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HUMAN RIGHTS COMMITTEE
Fifty-fourth session

DECISIONS

Communication No. 553/1993

Submitted by :	Michael Bullock (represented by counsel)
Alleged victim :	The author
State party :	Trinidad and Tobago
Date of communication :	24 August 1993 (initial submission)
Documentation references :	Prior decisions - Special Rapporteur's rule 86/rule 91 decision transmitted to the State party on 30 August 1993 (not issued in document form)
Date of present decision :	19 July 1995

[See ANNEX]

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

ANNEX

Decision of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights
- Fifty-fourth session -

concerning

Communication No. 553/1993

Submitted by: Michael Bullock

Alleged victim: The author

State party: Trinidad and Tobago

Date of communication: 24 August 1993 (initial submission)

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

Meeting on 19 July 1995,

Adopts the following:

Decision on admissibility

1. The author of the communication is Michael Bullock, a Trinidadian citizen, at the time of submission of the communication awaiting execution at the State Prison in Port-of-Spain, Trinidad and Tobago. He claims to be the victim of violations by Trinidad and Tobago of article 14, paragraphs 1, 2 and 3(e), of the International Covenant on Civil and Political Rights. He is represented by counsel.

The facts as submitted by the author:

2.1 On 25 April 1981, the author, together with one P.S., was charged with the murder of one H.McG. On 27 May 1983, he was found guilty as charged and sentenced to death; his co-accused was acquitted. The Court of Appeal dismissed the author's appeal on 21 April 1988. His petition for special leave to appeal to the Judicial Committee of the Privy Council was dismissed on 9 November 1990. On 19 August 1993, a warrant was issued for the execution of the author on 24 August 1993; on 23 August 1993, the High Court granted a stay of execution, following the filing of a constitutional

motion on the author's behalf.

2.2 Following the judgement of the Judicial Committee of the Privy Council in Pratt and Morgan v. Jamaica , the author's death sentence was commuted to one of life imprisonment.

2.3 At the trial, the prosecution's case rested mainly on the testimony of one Movin Brown, who lived at the same address as the author. This witness testified that, in the morning of 25 April 1981, he saw the author pull the victim out of her car, and beat her to death. During the trial, the author made an unsworn statement from the dock. He testified that he was present at the time of the incident, but that it was Movin Brown who beat and killed the deceased, and later threatened him. The prosecution also relied on oral statements made by the author testifying to his involvement in the robbery, as well as on circumstantial evidence.

2.4 During the trial, the defence sought to challenge the credibility of Movin Brown on the basis of a statement made by him to the police in 1976, concerning another murder case for which he had been tried, but had been acquitted (reportedly on the ground that the cause of death was not established). The judge, however, did not allow counsel to cross-examine Movin Brown on the basis of this statement, and refused counsel's request to admit the statement in evidence.

The complaint :

3.1 It is submitted that Movin Brown's prior statement was highly relevant to the issue of his credibility, and that the judge, by refusing counsel to cross-examine him on this point, and by refusing to admit the statement in evidence, violated the author's rights under article 14, paragraphs 1 and 3(e).

3.2 Counsel further points out that the trial judge, when instructing the jury, said: "[...] what Bullock has said in his defence by his statement in the dock is an exercise of his right to speak as an accused person and his right to speak from where he is. But as you have heard from time to time, wherever there are rights, there are responsibilities and I will come to that". The judge later said: "I said earlier, wherever there are rights, there are responsibilities. These responsibilities are not limited to the accused alone. They spread to his legal representative as well. This is the law of this country". And he further said: "As I said, the accused exercised his right, but rights carry responsibilities".

3.3 It is submitted that the judge's instructions were unfair, since he did not give any guidance to the jury as to what he meant by the word "responsibilities" in this connection. Counsel argues that the judge, by using such language, left the jury under the impression that the author had failed to discharge some responsibility which he was obliged to perform,

and that, since the exact nature of that responsibility was not made clear, the jury could have interpreted it to mean that the author had a responsibility to give a sworn statement. Counsel further argues that the judge's comments could also have been interpreted by the jury to mean that the author had in some way been irresponsible in levelling, as the judge himself put it, "serious and grave allegations" against Movin Brown. The judge's instructions to the jury are said to amount to a further violation of article 14, paragraph 1, and in addition, to a violation of article 14, paragraph 2, of the Covenant.

