCPR by Canada, but any ultimate execution by the U.S. may not have constituted a breach of the ICCPR by the U.S. This is because the U.S. is not a State that has abolished the death penalty, and therefore may "benefit" from Article 6(2). Canada, on the other hand, has abolished the death penalty, and therefore does not benefit from the death penalty exception in Article 6(2).

**a) Pain and Suffering Caused by Being Forced to Leave a State**

In *Canepa v. Canada* (558/93), the complainant was deported from Canada to Italy due to his criminal record. He was an Italian citizen who had lived in Canada for most of his life but had never taken up Canadian citizenship. The deportee argued that the anguish he would experience in being separated from his family, and displaced from a State that he considered to be his home, constituted cruel, inhuman or degrading treatment. The HRC found that the deportation would not breach Article 7. Therefore, it seems that the mental pain entailed in being forced to leave a State, and therefore one's life in that State behind, does not breach Article 7, at least so long as the reasons behind the deportation are reasonable.

### **3.2.13 Gender-Specific Violations of Article 7**

In General Comment 28, the HRC stated at paragraph 11:

"To assess compliance with Article 7 of the Covenant, ... the Committee needs to be provided information on national laws and practice with regard to domestic and other types of violence against women, including rape. It also needs to know whether the State party gives access to safe abortion to women who have become pregnant as a result of rape. The States parties should also provide the Committee with information on measures to prevent forced abortion or forced sterilization. In States parties where the practice of genital mutilation exists information on its extent and on measures to eliminate it should be

provided. The information provided by States parties on all these issues should include measures of protection, including legal remedies, for women whose rights under article 7 have been violated.”

The HRC has consistently recognised that domestic violence can breach Article 7 in conjunction with Article 3 (which guarantees the equal rights under the ICCPR of men and women). States parties must take appropriate measures to combat such violence, such as investigation of allegations, and prosecution and punishment of perpetrators.<sup>498</sup> In addition, General Comment 28 indicates that the following treatment breaches Article 7:

- Rape
- Lack of access to abortion after a rape
- Forced abortion
- Forced sterilization
- Female genital mutilation<sup>499</sup>

In Concluding Observations on the Netherlands, the HRC stated that women should not be deported to countries where they may be subjected to practices of genital mutilation and other traditional practices which “infringe upon the physical integrity or health of women”.<sup>500</sup>

In Concluding Observations on Morocco, the HRC found that the criminalization of abortion, which effectively forces women to carry pregnancies to term, breached Article 7.<sup>501</sup>

Finally, on the U.S., the HRC suggested that the shackling of women during childbirth breaches article 7.<sup>502</sup>

---

498 See e.g., Concluding Observations on Paraguay, (2006) UN doc. CCPR/C/PRY/CO/2, § 9; Concluding Observations on Italy, (2006) UN doc. CCPR/C/ITA/CO/5, § 9, and Concluding Observations on Norway, (2006) UN doc. CCPR/C/NOR/CO/5, § 10. Indeed, the HRC has flagged domestic violence as an Article 7 issue with regard to most States parties in recent Concluding Observations. See also Nowak, above note 97, p. 184.

499 The HRC has consistently condemned the practice of female genital mutilation in numerous Concluding Observations. See, for recent statements to this effect, e.g., Concluding Observations on Yemen, (2005) UN doc. CCPR/CO/84/YEM, § 11; Concluding Observations on Kenya, (2005) UN doc. CCPR/CO/83/KEN, § 12; Concluding Observations on Benin, (2004) UN doc. CCPR/CO/82/BEN, § 11; Concluding Observations on Gambia, (2004) UN doc. CCPR/CO/75/GMB, § 10.

500 Concluding Observations on the Netherlands, (2001) UN doc. CCPR/CO/72/NE, § 11.

501 Concluding Observations on Morocco, (2004) UN doc. CCPR/CO/82/MAR, § 29; see also Concluding Observations on Sri Lanka, (2003) UN doc. CCPR/CO/79/LKA, § 12.

502 Concluding Observations on the U.S., (2006) UN doc. CCPR/C/USA/CO/3, § 33.

### 3.2.14 Non-Use of Statements obtained in Breach of Article 7

In General Comment 20, the HRC stated:

“It is important for the discouragement of violations under article 7 that the law must prohibit the use or admissibility in judicial proceedings of statements or confessions obtained through torture or other prohibited treatment.”<sup>503</sup>

This aspect of Article 7 complements Article 14(3)(g) of the ICCPR, which provides for a right against self incrimination.<sup>504</sup>

In *Singarasa v. Sri Lanka* (1033/01), the HRC confirmed that in domestic criminal proceedings, “the prosecution must prove that the confession was made without duress”.<sup>505</sup> A violation of Article 7 (as well as Article 14(3)(g)) was entailed in the fact that the burden of proof in this respect was placed in domestic proceedings on the complainant.<sup>506</sup>

In *Bazarov v. Uzbekistan* (959/00), the complainant’s co-defendants testified against him after being tortured. Their evidence was used to convict the complainant. A violation of the complainant’s rights under Article 14(1) ICCPR was found, which protects the right to a fair trial.<sup>507</sup> No violation of Article 7 could be found in this respect, as this aspect of the complaint did not concern torture perpetrated upon the complainant, and the tortured co-defendants were not parties to the OP complaint, so no violations of their rights could specifically be found.

