

**MODEL QUESTIONNAIRE TO BE COMPLETED BY PERSONS ALLEGING ARBITRARY ARREST OR
DETENTION**

I. IDENTITY

1. Family name: Wilson
2. First name: David Philip
3. Sex: Male
4. Birth date or age (at the time of detention): 7th March 1984; age at detention: 20 years old.
5. Nationality/Nationalities: American
6. (a) Identity document (if any): Alabama Department of Corrections AIS (Alabama Institutional Serial) identity number
- (b) Issued by: Alabama Department of Corrections
- (c) On (date): January 8, 2008
- (d) No.: 0000Z748
7. Profession and/or activity (if believed to be relevant to the arrest/detention): Death Row Inmate
8. Address of usual residence: William C. Holman Correctional Facility, Holman 3700, Atmore, AL 36503-3700, USA

II. Arrest

1. Date of arrest: 14th April 2004
2. Place of arrest (as detailed as possible): At around 3am on 14th April 2004, about 5 police officers from the Dothan Police Department (actual number unclear from the record) entered the home of Ms Linda Wilson and apprehended her son, Mr David Wilson.¹
3. Forces who carried out the arrest or are believed to have carried it out: Police Officers from the Dothan Police Department, Houston County, Alabama.
4. Did they show a warrant or other decision by a public authority? No.
5. Authority who issued the warrant or decision: The Dothan Police Department
6. Reasons for the arrest imputed by the authorities: The police suspected Mr Wilson of committing the murder of Mr Dewey Walker who was found dead in his home in Dothan, Houston County, Alabama, on 13th April 2024.
7. Legal basis for the arrest including relevant legislation applied (if known): The police suspected Mr Wilson of committing the murder of Mr Walker and apprehended him at his home. Mr Wilson was not charged at the moment of apprehension and the legal basis is listed below (III. 7.).

III. Detention

1. Date of detention: Mr Wilson was arrested on 14th April 2004 and sentenced to death on 7th January 2008.
2. Duration of detention (if not known, probable duration): On 15th April 2004 Mr Wilson was charged with the capital murder of Mr Walker and was subsequently subjected to over 2 years and 7 months pre-trial detention. His capital trial was conducted by the Circuit Court of Houston County between 3rd and 5th December 2007, and he was sentenced to death on 7th January 2008. Overall he has been subjected to the capital jurisdiction for 20 years and under sentence of death for 16 years (and counting).
3. Forces holding the detainee under custody: The Alabama Department of Corrections.

¹ The facts of the case are cited from the habeas corpus petition filed by one of Mr Wilson's previous attorneys, Anne E. Borelli. See, *Wilson v. Dunn*, Petition for Writ of Habeas Corpus by a Prisoner in State Custody Under Sentence of Death, The United States District Court for the Middle District of Alabama, Southern Division, Case 1:19-CV-WKW-CEC, April 22, 2019. For a court's presentation of the facts see, *Wilson v. State*, Court of Criminal Appeals of Alabama, 142 So.3d 732, 5th November 2010. For the most recent filing by Mr Wilson's attorney, Professor Bernard Harcourt, Plaintiff's Reply on Motions for Limited Expedited Discovery, *Wilson v. Hamm*, Case No. 2:24-cv-00111-ECM, United States District Court for the Middle District of Alabama, Northern Division, March 2, 2024; Plaintiff's Response to Defendant's Motion to Dismiss, *Wilson v. Hamm*, Case No. 2:24-cv-00111-ECM, United States District Court for the Middle District of Alabama, Northern Division, May 3, 2024.

4. Places of detention (indicate any transfer and present place of detention): William C. Holman Correctional Facility in Atmore, Alabama, United States of America.

5. Authorities that ordered the detention: The Dothan Police Department

6. Reasons for the detention imputed by the authorities: The police suspected Mr Wilson of committing the murder of Mr Walker.

7. Legal basis for the detention including relevant legislation applied (if known): On 18th June 2004, a Houston County grand jury indicted Mr Wilson on two counts of capital murder for: (a) murder during a burglary, Code of Alabama, Capital Offences 1975, s. 13A-5-40(a)(4), and (b) murder during a robbery, s. 13A-5-40(a)(2). Mr Wilson was arraigned on 12th October 2004 and pled not guilty to both charges.

IV. Describe the circumstances of the arrest / V. Indicate reasons why you consider the arrest and/or detention to be arbitrary.

Introduction

This Individual Complaint is submitted on behalf of Mr David P. Wilson and is provided with the consent of Mr Wilson's lawyer, Professor Bernard Harcourt of Columbia Law School.² It is argued that Mr Wilson has been subjected to an arbitrary deprivation of his liberty and the right to life by the State of Alabama and the violations have not been remedied. For 20 years he has been a victim of the human rights violations which are assessable under the Working Group on Arbitrary Detention's (WGAD) UN mandate in Resolution 51/8 Arbitrary detention.³ The substantive issues are found designated under the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court,⁴ and the arguments setting forth the violations are presented under the WGAD's Categories I, III, and V, included in the Fact Sheet No. 26 (Rev. 1): Working Group on Arbitrary Detention.⁵ Also included in this Complaint are supportive WGAD jurisprudence on the death penalty,⁶ the right to a fair trial,⁷ and the safeguarding of healthcare rights.⁸

Mr Wilson has been deprived of his liberty arbitrarily or otherwise inconsistently with international human rights law. These include *inter alia*: the Universal Declaration of Human Rights (UDHR),⁹ the International Covenant on Civil and Political Rights,¹⁰ International Covenant on Economic, Social, and Cultural Rights (ICESCR),¹¹ the Convention on the Rights of Persons with Disabilities (CRPD),¹² the Guidelines on the Role of Prosecutors,¹³ the Basic Principles on the Role of Lawyers,¹⁴ the ECOSOC Safeguards Guaranteeing

² See Professor Bernard Harcourt's case page in the Columbia Center for Contemporary Critical Thought, David Wilson vs. John Q. Hamm, <https://cccct.law.columbia.edu/content/david-wilson-vs-john-q-hamm>.

³ Resolution 51/8 Arbitrary detention, A/HRC/RES/51/8, 12th October 2002; see also, Resolution 42/22. Arbitrary detention, A/HRC/RES/42/22, 8 October 2019.

⁴ Report of the Working Group on Arbitrary Detention, United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, A/HRC/30/37, 6th July 2015.

⁵ Fact Sheet No. 26 (Rev. 1): Working Group on Arbitrary Detention, 14th February 2024, 'The Working Group is the only non-treaty-based mechanism whose mandate expressly provides for the consideration of individual complaints aimed at qualifying whether a detention is arbitrary. This means that its actions are based on the right of petition of individuals anywhere in the world. Because the Working Group is one of the Human Rights Council's special procedures, it can engage with any State, irrespective of what treaties that State has or has not ratified,' pp. 8-9.

⁶ For example, Opinion No. 65/2019, 23 January 2020; Opinion No. 29, A/HRC/WGAD/2019/29; Opinion No. 32/2019, A/HRC/WGAD/2019/32, 9 September 2019; Opinion No. 32/2017, A/HRC/WGAD/2017/32, 6 July 2017; Opinion No. 56/2016, A/HRC/WGAD/2016/56, 23 January 2017.

⁷ For example, Opinion No. 31/2021, A/HRC/WGAD/2021/31; Opinion No. 32/2017, A/HRC/WGAD/2017/32, 6 July 2017.

⁸ For example, Opinion No. 36/2021, A/HRC/WGAD/2021/36.

⁹ Universal Declaration on Human Rights, Paris on 10th December 1948 during its 183rd plenary meeting United Nations General Assembly, General Assembly resolution 217 A.

¹⁰ International Covenant on Civil and Political Rights, 16th December 1966, General Assembly resolution 2200A (XXI).

¹¹ International Covenant on Economic, Social, Cultural Rights, 16th December 1966, General Assembly resolution 2200A (XXI).

¹² Convention on the Rights of Persons with Disabilities, United Nations, Treaty Series, vol. 2515, New York, 13th December 2006.

¹³ Guidelines on the Role of Prosecutors, the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 7th September 1990.

¹⁴ Basic Principles on the Role of Lawyers, the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 7th September 1990.

Protection of the Rights of Those Facing the Death Penalty,¹⁵ the UNGA Resolution on the moratorium on the use of the death penalty,¹⁶ and the HRC Resolution on the question of the death penalty.¹⁷

Ultimately it is argued that the death sentence imposed by the State of Alabama upon Mr Wilson followed an arbitrary deprivation of his liberty under the UDHR articles 7, 8, and 9, a violation of the right to a fair trial under the UDHR articles 10 and 11, and ICCPR article 14. There has been a failure to protect his right to healthcare within the capital judicial process under ICESCR article 14, and CRPD articles 4, 5, 10, 12, 13, 14, and 15. The State has breached the capital sentencing standards of ECOSOC Safeguard 4, and therefore for over 20 years, he has been subjected to an arbitrary deprivation of liberty which will be compounded by the arbitrary deprivation of life in his execution in violation of the UDHR article 3 and ICCPR article 6(1). He will experience torture and inhuman punishment in violation of the UDHR article 5, ICCPR article 7, and the CAT articles 1 and 2.

