UNITED NATIONS

CCPR

International Covenant on Civil and Political Rights

Distr.
RESTRICTED */

CCPR/C/56/D/461/1991
16 April 1996

Original: ENGLISH

HUMAN RIGHTS COMMITTEE
Fifty-sixth session
(18 March - 4 April 1996)

VIEWS

Communication No. 461/1991

| | |
|---|---|
| Submitted by: | George Graham and Arthur Morrison [represented by counsel] |
| Victims: | The authors |
| State party: | Jamaica |
| Date of communication: | 18 March 1991 (initial submission) |
| Documentation references: | Prior decisions - Special Rapporteur's rule 86/ rule 91 decision, transmitted to the State party on 25 August 1992 (not issued in document form)<br>- CCPR/C/52/D/461/1991 (Decision on admissibility, dated 12 October 1994) |
| Date of adoption of Views: | 25 March 1996 |

On 25 March 1996, the Human Rights Committee adopted its Views under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 461/1991. The text of the Views is appended to the present document.

[ANNEX]

*/ Made public by decision of the Human Rights Committee.

VWS461.56e cb

GE.96- 15872

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
- Fifty-sixth session -

concerning

Communication No. 461/1991

| | |
|---|---|
| Submitted by: | George Graham and Arthur Morrison [represented by counsel] |
| Victims: | The authors |
| State party: | Jamaica |
| Date of communication: | 18 March 1991 (initial submission) |
| Date of decision on admissibility: | 12 October 1994 |

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

Meeting on 25 March 1996,

Having concluded its consideration of communication No. 461/1991, submitted to the Committee by Messrs. George Graham and Arthur Morrison 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 authors of the communication, their counsel and by the State party,

Adopts the following:

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

1. The authors of the communication are George Graham and Arthur Morrison, two Jamaican citizens at the time of submission of the communication awaiting execution at St. Catherine District Prison, Jamaica. After the submission of the communication, Mr. Morrison died during an incident at St. Catherine District Prison, on 31 October 1993. Mr. Graham's sentence was commuted to

---

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

life imprisonment on 29 May 1995. The authors claim to be the victims of violations by Jamaica of articles 6, 7 and 14, paragraphs 1, 3 and 5, of the International Covenant on Civil and Political Rights. They are represented by counsel.

Facts as submitted by the authors

2.1 The authors were jointly charged with the murder, on 8 May 1984, of one O. B. On 16 April 1986, after a trial lasting three days, they were found guilty as charged and sentenced to death in the Home Circuit Court of Kingston. The Court of Appeal of Jamaica dismissed their application for leave to appeal on 12 October 1987. On 13 December 1990, the Judicial Committee of the Privy Council dismissed their petition for special leave to appeal. With this, it is submitted, available domestic remedies have been exhausted. In December 1992, the authors' offence was classified as capital murder under section 7 of the Offences against the Person (Amendment) Act 1992.

2.2 O. B. was shot in his parents' flat, in the presence of his parents and three sisters. The case against the authors rested on the evidence given by one of the victim's sisters, S. B., who identified the authors from the dock; no identification parade was held. S. B. testified that on 8 May 1984, at about 7 p.m., five armed men had forced their way into the flat; among these men she recognized George Graham, whom she knew by his nickname "Money-man", and Arthur Morrison, whom she also knew. George Graham allegedly said "Don't shoot because baby is inside" and then tried to pull O. B. out of the flat. O. B. resisted and ran into an adjacent bedroom, where his father was. Then a group of about 15 men entered the flat, all of whom were armed, and Arthur Morrison allegedly said: "Mek we kill the boy". O. B. was shot twice in the head by two other men; his father did not identify any of them. S. B. further testified that, upon leaving, one of the men grabbed her sister's golden chain, but that another man ordered him to give it back since "they had not come to rob, but to kill".

2.3 The prosecution argued that, although the authors had not actually killed O. B., they were participants in a joint plan or conspiracy to murder him, and were therefore guilty of murder on the basis of the doctrine of common design. The authors made an unsworn statement from the dock, claiming that they had been elsewhere at the time of the crime. At the close of the prosecution's case, Mr. Graham's legal representative made a submission of "no case to answer", which was dismissed by the judge. In her summing-up to the jury, the judge pointed out, inter alia, that it was not necessary to hold an identification parade when the eyewitness already knew the accused.

2.4 Throughout the judicial proceedings, the authors were represented by legal-aid lawyers. It appears from the trial transcript that the attorneys assigned to the authors for the trial had previously appeared together for both authors and two other accused persons. At the opening day of the trial, one of the attorneys indicated that they had subsequently divided the case,

and that he and junior counsel would represent Mr. Morrison and that the third attorney would represent Mr. Graham; he further indicated that the attorney appearing for Mr. Graham could not be present that day and, upon request of the judge, agreed to hold for him. The next morning, before cross-examination of the first witness, it was announced that the first attorney would be representing Mr. Morrison and the second Mr. Graham. The third attorney apparently withdrew from the defence.

