

## HUMAN RIGHTS COMMITTEE

### Grant v. Jamaica

Communication No. 597/1994\*\*

22 March 1996

CCPR/C/56/D/597/1994\*

### VIEWS

*Submitted by: Peter Grant [represented by counsel]*

*Victim: The author*

*State party: Jamaica*

*Date of communication: 12 August 1994 (initial submission)*

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

Meeting on 22 March 1996,

Having concluded its consideration of communication No. 597/1994, submitted to the Human Rights Committee by Mr. Peter Grant 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 the following:

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

1. The author of the communication is Peter Grant, a Jamaican citizen, currently detained at the South Camp Rehabilitation Centre, a prison in Kingston, Jamaica. At the time of submission he was awaiting execution at St. Catherine's District Prison. On 14 July 1995 his sentence was commuted to life imprisonment. He claims to be a victim of violations by Jamaica of articles 6, paragraph 2; 7; 9; 10, paragraph 1; 14, paragraph 1 and 3 (g), of the

International Covenant on Civil and Political Rights. He is represented by counsel.

The facts as submitted by the author

2.1 The author was convicted together with his co-defendants, Dennie Chaplin and Howard Malcolm<sup>1</sup>, of the murder of one Vincent Myrie and sentenced to death on 15 December 1988, by the St. James Circuit Court, Montego Bay, Jamaica. Their appeal was dismissed by the Court of Appeal of Jamaica on 16 July 1990. The author's Petition for Special Leave to Appeal to the Judicial Committee of the Privy Council was similarly dismissed, on 22 November 1993.

2.2 It is contended by counsel that constitutional remedies are not, in practice, available to the author, who lacks financial means. Counsel submits therefore that all domestic remedies have been exhausted for purposes of the Optional Protocol and refers to the Committee's jurisprudence in similar cases.<sup>2</sup>

2.3 The case for the prosecution was that, on 18 June 1987, at 11:00 a.m., Myrie was stabbed in the back, bludgeoned with an iron bar, that petrol was poured over him and then set alight. The prosecution's case was based on statements made to the police by the three accused as well as on circumstantial evidence.

2.4 During the trial, the author's uncle testified that, on 18 June 1987, the author and Dennie Chaplin had come to his home at about 7:00 a.m. to borrow a Red Morris Marina pick-up truck. Grant's uncle was unable to lend the pick-up as he had promised it to Mr. Myrie. Chaplin and the author left saying that they would arrange to borrow the car directly from Myrie. Another witness (SW) testified that at 8:00 a.m. she was given a lift by Myrie from Johnson Town to Hopewell and that there were 3 other men in the truck; one she identified as Howard Malcolm. She also testified to seeing an iron bar protruding from the box in the back of the pick-up. A third witness (SC) testified that at 11:00 a.m., while walking along the Lithe road, she saw first a burning plastic jug on the side of the road and then noticed a red pick-up truck which passed her twice going in different directions. Finally a petrol station attendant saw the pick-up at 1:00 p.m., at the petrol station in Ramble.

2.5 Chaplin's aunt testified that Chaplin and the author had come to her place, on 19 June 1987. Chaplin told her that he was: "Mix up in a little trouble" and asked to leave the pick-up at her premises, she agreed and the author also left her the car keys and licence plates.

2.6 On 13 July 1987, the author was arrested and detained at Sandy Bay Lock-up. He was seen by the investigating officer on 20 July 1987, when he also gave a written statement under caution. No magistrate or other judicial officer was present. In the statement the author admitted participating in the murder and implicated Dennie Chaplin and Howard Malcolm. Later at the trial the author affirmed that the statement had not been voluntary, but rather that he had been subjected to death threats and other ill treatment.

2.7 The author's co-accused Dennie Chaplin and Howard Malcolm had been arrested on 3 July and 2 July 1987 respectively, and given statements to the police admitting their

presence at the scene of the murder and implicating the author.

2.8 Although identification parades were held, the author was not identified. He was however identified during the trial by his uncle, Chaplin's aunt and by the petrol station attendant.

2.9 The statement given by the author was the object of a trial within the trial. After hearing the author the judge also heard the police officers, who denied that the statement had been given under duress. The judge admitted the statement into evidence, despite counsel's objection.

2.10 At the trial, each one of the three defendants gave a statement from the dock denying their own participation but implicating the other two.

2.11 It is stated that the case has not been submitted to another procedure of international investigation or settlement.