### 3.2.15 Positive duties under Article 7

A “negative” duty entails a duty upon a State to refrain from certain actions, such as the perpetration of acts of torture. A positive duty entails a duty for a State to perform rather than refrain from certain acts. States parties have numerous positive duties under Article 7, which are designed to prevent the

---

503 General Comment 20, § 12.

504 Joseph, Schultz, and Castan, above note 31, § 9.107. See e.g., Concluding Observations on the U.S., (2006) UN doc. CCPR/C/USA/CO/3, § 14.

505 *Singarasa v. Sri Lanka* (1033/01), § 7.4.

506 See also Concluding Observations on the Philippines, (2003) UN doc. CCPR/CO/79/PHL, § 12.

507 *Bazarov v. Uzbekistan* (959/00), § 8.3.

occurrence of violations, and to ensure that alleged violations are appropriately investigated. If a violation is established to have occurred, perpetrators should be punished and victims should be compensated. Similar duties arise under the CAT, and most cases on this issue have been addressed by the CAT Committee rather than the HRC.<sup>508</sup> Indeed, it is submitted that most if not all of the explicit positive duties outlined in CAT are implicitly contained in Article 7.<sup>509</sup>

### **a) Duty to enact and enforce Legislation**

In General Comment 20, the HRC stated:

“State parties should indicate when presenting their reports the provisions of their criminal law which penalize torture and cruel, inhuman and degrading treatment or punishment, specifying the penalties applicable to such acts, whether committed by public officials or other persons acting on behalf of the State, or by private persons. Those who violate article 7, whether by encouraging, ordering, tolerating or perpetrating prohibited acts, must be held responsible. Consequently, those who have refused to obey orders must not be punished or subjected to any adverse treatment.”<sup>510</sup>

For example, in 1995 the HRC noted its concern that Yemen had failed to pass laws which deal with domestic violence.<sup>511</sup> In 2002, the HRC returned to the issue noting that, although Yemen had adopted laws which addressed the issue, there continued to be a lack of proper enforcement.<sup>512</sup> A similar criticism was made in 2005.<sup>513</sup> Therefore, the enactment of relevant legislation is not sufficient; relevant legislation must be enforced by appropriate persons, such as police, prosecutors and the courts.

### **b) Duty to investigate Allegations of Torture**

States have an obligation to ensure that all complaints of torture are responded to effectively. Such an obligation is grounded in a combination of Article 7

---

508 See section 4.6. One relevant case before the HRC was *Zheikov v. Russian Federation* (889/99), § 7.2.

509 It is perhaps unlikely that the duties regarding universal jurisdiction (see Section 4.8) exist under the ICCPR, but all other positive duties contained in the CAT seem to have been confirmed as existing under Article 7, as seen below in Sections 3.2.15 (a)-(f).

510 General Comment 20, § 13.

511 Concluding Observations on Yemen, (1995) UN doc. CCPR/C/79/Add.51, § 14.

512 Concluding Observations on Yemen, (2002) UN doc. CCPR/CO/75/YEM, § 6.

513 Concluding Observations on Yemen, (2005) UN doc. CCPR/CO/84/YEM, § 12.

and Article 2(3), which requires States to provide remedies to victims of ICCPR rights abuses. “Complaints must be investigated promptly and impartially by competent authorities so as to make the remedy effective”.<sup>514</sup> Most cases on this issue have been dealt with under the CAT.<sup>515</sup>

*Rajapakse v. Sri Lanka* (1250/04) concerned a deficient investigation into allegations of torture. Despite compelling evidence of ill-treatment of the victim, a criminal investigation into the allegations of ill-treatment did not begin for three months. Since commencement, the investigation had stalled significantly, and little progress had been made by the time of the HRC’s decision, four years after the alleged incident.<sup>516</sup> For example, by the time of the HRC’s decision, only one of ten witnesses had actually given evidence. The HRC noted that “the large workload” of its courts “did not excuse it from complying with its obligations under the Covenant”.<sup>517</sup> Furthermore, the State had failed to “provide any timeframe for the consideration of the case”.<sup>518</sup> The HRC concluded:

“Under article 2, paragraph 3, the State party has an obligation to ensure that remedies are effective. Expedition and effectiveness are particularly important in the adjudication of cases involving torture. The general information provided by the State party on the workload of the domestic courts would appear to indicate that the High Court proceedings and, thus the author’s ... case will not be determined for some time. The Committee considers that the State party may not avoid its responsibilities under the Covenant with the argument that the domestic courts are dealing with the matter, when it is clear that the remedies relied upon by the State party have been prolonged and would appear to be ineffective. For these reasons, the Committee finds that the State party has violated article 2, paragraph 3, in conjunction with 7 of the Covenant. ...”<sup>519</sup>

In Concluding Observations, the HRC has stressed that investigations must be impartial and should preferably be conducted by an external body. For example, regarding Hong Kong, the HRC noted the high number of complaints

---

514 General Comment 20, § 14; see e.g., Concluding Observations on Italy, (2006) UN doc. CCPR/C/ITA/CO/5, § 10. See Model Complaint, *Textbox ii*, § 53.