2.5 On appeal, the authors were represented by a different lawyer. Before the Court of Appeal, counsel stated that, after having carefully examined the evidence and the judge's summing-up, he could find no grounds of appeal to argue on his clients' behalf. After reviewing the case, the Court of Appeal agreed with counsel and dismissed the application for leave to appeal. It appears from the written judgement, that the appeal was scheduled to be heard by the Court of Appeal on 26 May 1987, but that an application had been made to "take the matter out of the list for two weeks to obtain the services of senior counsel". It further appears that "five months later the situation had not altered" and that then the above-mentioned counsel had been assigned.

2.6 A London law firm represented the authors pro bono before the Judicial Committee of the Privy Council. The principal grounds for the authors' petitions for special leave to appeal to the Judicial Committee of the Privy Council were that the trial judge had misdirected the jury on the issue of identification and/or recognition evidence and on the issue of common design.

The complaint

3.1 In respect of article 14, paragraph 1, of the Covenant, the authors claim that the judge failed properly to direct the jury on issues relating to "common design". They further contend that the judge failed to warn the jury of the risk of errors in identification or recognition evidence.

3.2 As to the preparation and conduct of the defence at the trial, Mr. Morrison complained that the attorneys had never discussed the case with him or taken instructions prior to the trial. It is stated that neither Mr. Morrison nor Mr. Graham were consulted about the change of counsel which took place on the second day of the trial. Mr. Graham complains that he had only minimal opportunity to give subsequent instructions and that, in the circumstances, the conduct of his defence was deficient.

3.3 In respect of their appeal, both authors complain that their request to be represented by senior counsel was ignored, and that counsel assigned to them for the purpose of the appeal was not of their own choosing. They argue that in an appeal against conviction and sentence involving the death penalty, the right to a fair trial includes the right to representation either by counsel of one's own choice or by counsel of sufficient seniority and experience to present such an appeal competently and carefully. The authors further claim that they were not informed that counsel had been assigned to them, that they never saw nor spoke to him and that counsel abandoned the

appeal without their consent. In this context, the authors add that they were denied the opportunity to defend themselves in person, as their request to be present at the hearing of the appeal was either ignored or refused. It is submitted that, because the authors were denied the right to representation of their choosing or to be present at the appeal, and counsel abandoned the appeal, they were also deprived of their right to an effective review of their conviction and sentence by the Court of Appeal.

3.4 Finally, the authors claim that the time spent on death row, together with the anxiety and mental stress suffered, being kept in the dark as to whether the authorities will continue their policy of suspending executions or not, amounts to cruel, inhuman and degrading treatment in violation of article 7 of the Covenant. Moreover, the resumption of executions after such a period of suspension of executions unrelated to justifiable legal arguments is said to constitute a violation of article 6 of the Covenant.

The State party's submission on admissibility

4. In its submission of 11 February 1993, the State party argues that the communication is inadmissible on grounds of non-exhaustion of domestic remedies. It concedes that the authors have exhausted their criminal appeal possibilities but argues that they have failed to pursue the remedy provided for under the Jamaican Constitution. In this context, the State party submits that article 14, paragraphs 1, 3 (d) and 5, of the Covenant are coterminous with sections 20 and 110 of the Constitution. Section 25 of the Constitution provides that any person who alleges that any of his basic rights have been violated may apply to the Supreme Court for redress.

The Committee's admissibility decision

5.1 At its fifty-second session, the Committee considered the admissibility of the communication.

5.2 The Committee noted the State party's contention that the communication was inadmissible on the ground of failure to exhaust domestic remedies and recalled its constant jurisprudence that for purposes of article 5, paragraph 2 (b), of the Optional Protocol, domestic remedies must be both effective and available. The Committee noted that the Supreme Court of Jamaica had, in recent cases, allowed applications for constitutional redress in respect of breaches of fundamental rights, after the criminal appeals in these cases had been dismissed. However, the Committee also recalled that the State party had indicated on several occasions that no legal aid was made available for such purposes. The Committee considered that, in the absence of legal aid, a constitutional motion did not, in the circumstances of the case, constitute an available remedy which must be exhausted for purposes of the Optional Protocol. In this respect, therefore, the Committee found that it was not precluded by article 5, paragraph 2 (b), from considering the communication.

5.3 As to the authors' claims under articles 6 and 7 of the Covenant, the Committee, having noted that there were no further remedies available to the authors, considered that these allegations should be examined on the merits.

