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International Covenant on Civil and Political Rights

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Views

Communication No. 1629/2007

Submitted by:	Robert John Fardon (represented by counsel, Reeanna Maloney, The Prisoners' Legal Service Inc. in Queensland)
Alleged victims:	The author
State party:	Australia
Date of communication:	1 March 2006 and 29 May 2007 (initial submissions)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 3 December 2007 (not issued in document form)
Date of adoption of Views:	18 March 2010

*Made public by decision of the Human Rights Committee.

Subject matter:	Preventive detention order after completion of prison sentence for sexual offences
Procedural issue:	N/A
Substantive issues:	Prohibition of double jeopardy (ne bis in idem); arbitrary detention
Articles of the Covenant:	14, paragraph 7; 9, paragraph 1
Articles of the Optional Protocol:	N/A

On 18 March 2010 the Human Rights Committee adopted the annexed text as the Committee's Views under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1629/2007.

[Annex]

ANNEX

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political rights (Ninety-eighth session)

concerning

Communication No. 1629/2007**

Submitted by:	Robert John Fardon (represented by counsel, Reeanna Maloney, The Prisoners' Legal Service Inc. in Queensland)
Alleged victims:	The author
State party:	Australia
Date of communication:	1 March 2006 and 29 May 2007 (initial submissions)

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

Meeting on 18 March 2010,

Having concluded its consideration of communication No. 1629/2007, submitted to the Human Rights Committee on behalf of Mr. Robert John Fardon under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication, and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1. The communication dated 1 March 2006 and 29 May 2007 is submitted by Robert John Fardon, an Australian citizen born on 16 October 1948. The author claims to be victim of a violation by Australia of article 14, paragraph 7, and article 9, paragraph 1, of the Covenant The author is represented by counsel, Reeanna Maloney, of the Prisoners' Legal Service in Queensland.

** The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Mahjoub El Haiba, Mr. Ahmad Amin Fathalla, Ms. Helen Keller, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabian Omar Salvioli and Mr. Krister Thelin.

An individual opinion signed by Committee members Mr. Krister Thelin and Ms. Zonke Zanele Majodina is appended to the present document.

The facts as presented by the author

2.1 On 30 June 1989, the author was sentenced to 14 years' imprisonment for rape, sodomy and unlawful assault on a female committed on 3 October 1988. His sentence expired on 30 June 2003. The author has not committed any offence since 3 October 1988.

2.2 On 6 June 2003, the Queensland Dangerous Prisoners (Sexual Offenders) Act 2003 (DPSOA) came into force. On 17 June 2003, the Attorney-General of Queensland filed an application under the DPSOA for an order that the author be detained for an indefinite period pursuant to section 13 of the DPSOA[1]. Section 13 of the DPSOA provides that a prisoner who is proven to be a serious danger to the community may be detained in custody for an indefinite term for control, care or treatment. The onus is on the Attorney-General to prove the danger.

2.3 On 27 June 2003, the Supreme Court of Queensland, based on the DPSOA, ordered the interim detention of the author until 4 August 2003. This date was later extended until 3 October 2003 and thereafter "until further order". On 6 November 2003 and 11 May 2005, the Supreme Court of Queensland reiterated that the author should "continue to be the subject of a continuing detention order". On 8 November 2006, after two preceding preliminary decisions on the matter, the Supreme Court ordered that the author be subject to a conditional supervision order and that the continuing detention order be rescinded, following which the author was released on 4 December 2006, after an unsuccessful appeal by the Attorney-General.