Summary of the human rights violations inflicted upon Mr Wilson by the State of Alabama:

- i. a coercive police apprehension in violation of the Fourth Amendment of the U.S. Constitution which protects against unreasonable searches and seizures, with no safeguards (through the denial of a designated person) following the diagnoses he suffers from Asperger's Syndrome, Attention Deficit and Hyperactivity Disorder (ADHD), and Hypersensitivity Disorder;
- ii. he was subjected to a 2 year and 7 month delay from the date of arrest (14th April 2004) to the initiation of the capital trial (3rd December 2007 and completed on 5th December, and sentenced to death in a one day hearing on 7th December 2008). The allocation of 3 days for the trial, with 1 day for sentencing, is a completely insufficient time to appropriately consider all of the factual issues in a capital case before sentencing Mr Wilson to death;
- iii. prosecutorial misconduct occurred in the State's suppression of a letter written by Ms Catherine Corley, one of the co-defendant's in the trial, in which she confesses to committing the murder. This suppression of evidence lasted for almost 20 years and ultimately irreparably damaged Mr Wilson's right to a fair capital trial. It is therefore factually probable that Mr Wilson is innocent of the charge and the State has not proven his guilt of capital murder by clear and convincing evidence;
- iv. the composition of the jury violated racial equality as every person of African American heritage was struck from the jury pool by the prosecutors. The jury composition violated the prohibition against racial discrimination;
- v. the defense counsel were ineffective and provided representation far below professional standards which irreparably compounded the denial of the right to a fair trial;
- vi. the death sentence was an arbitrary deprivation of the right to life as there is fundamentally significant evidence (Ms Corley's letter) demonstrating that Mr Wilson is innocent of the capital charge;
- vii. the duration under sentence of death (16 years; 20 years under the capital judicial process) has rendered torture and inhuman punishment under the death row phenomenon;
- viii. execution by nitrogen gas asphyxiation will inflict further torture and inhuman punishment. The unethical human experiment conducted by the State of Alabama in the execution of Mr Kenneth Smith on 25th January 2024 revealed Mr Wilson will very likely be similarly subjected to an inhuman execution. Furthermore he will experience the compounding factors of his anxiety symptomatic of his Asperger's Syndrome, ADHD, and Hypersensitivity Disorder. The new execution technologies will increase the presence of trauma and pain due to his respiratory problems following his COVID-19 infection and his current long-COVID symptoms; and
- ix. Mr Wilson is a victim of the United States refusal to apply the international human rights law to its capital judicial process, and a refusal to apply a good faith implementation of the global norms against the death penalty.

In addition to the submitted claims of the violations to Mr Wilson's human rights, it is argued that the United States has failed to observe its procedural obligations under the UDHR articles 2 and 8, and to provide an 'appropriate and accessible remed[y]' for the violations under Principle 2 of the Basic Principles and

¹⁵ Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, ECOSOC Res 1984/50 of 25th May 1984.

¹⁶ Resolution on the moratorium on the use of the death penalty, UNGA A/RES/77/222, 15th December 2022.

¹⁷ Resolution on the question of the death penalty, A/HRC/RES/54/35, 17th October 2023.

Guidelines.¹⁸ Therefore the State is in violation of the ICCPR article 2 (1) which affirms that the ratifying state, 'undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant,' and under article 2(3) 'Each State Party to the present Covenant undertakes, (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy...' Mr Wilson should be provided a meaningful human rights assessment of each aspect of the capital judicial process. The necessity to guarantee the procedural rights for a comprehensive review is affirmed by the Working Group's Opinion No. 31/2021:

The State has a duty to review substantively, both on the basis of sufficiency of the evidence and of the law, the conviction and sentence, such that the procedure allows for due consideration of the nature of the case. This right is of particular importance in death penalty cases.¹⁹

In interpreting the ICCPR article 14 on the right to equality before the courts and the right to a fair trial, the Human Rights Committee's General Comment No. 32, has stated that governments must provide:

In cases of trials leading to the imposition of the death penalty scrupulous respect of the guarantees of fair trial is particularly important. The imposition of a sentence of death upon conclusion of a trial, in which the provisions of article 14 of the Covenant have not been respected, constitutes a violation of the right to life (article 6 of the Covenant).²⁰

Considering that Mr Wilson's right to healthcare as a disabled person is a fundamentally important part of the 'nature of the case,' it is argued that the State of Alabama has failed to provide a procedure to protect Mr Wilson's rights in the context of the 'scrupulous respect of the guarantees of fair trial.' Therefore the State has failed to provide the 'highest standards' for the protection of Mr Wilson's rights as a disabled person within the capital judicial process under the ICESCR article 14, and the CRPD articles 4, 5, 10, 12, 13, 14, and 15, which are implemented under Guideline 20:

Where a person with a disability is deprived of his or her liberty through any process, that person is, on an equal basis with others, entitled to guarantees in accordance with international human rights law, necessarily including the right to liberty and security of person, reasonable accommodation and humane treatment in accordance with the objectives and principles of the highest standards of international law pertaining to the rights of persons with disabilities.²¹

It is argued that whilst the State may claim that Mr Wilson has received numerous post-conviction reviews at both state and federal levels, the *de facto* provision of access to a court does not mean that the *de jure* quality of the assessment was provided consistent with international human rights law. The WGAD has affirmed in Opinion No. 78/2021 that, '[m]ere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the source's allegations.'²² Indeed, the Basic Principles and Guidelines and the below WGAD Categories I, III, and V, have all been violated in Mr Wilson's case. Over 20 years, whilst there is a *de facto* state and federal process of which Mr Wilson has been party, it has not hitherto remedied *de jure* the human rights violations.

It should also be noted that whilst the author of this Individual Complaint, has submitted a Complaint to the Special Procedures mechanisms on behalf of Mr Wilson on 15th April 2024,²³ the State of Alabama has not adhered to the Special Rapporteur's requests to halt previous executions so that the human rights violations

¹⁸ Principle 2, Report of the Working Group on Arbitrary Detention, United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, A/HRC/30/37, 6th July 2015.

¹⁹ Opinion No. 31/2021 concerning Fis Murhanzi (Democratic Republic of the Congo), A/HRC/WGAD/2021/31, 2nd February 2022, para. 79.

²⁰ General Comment No. 32 - Article 14: Right to equality before courts and tribunals and to a fair trial, CCPR/C/GC/32, 23rd August 2007, p. 17.

²¹ Guideline 20, A/HRC/30/37, 6th July 2015, para. 104.

²² See, Opinion No. 78/2021 concerning Gaffor Rakhmonovich Mirzoev (Tajikistan), A/HRC/WGAD/2021/78, 14th February 2022, para. 80.

²³ Jon Yorke, The Complaint on behalf of Mr David P. Wilson under sentence of death and in the custody of the Alabama Department of Corrections, United States of America, Submission to Dr Morris Tidball-Binz, Special Rapporteur on extrajudicial, summary or arbitrary executions, Dr Alice Edwards, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Dr Tlaleng Mofokeng, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Dr Heba Hagrass, Special Rapporteur on the rights of persons with disabilities, Professor Margaret Satterthwaite, Special Rapporteur on the independence of judges and lawyers, Dr Livingstone Sewanyana, Independent Expert on the promotion of a democratic and equitable international order, Dr Matthew Gillett, Chair-Rapporteur, Working Group on Arbitrary Detention, and Professor Robert McCorquodale, Chairperson, Working Group on Business and Human Rights, OHCHR-UNOG, 8-14 Avenue de la Paix, 1211 Geneve 10, Switzerland, 15th April 2024.

could be rectified in the cases of Mr Thomas 'Tommy' Arthur (2016),²⁴ Mr Doyle Lee Hamm (2018),²⁵ Mr Alan Eugene Miller (2022),²⁶ and for Mr Kenneth Eugene Smith on 25th January 2024. In the Communication Ref: UA USA 29/2023, in the case of Mr Kenneth Smith, the Special Rapporteurs stated:

Previously the special procedures mandate holders raised concerns regarding executions using lethal injection via communications, including USA 5/2022, USA 4/2018, and USA 13/2016...Regrettably, we have not received responses from your Excellency's Government to these communications.²⁷

The State of Alabama has previously failed to act in good faith regarding subsequent Special Rapporteur statements.²⁸ As the State proceeded to violate Mr Smith's human rights the Spokesperson for the UN High Commissioner for Human Rights, Ravina Shamdasani affirmed the UN's alarm at the impending execution,²⁹ and then proceeding Alabama's killing of Mr Smith, the Special Rapporteurs provided their unequivocal condemnation of this inhumane act of the State.³⁰ This demonstrates a clear willingness of the United States to impose executions in violation of international law.

Category I

In violation of Category I, Mr Wilson has been subjected to an arbitrary process in which the Dothan Police Department inflicted an apprehension, deprivation of liberty, and arrest, in violation of international law.

On 13th April 2004, Mr Dewey Walker was found dead in his home in Dothan, Houston County, Alabama.³¹ During police questioning of a witness three people were implicated in the crime, Mr Michael Jackson, Mr David Wilson, and Ms Catherine Corley. At around 3am on 14th April 2004, without an arrest warrant, police officers from the Dothan Police Department entered the home of Ms Linda Wilson and apprehended her son, Mr David Wilson. He had recently turned 20 years old (date of birth - 7th March 1984). He suffers from Asperger's Syndrome and Attention Deficit and Hyperactivity Disorder (ADHD), and was woken and startled by the police intrusion. The police officers did not provide a Miranda warning and did not ensure reasonable adjustments or safeguarding procedures to consider Mr Wilson as a vulnerable young adult due to his mental health diagnoses. At a minimum, this should have occurred through the presence of a designated person³² who would have been able to help Mr Wilson provide appropriate information to the police. This is necessary to help ensure the legal capacity of a disabled person in (potential) criminal proceedings. It cannot therefore be meaningfully and fairly demonstrated that he would have been able to provide informed consent to be taken to the police station.

At the Dothan Police Station Mr Wilson was questioned without appropriate mental health safeguards and the initial part of the interrogation was not recorded. The police then recorded a line of questioning for about 30 minutes, after which the recording stopped, but the interrogation continued for another 10 to 15 minutes. The total interrogation lasted for around 90 minutes. The lack of the full tape recording provided a *prima facie* opportunity for the police to frame the narrative of the evidence. This was due to Mr Wilson's lack of legal capacity during the apprehension, and then in the police station, and so he was a vulnerable adult susceptible to coercive influence. Due to his disabilities, and the absence of the safeguarding provision of a designated person, it cannot be fairly and reasonably ascertained whether his statement was an accurate

²⁴ Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Reference: UA USA 13/2016.

²⁵ Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Reference: UA USA 4/2018.

²⁶ Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment Reference: UA USA 18/2022.

²⁷ Communication Ref: UA USA 29/2023, 14th December 2023, p. 1.

²⁸ Press Release: United States: UN experts alarmed at prospect of first-ever untested execution by nitrogen hypoxia in Alabama, 3rd January 2024, <https://www.ohchr.org/en/press-releases/2024/01/united-states-un-experts-alarmed-prospect-first-ever-untested-execution>

²⁹ Press Briefing Notes: US: Alarm over imminent execution in Alabama, 16th January 2024, <https://www.ohchr.org/en/press-briefing-notes/2024/01/us-alarm-over-imminent-execution-alabama>

³⁰ United States: UN experts horrified by Kenneth Smith's execution by nitrogen in Alabama, 30th January 2024, <https://www.ohchr.org/en/press-releases/2024/01/united-states-un-experts-horrified-kenneth-smiths-execution-nitrogen-alabama>

³¹ The facts of the case are cited from the habeas corpus petition filed by one of Mr Wilson's previous attorneys, Anne E. Borelli. See, Wilson v. Dunn, Petition for Writ of Habeas Corpus by a Prisoner in State Custody Under Sentence of Death, The United States District Court for the Middle District of Alabama, Southern Division, Case 1:19-CV-WKW-CEC, April 22, 2019.