515 See Section 4.6.2.

516 As the proceedings were so prolonged, the complaint was found to comply with the domestic remedies requirement: *Rajapakse v. Sri Lanka* (1250/04), § 9.2.

517 *Rajapakse v. Sri Lanka* (1250/04), § 9.4.

518 *Rajapakse v. Sri Lanka* (1250/04), § 9.4.

519 *Rajapakse v. Sri Lanka* (1250/04), § 9.5.

against police officers which were ultimately dismissed. The HRC stressed the importance of an investigation process which is, and which appears to be, “fair and independent” and thus strongly recommended that investigations be carried out by an independent mechanism rather than by the police themselves.<sup>520</sup>

Furthermore, “the right to lodge complaints against maltreatment prohibited by Article 7 must be recognised in the domestic law”.<sup>521</sup> Therefore, such complainants must be protected from reprisals or victimization, regardless of the success of their complaints.<sup>522</sup>

### **c) Duty to Punish Offenders and Compensate Victims**

States have an obligation to pass and enforce legislation which prohibits violations of Article 7. Therefore, States must investigate, appropriately punish perpetrators, and provide effective remedies to victims. Furthermore, any victim of Article 7 treatment is entitled to a remedy in respect of that treatment under Article 2(3) of the ICCPR. Appropriate remedies will vary according to the circumstances of a case, and might include monetary compensation for losses as well as for pain and suffering, and rehabilitation.

An “amnesty” law is a law which protects persons from prosecution for past offences, including, occasionally, human rights abuses. Such laws are often passed by States in transition from dictatorship to democracy. In General Comment 20, the HRC stated:

“Amnesties are generally incompatible with the duty of States to investigate such [breaches of article 7]; to guarantee freedom from such acts within their jurisdiction; and to ensure that they do not occur in the future. States may not deprive individuals of the right to an effective remedy, including compensation and such full rehabilitation as may be possible.”<sup>523</sup>

In *Rodriguez v. Uruguay* (322/88), the complainant claimed that he had been subjected to torture under the previous military regime in Uruguay and that

---

520 Concluding Observations on Hong Kong, (1996) UN doc. CCPR/C/79/Add. 57, § 11; see also e.g., Concluding Observations on Brazil, (2005) UN doc. CCPR/C/BRA/CO/2, § 13; Concluding Observations on the Syrian Arab Republic, (2005) UN doc. CCPR/CO/84/SYR, §§ 8, 9; Concluding Observations on Slovenia, (2005) UN doc. CCPR/CO/84/SVN, § 9, Concluding Observations on Kenya, (2005) UN doc. CCPR/CO/83/KEN, § 18.

521 General Comment 20, § 14.

522 See Concluding Observations on Brazil, (1996) UN doc. CCPR/C/79/Add.66, § 327.

523 General Comment 20, § 15.

he had sought judicial investigation and appropriate redress for this violation. The new government declined to investigate the allegations and parliament enacted “Law no 15,848...which effectively provided for the immediate end of judicial investigation into such matters”.<sup>524</sup> The application of this rule by the judiciary prevented individuals from being able to seek any form of redress for their claims of torture and mistreatment. The State responded that such criminal investigation would be contrary to goals of “reconciliation, pacification and the strengthening of democratic institutions”<sup>525</sup> within Uruguay. It may also be noted that the amnesty law was endorsed by a referendum in Uruguay. The HRC found that the amnesty law breached the State party’s obligation to investigate and remedy breaches of Article 7. The HRC added its concern that the amnesty law may help to generate an “atmosphere of impunity” which might generate further human rights violations.<sup>526</sup> The HRC’s disapproval of such amnesty laws has also been exhibited in numerous Concluding Observations.<sup>527</sup>

The punishment given to those who violate Article 7 must also reflect the gravity of the offence. For example, the HRC has expressed its concern regarding the tendency for police officers in Spain to be given lenient sentences or to simply avoid punishment altogether.<sup>528</sup>

Unlike CAT, the ICCPR does not contain any explicit provisions which create a universal jurisdiction over alleged torturers,<sup>529</sup> nor has the HRC referred to such jurisdiction. It is therefore possible that the ICCPR does not confer such jurisdiction over alleged torturers.<sup>530</sup>

#### **d) Duty to Train Appropriate Personnel**

The HRC has specified certain categories and classes of people whose operational rules and ethical standards must be informed by the content of Article 7, and who should receive specific instruction and training in this regard. These people are:

---

524 *Rodríguez v. Uruguay* (322/88), § 2.2.

525 *Rodríguez v. Uruguay* (322/88), § 8.5.

526 *Rodríguez v. Uruguay* (322/88) § 12.4.

527 See e.g., Concluding Observations on El Salvador, (1994) UN doc. CCPR/C/79/ADD.34, § 7; Concluding Observations on Bolivia, (1998) UN doc. CCPR/C/79/Add. 73, § 15; Concluding Observations on Lebanon, (1998) UN doc. CCPR/C/79/Add. 78, § 12.