[1] The Queensland Dangerous Prisoners (Sexual Offenders) Act 2003:
13 Division 3 orders
(1) This section applies if, on the hearing of an application for a division 3 order, the court is satisfied the prisoner is a serious danger to the community in the absence of a division 3 order (a serious danger to the community).
(2) A prisoner is a serious danger to the community as mentioned in subsection (1) if there is an unacceptable risk that the prisoner will commit a serious sexual offence— (a) if the prisoner is released from custody; or (b) if the prisoner is released from custody without a supervision order being made.
(3) On hearing the application, the court may decide that it is satisfied as required under subsection (1) only if it is satisfied— (a) by acceptable, cogent evidence; and (b) to a high degree of probability; that the evidence is of sufficient weight to justify the decision.
(4) In deciding whether a prisoner is a serious danger to the community as mentioned in subsection (1), the court must have regard to the following— (a) the reports prepared by the psychiatrists under section 11 and the extent to which the prisoner cooperated in the examinations by the psychiatrists; (b) any other medical, psychiatric, psychological or other assessment relating to the prisoner; (c) information indicating whether or not there is a propensity on the part of the prisoner to commit serious sexual offences in the future; (d) whether or not there is any pattern of offending behaviour on the part of the prisoner; (e) efforts by the prisoner to address the cause or causes of the prisoner's offending behaviour, including whether the prisoner participated in rehabilitation programs; (f) whether or not the prisoner's participation in rehabilitation programs has had a positive effect on the prisoner; (g) the prisoner's antecedents and criminal history; (h) the risk that the prisoner will commit another serious sexual offence if released into the community; (i) the need to protect members of the community from that risk; (j) any other relevant matter.
(5) If the court is satisfied as required under subsection (1), the court may order— (a) that the prisoner be detained in custody for an indefinite term for control, care or treatment (continuing detention order); or (b) that the prisoner be released from custody subject to the requirements it considers appropriate that are stated in the order (supervision order).
(6) In deciding whether to make an order under subsection (5)(a) or (b), the paramount consideration is to be the need to ensure adequate protection of the community.
(7) The Attorney-General has the onus of proving that a prisoner is a serious danger to the community as mentioned in subsection (1).

2.4 On 9 July 2003, the Supreme Court of Queensland held that the provisions in the DPSOA were constitutional. This decision was confirmed by the Queensland Court of Appeal on 23 September 2003. On 1 October 2004, the High Court of Australia dismissed the author's appeal contesting the constitutional validity of the provisions that authorize Queensland courts to detain persons under the DPSOA.

The complaint

3.1 The author claims to be victim of a violation of article 14, paragraph 7 of the Covenant because his imprisonment based on the Dangerous Prisoners (Sexual Offenders) Act 2003 punished him again for an offence for which he had already been finally convicted[2]. The author maintains that the DPSOA imposes double punishment without further determination of criminal guilt. Despite characterizing the purpose of the imprisonment as non-punitive, the author was subject to the same regime of imprisonment as if he had been convicted of a criminal offence. Although the author acknowledges that the courts can, while sentencing someone, make an order for "preventive" reasons, his case was different as the orders for his continued detention were not contemplated at the time of sentencing.

3.2 The author argues that his imprisonment could not be justified on the basis of public safety, as he has not been charged or convicted of any crime while he was in prison. The "public order" basis upon which liberty may be deprived can only justify further temporary restrictions of liberty that are absolutely necessary and rely on the basis of clear evidence. He adds that his detention is neither justified by mental illness.

3.3 The author further submits that his detention pursuant to section 13 of the DPSOA was arbitrary and consequently in breach of article 9, paragraph 1, of the Covenant. He maintains that his preventive detention was not imposed as an aspect of his initial sentence, but following its completion, which distinguishes his communication from the Committee's previous jurisprudence[3]. Recalling the Committee's jurisprudence, the author argues that detention, in order to avoid the characterisation of arbitrariness, must be reasonable, necessary and proportionate[4]. The objectives of the DPSOA being "to ensure adequate protection of the community" and "to facilitate rehabilitation of a certain class of

[2] The author submits an article entitled « Does the Dangerous Prisoners (Sexual Offenders) Act 2003 (Q) inflict double punishment, contrary to the ICCPR?" by Patrick Keyzer and Sam Blay, referring to his case and supporting his claims. It transpires from the article that the author's criminal history dates from February 1965 (he was then 16 years old), consisting then mostly of minor property and other non-violent offences. However, the author has been convicted of three serious sexual offences. On 17 April 1967 (he was then 18), he was convicted of attempted carnal knowledge of a girl under the age of 10 years. On 20 June 1979, he was convicted of the offences of indecent dealing with a female under 14 years, rape and unlawful wounding. He was sentenced to serve 12 months, 13 years and 6 months respectively. Less than 3 weeks after his release from prison in relation to these offences, he was convicted of the offences mentioned in the present communication.

