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HUMAN RIGHTS COMMITTEE
Forty-seventh session

VIEWS

Communication No. 274/1988

Submitted by : Loxley Griffiths
[represented by counsel]

Alleged victim : The author

State party : Jamaica

Date of communication : 16 January 1988 (initial submission)

Documentation references : Prior decisions

- CCPR/C/WG/32/D/274/1988

  (Working Group combined rule 86,

  rule 91 decision, dated 15 March 1988)

- CCPR/C/37/D/274/1988

  (decision on admissibility,

  dated 16 October 1989)

Date of adoption of Views : 24 March 1993

On 24 March 1993, the Human Rights Committee adopted its Views under article 5, paragraph 4, of the Optional Protocol, in respect of communication No. 274/1988. The text of the Views is appended to the present document.

[Annex]

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* Made public by decision of the Human Rights Committee.

ANNEX*

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights - Forty-seventh session

concerning

Communication No. 274/1988

Submitted by:
Loxley Griffiths

[represented by counsel]

Alleged victim:
The author

State party:
Jamaica

Date of communication:
16 January 1988

Date of decision on admissibility: 16 October 1989

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

Meeting on 24 March 1993,

Having concluded its consideration of communication No. 274/1988, submitted to the Human Rights Committee on behalf of Mr. Loxley Griffiths under the Optional Protocol to the International Covenant on Civil and Political Rights,

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

Adopts its Views under article 5, paragraph 4, of the Optional Protocol.

The facts as submitted by the author:

1. The author of the communication, dated 16 January 1988, is Loxley Griffiths, a Jamaican citizen currently serving a life sentence at the South Camp Rehabilitation Centre in Kingston, Jamaica. He claims to be a victim of violations by Jamaica of articles 7 and 14 of the International Covenant on Civil and Political Rights. He is represented by counsel.

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* Pursuant to rule 85 of the Committee's rules of procedure, Committee member Mr. Laurel Francis did not take part in the adoption of the Committee's Views.

2.1 The author was charged with the murder, on 19 August 1978, of his wife, Joy Griffiths. He was tried in the Home Circuit Court of Kingston on 11 and 12 February 1980, found guilty as charged by the jury, convicted and sentenced to death. The Court of Appeal of Jamaica dismissed his appeal on 28 May 1981; it issued a written judgement on 26 October 1981. On 20 February 1991, the Judicial Committee of the Privy Council dismissed the author's petition for special leave to appeal. The author contends that such delays as occurred in the judicial proceedings are attributable to factors beyond his control.

2.2 The author married Joy Griffiths on 18 June 1977. Six weeks prior to her death, she moved out of their residence and returned to the home of her mother, Violeta Mercurious. The prosecution's case was that on 19 August 1978 at around 7 p.m., the author arrived at the gate to Mrs. Mercurious' yard and began talking to his wife, who was washing at a stand-pipe. This was witnessed by Mrs. Mercurious and a friend of hers, Monica Dacres, who testified against the author. Ms. Dacres testified that Mr. Griffiths wore a bush jacket, under which his right arm was concealed. Both women testified that after some minutes of increasingly heated conversation, the author produced a machete from under his jacket, with which he dealt his wife two blows. According to the forensic expert who carried out the post-mortem examination, Joy Griffiths died as a result of hypovelmic and neurogenic shock, due to massive loss of blood from a wound in the neck.

2.3 Under cross-examination, the author admitted that his relations with his wife's family were poor but contended that he loved his wife. When he arrived at the gate on the evening in question, he saw Joy Griffiths sitting on the lap of a man called "Roy". When he remonstrated with her, she reacted angrily; the author then requested that she return some money which he had given her for safekeeping, but she refused. A quarrel ensued, and the author struck his wife with his fist. At this point, Joy Griffiths' brother, who had been watching the scene from the door, attacked the author with a cutlass. He struck two blows at the author which the latter avoided; instead, the blows fatally wounded Joy Griffiths. The author denied having taken a machete to the home of his wife's mother.

2.4 The author indicates that a warrant for his execution was issued on 22 December 1987, to be carried out on 5 January 1988. On 4 February 1991, the author informed the Committee that he had been transferred from the death row section of St. Catherine District Prison to the South Camp Rehabilitation Centre in Kingston. On 24 January 1992, counsel confirmed that his client's death sentence had been commuted to life imprisonment on 17 September 1990.