528 Concluding Observations on Spain, (1996) UN doc. CCPR/C/79Add. 61.

529 See Section 4.8.

530 Joseph, Schultz, and Castan, above note 31, § 9.131.

“enforcement personnel, medical personnel, police officers and any other persons involved in the custody or treatment of any individual subjected to any form of arrest, detention or imprisonment.”<sup>531</sup>

States parties are required to inform the HRC in their reports of the instruction and training given in this regard. Such training is particularly important for States in transitional phases of their political development, where enforcement authorities, such as the police, have developed a culture of routinely using torture or ill-treatment to perform their functions. Training is necessary to eradicate such a culture and to ensure that people understand that such methods are simply unacceptable.

### **e) Procedural Safeguards**

States must ensure that there are adequate procedural safeguards in place to protect those who are particularly vulnerable to breaches of their rights under Article 7. Such persons include people in detention, such as prisoners (including suspects, remand prisoners, and convicted prisoners) or involuntary patients in psychiatric wards. The HRC recommends that “interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment” should all be systemically reviewed to minimize and prevent cases of torture or ill-treatment.<sup>532</sup>

The crucial importance of relevant and accurate record keeping has also been emphasized:

“To guarantee the effective protection of detained persons, provisions should be made for detainees to be held in places officially recognised as places of detention and for their names and places of detention, as well as for the names of persons responsible for their detention, to be kept in registers readily available and accessible to those concerned, including relatives and friends. To the same effect, the time and place of all interrogations should be recorded, together with the names of all those present and this information should also be available for purposes of judicial or administrative proceedings.”<sup>533</sup>

---

531 General Comment 20, § 10.

532 General Comment 20, § 11.

533 General Comment 20, § 11.

The HRC also specifies that places of detention must not contain equipment which can be used to torture or grossly mistreat an individual.<sup>534</sup> Furthermore, detainees must be given regular and prompt access to doctors, lawyers and family members (with supervision where required).

As noted above, incommunicado detention can of itself breach Article 7.<sup>535</sup> Instances of incommunicado detention, and particularly disappearances, increase the opportunity for the perpetration of Article 7 treatment without punishment or even detection. Therefore, “[p]rovisions should ... be made against incommunicado detention”.<sup>536</sup>

The types of safeguards described above reflect the important relationship between effective procedures and protection against substantive violations of Article 7.

### **3.2.16 Overlap between Article 7 and other ICCPR Provisions**

Article 7 breaches overlap considerably with breaches of Article 10 ICCPR (see Section 3.3). Breaches of Article 7 commonly arise with other ICCPR breaches too. For example, torture can often result in death, leading to breaches of both the right to freedom from torture and the right to life (Article 6 ICCPR). As noted above in Section 3.2.6, disappearances often result in both torture and death.

Breaches of Article 7 often also arise in conjunction with breaches of Article 9 ICCPR, concerning arbitrary detention and/or threats to the security of the person.<sup>537</sup> Incommunicado detention, for example, will breach Article 9 and, if lengthy enough, will also breach Article 7.<sup>538</sup> Torture and ill-treatment can be used to procure evidence ultimately used in a trial, which will lead to breaches of the right to a fair trial in Article 14 ICCPR. Finally, Article 7 breaches often arise in the context of discrimination, contrary to Article 26 ICCPR.

---

534 General Comment 20, § 11. See Model Complaint, *Textbox ii*, § 41.

535 See Section 3.2.5; see also Section 3.3.3. See Model Complaint, *Textbox ii*, § § 45-47, 63.

536 General Comment 20, § 11.

537 See also Section 2.3.5.

538 Disappearances will commonly breach Articles 6, 7, 9, and 10; see *Bousroual v. Algeria* (992/01), § 9.2.

### 3.3 Jurisprudence under Article 10

Article 10 states:

- “1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;  
  
(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.
3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.”

Article 10 seeks to address the distinct vulnerability of those who are in detention and to ensure that the deprivation of liberty does not leave detainees exposed to human rights violations. Such protection is essential as “the situation of “special power relationships” within closed facilities often occasions massive violations of the most diverse human rights”.<sup>539</sup>

Article 10 is both narrower and broader than Article 7. It is narrower as it only applies to people in detention. It is broader as it proscribes a less severe form of treatment, or lack of treatment, than Article 7.<sup>540</sup> The less severe nature of Article 10 abuses is reflected by the fact that it is a derogable right under Article 4 of the ICCPR.<sup>541</sup>

#### 3.3.1 Application of Article 10

In General Comment 21, the HRC outlined the beneficiaries of Article 10 rights, that is the meaning of “persons deprived of their liberty”. Article 10 “applies to anyone deprived of liberty under the laws and authority of the State who is held in prisons, hospitals – particularly psychiatric hospitals – detention

---

539 Nowak, above note 97, p. 242.

540 General Comment 21, § 3; see also *Griffin v. Spain* (493/92), § 6.3.

541 However, the HRC has stated that Article 10 is implicitly non-derogable in General Comment 29, § 13(a).

camps or correctional institutions or elsewhere”.<sup>542</sup> It is not relevant to the application of Article 10 whether the fact of the deprivation of liberty is unreasonable or unlawful.<sup>543</sup>

Article 10 applies to all institutions and establishments which are within the State’s jurisdiction.<sup>544</sup> Therefore, the State continues to be responsible for the well-being of detainees and for any violations of Article 10 in private detention centres. In *Cabal and Pasini Betran v. Australia* (1020/02), the HRC noted 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 the State party of its obligations under the Covenant”.<sup>545</sup>

It is clearly more difficult for a State to oversee conditions in a private detention facility than in one that it runs itself. Therefore, the HRC has a preference for the maintenance of State control and management over detention facilities.<sup>546</sup> At the least, States parties must regularly monitor such places of detention to ensure that the requirements of Article 10 are being upheld.