[3] See Communication No. 1090/2002, *Rameka et al. v. New Zealand*, views adopted on 6 November 2003, para. 7.2-7.3.

[4] See Communication No. 305/1988, *van Alphen v. The Netherlands*, views adopted on 23 July 1990, para. 5.8; Communication No. 560/1993, *A. v. Australia*, views adopted on 3 April 1997, para. 9.2 and 9.4; Communication No. 900/1999, *C. v. Australia*, views adopted on 28 October 2002, para. 8.2; Communication No. 1014/2001, *Baban v. Australia*, views adopted on 6 August 2003, para. 7.2; Communication No. 1050/2002, *D. v. Australia*, views adopted on 11 July 2006, para 7.2; Communication No. 1069/2002, *Bakhtiyari v. Australia*, views adopted on 29 October 2003, para. 9.2-9.3; Communication No. 1128/2002; *de Morais v. Angola*, views adopted on 29 March 2005, para. 6.1; Communication No. 1085/2002, *Taright v. Algeria*, views adopted on 15 March 2006, para. 8.3; and Communication No. 1324/2004, *Shafiq v. Australia*, views adopted on 31 October 2006.

prisoners", the author claims that his detention for an undetermined time period, which had, according to the author, a punitive character may not be rationally connected to the objective of facilitating his rehabilitation. He further maintains that the same legislative end could have been achieved by less intrusive measures, for example by his detention in a rehabilitative or therapeutic facility rather than a prison.

State party's observations on admissibility and merits

4.1 The State party submits its observations on the merits dated on 8 September 2008. The State party adds to the facts as presented by the author. Following the author's release on supervision order on 4 December 2006, he remained breach free until a letter of censure was issued on 1 June 2007 because he had given a talk to law students about his experience in prison and with regard to his reintegration; the release and supervision order made the author subject to conditions of supervision until 8 November 2016. From 24 July 2007 to 30 October 2007, the author was imprisoned again for breach of his supervision order. Since 3 April 2008, the author has been detained in custody following charges involving a sexual offence against an elderly woman.

4.2 With regard to the author's allegation that his detention under the DPSOA was arbitrary, the State party submits that his detention was lawful, reasonable and necessary in all circumstances. The author, as a repeat sexual offender, needed intensive counselling and rehabilitation programs, which are not available in psychiatric facilities. Furthermore, the author refused to participate in any rehabilitation program during his initial prison term. His preventive detention was subject to periodic independent review and fulfilled the stated aims of providing rehabilitation and protection of the community. The State party explains that the author's detention was based on procedures under the DPSOA, a law the State party's High Court found to be constitutional. According to the DPSOA, a continuing detention order is only made if there is an unacceptable risk that the prisoner may commit a sexual offence if released. Medical, psychological and psychiatric assessments from at least two independent experts evaluate the prisoner's propensity to commit serious sexual offences in the future, and the prisoner's participation during the initial detention period in rehabilitation programs. The author's continuing detention order was imposed following a full hearing before the Queensland Supreme Court, which found that supervised release was not appropriate in the author's case. Recalling the Committee's jurisprudence on preventive detention[5], the State party underlines that the author's preventive detention was subject to an annual review by an independent judicial body, notably the Queensland Supreme Court. To return the author to a detention facility with access to individualized rehabilitation programs was therefore, in light of his needs, reasonably proportionate to the objectives of the DPSOA.

4.3 Regarding the author's claim that he was victim of a violation of article 14, paragraph 7 of the Covenant, the State party notes that its High Court found no breach of the principle *ne bis in idem* in the author's case. It held that the sentencing of the author under the DPSOA did not contain elements of his first offence and underlined the preventive character of his detention, in particular with a view to protecting the community. The State party explains that the determination of preventive detention under DPSOA is a civil proceeding and does not involve the question of a criminal offence[6]. During his preventive detention, the author received intense individualized rehabilitation assistance, which could not be administered in any other facility than a prison. The author's criminal

[5] See General Comment No. 8, adopted on 28 July 1982, para. 4; Communication No. 1090/2002, *Rameka et al. v. New Zealand*, views adopted on 6 November 2003, para. 7.2-7.4; Communication No. 305/1988, *van Alphen v. The Netherlands*, views adopted on 23 July 1990.