³² Human Rights Committee, General Comment No. 35 (2014) Article 9 - Liberty and security of person, CCPR/C/GC/35, 16th December 2014, para. 28.

account of what he considered the facts to be. It is very likely that due to his cognitive difficulties, what he stated was the product of the unreasonable pressure of the circumstance.

As is argued below, it is very likely he is innocent of the capital charge as Ms Catherine Corley, a co-defendant, wrote a letter confessing to the murder. The police were in possession of the letter during the pre-trial investigations. Therefore, if the police had safeguarded Mr Wilson's right to healthcare he could have been provided an environment from which to be more specific about his innocence of the capital charge.

By not providing the opportunity for Mr Wilson to have a designated person, the police denied him the 'means, mode or format' for understanding his apprehension in violation of Principle 7.³³ In Guideline 5: Right to be informed,³⁴ the designated person is identified as a 'representative' to help ensure the understanding of police officer's questions. Experts from Cambridge University on autism and Asperger's Syndrome have identified this person to be an 'appropriate adult,'³⁵ and that it is imperative that such person (designated as 'representative' under Guideline 5) be present in the criminal justice proceedings. The Human Rights Council has affirmed this fundamentally important principle for safeguarding healthcare during an arrest:

For some categories of vulnerable persons, directly informing the person arrested is required but not sufficient...For certain persons with mental disabilities, notice of the arrest and the reasons should also be provided directly to persons they have designated or appropriate family members. Additional time may be required to identify and contact the relevant third persons, but notice should be given as soon as possible.³⁶

The Human Rights Council, the WGAD Guideline 5 and Principle 7, and the experts in Autism studies, all affirm that people suffering from Asperger's Syndrome, should have an appropriate person with them during police questioning to help safeguard their rights and to ultimately help ensure that the responses to questions and the content of any statements made are not articulated under coercion, and are thus informed, and accurate. This can only occur when the 'legal capacity' of a disabled person can be appropriately identified.³⁷ Guideline 20 identifies the specific measures for persons with disabilities for the determination of legal capacity:

The following measures shall be taken to ensure procedural accommodation and the provision of accessibility and reasonable accommodation for the exercise of the substantive rights of access to justice and equal recognition before the law:

(a) Persons with disabilities shall be informed about, and provided access to, promptly and as required, appropriate support to exercise their legal capacity with respect to proceedings related to the detention and in the detention setting itself. Support in the exercise of legal capacity is to respect the rights, will and preferences of persons with disabilities and should never amount to substituted decision-making.³⁸

Mr Wilson was denied the opportunity to express his 'legal capacity' in each of the three factual circumstances of: (a) the apprehension at his home, (b) the questioning at the police station, and (c) the giving of his statement. Furthermore, as stated above, there was an opportunity for the Dothan Police Force to further abuse their power as only a partial recording of the questioning of Mr Wilson was produced. Guideline 5 states:

Means of verification that a person has actually been informed shall be established. These means may include documentation of the person having been informed by way of printed record, audiotape, videotape or witnesses.³⁹

The record must be 'established.' It will need to be complete as without a full recording or transcript, the 'means of verification' cannot be authenticated. The necessity for such authentication is increased when the

³³ Principle 7, A/HRC/30/37, 6th July 2015.

³⁴ Id. Guideline 5: Right to be informed, 'The factual and legal basis for the detention shall be disclosed to the detainee and/or his or her representative without delay so as to provide adequate time to prepare the challenge. Disclosure includes a copy of the detention order, access to and a copy of the case file, in addition to the disclosure of any material in the possession of the authorities or to which they may gain access relating to the reasons for the deprivation of liberty,' para 56.

³⁵ See, R. Slavny-Cross, C. Allison, S. Griffiths & S. Baron-Cohen, Autism and the criminal justice system: An analysis of 93 cases. Autism Research, 15(5), 904-914, (2022).

³⁶ See, General comment No. 35 - Article 9 (Liberty and security of person), CCPR/C/GC/35, 16 December 2014, para 28, p. 9.

³⁷ If the mental health disability renders legal capacity impossible, this can change the nature of the investigations from the criminal jurisdiction to a mental health assessment.

³⁸ Guideline 20, A/HRC/30/37, 6th July 2015, para 107.

³⁹ Id. para 58.

police is questioning a disabled person, and so the capital judicial process must also encompass the protection of the right to healthcare for disabled persons through providing a full, '[m]eans of verification.'

The consequence of these breaches from the moment of apprehension is that the defense was deprived of both time and access to information to appropriately form a legal defense. From the moment of his apprehension, Mr Wilson was denied the fundamentally important principle of equality of arms under the ICCPR article 14, and his arrest was an arbitrary deprivation of his liberty under UDHR articles 7, 8, 9, 10 and 11.

Category III

In violation of Category III, Mr Wilson has been subjected to:

- i. Excessive delay under custody between apprehension and trial
 - ii. Insufficient time provided by the court to appropriately determine a capital charge and conviction
 - iii. Prosecutorial misconduct
 - iv. Unprofessional defense representation
 - v. An arbitrary deprivation of the right to life
- i. Excessive delay under custody between apprehension and trial

Mr Wilson was apprehended on 14th April 2004 and was detained for over 2 years and 7 months before his trial. This is a pre-trial duration in custody that exceeds the timeframe limits recognised in international human rights law.

The ICCPR article 14 3 (c) states, 'In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality...To be tried without undue delay.' In interpreting this article, the Human Rights Committee has stated it:

is not only designed to avoid keeping persons too long in a state of uncertainty about their fate and, if held in detention during the period of the trial, to ensure that such deprivation of liberty does not last longer than necessary in the circumstances of the specific case, but also to serve the interests of justice. What is reasonable has to be assessed in the circumstances of each case, taking into account mainly the complexity of the case, the conduct of the accused, and the manner in which the matter was dealt with by the administrative and judicial authorities. In cases where the accused are denied bail by the court, they must be tried as expeditiously as possible. This guarantee relates not only to the time between the formal charging of the accused and the time by which a trial should commence, but also the time until the final judgement on appeal. All stages, whether in first instance or on appeal must take place "without undue delay."⁴⁰

Mr Wilson was subjected to an excessive duration in custody which maintained a prolonged state of uncertainty that was not in the 'interest of justice.' The police was in possession of Ms Corley's letter in which she admits to committing the murder and this should have been utilized to legitimately take the focus of the 'theory of the crime' off Mr Wilson. The State cannot claim that the excessive delay was because of the 'complexity of the case,' as the trial only lasted 3 days. The 'administrative and judicial authorities,' dealt with this case in an expedient way that failed to consider key evidence which calls into question the safety of the verdict. Therefore a pre-trial detention exceeding 2 years violated the standards recognised in the jurisprudence of the Human Rights Committee⁴¹ and the Working Group on Arbitrary Detention.

In Opinion No. 31/2021, the WGAD affirmed the importance of assessing the, 'manner in which the matter was dealt with by the executive and judicial authorities.'⁴² The State of Alabama has not acted consistently with fair pre-trial proceedings. Not only was the time of pre-trial detention excessive, but the manner in which the State conducted itself within this duration of time, violated international law (the issue of the suppressed exculpatory evidence is considered below). In Opinion No. 32/2017 concerning Salih Mohammed Salih Mansour al Dulaimi (Iraq),⁴³ it was held:

⁴⁰ General Comment No. 32 - Article 14: Right to equality before courts and tribunals and to a fair trial, CCPR/C/GC/32, 23rd August 2007, pp. 10-11.

⁴¹ For example, *Sextus v Trinidad and Tobago*, communication No. 818/1998, para. 7.2 regarding a delay of 22 months between the charging of the accused with a crime carrying the death penalty and the beginning of the trial without specific circumstances justifying the delay; *Yasseen and Thomas v. Guyana*, communication No. 676/1996, para. 7.11 (delay of two years between a decision by the Court of Appeal and the beginning of a retrial).

⁴² Opinion No. 31/2021 concerning *Fis Murhanzi* (Democratic Republic of the Congo), para. 62, citing, Human Rights Committee, general comment No. 32 (2007), paras. 73-74, and A/HRC/30/37, annex, principle 12 and guidelines 11 and 13.

⁴³ Opinion No. 32/2017 concerning *Salih Mohammed Salih Mansour al Dulaimi (Iraq)*, A/HRC/WGAD/2017/32, 6 July 2017.

30. e) Mr. Al Dulaimi cannot be said to have been tried without undue delay as he was indicted on 8 November 2015, 7 months after his arrest, sentenced by the court of first instance on 12 May 2016, almost 14 months after his arrest, and his appeal is still pending, which means that he has already been in detention for over two years (contrary to articles 10 and 11 (1) of the Universal Declaration of Human Rights and article 14 (1) and (3) (c) of the Covenant).⁴⁴

Similarly, in Opinion No.32/2019 concerning Saeed Malekpour (Islamic Republic of Iran),⁴⁵ the arrest occurred on 4th October 2008 and the trial began on 29th November 2010, which was a pre-trial delay of over 2 years.⁴⁶ In the context of pre-trial detention in a capital offence, in the Opinion No. 31/2021 concerning Fis Murhanzi (Democratic Republic of the Congo),⁴⁷ the WGAD stated:

holding Mr. Malekpour for more than two years pending trial was excessively long...the only evidence brought against Mr. Malekpour at his trial was his forced confession. It is unclear why the Government took so long to proceed to trial, as it does not appear to have required additional time to gather other evidence. Mr. Malekpour's right to be tried within a reasonable time under article 9 (3) and his right to trial without undue delay under article 14 (3) (c) of the Covenant were violated.⁴⁸

The WGAD's jurisprudence considers pre-trial detention durations similar to Mr Wilson's (circa 2 years and 7 months). There are further comparative violations as the only substantive evidence against Mr Wilson was his own statement (which the police created through violating his right to healthcare). Therefore the right to be tried without undue delay was violated under UDHR articles 10 and 11, and the ICCPR articles 9(3) and 14(1) and 14 (3)(c).

ii. Insufficient time provided by the court to appropriately determine a capital charge and conviction