5.4 As to the authors' claim of unfair trial because of the trial judge's alleged failure properly to direct the jury on the issues of common design and identification evidence, the Committee reaffirmed that it was in principle for the appellate courts of States parties to the Covenant, and not for the Committee, to evaluate the facts and evidence in a particular case. Similarly, it was not for the Committee to review specific instructions to the jury by the judge unless it could be ascertained that the instructions to the jury were clearly arbitrary or amounted to a denial of justice, or that the judge had manifestly violated his obligation of impartiality. The material before the Committee did not show that the judge's instructions to the jury or the conduct of the trial suffered from such defects. This part of the communication was therefore inadmissible under article 3 of the Optional Protocol.

5.5 The Committee considered that the authors had failed to substantiate, for purposes of admissibility, their claim that the preparation and the conduct of their defence at trial was inadequate. The information before the Committee revealed that Mr. Morrison was represented by the same attorney who had represented both him and Mr. Graham at the preliminary hearing, that Mr. Graham had raised no objections when it was decided that junior counsel would represent him and that no complaint was made to the trial judge by or on behalf of the authors that time or facilities to prepare their defence had been inadequate. Furthermore, the authors failed to indicate how their attorneys would have acted against their instructions, and there was no indication that Mr. Morrison's attorney or junior counsel representing Mr. Graham had acted negligently in the discharge of their professional duties. Accordingly, this part of the communication was inadmissible under article 2 of the Optional Protocol.

5.6 As to the authors' allegations about the preparation and conduct of their defence on appeal, and as to whether, in the circumstances, the authors should have been allowed to attend the hearing of their application for leave to appeal, the Committee considered that this might raise issues under article 14, paragraphs 1, 3 (b) and (d) and 5, of the Covenant; accordingly, these allegations should be examined on their merits.

5.7 Finally, the Committee noted from the information received from a third party that Mr. Morrison had died on 31 October 1993, almost one year before the adoption of the decision on admissibility, and requested the State party to confirm this information and to clarify the circumstances surrounding Mr. Morrison's death.

6. Accordingly, the Human Rights Committee decided that the communication was admissible in so far as it might raise issues under articles 6, 7 and, in respect of the conduct of the authors' appeal, article 14, paragraphs 1, 3 (b)

and (d) and 5, of the Covenant. Under rule 86 of the Committee's rules of procedure, the State party was requested not to carry out the death sentence against Mr. Graham while the communication was under consideration by the Committee.

State party's submission on the merits and counsel's comments

7.1 The State party, by submission of 27 July 1995, denies that there has been a violation of article 7 in the authors' case. In this connection, it refers to the Committee's decision in the case of Earl Pratt and Ivan Morgan (CCPR/C/35/D/210/1987 and CCPR/C/35/D/225/1987), where the Committee held that "prolonged judicial proceedings do not per se constitute cruel, inhuman and degrading treatment". In this context, the State party observes that it is not enough to assert that a long stay on death row constitutes cruel and inhuman treatment, but that the circumstances of a particular case must show specific factors which render the treatment cruel or inhuman.

7.2 The State party submits that the authors have failed to provide grounds for their allegation that article 6 has been violated in their case.

7.3 As regards the authors' representation on appeal, the State party states that the records of the Court of Appeal show that counsel who represented Mr. Morrison at trial confirmed, by letter of 30 April 1986, that he would represent the authors at the hearing of their appeal. By further letter of 27 May 1987, counsel requested that his name be removed from the list, as he had been informed that the authors were in the process of instructing senior counsel. By letter of 25 June 1987, the Court of Appeal informed Mr. Morrison accordingly and requested him to advise the Court of the name of counsel retained. No reply was received from the author and a second similar letter was sent to the authors on 31 August 1987, informing them that their case would be heard during the Michaelmas term, to begin on 21 September 1987, and requesting them to inform the Court of the name of their counsel or to indicate if they were unable to retain counsel. Again, no reply was received and in September 1987 the Court issued a legal-aid certificate and assigned an experienced counsel to represent the authors. The State party concludes from the above that the authors had ample opportunity to retain counsel of their choice and that the appointment of legal-aid counsel in the specific circumstances did not constitute a breach of the Covenant.

7.4 As regards the allegations of the conduct of the appeal, the State party argues that once competent counsel has been appointed, the manner in which the case is conducted is not the responsibility of the State.

7.5 Finally, the State party states that it will provide the Committee with information on the circumstances surrounding the death of Mr. Morrison as soon as it is available.

7.6 In January 1996, the State party informed the Committee that Mr. Graham's sentence had been commuted to life imprisonment on 29 May 1995.

8.1 In his comments on the State party's submission, counsel refers to the Privy Council's decision in Pratt and Morgan v. Attorney General of Jamaica of 2 November 1993 and invites the Committee to adopt the Privy Council's opinion that "in any case in which an execution is to take place more than five years after sentence there will be strong grounds for believing that the delay is such as to constitute inhuman or degrading treatment or punishment".