### The complaint

3.1 The author claims that the ill treatment he was submitted to by the investigating officer, in order to induce him to sign a confession of guilt, constitutes a violation of articles 7, 10, paragraph 1, and 14, paragraph 3 (g), of the Covenant.

3.2 Counsel alleges that no evidence was given to justify the delay of seven days between the author's detention and his being seen by the investigating officer; counsel contends that this period of detention was meant to induce the author into signing a statement. Counsel also alleges that the author was only informed of the charges against him after seven days, during the meeting with the investigating officer, and that he was not brought promptly before a judge. The above is said to constitute a violation of article 9, paragraphs 2, 3, and 4, of the International Covenant on Civil and Political Rights. In this context, counsel refers to the Human Rights Committee's jurisprudence<sup>3</sup> in which violations of article 9, paragraph 3, were found because the delays exceeded a few days.

3.3 Counsel claims that the trial judge erred in admitting the author's statement to the police into evidence and, moreover misdirected the jury by failing to direct them to take the author's illegal detention into account and by telling them that: "... I cannot see the significance of whether he went the day before or whether it took him a week to get Grant". It is further argued that the judge misdirected the jury by informing them that he had admitted the statement into evidence. In this connection, counsel submits that once a statement has been admitted into evidence it is still for the jury to decide if they are satisfied that it was properly obtained. Counsel claims that any comment from the learned judge regarding the admissibility of the statement carried the risk of influencing the jury. It is submitted that the correct practice would have been for the judge to say nothing about having admitted the statement in evidence, simply to tell the jury that they were to consider the statement themselves and decide if it could be relied upon. Moreover, it is argued that the trial judge, having properly directed the jury in that a statement under caution of one

defendant is not evidence against the other defendants, was then incorrect to compare and contrast the statements of the three defendants, effectively saying that all the defendants excused themselves and blamed the other two. Counsel claims that the judge's directions clearly constitute a denial of justice in violation of article 14, paragraph 1, of the International Covenant on Civil and Political Rights.

3.4 Finally, counsel points out that the author was held on death row for six years awaiting execution; the "agony and suspense" derived from such a long period on death row is submitted to be cruel, inhuman and degrading treatment. Reference is made to the decision of the Judicial Committee of the Privy Council in the case of Pratt and Morgan<sup>4</sup>, where it was held, inter alia, that the delay in the carrying out of the execution constitutes cruel, inhuman and degrading treatment. It is also submitted that the delay in this case is on its own sufficient to constitute a violation of articles 7 and 10, paragraph 1. It is further submitted that the conditions at St. Catherine District Prison amount to a violation of the author's rights under articles 7 and 10, paragraph 1. In this context, the author refers to his being confined to a cell for 22 hours a day, isolated from other men with nothing to do, much of the time in enforced darkness.

#### State party's observations

4.1 In its submission of 10 February 1995, the State party does not raise objections to the admissibility of the communication and addresses the merits, in order to expedite the disposition of the case.

4.2 As regards the allegation of breach of article 9, paragraph 2, of the Covenant, the State party argues that while it is a well-known principle of criminal law that an arrested person must be informed of the grounds for his arrest, there are cases in which it is obvious that the person in question was well aware of the substance of the alleged offence (R. v. Howarth [1928], Mood CC 207). The facts of the instant case reveal that Mr. Peter Grant knew of the substance of the alleged offence for which he had been arrested.

4.3 In respect of the allegation of breach of article 9, paragraph 3, of the Covenant, the State party notes that the principle is that an arrested person should be brought before a magistrate within a reasonable time. Any determination as to what amounts to a reasonable time depends on the circumstances of the case. In any event, there was no delay in bringing Mr. Grant before the courts for trial.

4.4 As regards the allegation of breach of article 9, paragraph 4, the State party denies that there has been any breach of that provision. Article 9, paragraph 4, provides that an arrested person is entitled to take proceedings before a court to determine the lawfulness of his detention and order his release if the detention is not lawful. Mr. Grant had the opportunity to have filed on his behalf a writ of habeas corpus to secure his release. There has been no denial of his right to do so by the State, but rather a failure on the part of Mr. Grant to exercise that right to apply for the writ.

4.5 The State party denies the allegations of breaches of articles 7, 10, paragraph 1, and 14,

paragraph 3 (g), in connection with the procurement of the author's statement. The State party contends that the decision of the St. James Circuit Court on the admissibility of the confession finally determines the issue vis-à-vis the Committee, since it is an issue of fact and evidence upon which the Committee has emphasised that it is not competent to adjudicate.