The complaint :

3.1 The author alleges that his trial was unfair, and that several irregularities occurred in its course. He contends that, after his conviction, he learned that the Court Registrar was the nephew of the deceased. He complained to the Chief Justice and to the Ombudsman about the matter but received no reply; it is not apparent, however, that the issue was raised on appeal. Furthermore, it is submitted that the Registrar and the mother of the deceased were seen talking to members of the jury during the trial, and that the

Registrar took the jury to the verdict room. The author adds that he was able to meet the trial judge, who is now retired, on 5 September 1988; the judge allegedly admitted that irregularities had occurred during the trial, but added that there was nothing he could do to help the author.

3.2 The author further argues that there were contradictions in the testimony given by Monica Dacres and the mother of the deceased, which the judge did not put to the jury. He further alleges that the judge misdirected the jury on the issue of manslaughter, and that he was wrong in refusing to leave the issue of provocation to the jury. In the author's opinion, since there was evidence of provocation, the judge was obliged to let the jury determine whether the requirements for the defence of provocation, governed by the Offences against the Person (Amendment) Act of 1958, had been satisfied, namely, that the author had in fact lost his self-control, and that a reasonable person would have lost his self-control in the circumstances. Instead, the judge directed the jury as follows:

> "You must also be satisfied that the killing was unprovoked. Now when we speak of provocation in that sense we mean legal provocation into which I do not propose to go because, as you heard me indicate to learned counsel ... when he attempted to raise this matter of provocation to you, that there was no evidence before you on which the legal provocation which the law requires arises in this case and, as a consequence, it does not arise in this case for your consideration."

3.3 Finally, counsel submits that the time spent on death row, close to 11 years prior to commutation of sentence, amounts to cruel, inhuman and degrading treatment within the meaning of article 7 of the Covenant.

3.4 With respect to the requirement of exhaustion of domestic remedies, the author concedes that it is in principle for the appellant to seek constitutional protection and to show that the delays in the proceedings are not attributable to himself. He reiterates, however, that the delays in his case cannot be attributed to him. He emphasizes that he unsuccessfully requested the written judgements in his case, which are a prerequisite for lodging a petition for leave to appeal with the Judicial Committee. In this context, counsel observes that instructions from the author to a London law firm which had agreed to represent him before the Judicial Committee of the Privy Council on a pro bono basis, were received in the summer of 1988. Further court documents requested by this firm arrived in August 1988. The petition was returned by counsel on 17 October 1988, with a request for further information about the grounds of appeal which had been argued but not specified in the judgement of the Court of Appeal. Numerous attempts were made to obtain this information from the Court of Appeal of Jamaica and the author's legal aid representative for the appeal. Both replied in March 1990 and January 1991, respectively, but could not provide the information requested. Counsel therefore argues such delays as occurred were not attributable to negligence on the author's part.

The State party's information and observations:

4.1 By submission of 8 December 1988, the State party argued that the communication was inadmissible under article 5, paragraph 2 (b), of the Optional Protocol, as the author's case had, at that time, not been adjudicated by the

Judicial Committee of the Privy Council. It added that legal aid is available for this purpose under Section 3, paragraph 1, of the Poor Prisoners' Defence Act.

4.2 By further submissions of 10 January and 7 September 1990, made after the adoption of the Committee's decision on admissibility, the State party affirmed that the rules of procedure of the Judicial Committee of the Privy Council do not make the production of a written judgement from the Court of Appeal a prerequisite for a petition for special leave to appeal to the Privy Council. Thus, although Rule 4 provides that a petitioner should lodge the judgement from which leave to appeal is sought, "judgement" is defined in Rule 1 as including a "decree, order, sentence, or decision of any court, judge, or judicial officer". The State party submitted that the order or decision of the Court of Appeal, as distinct from the reasoned judgement, was a sufficient basis for a petition for special leave to appeal to the Privy Council, and that the Judicial Committee had heard appeals on the basis of the mere order or decision of the Court of Appeal dismissing the appeal.

4.3 The State party contends that a copy of the written judgement of the Court of Appeal would have been available to the author's counsel from the date of its delivery, that is 26 October 1981. With regard to the alleged unreasonable delays in the judicial proceedings, the State party argues that no evidence establishing any government responsibility in this respect has been offered.

4.4 With respect to the allegation of unfair trial, finally, the State party submits, by reference to the Committee's jurisprudence, that the facts relied upon by the author merely seek to raise issues of facts and evidence in the case, which the Committee is not competent to evaluate. 1/

Decision on admissibility and review:

5.1 During its thirty-seventh session in October 1989, the Committee considered the admissibility of the communication. With respect to the requirement of exhaustion of domestic remedies, the Committee observed that the author's failure, at that time, to petition the Judicial Committee of the Privy Council for special leave to appeal could not be attributed to him, as relevant court documents, which are a prerequisite for a petition for special leave to appeal to be entertained, had not been made available to him. The Committee further noted that the author's appeal had been dismissed in May 1981 and concluded that the pursuit of domestic remedies had been "unreasonably prolonged" within the meaning of article 5, paragraph 2 (b), of the Optional Protocol.