The capital trial conducted by the Circuit Court of Houston County, Alabama, only lasted 3 days (3rd to 5th December 2007) with a further day for the Circuit Court Judge to sentence Mr Wilson to death (7th January 2008). On the relationship of the ICCPR articles 14 with 6, for the assessment of the death penalty, the Human Rights Committee's General Comment No. 32 states:

In cases of trials leading to the imposition of the death penalty scrupulous respect of the guarantees of a fair trial is particularly important. The imposition of a sentence of death upon conclusion of a trial, in which the provisions of article 14 of the Covenant have not been respected, constitutes a violation of the right to life (article 6 of the Covenant).⁴⁹

In allowing four days for Mr Wilson's capital trial and sentence, the State of Alabama cannot reasonably argue that it provided a 'scrupulous respect of the guarantees of a fair trial,' and therefore sentenced him to death in the absence of 'clear and convincing evidence.' The ECOSOC *Safeguards* state:

Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts.⁵⁰

The ECOSOC Safeguards provide the interpretive context of the right to a fair trial in capital proceedings (for the ICCPR articles 6 and 14), and the State of Alabama has failed to meet these standards. Mr Wilson is a victim of the state's arbitrary and unlawful capital judicial process. There is an 'alternative explanation of the facts,' as demonstrated by Ms Corely's letter, but there was insufficient time provided by the trial to review all the factual issues involved before a state should put someone to death. This constituted a *prima facie* violation of the UDHR articles 3, 7, 8, 9, 10, and 11, ICCPR articles 14 and 6(1), ICESCR article 14 and CRPD articles 4, 5, 10, 12, 13, 14 and 15. This argument is now further explained in points iii. to iv. below.

⁴⁴ Id., para 30 (e).

⁴⁵ Opinion No.32/2019 concerning Saeed Malekpour (Islamic Republic of Iran), A/HRC/WGAD/2019/32, 9th September 2019.

⁴⁶ Id., para. 38. The pre-trial detention insufficiency of time and facilities was considered and held to be violated in Opinion No. 47/2016 concerning Bobomurod Razzakov (Uzbekistan), A/HRC/WGAD/2016/47, 8th February 2017, para. 87, under UDHR article 10 and ICCPR article 14

⁴⁷ Opinion No. 31/2021 concerning Fis Murhanzi (Democratic Republic of the Congo), A/HRC/WGAD/2021/31, 2nd February 2022.

⁴⁸ Id., para. 12.

⁴⁹ General Comment No. 32 – Article 14: Rights to equality before courts and tribunals and to a fair trial, CCPR/C/GC/32, 23rd August 2007.

⁵⁰ Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, ECOSOC 1984/50. The Human Rights Committee in *Price v Jamaica* stated:

the imposition of a sentence of death upon conclusion of a trial in which the provisions of the Covenant have not been respected constitutes, if no further appeal against sentence is possible, a violation of article 6 of the Covenant.

iii. Prosecutorial Misconduct

During the preparations for the trial, the District Attorney obtained a letter from Ms Corley in which she confesses that she, 'hit Mr Walker with a baseball bat until he fell.'⁵¹ The police then seized other handwriting samples from Ms Corley's prison cell, and the District Attorney engaged the services of a handwriting expert from the United States Postal Service (USPS). The expert found that the handwriting samples were probably from the same person. This means that the letter containing the confession and the letters from Ms Corley's cell were under a balance of reasonable probabilities all written by the co-defendant.

There is a substantial difference between what Ms Corley stated to the police, which was turned over to the defense, and what she stated in her letter, which was not. In Ms Corley's disclosed statement she claims she did not go into the kitchen to look at Mr Walker's body. However, the letter she wrote states that she herself was the person who not only saw Mr Walker alive, but who also committed the murder. Mr Wilson claimed in his statement he only caused one accidental hit on Mr Walker's head, and then restrained him until he released a knife (making Mr Wilson guilty of an assault). Then he left the premises whilst Mr Walker was still alive. Whereas the confession by Ms Corley that she hit him until he fell is consistent with the forensic evidence provided by the state at trial. The State's pathologist concluded that there were multiple impact wounds inflicted whilst Mr Walker was still alive and which subsequently resulted in his death. Ms Corley confessed to inflicting wounds consistent with the pathologist's testimony, but the state presented a 'theory of the crime' that only Mr Wilson inflicted these wounds.

In Mr Wilson's statement he affirmed that he did not accompany Ms Corley into Mr Walker's home, and he therefore stated there was a period of time in the home that Mr Wilson cannot account for, but Ms Corley could have done so. Ms Corley did not provide her opinion of what happened in the house during the trial, but she did so through her letter. This evidence points to the fact that during this time, Ms Corley had an opportunity to inflict the fatal wounds which caused Mr Walker's death.

Between the 2004 investigation and until 28th July 2023, the State did not question the accuracy of the content of the letter or the identity of the author. The State of Alabama, through claims of the police, handwriting experts, and legal arguments by state prosecutors, had maintained that Ms Corley wrote the letter and that it was authenticated as to both authorship and the factual accuracy of its contents. To affirm this Professor Harcourt cogently identified the factual predicates and legal propositions made by the State of Alabama in various court proceedings (replicated below is the State of Alabama submission to the U.S. Supreme Court)⁵²:

To the United States Supreme Court, in its Brief in Opposition to Petition for Writ of Certiorari: "Wilson also argues that the State violated Brady by not producing documents authenticating the Corley letter, but that argument fails for at least three reasons. First, the authorship of the letter was not in dispute. As the exhibits to Wilson's petition show, the investigating officer believed "that the author of both documents are [sic] Catherine Nicole Corley." [] Second, the authenticating documents described in the petition have no independent materiality. [...] A document "authenticating" a letter's authorship when the authorship is not in dispute is not material because it neither adds to nor takes away from the quantum of evidence before the jury. Third, even if the letter's authenticity was at issue, the State produced the police report which disclosed the substance of the allegedly suppressed fact: that the document was authentic." []

On 21st June 2023, after eleven (11) requests between 2004 and 2023 the state was instructed by Judge Keith Watkins of the United States District Court for the Middle District of Alabama to provide the defense with the letter written by Ms Corley.⁵³ The Attorney General complied with the order, but he also obtained an affidavit from Ms Corley stating that the letter is a fake. This was on 29th June 2023. This raises serious questions about the partiality of the prosecutor, because it appears that the State has knowingly tendered to the District Court an affidavit from Ms Corley it does not believe to be true. Professor Harcourt argues:

It is not surprising that Kittie Corley now denies authorship of the letter in which she confesses to having beaten Mr. Dewey Walker to death and to being deeply implicated in the drug-dealings and murder of C.J. Hatfield. [] Corley is about to appear before the Alabama Board of Pardons and Paroles. [] The last thing she wants is to be associated with her confessions to involvement in two murders.

⁵¹ Wilson v Hamm, in The United States District Court for the Middle District of Alabama, Southern District, Case 1:19-cv-00284-RAH-CSC, filed 02/23/2024.

⁵² Id.

⁵³ Id.

Corley has every motive in the world to lie and now contend that she was not involved in those murders—concerning the second of which there is no public knowledge of her involvement.

But what is deeply alarming is that the Alabama Attorney General would file an affidavit with the Court that, by their own evidence, is likely perjurious. [] In fact, the Corley affidavit explicitly contradicts one of the core arguments that the Attorney General has relied on for years to shield the Corley letter: namely, that Petitioner is procedurally defaulted on his Brady claims because he knew that, in the Attorney General's words to the United States Supreme Court, "the authorship is not in dispute."

It is also alarming that the Alabama Attorney General obtained Kittie Corley's sworn signature on June 29, 2023, the day after the Attorney General complied with this Court's production order of June 21, 2023.[] Indeed, on June 28, 2023, at 11:54 PM, just a few hours before obtaining Corley's affidavit, the Attorney General turned over to undersigned counsel the back side of the Corley letter.⁵⁴

This District Court order raises the question as to whether the State prosecutors have acted with misconduct,⁵⁵ and it is therefore argued that the trial court and subsequent appellate review has failed to protect Mr Wilson's right to a fair trial. It is a reasonable proposition that had the jury been presented with the evidence of Ms Corley's letter that at least one further juror would not have recommended the death sentence.⁵⁶ Hence the defense had not received an appropriate opportunity to access information for Mr Wilson's defense. The principle of equality of arms is central to the right to a fair trial under the ICCPR article 14, along with the duties and responsibilities under the *Guidelines on the Role of Prosecutors*⁵⁷ and the *Basic Principles on the Role of Lawyers*.⁵⁸ In denying the defense access to Ms Corley's letter the State had irreparably violated these standards under the category of 'adequate facilities.' In interpreting the ICCPR article 14 (3) (b), the Human Rights Committee's *General Comment No. 32* explains:

'Adequate facilities' must include access to documents and other evidence; this access must include all materials that the prosecution plans to offer in court against the accused or that are exculpatory. Exculpatory material should be understood as including not only material establishing innocence but also other evidence that could assist the defense (e.g. indications that a confession was not voluntary).⁵⁹

Suppressing exculpatory evidence leads to a denial of equal access to courts, both *de jure* and *de facto*,⁶⁰ and both prosecution and defense lawyers must appropriately handle evidence for the administration of justice and the protection of human rights. The *Guidelines on the Role of Prosecutors* states:

12. Prosecutors shall, in accordance with the law, perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system.

⁵⁴ Wilson v Hamm, in The United States District Court for the Middle District of Alabama, Southern District, Case 1:19-cv-00284-RAH-CSC, filed 02/23/2024.

⁵⁵ Brady v. Maryland, 373 U.S. 83, 87 (1963). Applied in Alabama under Ex parte Frazier, 562 So.2d 560 (Ala. 1990). The state's failure to disclose exculpatory information in this case essentially parallels the facts of Patton v. State, 530 So.2d 886, 890 (Ala.Cr.App. 1988) in which the defendant was granted a retrial because the government's withholding of an informant's identity prevented his calling the informant as a witness. The duty to disclose exculpatory material necessarily entails a corresponding obligation to discover, gather and preserve evidence that negates or mitigates liability, as held in California v. Trombetta, 467 U.S. 479 (1984).

⁵⁶ Favourable evidence is material there is a reasonable probability that disclosure would have led to a different legal result, see Banks v. Dretke, 540 U.S. 668, 696 (2004) and Kyles v. Whitley, 514 U.S. 419, 433 (1995).