4.6 With regard to the allegation of a breach of articles 7 and 10, paragraph 1, because Mr. Grant was on death row for more than five years, the State party submits that the judgement of the Privy Council in Pratt & Morgan v. Attorney-General should not be considered a prejudgment of every case where there is a prisoner on death row for more than five years. Each case must be looked at on its merits before a determination can be made as to whether such a case falls within the principles set out by the Privy Council in Pratt & Morgan v. Attorney-General.

4.7 This contention is supported by the Committee's own jurisprudence. In fact, in the Committee's decision in the Pratt & Morgan case, the view was adopted that the delay by itself would not necessarily constitute a breach of article 7.<sup>5</sup>

#### Counsel's comments

5.1 In his submission of 7 March 1995 counsel agrees to the examination of the merits at this stage.

5.2 With regard to article 9 of the Covenant counsel contests the State party's argument that as Peter Grant knew of the substance of the alleged offence for which he had been arrested, there was no need to inform him of the grounds for his arrest and that it was reasonable for Mr. Grant to be brought before a judicial officer seven days after his detention. Article 9 was the subject of General Comment 8 by the Human Rights Committee (16th session, 1982). The Committee noted that delays under article 9, paragraph 3, must not exceed a few days and that pre-trial detention "should be an exception and as short as possible". It is submitted that no compelling evidence was called to explain the delay of seven days between Peter Grant's detention and the investigating officer seeing him.

5.3 A requirement to give reasons on arrest was imposed at common law (Christie v. Leachinsky [1947] AC 573, HL) and is now found in s.28 of the Police and Criminal Evidence Act 1984. Thus a person arrested must be informed of both the fact and the ground of arrest or as soon as practicable thereafter; where a person is arrested by a constable, these obligations apply regardless of whether these matters are obvious. Where no reason is given, the arrest is clearly unlawful.

5.4 Article 9, paragraph 3, of the Covenant requires that a person detained on a criminal charge be brought promptly before a judicial officer. In Kelly v. Jamaica (communication No. 257/1987), the Human Rights Committee emphasised that delays "should not exceed a few days".

5.5 Article 9, paragraph 4, of the Covenant entitled any person subject to arrest or detention

to challenge the lawfulness of a detention before a Court without delay. The State party contends that there was no denial of Mr. Grant's right to do so by the State, but rather a failure on the part of Mr. Grant himself to exercise that right to apply for a writ of habeas corpus. It is submitted that as Peter Grant was not brought promptly before a judicial officer within the meaning of article 9, paragraph 3, he was not able to take proceedings before a Court to determine the lawfulness of his detention.

5.6 With regard to articles 7, 10, paragraph 1, and 14, paragraph 3 (g), counsel submits that the treatment of Peter Grant by the investigating authorities did amount to direct physical and psychological pressure, which he attempted to substantiate to the best of his ability at his trial. The attorney who represented Mr. Grant at his trial stated that Grant had complained to him of being beaten to sign a confession. Despite the testimony of Peter Grant and the submissions made on his behalf by counsel, Mr. Justice Wolfe ruled that the statement would be admitted in evidence. Despite the decision of the trial judge, it is submitted that the confession was procured by methods amounting to torture.

5.7 As to the "death row phenomenon", author's counsel refers to the judgment of the Judicial Committee of the Privy Council in Pratt & Morgan v. Attorney-General of Jamaica, holding that "in any case in which execution is to take place more than 5 years after sentence, there will be strong grounds for believing that the delay is such as to constitute inhuman and degrading punishment". The Judicial Committee further held that a State "must accept the responsibility for ensuring that execution follows as swiftly as practical after sentence, allowing a reasonable time for appeal and consideration of reprieve".

5.8 Counsel further refers to the Committee's General Comment on article 7, which states that "... when the death penalty is applied by the State party for the most serious crimes ... it must be carried out in such a way as to cause the least possible physical pain and suffering". Counsel submits that any execution that would take place more than five years after conviction entails a violation of article 7.

#### Decision on admissibility and examination of the merits

6.1 Before considering any claims 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.

6.2 The Committee has ascertained, as required under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 The Committee notes that the State party does not raise objections to the admissibility of the communication and has submitted its observations on the merits in order to expedite the procedure. The Committee further notes that counsel for the author agrees to the examination of the merits of the communication at this stage.

6.4 While prepared to declare the communication admissible, the Committee has nonetheless

examined whether all of the author's allegations satisfy the admissibility criteria of the Optional Protocol.