### 3.3.2 Conditions of Detention

Clearly, a case regarding appalling conditions of, or treatment in, detention potentially raises issues under both Articles 7 and 10. The HRC has tended to address most such cases under Article 10, unless there is an element of personal persecution of the victim, or unless violent treatment or punishment is involved.<sup>547</sup> Nowak suggests that Article 10(1) aims to address situations where there is a poor “general state or detention facility” while Article 7 is aimed at addressing “specific, usually violent attacks on personal integrity”.<sup>548</sup> However, the line between violations under Article 7 and violations under Article 10 is often difficult to discern.<sup>549</sup> Sometimes violations of both Articles are found.

---

542 General Comment 21, § 2.

543 Article 9 ICCPR addresses the issue of whether the fact of detention itself breaches human rights.

544 General Comment 21, § 2.

545 *Cabal and Pasini Betran v. Australia* (1020/02), § 7.2.

546 Concluding Observations on New Zealand, (2002) UN doc. CCPR/CO/75/NZL, § 13.

547 Joseph, Schultz, and Castan, above note 31, §§ 9.139-9.143. See also Section 3.2.3.

548 Nowak, above note 97, p. 250.

549 Joseph, Schultz, and Castan, above note 31, § 9.144.

In *Madafferi v. Australia* (1011/01), the return of the complainant to immigration detention despite his mental illness, and against the advice of doctors and psychiatrists, was deemed to be a breach of Article 10(1). The facts of this case in this respect resemble *C v. Australia* (900/99), where a violation of Article 7 was found.<sup>550</sup> The HRC stated with regard to a simultaneous complaint regarding Article 7:

“In the light of this finding in respect of article 10, a provision of the Covenant dealing specifically with the situation of persons deprived of their liberty and encompassing for such persons the elements set out generally in article 7, it is not necessary to separately consider the claims arising under article 7.”

This recent comment indicates that the lines between violations of Article 7 and Article 10 are very fine indeed.

The application of Article 10 “cannot be dependent on the material resources available in the State party”.<sup>551</sup> This is an important principle, as the provision of adequate detention facilities to address issues such as overcrowding in prisons can cost considerable amounts of money.

As with Article 10, considerations of breach sometimes entail a subjective element. In *Brough v. Australia* (1184/03), the HRC stated:

“Inhuman treatment must attain a minimum level of severity to come within the scope of article 10 of the Covenant. The assessment of this minimum depends on all the circumstances of the case, such as the nature and context of the treatment, its duration, its physical or mental effects and, in some instances, the sex, age, state of health or other status of the victim.”<sup>552</sup>

The following situations have been classified as breaches of Article 10(1). As can be seen, the provision covers a wide range of situations, some of which surely verge close to the line of violating Article 7, while others seem far away from that line:

- Detention for 42 months on remand in a small and overcrowded cell followed by 8 years on death row, including periods of solitary confinement in appalling conditions.<sup>553</sup>

---

550 See Section 3.2.7.

551 General Comment 21, § 4.

552 *Brough v. Australia* (1184/03), § 9.2.

553 *Kennedy v. Trinidad and Tobago* (845/98), § 7.8.

- For sixteen months, the victim was unable to leave his cell even for a shower or a walk; detention in cell measuring 3 metres by 3, which he shared at first with 8 and, eventually, 15 other detainees; inadequate food. The victim was then held for 16 months in another prison 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 guarding him occasionally put the complainant out in the yard as he could not move by himself (due to injuries sustained).<sup>554</sup>
- Five years in a solitary cell measuring 9 by 6 feet, containing an iron mattress, bench and table, with a plastic pail for a toilet. A small ventilation hole was the only opening. There was no natural light, only a fluorescent strip that was on 24 hours a day. After five years, the prisoner was moved to share a 9 by 6 feet cell with 12 other prisoners. The overcrowding caused violent confrontations to erupt amongst the prisoners. There were not enough beds, so the victim slept on the floor. The plastic pail toilet was only emptied once a day, and sometimes overflowed. The victim was locked in his cell for 23 hours with no educational opportunities, work or reading materials. The food supplied did not meet his nutritional needs.<sup>555</sup>
- Detention for over ten years with access to the prison yard for only three hours a day, with the rest of the time spent in a dark, wet cell, with no access to books or to means of communication.<sup>556</sup>
- A lack of medical attention for a seriously ill prisoner, whose illness was obvious, and who subsequently died.<sup>557</sup>
- Detention for eight months in a 500 year old prison infested with rats, lice, cockroaches and diseases; 30 persons per cell, among them old men, women, adolescents and a baby; no windows, but only steel bars which let in the cold; high incidence of suicide, self-mutilation, violence; human faeces all over the floor as the toilet, a hole in the ground, was overflowing; urine soaked mattresses to sleep on.<sup>558</sup>

---

554 *Mulezi v. Congo* (962/01), §§ 2.4, 2.5, 5.3.