5.2 On 16 October 1989, the Committee declared the communication admissible inasmuch as it appeared to raise issues under article 14 of the Covenant.

6.1 The Committee has taken note of the State party's contention, made after the adoption of the decision on admissibility, that the written judgement of the Court of Appeal would have been available to the author and his counsel upon delivery, i.e. as of 26 October 1981, and that there is no evidence of any State party responsibility concerning delays in the pursuit of domestic remedies. The Committee takes the opportunity to expand on its admissibility findings.

6.2 The Committee need not address the question of whether the Judicial Committee may consider petitions for special leave to appeal in the absence of a written judgement from the Court of Appeal of Jamaica, because the author's petition, dismissed on 20 February 1991, had in fact been accompanied by said judgement. As to the issue of delays in the judicial proceedings, the Committee considers that the State party has failed to show that the author, or his counsel, acted negligently in the pursuit of available remedies; the author's account of his efforts to obtain the written judgement of the Court of Appeal has not been challenged. In this context, the Committee reaffirms that the adoption of the written judgement cannot of itself be equated with "availability" of the same to either the appellant or to his counsel, and that there should be reasonably efficient channels through which either appellant or counsel may request and obtain relevant court documents. 2/

6.3 For the above reasons, the Committee considers that there is no reason to reverse the decision on admissibility of 16 October 1989.

Examination of the merits :

7.1 Two issues of substance are before the Committee: (a) whether alleged irregularities during the trial amounted to a violation of article 14 of the Covenant, and (b) whether prolonged detention on death row constitutes cruel, inhuman and degrading treatment within the meaning of article 7.

7.2 With respect to the author's claim under article 14, paragraph 1, the Committee recalls that it is in general for the courts of States parties to the Covenant to evaluate facts and evidence in a given case, and for the appellate courts to review the evaluation of such evidence by the lower courts. It is not in principle for the Committee to review the evidence and the judge's instructions to the jury, unless it is clear that the instructions were manifestly arbitrary or amounted to a denial of justice, or that the judge otherwise violated his obligation of impartiality. On the basis of the information before it, the Committee cannot conclude that the judge's instructions to the jury were arbitrary or biased, in particular with regard to the issue of legal provocation, where the judge directed the jury in a manner that has not been shown to be inconsistent with the applicable Jamaican law. The Committee, therefore, cannot find that the judge's instructions reveal a violation of article 14, paragraph 1, of the Covenant.

7.3 In respect of the author's claim concerning irregularities in the trial, including his allegation that two prosecution witnesses sought to influence members of the jury, the Committee notes that these allegations have not been substantiated as to lead the Committee to conclude that the author was denied the right to a fair trial. Moreover, it is to be noted that this latter allegation was not, on the basis of the information available to the Committee, placed before the Jamaican courts or any other competent judicial instance. In the circumstances, the Committee finds no violation of article 14.

7.4 With regard to the author's claim under article 7, the Committee notes that this allegation was substantiated at a late stage, after the adoption of the Committee's decision to declare the communication admissible in respect of

article 14 of the Covenant, and after the commutation of the death sentence and the author's transfer from the death row section of St. Catherine District Prison to another penitentiary. Moreover, the Committee notes that the question whether prolonged detention on death row constitutes cruel, inhuman and degrading treatment was not placed before the Jamaican courts, nor brought before any other competent authority. The Committee is therefore unable to consider this allegation on its merits. It reiterates, however, that prolonged judicial proceedings do not *per se* constitute cruel, inhuman and degrading treatment, even if they may be a source of mental strain and tension for convicted prisoners. This also applies to appeal and review proceedings in cases involving capital punishment, although an assessment of the circumstances of each case would be necessary. In States whose judicial system provides for review of sentencing policies, an element of delay between the lawful imposition of a sentence of death and the exhaustion of available remedies is inherent in the review of the sentence.

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it do not reveal a breach of any provision of the Covenant.

[Done in English, French, Russian and Spanish, the English text being the original version.]

Notes

1/ Communication No. 369/1989 (*G. S. v. Jamaica*), decision of 8 November 1989, paragraph 3.2.

2/ See communication No. 233/1987 (*M. F. v. Jamaica*), decision of 21 October 1991, paragraph 6.2.