6.5 With regard to the author's allegations that he was tortured in order to induce him to confess, the Committee notes that this was the subject of a trial within the trial to determine whether the author's statement was admissible evidence. In this connection the Committee refers to its prior jurisprudence and reiterates that it is generally for the courts of States parties to the Covenant to evaluate facts and evidence in a particular case and notes that the Jamaican courts examined the author's allegations and found that the statement had not been procured through duress. In the absence of a clear showing of bias or misconduct by the judge, the Committee cannot reevaluate the facts and evidence underlying the judge's finding. Accordingly, this part of the communication is inadmissible as incompatible with the provisions of the Covenant, pursuant to article 3 of the Optional Protocol.

6.6 With regard to the judge's instructions to the jury, the Committee reaffirms its jurisprudence that it is not within its competence to review specific instructions to the jury by a trial judge, unless it can be ascertained that the instructions to the jury were clearly arbitrary or amounted to a denial of justice. The material before the Committee, including the written judgment of the Court of Appeal, does not show that the trial judge's instructions or the conduct of the trial suffered from such defects. Accordingly, this part of the communication is inadmissible as incompatible with the provisions of the Covenant, pursuant to article 3 of the Optional Protocol.

6.7 As to the author's allegations that prolonged detention on death row amounts to a violation of article 7 of the Covenant, the Committee refers to its jurisprudence that the length of detention alone does not entail a violation of article 7 of the Covenant in the absence of some further compelling circumstances particular to the individual concerned.<sup>6</sup> In the instant case the Committee observes that the author has not substantiated any specific circumstances that would raise an issue under article 7 of the Covenant. This part of the communication is therefore inadmissible under article 2 of the Optional Protocol.

7. As to the author's other allegations, the Committee declares them admissible and proceeds, without further delay, to the examination of the substance of the claims, in the light of all the information made available to it by the parties, as required under article 5, paragraph 1, of the Optional Protocol.

8.1 With regard to the author's allegations concerning a violation of article 9, the Committee observes that the State party is not absolved from its obligation under article 9, paragraph 2, of the Covenant to inform someone of the reasons of his arrest and of the charges against him, because of the arresting officer's opinion that the arrested person is aware of them. In the instant case, the author was arrested some weeks after the murder with which he was subsequently charged, and the State party has not contested that he was not informed of the reasons for his arrest until seven days later. In the circumstances, the Committee concludes that there has been a violation of article 9, paragraph 2.

8.2 As regards the author's claim under article 9, paragraph 3, the Committee notes that it

is not clear from the information before it when the author was first brought before a judge or other officer authorized by law to exercise judicial power. It is uncontested, however, that the author, when he was seen by the investigating officer seven days after his arrest, had not yet been brought before a judge, nor was he brought before a judge that day. Accordingly, the Committee concludes that the period between the author's arrest and his being brought before a judge was too long and constitutes a violation of article 9, paragraph 3, of the Covenant and, to the extent that this prevented the author from access to court to have the lawfulness of his detention determined, of article 9, paragraph 4.

9. 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 9, paragraphs 2, 3 and 4, of the Covenant.

10. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide Mr. Grant with an effective remedy. The State party is under an obligation to ensure that similar violations do not occur in the future.

11. Bearing in mind that, by becoming a State 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 in connection with 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.]

#### Footnotes

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

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

1/ Dennie Chaplin and Howard Malcolm also submitted their cases to the Human Rights Committee; their cases were registered respectively as communications Nos. 596/1994 and 595/1994. Following the commutation of his sentence, Howard Malcolm withdrew his case, which was accordingly discontinued by the Committee in July 1995.

2/ Communication No. 445/1991 (Lynden Champagnie, Delroy Palmer and Oswald Chisholm v. Jamaica), Views adopted on 18 July 1994.



3/ Communication No. 277/1988 (Jijón v. Ecuador), Views adopted 26 March 1992 and communication No. 253/1987 (Kelly v. Jamaica), Views adopted 8 April 1991.

4/ Earl Pratt and Ivan Morgan v. Attorney-General of Jamaica; PC Appeal No. 10 of 1993, judgment delivered on 2 November 1993.

5/ CCPR/C/35/D/210/1986 and 225/1987, Views of the Human Rights Committee concerning communications Nos. 210/1985 and 225/1987 at paragraph 3.6.

6/ See Committee's Views on communication No. 588/1994 (Errol Johnson v. Jamaica), adopted on 22 March 1996. See also Committee's Views on communications Nos. 210/1986 and 225/1987 (Errol Pratt & Ivan Morgan v. Jamaica), adopted on 6 April 1989.