555 *Sextus v. Trinidad and Tobago* (818/1998) § 7.4.

556 *Vargas Más v. Peru* (1058/02), §§ 3.3, 6.3.

557 *Lantsova v. Russian Federation* (763/1997) §§ 9.1, 9.2. A violation of Article 6, the right to life, was also found in this case.

558 *Griffin v. Spain* (493/92), § 6.2.

- A beating during a prison riot which required five stitches<sup>559</sup>
- The use of cage-beds as a measure of restraint in social care homes and psychiatric units<sup>560</sup>
- Placement in a holding cell in which the two accused could not sit down at the same time, even though such detention was only for one hour.<sup>561</sup>
- A few days' detention in a wet and dirty cell without a bed, table or any sanitary facilities.<sup>562</sup>
- Being told that one would not be considered under the prerogative of mercy nor for early release due to submission of a human rights complaint to the HRC. That is, the prisoner was victimized for exercising his right to submit an individual complaint under the OP.<sup>563</sup>
- Unexplained denial of access to one's medical records.<sup>564</sup>
- While prisons may exercise a certain level of reasonable control and censorship over prisoners' correspondence, extreme levels of censorship will breach Article 10(1) in conjunction with Article 17, the right to privacy in the ICCPR.<sup>565</sup>

In General Comment 21, the HRC identified certain UN documents which outline relevant standards for detention facilities, and invited States parties to comment on their implementation of those standards. This comment indicates that non-adherence to such standards leads to a violation of Article 10. Those standards are:

“[T]he Standard Minimum Rules for the Treatment of Prisoners (1957), the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988), the Code of Conduct for Law Enforcement Officials (1978) and the Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1982).”<sup>566</sup>

---

559 *Walker and Richards v. Jamaica* (639/95), § 8.1.

560 Concluding Observations on Slovakia, (2003) UN doc. CCPR/CO/78/SVK, § 13.

561 *Cabal and Pasini Bertran v. Australia* (1020/02).

562 *Gorji-Dinka v. Cameroon* (1134/02), § 5.2.

563 *Pinto v. Trinidad and Tobago* (512/92), § 8.3.

564 *Zhedludkov v. Ukraine* (726/96), § 8.4.

565 *Angel Estrella v. Uruguay* (74/80), § 9.2.

566 General Comment 21, § 5.

In particular, it seems that the Standard Minimum Rules for the Treatment of Prisoners have been incorporated into Article 10.<sup>567</sup> The Standard Minimum Rules outline the minimum conditions which are acceptable for the detention of an individual. The rules address various aspects of detention and all rules must be applied without discrimination. Examples of rights and issues addressed by the rules are outlined below:

- Prisoners should generally have their own cells
- Lighting, heating and ventilation, as well as work and sleep arrangements should “meet the requirements of health”.
- Adequate bedding clothing, food, water and hygiene facilities must be supplied.
- Certain medical services must be available for prisoners.
- Prisoners must be permitted access to the outside world and be able to receive information concerning their rights
- Prisoners should have access to a prison library
- Prisoners should have a reasonable opportunity to practice their religion
- Any confiscated property must be returned to the prisoner upon release
- Prison wardens must inform a prisoner’s family or designated representative if that prisoner dies or is seriously injured.
- The prisoner must be allowed to inform his or her family or representative of his/her imprisonment and of any subsequent transfer to another institution.

The rules also address disciplinary measures in Rules 27-36. The Standard Minimum Rules are reprinted in full at Appendix 9.

### 3.3.3 Detention Incommunicado and Solitary Confinement

Incommunicado detention, in principle, violates Article 10(1). The shortest period of detention found by the HRC to constitute a breach of Article 10 was two weeks in *Arutyunyan v. Uzbekistan* (917/00).<sup>568</sup> Where the period

---

567 Joseph, Schultz, and Castan, above note 31, §§ 9.148-9.149 and see e.g., *Mukong v. Cameroon* (458/91), § 9.3 and *Potter v. New Zealand* (632/95), § 6.3.

568 See also *Arzuaga Gilboa v. Uruguay* (147/83), where incommunicado detention for 15 days breached Article 10(1).

of detention incommunicado lasted for eight months, the HRC found the detention to be so serious as to violate Article 7.<sup>569</sup>

The HRC is also wary of solitary confinement. Regarding Denmark, it has stated that such confinement is:

“a harsh penalty with serious psychological consequences and is justifiable only in case of urgent need; the use of solitary confinement other than in exceptional circumstances and for limited periods is inconsistent with article 10, paragraph 1, of the Covenant.”<sup>570</sup>

### 3.3.4 Death Row Phenomenon

The discussion of death row phenomenon under Article 7 can also be applied to Article 10.<sup>571</sup> That is, current case law indicates that it is not a breach of Article 10(1).

### 3.3.5 Procedural Duties under Article 10

The positive procedural obligations which arise under Article 10 mirror those required under Article 7.<sup>572</sup> In General Comment 21, the HRC referred to the following positive obligations:<sup>573</sup>

- Reports should provide detailed information on national legislative and administrative provisions that have a bearing on rights under Article 10(1)
- Reports should detail concrete measures to monitor effective application of rules regarding treatment of detainees, including systems of impartial supervision.
- Reports should refer to the provisions in the training and instruction of individuals who exercise authority over detainees, including the level of adherence to such provisions.
- Reports should detail the means by which detainees have access to information about their rights and effective legal means of ensuring that they are upheld, as well as an avenue for complaint and the right to obtain adequate compensation if their rights are violated.