[6] See *Uner v. the Netherlands*, [2005] ECHR 46410/99 (16 June 2005), para. 53.

history was not the basis of the preventive detention order, nor did the court include the criminal elements of the previous offence in its determination. The State party thus submits that the civil proceedings under the DPSOA do not relate to the initial offence by the author. The State party submits that the author's preventive detention did not have punitive character. The protective character of the author's imprisonment was, in addition to providing individualized rehabilitation assistance, further derived from the need to protect public safety.

Author's comments on the State party's observations

5.1 On 18 November 2008, the author notes that he has been re-imprisoned on 12 and 24 July 2007 for breaches of the supervision orders. He underlines that he has not been convicted of any crime since 29 June 2003, when he completed his initial prison sentence for offences committed in 1988. He maintains that his imprisonment under the DPSOA amounted to a double punishment considering that the court is required to have regard to the prior offences determining whether a continued imprisonment should be ordered. The author further underlines the punitive effect of his continuing imprisonment which was carried out in a prison facility and under the same imprisonment regime as if he were convicted of a criminal offence.

5.2 The author maintains that the essence of his communication lies in the fact that the preventive detention was not imposed as part of the initial criminal trial process. He cites the opinion of the dissenting judge in his case before the High Court and notes that the re-imprisonment under the DPSOA imposes a "new punishment without any intervening offence, trial or conviction". The author underlines that the imprisonment under the DPSOA is not a preventive detention but amounts to being held under continued prison regime.

5.3 The author argues that his detention is not connected rationally to any legitimate objective under the DPSOA, as according to psychiatrists, rehabilitation can only be tested when a person has some liberty. He underlines that imprisonment is not necessary to achieve the objective of protection of the community and the rehabilitation needs of a former offender. He underlines that the DPSOA inflicts imprisonment on the basis of what a person might do, rather than for what a person has done.

Issues and proceedings before the Committee

Consideration of admissibility

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

6.2 The Committee has ascertained, as required by article 5, paragraph 2 (a), of the Optional Protocol, that the same matter is not being examined under another international procedure of investigation or settlement.

6.3 Concerning the requirement of exhaustion of domestic remedies, the Committee has noted that according to the information submitted by the author, all available domestic remedies, including the High Court of Australia, have been exhausted. In the absence of any objection by the State party, the Committee considers that the requirements of article 5, paragraph 2 (b), of the Optional Protocol have been met.

6.4 In the Committee's view, the author has sufficiently substantiated, for purposes of admissibility, the claims under articles 9, paragraph 1, and 14, paragraph 7, of the Covenant and therefore proceeds to their examination on the merits.

Consideration of the merits

7.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as provided for in article 5, paragraph 1, of the Optional Protocol.

7.2 The Committee notes the State party's observations that its High Court had examined the author's claim of ne bis in idem and found that the detention order under the DPSOA was not based on the author's criminal history and did not relate to the author's initial offence. It further notes the State party's explanation that proceedings under the DPSOA are of civil nature and that the author's detention had a preventive character. The Committee has also noted the author's claim that his detention under the DPSOA imposes double punishment without further determination of criminal guilt and that the court failed to include any order for preventive reasons in the initial sentence. It also notes that the author's claim that he was detained under the same prison regime as for his initial prison term.

7.3 The Committee observes that Article 9 paragraph 1 of the Covenant recognises for everyone the right to liberty and the security of his person and that no-one may be subjected to arbitrary arrest or detention. The Article, however, provides for certain permissible limitations on this right, by way of detention, where the grounds and the procedures for doing so are established by law. Such limitations are indeed permissible and exist in most countries in laws which have for object, for example, immigration control or the institutionalised care of persons suffering from mental illness or other conditions harmful to themselves or society. However, limitations as part of, or consequent upon, punishment for criminal offences may give rise to particular difficulties. In the view of the Committee, in these cases, the formal prescription of the grounds and procedures in a law which is envisaged to render these limitations permissible is not sufficient if the grounds and the procedures so prescribed are themselves either arbitrary or unreasonably or unnecessarily destructive of the right itself.