⁵⁷ Guidelines on the Role of Prosecutors, the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 7th September 1990

⁵⁸ Basic Principles on the Role of Lawyers, the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 7th September 1990

⁵⁹ General Comment No. 32 – Article 14: Right to equality before courts and tribunals and to a fair trial, CCPR/C/GC/32, 23 August 2007, p. 10. Citing, concluding observations, Canada, CCPR/C/CAN/CO/5 (2005), para. 13.

⁶⁰ The Human Rights Council affirms that, 'A situation in which an individual's attempts to access the competent courts or tribunals are systematically frustrated *de jure* or *de facto* runs counter to the guarantee of article 14, paragraph 1, first sentence,' General Comment No. 32 – Article 14: Right to equality before courts and tribunals and to a fair trial, CCPR/C/GC/32, 23rd August 2007, p. 2.

13. In the performance of their duties, prosecutors shall: (a) Carry out their functions impartially and avoid all political, social, religious, racial, cultural, sexual or any other kind of discrimination;

The *Basic Principles on the Role of Lawyers* states:

12. Lawyers shall at all times maintain the honour and dignity of their profession as essential agents of the administration of justice.

21. It is the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time.

There are substantial reasons to argue that the State of Alabama has violated the above *Guidelines* and the *Basic Principles*, and the State prosecutors involved in the case have failed to uphold the honour and dignity of the legal profession and therefore thwarted the 'smooth functioning of the criminal justice system.' Following the Order by the District Court for the turning over to the defense the letter written by Ms Corley, the Attorney General has not been impartial and has discriminated against Mr Wilson. This is further implicated by the timing of the affidavit of Ms Corley claiming the letter is a fake. The suppressed letter speaks to the presence of factual issues relevant for refuting Mr Wilson's moral and legal culpability for the crime. Ms Corley's letter as exculpatory evidence is 'appropriate information' for the trial to have been fair, and should have been shared with the defense at the time of the discovery. Under *Basic Principle* 21 the 'earliest appropriate time' was in 2004, it is now 20 years too late.

These UN standards on the professionalism of the lawyers in criminal proceedings are affirmed in the WGAD Basic Principles and Guidelines. Principle 12 states that:

The proceedings shall be fair and effective in practice, and the parties to the proceedings in question shall be ensured the right to equal access to present their full case, and equality of arms, and be treated without any discrimination before the courts.⁶¹

Every individual deprived of liberty shall be guaranteed the right to have access to all material related to the detention or presented to the court by State authorities to preserve the equality of arms.⁶²

Guideline 11 Equality of arms, states:

To ensure that the procedure is guided by the adversarial principle and equality of arms, the following conditions shall be guaranteed in all proceedings, whether of a criminal or non-criminal nature:

(a) Full and complete access by detainees and their legal counsel to the material related to the detention or presented to the court, as well as a complete copy of them;

(b) The ability of detainees to challenge any documents relating to their case file, including all the arguments and material elements adduced by the authorities...⁶³

Guideline 13 Disclosure of information, states:

The detaining authority shall provide all relevant information to the judge, the detainee and/or his or her lawyer. Disclosure is to include exculpatory information, which includes not only information that establishes an accused person's innocence but also other information that could assist the detainee, for example, in arguing that his or her detention is not lawful or that the reasons for his or her detention no longer apply.⁶⁴

Consistent with these standards the WGAD has held in Opinion No. 31/2021, that:

every individual deprived of liberty has the right to have access to all material related to their detention, including information that may assist the detainee in arguing that the detention is not lawful or that the reasons for the detention no longer apply. The authorities must ensure that

⁶¹ Principle, A/HRC/30/37, 6th July 2015, para. 19.

⁶² Id. para 20.

⁶³ Id. para 76.

⁶⁴ Id. para 78.

lawyers have access to files and documents in sufficient time to enable them to provide effective assistance to their clients, and such access should be provided at the earliest appropriate time.⁶⁵

In suppressing the letter by Ms Corley, the State of Alabama rendered an unfair capital trial for Mr Wilson, in violation *Basic Principles* 12 and 21, and *Guideline* 13, and therefore in violation of the ICCPR article 14.

iv. Unprofessional defense representation

Following the U.S. Supreme Court decision in *Strickland v Washington*, defense representation: (a) must not fall below an objective standard of reasonableness; and (b) such deficiency must not prejudice the defense.⁶⁶ If (a) and (b) are satisfied it demonstrates that the defense had received 'ineffective assistance of counsel,' and is thus a violation of the Sixth Amendment of the U.S. Constitution. Under *Ford v. Wainwright*, capital proceedings must demonstrate a heightened standard of reliability.⁶⁷ It is clear that in Mr Wilson's case there are numerous examples of ineffective assistance of counsel and viewing these both separately and cumulatively, demonstrates that he did not receive a fair trial.

Defense counsel did not adequately prepare for the capital case consistent with the ABA Guidelines on the Appointment and Performance of Defense Counsel in Death Penalty Cases.⁶⁸ Mr Wilson was represented by two lawyers, and one of his counsel only visited him two times, and the other three times, and the meetings for the discussion of the whole capital case amounted to about 5 hours. This is an insufficient time to discuss the case with the defendant and did not enable counsel to adequately prepare to understand the facts in this life-or-death circumstance. The defense did not adequately prepare for cross examination of state witnesses. Due to his Asperger's Syndrome and ADHD, the defense failed to appropriately understand the socio-medical and inter-generational background of Mr Wilson, and they also failed to adequately prepare for the mitigation phase. At the end of the trial the defense counsel waived the opportunity to provide a closing argument. Therefore the jury was presented with no legitimate reason why they should find him not guilty or guilty of a non-capital offence. It demonstrated to the jury that there was no clear 'theory of defense' and therefore no propositions for reasonable doubt against a capital offence. Before wanting to kill any human being, and in this case, a person suffering from Asperger's Syndrome and ADHD, the state should provide adequate assessment of the facts and the mental health issues of the defendant. In Mr Wilson's case, neither has happened. The State of Alabama has therefore imposed an arbitrary death sentence upon Mr Wilson and this amounted to an arbitrary deprivation of his right to life.

Following Opinion No. 32/2017⁶⁹ and the judgments cited above in the case of Mr Wilson, the State of Alabama has not provided: a) effective legal representation, b) adequate time, and c) facilities and information. This has prevented him receiving a fair trial, and the subsequent lack of remedial outcome demonstrates that both state and federal proceedings have denied an effective post-conviction review. Therefore these omissions demonstrate that the State has failed to guarantee the right to a fair trial in violation of the UDHR articles 10 and 11, the ICCPR articles 14, the ICESCR article 14, and CRPD articles 4, 5, 10, 12, 13, 14 and 15.

v. An arbitrary deprivation of the right to life

The State of Alabama has not reasonably proven that Mr Wilson was sentenced to death for a murder of which he:

- a. intended to commit, and;
- b. inflicted the bodily harm which caused the death.

⁶⁵ Opinion No. 31/2021 concerning Fis Murhanzi (Democratic Republic of the Congo), para. 62, citing, Human Rights Committee, general comment No. 32 (2007), para. 38 (in which it is stated that in cases involving capital punishment, the accused must be effectively assisted by a lawyer at all stages of the proceedings), and A/HRC/30/37, annex, principle 12 and guidelines 11 and 13.

⁶⁶ *Strickland v Washington*, 466 U.S. 668 (1984), as affirmed in *Wiggins v Smith*, 539 U.S. 510 (2003).

⁶⁷ *Ford v. Wainwright*, 477 U.S. 399, 411 (1986)

⁶⁸ American Bar Association (2003) ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases, Hofstra Law Review, Vol. 31: 4, (2003) Available at: <https://scholarlycommons.law.hofstra.edu/hlr/vol31/iss4/2>

⁶⁹ Opinion No. 32/2017 concerning Salih Mohammed Salih Mansour al Dulaimi (Iraq), A/HRC/WGAD/2017/32, 6 July 2017, 'The Working Group is particularly concerned that Mr. Al Dulaimi's right to have effective legal representation, adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing, has not been respected by the Government of Iraq, in violation of article 14 (3) (b) of the Covenant and principle 17.1 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment,' para. 36.

The capital sentence imposed upon Mr Wilson on 7th January 2008 is therefore a violation of ICCPR article 6(2) which provides a temporary provision of the death penalty for the 'most serious crimes' (see below – Category V - points v-vi). The Human Rights Committee has stated that the scope of the punishment is to be confined to 'intentional killing.'⁷⁰ It has not been reasonably demonstrated that Mr Wilson had such intention and there is no forensic evidence to prove that he killed the victim. Applying the ICCPR article 14 to the death penalty, the ECOSOC *Safeguards* state the death sentence cannot comply with ICCPR article 6(2) unless the, 'guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts.'⁷¹ The letter written by Ms Corley demonstrates there is an alternative explanation. The Human Rights Committee has advised that, 'a death sentence issued following legal proceedings conducted in violation of domestic laws of criminal procedure or evidence will generally be both unlawful and arbitrary,'⁷² and that:

Deprivation of life is, as a rule, arbitrary if it is inconsistent with international law or domestic law. A deprivation of life may, nevertheless, be authorized by domestic law and still be arbitrary. The notion of "arbitrariness" is not to be fully equated with "against the law", but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality.⁷³

The standards on the right to a fair trial have also been affirmed by the General Assembly in the *Resolution on the moratorium on the use of the death penalty*, paragraph 7(d) which calls upon all states:

To ensure that any trial leading to the imposition of the death penalty complies with internationally recognized fair trial guarantees...bearing in mind that namely failure to respect fair trial guarantees in proceedings resulting in the imposition of the death penalty could constitute a violation of the right to life.⁷⁴

Mr Wilson's death sentence was 'authorized by domestic law,' but it was arbitrary in violation of his human rights under the ICCPR article 6(1). The State of Alabama has acted at variance with ICCPR article 14, the ECOSOC *Safeguards*⁷⁵, the General Comment No. 36⁷⁶, the UNGA and HRC standards⁷⁷, and it as achieved this by creating a capital trial which violated the ICCPR article 6(2).