---

569 *Shaw v. Jamaica* (704/96). See also Joseph, Schultz, and Castan, above note 31, § 9.151. See Section 3.2.5.

570 Concluding Observations on Denmark, (2000) UN doc. CCPR/CO/70/DNK, § 12.

571 Section 3.2.10(b).

572 Joseph, Schultz, and Castan, above note 31, § 9.158.

573 General Comment 21, §§ 6, 7.

The above duties are all written as providing guidance to States parties on how to prepare reports on their Article 10 obligations. However, this guidance implicitly points to underlying substantive duties. For example, a duty to report on training measures implies that training measures must be in place. A duty to report on complaints procedures again implies that complaints procedures must be in place.

Fulfilment of such duties helps to ensure that breaches of Article 10 do not take place. Furthermore, non-fulfilment of relevant procedural duties may mean that a State finds it difficult to defend itself against Article 10 claims.<sup>574</sup> For example, in *Hill and Hill v. Spain* (526/93), the complainants claimed that they had been denied food and drink for five days while in police custody. The State was unable to produce records to demonstrate that such food had been provided. On the basis of the detailed allegations made by the authors and in light of the State's inability to produce the relevant evidence to the contrary, a violation of Article 10 was found.<sup>575</sup>

#### **a) Detention of Pregnant Women**

In General Comment 28, the HRC confirms that States have particular duties to care for pregnant and post natal women who are in detention. States parties must report on facilities and medical and health care available for mothers and their babies. Pregnant women “should receive humane treatment and respect for their inherent dignity at all times surrounding the birth and while caring for their newly-born children”.<sup>576</sup>

In Concluding Observations on Norway, the HRC expressed concern about the removal of infants from their mothers while in custody. Indeed, it felt that the State party should consider “appropriate non-custodial measures” for breastfeeding mothers.<sup>577</sup>

#### **b) Segregation of Convicted Prisoners from Remand Prisoners**

Under Article 10(2)(a), accused persons should be segregated from convicted persons, “save in exceptional circumstances”, and should be treated in a

---

<sup>574</sup> Joseph, Schultz, and Castan, above note 31, § 9.160.

<sup>575</sup> *Hill and Hill v. Spain* (526/93), §§ 10.4, 13.

<sup>576</sup> General Comment 28, § 15.

<sup>577</sup> Concluding Observations on Norway, (2006) UN doc. CCPR/C/NOR/CO/5, § 16.

manner which is appropriate to “their status as un-convicted persons”. Article 10(2)(a) reinforces Article 14(2) of the ICCPR, which dictates that all people are entitled to be presumed innocent until proven otherwise.<sup>578</sup>

The degree of separation required by Article 10(2)(a) was addressed in *Pinkney v. Canada* (27/78). In *Pinkney*, the complainant’s cell was in a separate part of the prison to the cells of convicted prisoners. The HRC affirmed that accused persons need only be accommodated in separate quarters, not necessarily in separate buildings. Though convicted prisoners worked in the remand area of the prison (as cleaners and food servers), the HRC found that this level of interaction was acceptable provided that “contacts between the two classes of prisoners are kept strictly to a minimum necessary for the performance of those tasks”.<sup>579</sup>

The HRC has also specified that male and female prisoners must be kept in separate facilities.<sup>580</sup>

### **c) Protection for Juvenile Detainees**

Article 10(2)(b) requires the separation of accused juveniles from adult detainees, and that they be brought to trial as speedily as possible. Article 10(3) further requires that juvenile offenders be separated from adults, and that they “be accorded treatment appropriate to their age and legal status”. In this respect, Article 10 supplements Article 24 of the ICCPR, which requires special protection for children’s rights.

In General Comment 21, the HRC concedes that the definition of a “juvenile” may vary according to “relevant, social, cultural and other conditions”. Nevertheless, it stresses a strong preference for juveniles to be classified as persons under 18 for criminal justice purposes, including for Article 10 purposes.<sup>581</sup> In *Thomas v. Jamaica* (800/98), the HRC found a violation of Articles 10(2)(b) and (3) entailed in the detention of the complainant with adult prisoners from the ages of 15 to 17.<sup>582</sup>

The requirement that the individual be brought “as speedily as possible for adjudication” seeks to ensure that juveniles spend the minimum amount of

---

578 General Comment 21, § 9.

579 *Pinkney v. Canada* (27/78), § 30.