7.4 The question presently before the Committee is whether, in their application to the author, the provisions of the DPSOA under which the author continued to be detained at the conclusion of his 14-year term of imprisonment were arbitrary. The Committee has come to the conclusion that they were arbitrary and. consequently, in violation of Article 9 paragraph 1 of the Covenant, for a number of reasons, each of which would, by itself, constitute a violation. The most significant of these reasons are the following:

(1) The author had already served his 14 year term of imprisonment and yet he continued, in actual fact, to be subjected to imprisonment in pursuance of a law which characterises his continued incarceration under the same prison regime as detention. This purported detention amounted, in substance, to a fresh term of imprisonment which, unlike detention proper, is not permissible in the absence of a conviction for which imprisonment is a sentence prescribed by law.

(2) Imprisonment is penal in character. It can only be imposed on conviction for an offence in the same proceedings in which the offence is tried. The author's further term of imprisonment was the result of Court orders made, some 14 years after his conviction and sentence, in respect of predicted future criminal conduct which had its basis in the very offence for which he had already served his sentence. This new sentence was the result of fresh proceedings, though nominally characterised as "civil proceedings", and fall within the prohibition of Article 15 paragraph 1 of the Covenant. In this regard, the Committee further observes that, since the DPSOA was enacted in 2003 shortly before the expiry of the author's sentence for an offence for which he had been convicted in 1989 and which became an essential element in the Court orders for his continued incarceration, the DPSOA was being retroactively applied to the author. This also falls within the prohibition

of Article 15 paragraph 1 of the Covenant, in that he has been subjected to a heavier penalty "than was applicable at the time when the criminal offence was committed". The Committee therefore considers that detention pursuant to proceedings incompatible with article 15 is necessarily arbitrary within the meaning of article 9, paragraph 1, of the Covenant.

(3) The DPSOA prescribed a particular procedure to obtain the relevant Court orders. This particular procedure, as the State Party conceded, was designed to be civil in character. It did not, therefore, meet the due process guarantees required under Article 14 of the Covenant for a fair trial in which a penal sentence is imposed.

(4) The "detention" of the author as a "prisoner" under the DPSOA was ordered because it was feared that he might be a danger to the community in the future and for purposes of his rehabilitation. The concept of feared or predicted dangerousness to the community applicable in the case of past offenders is inherently problematic. It is essentially based on opinion as distinct from factual evidence, even if that evidence consists in the opinion of psychiatric experts. But psychiatry is not an exact science. The DPSOA, on the one hand, requires the Court to have regard to the opinion of psychiatric experts on future dangerousness but, on the other hand, requires the Court to make a finding of fact of dangerousness. While Courts are free to accept or reject expert opinion and are required to consider all other available relevant evidence, the reality is that the Courts must make a finding of fact on the suspected future behaviour of a past offender which may or may not materialise. To avoid arbitrariness, in these circumstances, the State Party should have demonstrated that the author's rehabilitation could not have been achieved by means less intrusive than continued imprisonment or even detention, particularly as the State Party had a continuing obligation under Article 10 paragraph 3 of the Covenant to adopt meaningful measures for the reformation, if indeed it was needed, of the author throughout the 14 years during which he was in prison.

7.5 In light of the preceding findings, the Committee does not consider it necessary to examine the matter separately under article 14, paragraph 7, of the Covenant.

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol, is of the view that the facts before it disclose a violation of article 9, paragraph 1, of the Covenant.

9. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including termination of his detention under the DPSOA.

10. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognised the competence of the Committee to determine whether there has been a violation of the Covenant or not, and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognised in the Covenant and to provide an effective and enforceable remedy in case that a violation has been established, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's views.

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

APPENDIX

Individual opinion of Committee members Mr. Krister Thelin and Ms. Zonke Zanele Majodina

Committee member Mr. Krister Thelin, with whom Ms. Zonke Zanele Majodina associated herself, was of a different view and stated:

"The majority has found a violation in this case. I respectfully disagree. The Committee's views should in its reasoning and conclusions read as follows:

7.1 With regard to the author's claim that his detention under the DPSOA was arbitrary, the Committee recalls its jurisprudence establishing that detention for preventive purposes must be justified by compelling reasons and reviewable periodically by an independent body[1]. The Committee notes that the author was preventively detained from 27 June 2003 to 4 December 2006 and that his preventive detention was based on grounds and procedures established by law – the DPSOA –, and reviewed periodically by an independent judicial body, i.e. the Queensland Supreme Court. It also notes that the two purposes of the DPOSA are public safety and the rehabilitation of a sexual offender. Nevertheless, to avoid arbitrariness, the author's preventive detention must have been reasonable, necessary in all circumstances of the case and proportionate to achieving the legitimate ends of the State party. The Committee observes that the author's case was thoroughly and repeatedly reviewed by the State party's Queensland Supreme Court and also upheld on appeal, that the preconditions as set out in the DPSOA were, according to the judicial review, met and that the author's refusal to participate in rehabilitation programs during his initial sentence contributed to the assessment that he may pose a serious danger to the community[2]. In the light of the circumstances of the case, the Committee therefore concludes that the author's preventive detention was not disproportionate to the legitimate aim of the applicable law and did not, in this or any other respect, constitute a violation of article 9, paragraph 1, of the Covenant.

7.2 The Committee notes the State party's observations that its High Court had examined the author's claim of ne bis in idem and found that the detention order under the DPSOA was not based on the author's criminal history and did not relate to the author's initial offence. It further notes the State party's explanation that proceedings under the DPSOA are of civil nature and that the author's detention had a preventive character. The Committee has also noted the author's claim that his detention under the DPSOA imposes double punishment without further determination of criminal guilt and that the court failed to include any order for preventive reasons in the initial sentence. It also notes that the author's claim that he was detained under the same prison regime as for his initial prison term.

7.3 The Committee recalls its General Comment No. 32[3], according to which a person, once convicted or acquitted of a certain offence, cannot be brought before the same court again or before another tribunal for the same offence. The guarantee, however, only applies

[1] Communication No. 1090/2002, Rameka et al. v. New Zealand, views adopted on 6 November 2003, para. 7.3; Communication No. 1385/2005, Benjamin Manuel v. New Zealand, views adopted on 18 October 2007, para. 7.2-7.3; Communication No. 1512/2006, Allan Kendrick Dean v. New Zealand, views adopted on 17 March 2009, para. 7.4.

[2] See Communication No. 1512/2006, Allan Kendrick Dean v. New Zealand, views adopted on 17 March 2009, para. 7.5.

[3] See CCPR/C/GC/32, para.54 and 57.

to criminal offences and not to disciplinary measures that do not amount to a sanction for a criminal offence within the meaning of article 14 of the Covenant[4]. The Committee has noted the State party's contention that proceedings under the DPSOA are of civil nature and therefore do not fall within the remit of article 14 of the Covenant. It recalls General Comment No. 32 and its jurisprudence to the effect that the criminal nature of a sanction may be extended to acts that, regardless of their qualification in domestic law, must be regarded as penal because of their purpose, character or severity[5]. The Committee observes that despite the preventive purposes of protection of public safety and rehabilitation of a sexual offender envisaged in the DPSOA, and the legal qualification of the DPSOA as civil proceedings, the severity of the measure – continued imprisonment subject to annual review – must be regarded as being of criminal nature.

7.4 The Committee must therefore determine if the penal sanction under the DPSOA was based on the same offence as the author's initial sentence. The Committee recalls that the Covenant does not limit the State party's capacity to authorize an indefinite sentence with a preventive component[6]. The basis of the assessment for the author's preventive detention was, as found by the courts, his serious danger to the community. The Committee concludes that the preventive detention was not imposed on the same grounds as his previous offence but for legitimate protective purposes. It therefore concludes that the author's preventive detention did not constitute a violation of the principle ne bis in idem according to article 14, paragraph 7, of the Covenant.

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol, is consequently of the view that the facts before it do not reveal a violation of article 9, paragraph 1 and article 14, paragraph 7, of the Covenant."

[Signed] Mr. Krister Thelin

[Signed] Ms. Zonke Zanele Majodina

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

[4] See Communication No. 1001/2001, Gerardus Strik v. The Netherlands, inadmissibility decision of 1 November 2002, para. 7.3.

[5] See CCPR/C/GC/32, para. 15, Communication No. 1015/2001, Perterer v. Austria, views adopted on 20 July 2004, para. 9.2.

[6] Communication No. 1090/2002, Rameka et al. v. New Zealand, views adopted on 6 November 2003, para. 7.2.