Category V

In violation of Category V, Mr Wilson has been treated with discrimination by the State of Alabama and the US federal government through:

- i. The systematic denial of the right to healthcare
 - ii. The jury composition in application of racial discrimination
 - iii. Shackling Mr Wilson during the trial
 - iv. New method of execution through nitrogen gas asphyxiation
 - v. Duration on death row
 - vi. Violation of the norms of international law
- i. The systematic denial of the right to healthcare

From his apprehension in 2004, the State of Alabama has discriminated against Mr Wilson through the failure to provide safeguarding of his rights to healthcare due to his Asperger's Syndrome and ADHD. The WGAD jurisprudence identifies the need for the protection of vulnerable persons, for example, in Opinion No. 29/2019 when the government, 'fails[s] to afford him protections associated with his status as a

⁷⁰ General Comment No. 36 – Article 6: right to life, CCPR/C/GC/36, p. 8.

⁷¹ Safeguard 4, Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, ECOSOC 1984/50. The Human Rights Committee in *Price v Jamaica* stated:
the imposition of a sentence of death upon conclusion of a trial in which the provisions of the Covenant have not been respected constitutes, if no further appeal against sentence is possible, a violation of article 6 of the Covenant.

⁷² General Comment No. 36 – Article 6: right to life, CCPR/C/GC/36, p. 3.

⁷³ Id.

⁷⁴ Resolution on the moratorium on the use of the death penalty, UNGA A/RES/77/222, 15th December 2022

⁷⁵ Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, ECOSOC 1984/50

⁷⁶ General Comment No. 36 – Article 6: right to life, CCPR/C/GC/36.

⁷⁷ As stated in UNGA Resolution and HRC Resolution, cited above.

juvenile,⁷⁸ and such protection should have been provided for Mr Wilson due to his status as someone suffering from mental health problems, including limited intellectual capacity consistent with that of a juvenile.

The subsequent death sentence compounded the mental health violations consistent with the WGAD Opinion No. 31/2021 as the deterioration of the mental health of a person under sentence of death.⁷⁹ Following the execution of Mr Kenneth Smith, Mr Wilson's mental health has significantly deteriorated as he fears for his own life. Therefore, the State of Alabama has violated his healthcare rights under the Convention on the Rights of Persons with Disabilities (CRPD), Article 14 (1). 'States Parties shall ensure that persons with disabilities, on an equal basis with others: (a) Enjoy the right to liberty and security of person; (b) Are not deprived of their liberty unlawfully or arbitrarily...'; and under article 14(2), any deprivation of liberty must be, 'in accordance with international human rights law...' The protection of Mr Wilson's disability rights under the CRPD are enhanced under the ICCPR article 9, and the Human Rights Committee's *General Comment No. 35*, explains:⁸⁰

For some categories of vulnerable persons, directly informing the person arrested is required but not sufficient...For certain persons with mental disabilities, notice of the arrest and the reasons should also be provided directly to persons they have designated or appropriate family members. Additional time may be required to identify and contact the relevant third persons, but notice should be given as soon as possible.⁸¹

The Human Rights Committee has recognised the need for the legal system to adequately protect 'vulnerable persons.' Researchers from the Autism Research Centre at the University of Cambridge have conducted a comparative study of the extent to which criminal justice systems take into consideration autistic people's particular vulnerability.⁸² The findings of Professors Rachel Slavny-Cross, Carrie Allison, Sarah Griffiths, and Simon Baron-Cohen, reveal violations of the rights of autistic people in the criminal justice system consistent with those identified within this Complaint. The professors identify the detrimental consequences of the lack of appreciation of the particular mental and physical health issues of suspects and defendants, and then the criminal justice process' subsequent failure to adopt appropriate safeguarding for such people.⁸³

At no stage of the pre-trial and trial proceedings was there an adequate understanding of Mr Wilson's Asperger's Syndrome and ADHD. There is no evidence of the arresting authorities providing appropriate care and provisions for protecting Mr Wilson in his vulnerable state. It would have been appropriate under these circumstances for Mr Wilson to have had with him a person designated or 'relevant third person'⁸⁴ or an 'appropriate adult'⁸⁵ to help ensure that he understands the circumstances of his apprehension and the

⁷⁸ Opinion No. 29/2019 concerning a minor whose name is known to the Working Group (Egypt), A/HRC/WGAD/2019/29, 9th October 2019, para. 44.

⁷⁹ Opinion No. 31/2021 concerning Fis Murhanzi (Democratic Republic of the Congo), A/HRC/WGAD/2021/31, 2nd February 2022, para 91:

Mr. Murhanzi is currently under sentence of death and does not know when, if at all, he will be executed. His mental health has reportedly deteriorated. He may be experiencing death row phenomenon, which itself can amount to torture or cruel, inhuman or degrading treatment or punishment. The Working Group requests the Government to immediately and unconditionally release him and ensure that he receives medical care.

⁸⁰ Human Rights Committee, General Comment No. 35 (2014) Article 9 - Liberty and security of person, CCPR/C/GC/35, 16th December 2014.

⁸¹ Id. para. 28, p. 9.

⁸² R. Slavny-Cross, C. Allison, S. Griffiths, & S. Baron-Cohen, Autism and the criminal justice system: An analysis of 93 cases. Autism Research, 15(5), 904–914 (2022).

⁸³ The general failure of the criminal justice process to guarantee the rights of disabled persons, and particularly those with Asperger's Syndrome, is widely known, see Chiara Eisner Prison Is Even Worse When You Have a Disability Like Autism, The Marshall Project, <https://www.themarshallproject.org/2020/11/02/prison-is-even-worse-when-you-have-a-disability-like-autism> and, Nick Dublin, Autism and the Criminal Legal System, Medium, 12 December 2023, <https://medium.com/blue-notes-to-myself/autism-and-the-criminal-legal-system-20e9805dc262>

⁸⁴ See, General comment No. 35 - Article 9 (Liberty and security of person), CCPR/C/GC/35, 16 December 2014:

'For some categories of vulnerable persons, directly informing the person arrested is required but not sufficient...For certain persons with mental disabilities, notice of the arrest and the reasons should also be provided directly to persons they have designated or appropriate family members. Additional time may be required to identify and contact the relevant third persons, but notice should be given as soon as possible,' para 28, p. 9.

⁸⁵ See, R. Slavny-Cross, C. Allison, S. Griffiths & S. Baron-Cohen, Autism and the criminal justice system: An analysis of 93 cases. Autism Research, 15(5), 904–914, (2022).

resulting questions he would have to answer. His mental health diagnoses render probable the fact that due to the highly coercive nature of the apprehension of Mr Wilson, he would have been susceptible to cognitive and communication difficulties, and would have most likely misunderstood the quality and nature of what the interrogating authorities would have stated and asked of him. This renders a *prima facie* argument against the accuracy of what Mr Wilson included in his statement to the police.

Due to the adopted procedures depriving him of his liberty without appropriate safeguarding measures and the protection of his mental health under the CRPD article 14 and ICCPR article 9, it *prima facie* rendered the beginning of the violation of the right to a fair trial under ICCPR article 14. The concomitant violation of his healthcare rights amounted to an arbitrary deprivation of his life under ICCPR article 6.

ii. The jury composition in application of racial discrimination

In 2004 the demography of Houston County in the United States revealed that there were 25% African Americans living within the jurisdiction. Therefore on a jury in this area it would be legitimately representative for 3 of the 12 jurors to be African American. For Mr Wilson's trial there were 54 people in the venire pool for jury selection and after initial strikes and hardship excuses there was a pool of 45 people and only 5 (12%) were African Americans. The State then used 5 peremptory challenges to strike all of the potential African American jurors thus creating a jury composition which *prima facie* demonstrated racial discrimination.

In *Batson v. Kentucky*,⁸⁶ the U.S. Supreme Court held that it was a violation of equal protection (under the Fourteenth Amendment of the U.S. Constitution) for a juror to be struck based solely on account of their race or on the assumption that an African American juror would be unable to impartially consider the prosecution's case. However, the reasonable interpretation of the State's actions is that the predominant factor for these strikes was the race of the person in the pool.⁸⁷ This was a *prima facie* unconstitutional jury selection. Such a formulation denied Mr Wilson the right to a fair trial under the ICCPR article 14.

iii. Shackling Mr Wilson during the trial

Mr Wilson was shackled during the duration of the trial. The jury would have been able to see him presented in restraints and the appearance of the defendant in handcuffs would have *prima facie* tainted their ability to impartially consider the facts of the case and then to determine the extent of his culpability. This resulted in a violation consistent with the legal findings in *Deck v. Missouri*.⁸⁸ It is unconstitutional to shackle a defendant during the trial unless such restraint is 'justified by an essential state interest.'⁸⁹ The court in Mr Wilson's case failed to establish this interest and the defense counsel did not challenge the use of the shackles. This prevented the court from ensuring that Mr Wilson had a presumption of innocence before the jury. This is a fundamental tenet of fairness and equal treatment during criminal proceedings. What occurred, however, was a prejudicial act by the State and the court did not rectify the damaging, and damning, appearance (and thus presumption) of guilt of the defendant due to him wearing restraints during the trial.

The shackles also need to be placed in context with the stress and trauma that Mr Wilson would have felt as he suffers from Asperger's Syndrome and ADHD. This was cruel treatment of someone with such mental health difficulties, and further contributed to Mr Wilson's arbitrary deprivation of his right to life.

Therefore, the trial itself was a source of ill-treatment inflicted upon Mr Wilson, in violation of Guideline 10:

To ensure the effectiveness and fairness of proceedings and to strengthen the protection of detainees from other violations, such as torture or other ill-treatment, a court should guarantee the physical presence of the detainee before it...This shall be ensured through implementation of the following measures:

(a) Any person deprived of his or her liberty, and not only persons charged with a criminal offence, shall enjoy the right to appear promptly before a court in order to challenge the deprivation of liberty and the conditions of detention, including acts of torture and ill-treatment.⁹⁰

⁸⁶ *Batson v. Kentucky*, 476 U.S. at 89.

⁸⁷ See, *Wilson v. State, Court of Criminal Appeals of Alabama*, 142 So.3d 732, November 5, 2010.

⁸⁸ *Deck v. Missouri*, 544 U.S. 622 (2005).

⁸⁹ *Id.* 626.

⁹⁰ See Guideline, A/HRC/30/37, 6th July 2015, Para. 75.