580 General Comment 28, § 15.

581 General Comment 21, § 13.

582 See also Concluding Observations on Cyprus, (1994) UN doc. CCPR/C/79/Add. 39, § 13.

time possible in pre-trial detention. This obligation should be read in light of Article 9(3) and 14(3)(c) in the ICCPR, which also seek to ensure that accused individuals are brought to trial “within a reasonable time” and “without undue delay.” The inclusion of this additional requirement suggests a heightened level of obligation for States in relation to juvenile detention, which goes beyond the requirements of Article 9(3) and 14(3)(c). Nowak adds that any adjudication of alleged youth crimes need not be before a court but may be before “special, non-judicial organs empowered to deal with crimes by juveniles”.<sup>583</sup>

Article 10(3) requires that juveniles be treated in a way which is “appropriate to their age and legal status”. The HRC has suggested that such treatment should entail initiatives such as shorter working hours and more contact with relatives.<sup>584</sup> The treatment of juveniles should reflect the aim of “furthering their reformation and rehabilitation”.<sup>585</sup>

In *Brough v. Australia* (1184/03), the complainant was a young Australian Aboriginal boy of 16 years who suffered from a mild intellectual disability, who participated in a riot at a Juvenile Detention Centre. He was subsequently transferred to an adult prison. The HRC found that his:

“extended confinement to an isolated cell without any possibility of communication - combined with his exposure to artificial light for prolonged periods and the removal of his clothes and blanket - was not commensurate with his status as a juvenile person in a particularly vulnerable position because of his disability and his status as an Aboriginal<sup>586</sup>...the hardship of the imprisonment was manifestly incompatible with this condition, as demonstrated by his inclination to inflict self-harm and his suicide attempt”.<sup>587</sup>

In *Brough*, violations of both Articles 10(1) and 10(3) were found. It seems likely that the treatment would have breached Article 10(1) even if the complainant had not been a youth, but the fact of his youth exacerbated the violation.

---

583 Nowak, above note 97, p. 252.

584 General Comment 21, § 13.

585 General Comment 21, § 13.

586 Australian Aborigines are known to be vulnerable detainees, as evidenced by a disproportionate percentage of deaths in custody compared to non-Aboriginal detainees.

587 *Brough v. Australia* (1184/2003), § 9.4.

### 3.3.6 Rehabilitation Duty

Article 10(3) dictates that the essential aim of the penitentiary system should be the reformation and social rehabilitation of prisoners. In General Comment 21, the HRC affirms that “[n]o penitentiary system should be only retributory”.<sup>588</sup> The HRC requests that States provide information on the assistance given to prisoners after their release, and on the success of such programmes as well as:

“the measures taken to provide teaching, education and re-education, vocational guidance and training and also concerning work programmes for prisoners inside the penitentiary establishment as well as outside”.<sup>589</sup>

It also requests information on specific aspects of detention which may compromise this goal if they are not addressed and managed appropriately. These aspects include:

“how convicted persons are dealt with individually and how they are categorised, the disciplinary system, solitary confinement and high security detention and the conditions under which contacts are ensured with the outside world (family, lawyer, social and medical services, and non-governmental organisations)”.<sup>590</sup>

The HRC has addressed this “rehabilitation” duty in a number of Concluding Observations. For example, regarding Belgium, the HRC suggested that “[a]lternative sentencing, including community service, should be encouraged in view of its rehabilitative function...”<sup>591</sup> It further emphasised the importance of ongoing support for a released individual, urging the adoption of “rehabilitation programmes both for the time during imprisonment and for the period after release, when ex offenders must be re-integrated...if they are not to become recidivists”.<sup>592</sup> States should also “adhere to standards postulated in generally accepted theories of criminal sociology”.<sup>593</sup> The HRC has also expressed concern in this regard over the removal of the right to vote from

---

588 General Comment 21, § 10.

589 General Comment 21, § 11.

590 General Comment 21, § 12.

591 Concluding Observations on Belgium, (1998) UN doc. CCPR/C/79/Add.99. § 16.

592 Concluding Observations on Belgium, (1998) UN doc. CCPR/C/79/Add.99. § 19.

593 Nowak, above note 97, p. 253.

prisoners.<sup>594</sup> However, it is generally perceived that states have broad discretion in how they approach the Article 10(3) obligation.<sup>595</sup>

Article 10(3) has arisen in very few individual complaints, which may be due to the difficulty in establishing that a particular person is a victim of a State's failure to adopt policies aimed at rehabilitating prisoners.<sup>596</sup> *Kang v. Republic of Korea* (878/99) is a rare case where a violation of Article 10(3) was found. The victim was held in solitary confinement for 13 years and the HRC found that this treatment violated Article 10(1) and Article 10(3).<sup>597</sup>

This "rehabilitation" aspect of Article 10(3) is perhaps controversial in the present day, where an increasing number of governments appear to be adopting policies which are designed to be "tough on crime".<sup>598</sup> Rehabilitation as opposed to other policies which might underline penal policy, such as retribution and deterrence, seems to be out of vogue at the beginning of the twenty-first century, as opposed to the 1960s when the ICCPR was adopted by the UN. In the face of such trends, it is hoped that the HRC will vigorously uphold the standards of Article 10(3).

---

594 Concluding Observations on the UK, (2001) UN doc. CCPR/CO/73/UK, § 10; see also Concluding Observations on the U.S., (2006) UN doc. CCPR/C/USA/CO/3, § 35, where the concern seemed to be of the continued removal after parole or release, rather than removal of the right to vote per se.

595 Nowak, above note 97, p. 254.

596 See e.g., *Lewis v. Jamaica* (708/96).

597 *Kang v. Republic of Korea* (878/99), § 7.3.

598 For example, such a debate was dominating political debate in the UK in June 2006, with tough new criminal law measures being proposed by Prime Minister Tony Blair.