The State party's observations on admissibility and the author's comments:

4.1 By submission of 4 November 1993, the State party argues that the communication is inadmissible.

4.2 The State party points out that on 23 August 1993, after a warrant for the author's execution had been issued, the author filed a constitutional motion before the High Court, seeking a declaration that the execution of the sentence of death against him would be unconstitutional, as well as an order to vacate the sentence of death and to stay the execution. On 23 August 1993, the Court granted a conservatory order, staying the author's execution. The State party concludes that domestic remedies have not been exhausted and that the communication is thus inadmissible.

4.3 As regards the Committee's request, under rule 86 of its rules of procedure, that the State party not carry out the death penalty against the author while his communication is being considered by the Committee, the State party states that, in view of the inadmissibility of the communication, it is not prepared to give such an undertaking. It refers, however, to the stay of execution ordered by the High Court, and states that it will abide by it.

4.4 The State party encloses a copy of the judgement of the Court of Appeal in the author's case. It submits that the Court of Appeal dealt extensively with the refusal of the trial judge to admit the statement made by Movin Brown, as well as with the judge's directions regarding the author's statement from the dock. The Court of Appeal concluded that the trial judge had acted properly in both the conduct of the trial and in his summing up to the jury, and dismissed the appeal.

4.5 The State party claims that the author is seeking to use the Human Rights Committee as a final court of appeal. It argues that this is contrary to the Committee's jurisprudence and incompatible with the provisions of the Covenant.

5.1 In his comments on the State party's submission, the author argues that his constitutional law motion does not render his communication to the Committee inadmissible under article 5, paragraph 2(b), of the Optional Protocol. He submits that the constitutional motion only concerns the constitutionality of the execution of his death sentence, and does not concern his claim of unfair trial.

5.2 The author further argues that, while it is true that it is not in principle for the Committee to evaluate facts and evidence in a particular case, or to review the judge's instructions to the jury, the Committee does have competence to do so where it can be ascertained that the proceedings have been arbitrary or manifestly unjust, amounting to a denial of justice. The author argues that the judge's refusal to have him cross-examine thoroughly the prosecution's main witness as well as the judge's instructions to the jury, improperly shifting the burden of proof onto him, amounted to a denial of justice, and that the Committee therefore is competent to examine his communication.

6. In a further submission, dated 18 July 1994, the State party informs the Committee that the author's death sentence has been commuted to one of life imprisonment for the rest of his natural life, following the decision of the Judicial Committee of the Privy Council in the case of Pratt and Morgan v. the Attorney General of Jamaica, in which it was held that in any case in which 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 punishment or treatment".

Issues and proceedings before the Committee:

7.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

7.2 The Committee regrets that the State party was not prepared to give the undertaking requested by the Committee under rule 86 of its rules of procedure, not to execute the death sentence against the author while his case was under examination under the Optional Protocol, since the State party considered the communication inadmissible. The Committee observes that it is not for the State party, but for the Committee, to decide whether or not a communication is admissible. The Committee requests the State party to cooperate fully with the Committee's examination of communications in the future.

7.3 The Committee notes that part of the author's allegations relate to the instructions given by the judge to the jury. The Committee refers to its prior jurisprudence and reiterates that it is generally not for the Committee, but for the appellate Courts of States parties, to review specific instructions to the jury by the trial judge, unless it can be ascertained that the instructions to the jury were clearly arbitrary or amounted to a denial of justice. The Committee has taken note of the author's claim that the instructions in the instant case were manifestly unjust. The Committee has also noted the Court of Appeal's consideration of this claim, and concludes that in the instant case the trial judge's instructions did not show such defects as to render them manifestly

arbitrary or a denial of justice. Accordingly, this part of the communication is inadmissible as incompatible with the provisions of the Covenant, pursuant to article 3 of the Optional Protocol.

7.4 As regards the author's claim that the judge's refusal to admit the 1976 statement by the main prosecution witness in evidence or to allow cross-examination of this witness on the statement violated his rights under article 14, paragraphs 1 and 3(e), of the Covenant, the Committee considers that it is generally for the appellate courts of States parties, and not for the Committee, to review the judge's discretion in relation to the admission of evidence unless it can be ascertained that the exercice of the discretion was manifestly arbitrary or amounted to a denial of justice. Since no such defects have been shown in the instant case, this part of the communication is therefore inadmissible under article 3 of the Optional Protocol, as being incompatible with the provisions of the Covenant.

8. The Human Rights Committee therefore decides:

(a) that the communication is inadmissible;

(b) that this decision shall be communicated to the State party, to the author and to the author's counsel.

[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.]

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