The 'appearance' before the court is supposed to occur to promote the 'effectiveness and fairness' of the proceedings, and the right to habeas corpus was created to provide the right to be brought before a court to challenge the legality of state action. So the court, and the courtroom, is supposed to be a safe and protected space, especially for disabled people. But when the Circuit Court of Houston County allowed Mr Wilson to be inappropriately shackled, the court itself became a state forum which inflicted ill-treatment and created and maintained a fundamental unfairness during the proceedings. The court allowed the State to illegitimately shackle Mr Wilson and this arbitrariness was displayed for the jury to see during the whole trial. This amounted to a violation of the rights to a fair trial under the UDHR articles 10 and 11, ICCPR article 14, ICESCR article 14, and the CRPD articles 12 and 13.

iv. New method of execution through nitrogen gas asphyxiation

The State of Alabama now seeks to complete the arbitrary deprivation of Mr Wilson's life by using a new method of execution through forced nitrogen gas asphyxiation. Following the 25th January 2024 execution of Mr Kenneth Smith in which Alabama became the first state to use forced nitrogen gas inhalation as an execution method,⁹¹ they will now seek to impose this method upon Mr Wilson. The eyewitness accounts of the execution of Mr Smith, and the review of them by healthcare professionals,⁹² demonstrate that this method poses an intolerable risk that Mr Wilson will be subjected to a torturous, cruel, and inhuman punishment. It is likely that if Mr Wilson is forced to breath nitrogen gas into his body, that he will die whilst experiencing seizures, the sensation of choking, and great pressure within and upon his internal organs. This torture will be compounded as Mr Wilson suffers from anxiety, hypersensitivity to bright light, and respiratory problems due to contracting COVID-19, and suffering from long-COVID symptoms. This will cumulatively ensure that for Mr Wilson the levels of pain in the execution will be increased.

It took Mr Smith nearly half-an-hour to die. This was not an amount of time envisaged by the State, as the Attorney General submitted to the U.S. Supreme Court that unconsciousness will be attained in a few seconds and death would ensue shortly afterwards.⁹³ However, through the eyewitness accounts⁹⁴ Mr Smith's execution began at either 7:57 or 7:58pm and death occurred somewhere between 8:15 and 8:25pm. So death occurred at a minimum time of 17 minutes (between 7:58pm and 8:15pm), or somewhere within this minimum and the maximum time of 28 minutes (between 7:57 and 8: 25pm). Both of these lengths of time are in violation of the international standards determining that executions must be confined to, 'minimum possible suffering'.⁹⁵ The General Comment No. 20, states, 'least possible physical and mental suffering',⁹⁶ and following the Human Rights Committee's decision in *Ng v. Canada*, it was affirmed that 12 minutes to die is an excessive duration for an execution using cyanide gas, and therefore renders an execution outside the temporal scope of acceptable suffering.⁹⁷ Therefore, the length of time for Mr Smith to die violated his human rights and provides evidence for a reasonable deduction that Mr Wilson's rights will also be violated under the UDHR article 5, ICCPR articles 6, 7, and 10, CAT articles 1 and 2, and the CRPD articles 10, 12, 13, 14 and 15.

⁹¹ See, Alabama Schedules A Second Execution for Kenneth Smith, Using Nitrogen Gas for the First Time in U.S. History, Death Penalty Information Center, <https://deathpenaltyinfo.org/news/alabama-schedules-a-second-execution-for-kenneth-smith-using-nitrogen-gas-for-the-first-time-in-u-s-history>

⁹² See, Joel B. Zivot, A new Louisiana capital-punishment bill would fundamentally alter physician licensing STAT, February 26, 2024, <https://www.statnews.com/2024/02/26/nitrogen-execution-alabama-louisiana-law-medical-licensing-board/>

⁹³ See, Petitioner's Fifth Motion for Brady Discovery, *Wilson v. Hamm*, February 23, 2024, Case No. 1:19-CV-284-RAH-CSC.

⁹⁴ For example, Kim Chandler, Alabama executes a man with nitrogen gas, the first time the new method has been used, AP News, 26th January 2024, <https://apnews.com/article/nitrogen-execution-death-penalty-alabama-699896815486f019f804a8afb7032900>

⁹⁵ Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, ECOSOC 1984/50, Safeguard 9.

⁹⁶ General Comment No. 20 - Article 7: Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment), CCPR/C/21/Add.3, para. 6

⁹⁷ *Ng v. Canada*, Communication No. 469/1991, U.N. Doc. CCPR/C/49/D/469/1991 (1994) para. 16.4. Ultimately in *Ng*, 'In the instant case and on the basis of the information before it, the Committee concludes that execution by gas asphyxiation, should the death penalty be imposed on the author, would not meet the test of 'least possible physical and mental suffering', and constitutes cruel and inhuman treatment, in violation of article 7 of the Covenant.' Citing the General Comment No. 20: Article 7: Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment), CCPR/C/21/Add.3, para. 6.

In *Ng* a material issue was the fact that cyanide was not approved in other foreign state's capital judicial systems, indeed, 'elsewhere in the international community'.⁹⁸ Therefore, the Human Rights Committee designated three fundamentally important issues: (a) an assessment of duration; (b) an assessment of the level of pain during this duration, and (c) the use of the method of execution in other retentionist states. This assessment criteria should be applied to Alabama's use of nitrogen and it is argued that: (a) the time for Mr Wilson to die will exceed a duration considered to be humane, (b) the level of pain inflicted upon him will amount to torture or other cruel and inhuman punishment, and (c) the U.S. is currently the only country in the world who officially uses forced nitrogen gas asphyxiation as an execution method. It is therefore an outlier State violating the Human Rights Committee's assessment in *Ng*.

In the United States Fifth Periodic Review by the Human Rights Committee which occurred on 17th-18th October 2023,⁹⁹ concerning the management of pain in the initiation of an execution, it was recommended:

when the death penalty is applied by a State party for the most serious crimes, it must not only be strictly limited in accordance with article 6 but it must be carried out in such a way as to cause the least possible physical and mental suffering.¹⁰⁰

The State of Alabama is failing to observe the Committee's recommendation, and the General Assembly¹⁰¹ and the Human Rights Council¹⁰² resolutions on the death penalty place the onus upon the state governments to ensure humane methods of execution:

States parties that have not abolished the death penalty must respect article 7 of the Covenant, which prohibits certain methods of execution. Failure to respect article 7 would inevitably render the execution arbitrary in nature and thus also in violation of article 6...painful and humiliating methods of execution are also unlawful under the Covenant.¹⁰³

Hence, Mr Wilson's human rights are therefore violated under the ICCPR articles 6, 7, and 10, the CAT articles 1 and 2, and the CRPD articles 10, 12, 13, and 14.

v. Executing a disabled person with nitrogen and the torture imposed through the new technologies

In the Complaint on behalf of Mr Kenneth Smith, Dr Joel Zivot observed that there can be difficulties in applying the mask when people suffer from claustrophobia.¹⁰⁴ The terrifying nature of having it applied to a person suffering from Asperger's Syndrome and ADHD would be significantly heightened. Professor Harcourt has stated in his submission to the District Court, that the fitting of the mask over Mr Wilson's face will cause significant personal distress as he suffers from sensitivity to bright light and requires prescription glasses. The gasmask will not prevent the exposure to the bright lights, and it is very likely that any prescription glasses that he wears under the mask may cause gaps in the seal of the mask over his facial skin. This may render gas seepage and if there is a mixing of oxygen and nitrogen, it may create a more torturous execution of Mr Wilson. His Asperger's Syndrome, ADHD, and sensitivity to light, will compound the trauma during the execution. Following the Human Rights Committee's observations in *Ng v. Canada*, it is likely that Mr Wilson will be subjected to a similar violation as:

⁹⁸ *Id.*

⁹⁹ United States of America, 17th-18th October, 139 Session, 9th October 2023 – 3rd November 2023, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/SessionDetails1.aspx?SessionID=2637&Lang=en

¹⁰⁰ General comment No. 20: Article 7: Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment), CCPR/C/21/Add.3, para. 6.

¹⁰¹ Moratorium on the use of the death penalty, A/RES/77/222, 15 December 2022, para. 7(i), calls upon all states, 'To provide access for persons sentenced to death to information relating to the method of execution, in particular the precise procedures to be followed.'

¹⁰² Question on the use of the death penalty, A/HRC/RES/54/35, 17 October 2023, para. 9. 'Calls upon States that have not yet abolished the death penalty to make available systematically and publicly full, accurate and relevant information...including about compliance with the obligations of States with regard to the use of the death penalty.'

¹⁰³ General Comment No. 36 – Article 6: right to life, CCPR/C/GC/36, p. 9, citing, CCPR/C/IRN/CO/3, para. 12. CCPR/C/USA/CO/4, para. 8. *Ng v. Canada*, CCPR/C/49/D/469/1991, para. 16.4. African Commission on Human and Peoples' Rights, *Malawi African Association and others v. Mauritania*, 11 May 2000, para. 120. CCPR/CO/72/PRK, para. 13. 170 CCPR/C/JPN/CO/6, para. 13.

¹⁰⁴ See, BCU Centre for Human Rights, Kenneth Eugene Smith, <https://www.bcu.ac.uk/law/research/centre-for-human-rights/clinic/clinic-cases/kenneth-eugene-smith>

asphyxiation may take up to twelve minutes, during which condemned persons remain conscious, experience obvious pain and agony, drool and convulse and often soil themselves.¹⁰⁵

Alabama is therefore taking unnecessary risks and will very likely inflict torture and inhuman punishment upon Mr Wilson in violation of the ICCPR article 7, the CAT articles 1 and 2, and in violation his healthcare rights under the ICESCR article 14, and the CRPD articles 4, 5, 10, and 15.

vi. Duration under the capital judicial process

Mr Wilson has been a victim of the U.S. capital judicial process. He was arbitrarily apprehended on 14th April 2004, subjected to 2 years and 7 months of custody before his trial. He only received a 3 day trial (between 3rd – 5th December 2007), and sentenced to death following a one day hearing on 7th January 2008. The State of Alabama has therefore controlled the temporality of the case to suit their own needs and the result has been the violation of Mr Wilson's human rights. There is a time paradox here in that whilst Mr Wilson was subjected to excessive durations of over 20 years under the capital judicial process, the state only used 3 days to achieve a death sentence. So Mr Wilson is a victim of an extraordinarily short timeframe for his trial, but an extraordinary length of time under the capital judicial process and now on death row. For the assessment of the various contributory factors extending duration under the capital judicial process and in death row incarceration, all aspects which contribute to the extension of time should be considered consistent with the Human Rights Committee's decision in *Lumanog and Santos v. The Philippines*:

In relation to the authors' claim under article 14, paragraph 3 (c), it may be noted that the right of the accused to be tried without undue delay relates not only to the time between the formal charging of the accused and the time by which a trial should commence, but also the time until the final judgment []. All stages whether at first instance or on appeal, must be completed "without undue delay". Therefore, the Committee must not limit its consideration exclusively to the part of the judicial proceedings subsequent to the transfer of the case from the Supreme Court to the Court of Appeals, but rather take into account the totality of time, i.e. from the moment the authors were charged until the final disposition by the Court of Appeals.¹⁰⁶

Mr Wilson's case demonstrates that the State of Alabama has unreasonably used time-control over him. Following *Lumanog and Santos* the assessment of Mr Wilson's 'totality of time' spent in each aspect of the capital judicial process reveals a violation of ICCPR articles 6, 7, 10, and 14. The Committee observed that in, 'death penalty cases...State parties have an obligation to organize their system of administration of justice in such a manner as to ensure an effective and expeditious disposal of the cases.'¹⁰⁷ The Committee identified the excessive length of time was contributed to by the government, and it was this portion of time that rendered a violation of the ICCPR article 14(3)(c).¹⁰⁸ Likewise in Mr Wilson's case the State of Alabama is the major (if not the only) cause for his time on death row. In *Persaud and Rampersaud v. Guyana*,¹⁰⁹ the Committee considered a case in which the petitioners were arrested for murder in 1986, sentenced to death in 1990, and after exhausting domestic remedies filed a Communication in 1998. Following this 12 year period, and a further 3 years for the determination of the case, the individual opinion of Mr Hipólito Solari-Yrigoyen and joined by Mr Edwin Johnson, stated:

taking into account the circumstances of this case, in which the author of the communication has spent 15 years on death row, I am of the view that this fact alone constitutes cruel, inhuman and degrading treatment and that article 7 of the Covenant has been violated.

Accordingly, the facts before the Committee reveal violations by the State party both of article 6 and of article 7 of the Covenant.¹¹⁰

¹⁰⁵ Ng v. Canada, CCPR/C/49/D/469/1991, para. 11.10.

¹⁰⁶ Lumanog and Santos v. The Philippines, CCPR/C/92/D/1466/2006, 21 April 2008, para 8.3. Citing, General Comment No. 32 on article 14 "Right to equality before courts and tribunals and to a fair trial", para. 35. See also, for instance, Communications No. 526/1993, Hill v. Spain, para. 12.3; No. 1089/2002, Rouse v. Philippines, para.7.4; and No. 1085/2002, Taright, Touadi, Remli and Yousfi v. Algeria, para. 8.5

¹⁰⁷ Id. para. 8.5.

¹⁰⁸ Id. paras 8.5-8.6.

¹⁰⁹ Raymond Persaud and Rampersaud v. Guyana, Communication No. 812/1998, U.N. Doc. CCPR/C/86/D/812/1998 (2006).

¹¹⁰ An individual opinion co-signed by Committee members Mr. Hipólito Solari Yrigoyen and Mr. Edwin Johnson, Raymond Persaud and Rampersaud v. Guyana, Communication No. 812/1998, U.N. Doc. CCPR/C/86/D/812/1998 (2006).

The opinion of the Committee members Mr Hipólito Solari-Yrigoyen and joined by Mr Edwin Johnson, is that a duration of 15 years on death row is a violation of ICCPR article 7. Mr Wilson has been under Alabama's criminal jurisdiction for 20 years and under sentence of death for 16 years, but he has also experienced this timeframe as a disabled person. Due to his diagnosis of Asperger's Syndrome and ADHD, the experience of the 'long time on death row' is compounded. The Human Rights Committee has stated:

Extreme delays in the implementation of a death penalty sentence that exceed any reasonable period of time necessary to exhaust all legal remedies may also entail the violation of article 7 of the Covenant, especially when the long time on death row exposes sentenced persons to harsh or stressful conditions, including solitary confinement, and when sentenced persons are particularly vulnerable due to factors such as age, health or mental state.¹¹¹

Mr Wilson is a disabled person who has been under Alabama's capital jurisdiction which is in violation of UDHR article 5, and ICCPR articles 7 and 10, and the CAT article 1.

vi. Violation of the norms of international law

The growing state practice in the *de jure* and *de facto* abolition of the death penalty provides for the interpretation that the death penalty is now a violation of the peremptory norm of general international law (*jus cogens*). This is consistent with the 'pro-abolitionist spirit'¹¹² of the ICCPR, and promotion of global abolition in ICCPR article 6(6) as, '[n]othing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.' The International Law Commission's *Draft conclusions on identification and legal consequences of peremptory norms of general international law* (*jus cogens*) 2022¹¹³ now provides a guiding methodology for UN Special Procedures to state the *jus cogens* violations of the death penalty (either as a new norm or in violation of the right to life or the prohibition of torture). The appropriate clarifying methodology to determine *jus cogens*, is found, *inter alia*, in Draft Conclusions 7 and 8,¹¹⁴ which provide interpretive criteria for demonstrating a new peremptory norm against the death penalty due to 'states as a whole' being abolitionist. The member state vote in favour of the UNGA resolution was 77% in favour,¹¹⁵ and the latest Amnesty International statistics on the death penalty identifies that 72% of all states are either abolitionist *de jure* or abolitionist *de facto*.¹¹⁶ This argument is consistent with the Statement presentation by the Academic Network for the Abolition of the Death Penalty and Cruel Punishment (REPECAP) at the World Congress Against the Death Penalty in Berlin in 2022.¹¹⁷ Therefore there are considerable grounds for arguing that the United States is now in violation of this new international standard.

Consistent with this promotion of abolition the WGAD has called upon governments to adopt such policies. For example in Opinion No. 31/2021, it stated:

¹¹¹ General Comment No. 36 – Article 6: the Rights to life, CCPR/C/GC/36, 3 September 2019, paragraph 40. Citing, *Johnson v. Jamaica* (CCPR/C/56/D/588/1994), para. 8.5; *Kindler v. Canada*, para. 15.2; *Martin v. Jamaica* (CCPR/C/47/D/317/1988), para. 12.2. 172 *Brown v. Jamaica* (CCPR/C/65/D/775/1997), para. 6.13. 173 CCPR/C/JPN/CO/6, para. 13. 174 *Kindler v. Canada*, para. 15.3.

¹¹² General Comment No. 36 – Article 6: right to life, CCPR/C/GC/36, 3rd September 2019, p. 8.

¹¹³ International Law Commission, *Draft conclusions on identification and legal consequences of peremptory norms of general international law (jus cogens)* 2022, https://legal.un.org/ilc/texts/instruments/english/commentaries/1_14_2022.pdf

¹¹⁴ *Id.*

¹¹⁵ The vote on the UNGA Resolution, Moratorium on the use of the death penalty, revealed that A/RES/77/222, 15 December 2022, adopted by 125 votes to 37, with 22 abstentions, which is 77% in favour.

¹¹⁶ Amnesty International, *Death Sentences and Executions 2022* reveals 72% of countries were abolitionist. (May 2023), Abolitionist for all crimes: 112 Abolitionist for ordinary crimes only: 9 Abolitionist in practice: 23 Total abolitionist in law or practice: 144 Retentionist: 55 (72% abolitionist).

¹¹⁷ REPECAP, *Declaration on the Abolition of the Death Penalty as a Peremptory Norm of General International Law (jus cogens)*, On the Occasion of the 8th World Congress Against the Death Penalty, Berlin, 15-18 November 2022 <https://www.academicsforabolition.net/en/blog/abolition-of-the-death-penalty>

The Working Group requests the Government to establish an official moratorium on all executions, with a view to abolishing the death penalty, and to accede to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.¹¹⁸

This would also be consistent with the WGAD's focus upon ensuring the observance of customary international law and peremptory norms of general international law (*jus cogens*) as identified in Deliberation No 9 concerning the definition and scope of arbitrary deprivation of liberty under customary international law.¹¹⁹ The WGAD affirmed:

This widespread ratification of international treaty law on arbitrary deprivation of liberty, as well as the widespread translation of the prohibition into national laws, constitute a near universal State practice evidencing the customary nature of the arbitrary deprivation of liberty prohibition. Moreover, many United Nations resolutions confirm the *opinio iuris* supporting the customary nature of these rules.¹²⁰

The *opinio iuris* for the global abolition of the death penalty has significantly increased over the past 12 years since the adoption of Deliberation No. 9. This strengthens the UN position against the punishment. The 2023 *Report of the Secretary-General on the question of the death penalty*, states:

The Human Rights Committee has concluded that article 6 (6) of the Covenant reaffirms the position that States parties that are not yet totally abolitionist should be on an irrevocable path towards complete eradication of the death penalty, de facto and de jure, in the foreseeable future. In the Committee's view, the death penalty cannot be reconciled with full respect for the right to life, and abolition of the death penalty is both desirable and necessary for the enhancement of human dignity and the progressive development of human rights.¹²¹

There must be a 'foreseeable' end to the punishment, and seeking to develop new execution technologies and methods demonstrates not 'foreseeable abolition', but the contrary position of 'foreseeable retention.' In Alabama seeking to create new execution methods the United States is acting contrary to the abolitionist aims and objectives, and is a *per se* arbitrary deprivation of the right to life under ICCPR article 6(1).

VI. Indicate internal steps, including domestic remedies, taken especially with the legal and administrative authorities, particularly for the purpose of establishing the detention and, as appropriate, their results or the reasons why such steps or remedies were ineffective or why they were not taken.

Mr David Wilson has been provided opportunities for post-conviction review of his case. Whilst there has been recent success in the District Court ordering the State to provide to the defense the exculpatory evidence it has suppressed for 20 years, there is still a need for Mr Wilson's case to receive a meaningful review of his human rights violations – as are detailed above. Under international human rights law the outcome of a meaningful review can only lead to the quashing of his death sentence.

VII. Full name, postal and electronic addresses of the person(s) submitting the information (telephone and fax number, if possible).

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¹¹⁸ Opinion No. 31/2021 concerning Fis Murhanzi (Democratic Republic of the Congo), A/HRC/WGAD/2021/31, 2nd February 2022, para 99.

¹¹⁹ Deliberation No. 9 concerning the definition and scope of arbitrary deprivation of liberty under customary international law, Report of the Working Group on Arbitrary Detention, A/HRC/22/44, 24th December 2012.

¹²⁰ Id. para. 43.

¹²¹ Report of the Secretary-General, Question of the death penalty, A/HRC/54/33, 14 August 2023, p. 2