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HUMAN RIGHTS COMMITTEE
Fifty-third session

VIEWS

Communication No. 447/1991

Submitted by:	Leroy Shalto [represented by counsel]
Victim:	The author
State party:	Trinidad and Tobago
Date of communication:	16 July 1989 (initial submission)
Documentation references:	Prior decisions - Special Rapporteur's combined rule 86/rule 91 decision, transmitted to the State party on 7 August 1991 (not issued in document form)
	- CCPR/C/50/D/447/1991 (Decision on admissibility, dated 17 March 1994)
Date of adoption of Views:	4 April 1995

On 4 April 1995, the Human Rights Committee adopted its Views under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 447/1991. 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
- FIFTY-THIRD SESSION -

concerning

Communication No. 447/1991

Submitted by: Leroy Shalto [represented by counsel]

Victim: The author

State party: Trinidad and Tobago

Date of communication: 16 July 1989 (initial submission)

Date of decision on admissibility: 17 March 1994

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

Meeting on 4 April 1995,

Having concluded its consideration of communication No. 447/1991 submitted to the Human Rights Committee by Mr. Leroy Shalto 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 the State party,

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

1. The author of the communication is Leroy Shalto, a citizen of Trinidad and Tobago, at the time of submission of the communication awaiting execution at the State Prison of Port of Spain. He claims to be the victim of a violation of the International Covenant on Civil and Political Rights by Trinidad and Tobago, without specifying which provisions of the Covenant he considers to have been violated.

Facts as submitted by the author

2.1 The author was arrested and charged with the murder of his wife, Rosalia, on 28 September 1978. On 26 November 1980, he was found guilty as charged and sentenced to death. On 23 March 1983, the Court of Appeal quashed the conviction and sentence and ordered a retrial. At the conclusion of the retrial, on 26 January 1987, the author was again convicted of murder and sentenced to death. On 22 April 1988, the Court of Appeal dismissed his appeal; a subsequent petition for special leave to appeal to the Judicial Committee of the Privy Council was dismissed on 9 November 1989. On 2 December 1992, the author's death sentence was commuted to one of life imprisonment.

2.2 The evidence relied on by the prosecution during the trial was that, on

28 September 1978, following a dispute betwe en the author and his wife in the store where she worked, the author took out a gun, aimed at his wife and shot her while she was walking away from him. Sev eral eyewitnesses to the incident gave testimony during the trial.

2.3 In a written statement, given to the police after his arrest and duly signed by the author, the author says that he was in the store, talking to his wife, when he saw a man that he thought was police constable E. behind a refrigerator in the store. He pulled out a gun and his wife started to run in the man's direction. The author fired a shot, thereby hitting his wife. During the trial, the author claimed that he had signed the written statement under duress, while he was suffering from a leg injury sustained when he was arrested. He claimed that the part of the statement that related to the incident at the store was incorrect and fabricated by the police. After a voir dire, however, the judge admitted the statement as evidence.

2.4 In an unsworn statement during the trial, the author testified that he and his wife had separated about a month prior to the incident and that on the day in question he went to her to inquire about their two children. He added that he also wanted to ask her about a police revolver that he had found in a clothes basket at his home. After a short conversation, his wife told him that the children were not his and that "this policeman" (apparently constable E.) was a better man than he. The author then became angry and took out the revolver which he had found at home. His wife attempted to get hold of the revolver and during the struggle that ensued the weapon was discharged and she was fatally wounded. The author further stated that prior to the incident he had been harassed by police constable E., who had wrongfully arrested him two days before.

Complaint

3.1 The author claims that his retrial in January 1987 was unfair in that the trial judge, when directing the jury in respect of each of the three different versions of what had happened, misdirected the jury by stating that, in law, "words alone cannot amount to provocation", thereby depriving him of the possibility of a verdict of manslaughter based on provocation. In this context, the author submits that, in 1985, by virtue of an amendment of the Offences against the Person Act, the law in Trinidad and Tobago was amended with regard to the issue of provocation, and from then on required that the issue of provocation be left to the jury. It appears from documentation provided by the author, however, that the law applies only to trials in which an indictment was issued after 21 May 1985 and is therefore not applicable to the author's case.

3.2 Although the author does not invoke the specific articles of the Covenant, the delay in the author's retrial appears to raise issues under articles 9, paragraph 3, and 14, paragraph 3(c).

State party's observations and author's comments thereon

4.1 The State party, by its submission of 30 January 1992, refers to the jurisprudence of the Committee which holds that it is a matter for the appellate courts of States parties to the Covenant and not for the Committee to evaluate facts and evidence placed before domestic courts and to review the interpretation of domestic laws by those courts. It also refers to the Committee's jurisprudence that it is for the appellate courts and not for the Committee to review specific instructions to the jury by the trial judge, unless it is apparent that the instructions to the jury were clearly arbitrary or tantamount to a denial of justice or that the judge manifestly violated his obligation of impartiality.

4.2 The State party argues that the facts as sub mitted by the author do not reveal that the jud ge's instructions to the jury suffered from such defects. It therefore conten ds that the communication is inadmissible under article 3 of the Optional Protocol.

5. In his comments on the State party's submission, the author requests the Committee to take into account the fact that he has spent more than 14 years in prison, the last six under sentence of death.

Committee's decision on admissibility

6. At its fiftieth session, the Committee considered the admissibility of the communication. It noted that, despite a specific request, the State party had failed to provide additional information about the delay between the Court of Appeal's decision of 23 March 1983 to order a retrial and the start of the retrial on 20 January 1987. The Committee considered that this delay might raise issues under article 9, paragraph 3, and article 14, paragraph 3(c), of the Covenant, which should be considered on the merits. Consequently, on 17 March 1994, the Committee declared the communication admissible in this respect.

Issues and proceedings before the Committee

7.1 The Committee has considered the communication in the light of all the information provided by the parties. It notes with concern that, following the transmittal of the Committee's decision on admissibility, no further information has been received from the State party clarifying the matter raised by the present communication. The Committee recalls that it is implicit in article 4, paragraph 2, of the Optional Protocol, that a State party examine in good faith all the allegations brought against it, and that it provide the Committee with all the information at its disposal. In the light of the failure of the State party to cooperate with the Committee on the matter before it, due weight must be given to the author's allegations, to the extent that they have been substantiated.

7.2 The Committee notes that the information before it shows that the Court of Appeal, on 23 March 1983, quashed the author's conviction for murder and ordered a retrial, which started on 20 January 1987 and at the conclusion of which he was found guilty of murder. The author remained in detention throughout this period. The Committee recalls that article 14, paragraph 3(c), of the Covenant prescribes that anyone charged with a criminal offence has the right to be tried without undue delay, and that article 9, paragraph 3, provides further that anyone detained on a criminal charge shall be entitled to trial within a reasonable time or release. The Committee concludes that a delay of almost four years between the judgement of the Court of Appeal and the beginning of the retrial, a period during which the author was kept in detention, cannot be deemed compatible with the provisions of article 9, paragraph 3, and article 14, paragraph 3(c), of the Covenant, in the absence of any explanations from the State party justifying the delay.

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 disclose a violation of articles 9, paragraph 3, and 14, paragraph 3(c), of the International Covenant on Civil and Political Rights.

9. In accordance with article 2, paragraph 3(a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy. The Committee has noted that the State party has commuted the author's death sentence and recommends that, in view of the fact that the author has spent over sixteen years in prison, the State party consider the author's early

release. The State party is under an obligation to ensure that simila r violations do not occur in the future.

10. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within 90 days, information about the measures taken to give effect to the Committee's Views.

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

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