8.2 As regards the representation on appeal, counsel indicates that he is seeking further instructions from the authors and requests copies of the correspondence referred to by the State party. Counsel reiterates that the authors' representative on appeal was appointed without them being informed and maintains that this amounts to a violation of article 14 of the Covenant.

Issues and proceedings before the Committee

9. The Human Rights Committee regrets that the State party has failed to provide information on the circumstances of Mr. Morrison's death, as requested by the Committee in its decision on admissibility.

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

10.2 In view of the commutation of Mr. Graham's death sentence, the Committee need not address counsel's argument that the execution of the death sentence would constitute a violation of article 6 of the Covenant.

10.3 Counsel for the authors has claimed that the time spent by the authors on death row amounts to cruel, inhuman and degrading treatment, in violation of article 7 of the Covenant. The Committee refers to its prior jurisprudence[1], and in particular to its Views in respect of communication No. 588/1994[2], and states that it remains the jurisprudence of this Committee that detention on death row for a specific period of time does not amount to a violation of article 7 of the Covenant in the absence of some further compelling circumstances. In the instant case, neither the author nor his counsel have pointed to compelling circumstances over and above the length of the detention on death row, that would render this detention cruel, inhuman or degrading treatment or punishment, in violation of article 7 of the Covenant. The Committee therefore concludes that there has been no violation of article 7.

10.4 As regards the authors' allegations concerning the preparation and conduct of the appeal, the Committee notes that it is undisputed that the

---

[1] See the Committee's Views on communications Nos. 210/1986 and 225/1987 (Earl Pratt and Ivan Morgan v. Jamaica), adopted on 6 April 1989, paragraph 12.6.

[2] Errol Johnson v. Jamaica, adopted on 22 March 1996.

hearing of the appeal was postponed on several occasions in order to allow the authors to retain counsel. Eventually, in the absence of further information from the authors as to who would represent them, the Court of Appeal decided to appoint a legal-aid counsel. The authors have argued that they were not informed by the Court that a legal-aid counsel had been appointed for them and that appointed counsel factually withdrew the appeal without having consulted or informed them. The Committee notes that it appears from the written judgement of the Court of Appeal that the Court did review the case proprio motu.

10.5 The Committee recalls its jurisprudence[3] that under article 14, paragraph 3 (d), the court should ensure that the conduct of a case by the lawyer is not incompatible with the interests of justice. While it is not for the Committee to question counsel's professional judgement, the Committee considers that particularly in a capital case, when counsel for the accused concedes that there is no merit in the appeal, the Court should ascertain whether counsel has consulted with the accused and informed him accordingly. If not, the Court must ensure that the accused is so informed and given an opportunity to engage other counsel. The Committee is of the opinion that in the instant case, Mr. Graham and Mr. Morrison should have been informed that their legal-aid counsel was not going to argue any grounds in support of the appeal so that they could have considered any remaining options open to them. In the circumstances, the Committee finds that Mr. Morrison and Mr. Graham were not effectively represented on appeal, in violation of article 14, paragraphs 3 (b) and (d).

10.6 The Committee is of the opinion that 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 the sentence is possible, a violation of article 6 of the Covenant. As the Committee noted in its General Comment 6(16), the provision that a sentence of death may be imposed only in accordance with the law and not contrary to the provisions of the Covenant implies that "the procedural guarantees therein prescribed must be observed, including the right to a fair hearing by an independent tribunal, the presumption of innocence, the minimum guarantees for the defence, and the right to review of conviction and sentence by a higher tribunal."[4] In the present case, since the final sentence of death was passed without adequate representation of the authors on appeal, there has consequently also been a violation of article 6 of the Covenant.

11. 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 disclose a violation of article 14,

---

[3] See inter alia the Committee's Views in respect of communication No. 459/1991 (Osbourne Wright and Eric Harvey v. Jamaica), adopted on 27 October 1995, paragraph 10.5.

[4] See CCPR/C/21/Rev.1, page 7, paragraph 7.

paragraphs 3 (b) and (d), and consequently of article 6, paragraph 2, of the International Covenant on Civil and Political Rights.

12. As the authors' rights were violated, they are entitled to a remedy. However, the State party has commuted Mr. Graham's death sentence to life imprisonment. The Committee considers that commutation of the death sentence constitutes an adequate remedy, pursuant to article 2, paragraph 3 (a), of the Covenant, for the violation of article 6. As regards the violation of article 14, paragraph 3 (b) and (d), the State party should provide an appropriate remedy. The Committee stresses the duty of the State party to ensure that similar violations do not occur in the future.

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

-*-