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Ninetieth session
9 – 27 July 2007

VIEWS

Communication No. 1347/2005

Submitted by:	Lucy Dudko (represented by counsel, Mr. Akhmed Glashev)
Alleged victim:	The author
State party:	Australia
Date of communication:	1 June 2004 (initial submission)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 18 January 2005 (not issued in document form)
Date of adoption of Views:	23. July 2007

* Made public by decision of the Human Rights Committee.

Subject matter: Criminal trial and appeal accompanied by widespread publicity; absence from argument of final appeal where unaided and unrepresented

Procedural issue: Non-exhaustion of domestic remedies

Substantive issues: Fair trial and appeal; delay of proceedings; provision of legal aid; equality before the courts

Articles of the Optional Protocol: 2 and 5, paragraph 2(b)

Articles of the Covenant: 7, 9, 10, 14 and 17

On 23 July 2007 the Human Rights Committee adopted the annexed text as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1347/2005.

[ANNEX]

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

Ninetieth session concerning

Communication No. 1347/2005[**]

Submitted by:	Lucy Dudko (represented by counsel, Mr. Akhmed Glashev)
Alleged victim:	The author
State party:	Australia
Date of communication:	1 June 2004 (initial submission)

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

Meeting on 23. July 2007,

Having concluded its consideration of communication No. 1347/2005, submitted to the Human Rights Committee on behalf of Ms. Lucy Dudko 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, and the State party,

Adopts the following:

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

1. The author of the communication, initially dated 1 June 2004, is Lucy Dudko, an Australian, currently imprisoned in the Silverwater Training and Detention Centre, New South Wales, Australia. She claims to be victim of violations by Australia of articles 7, 9, 10, 14 and 17 of the Covenant. She is represented by counsel, Mr. Akhmed Glashev.

** The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Yuji Iwasawa, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada and Sir Nigel Rodley.

Pursuant to rule 90 of the Committee's rules of procedure, Committee member Mr. Ivan Shearer did not participate in adoption of the Committee's decision.

Factual background

2.1 In March 1999, a helicopter was hijacked on a tourist flight over Sydney. The hijacker ordered the pilot to land at Silverwater prison, where a Mr. Killick, a convicted bank robber and inmate of the prison, was taken on board. The hijacker and Mr. Killick escaped from the prison aboard the helicopter and disappeared. Between 25 and 31 March 1999, some 40 articles appeared in the press portraying the author as the hijacker, an accomplice of criminals and a threat to society. Thirteen similar articles were published in April 1999 and 19 articles were published in May 1999, before the news coverage diminished. On 8 May 1999, the author was arrested on suspicion of hijacking an aircraft and unlawfully aiding a particularly dangerous criminal to escape from detention. Mr. Killick was also arrested. Throughout the year 2000, there were numerous media reports which, according to the author, characterised her as a criminal posing a particular danger to society. Some of these media reports were said to have stated that it was essential to stem the flux of Russian immigrants as threats to society. In December 2000, Mr. Killick was sentenced following a plea of guilty to various offences associated with his escape. At sentencing, the sentencing judge, Judge M., remarked that "In my view this was an extraordinary escape to say the very least. It had its genesis in Hollywood fiction. Both the offender and co-offender … learned and rehearsed their respective roles right down to the matter of timing."[1]

2.2 In March 2001, the author's trial commenced. Mr. Killick was neither called as a witness nor attended. Despite the author's argument that she was not the hijacker in question, she was found guilty, by a jury in the District Court of New South Wales, of rescue of an inmate in lawful custody by force, as well as assault on a member of the crew of an aircraft, detention for advantage and two counts of unauthorised possession of a firearm (pistol). The author alleges that before the verdict was handed down, Judge M., who had no involvement in the author's case, gave an interview to the Daily Telegraph newspaper in which he effectively declared that the author had committed the offence. The District Court sentenced her to ten years of imprisonment on the most serious offences, with lesser periods of concurrent imprisonment on the other offences.

2.3 On 20 August 2002, the New South Wales Court of Criminal Appeal rejected the author's appeal. On 2 April 2003, the author's application for legal aid in support of her application to the High Court of Australia for leave to appeal was rejected on the basis that there was no reasonable prospect that leave would be granted; as a result, the author prepared her own application. On 16 March 2004, the High Court (Gummow, Kirby and Heydon JJ.) refused her application for leave to appeal, reasoning that "the only question that would arise on an appeal to this Court would concern [the issue of adverse publicity;] [h]owever, even if it were shown that there had been a failure in that respect, the other evidence of identity … was so overwhelming that the failure could not be shown to have given rise to a miscarriage of justice". The author was unable to attend the High Court hearing despite her wish to be present and was deprived of the opportunity to present her own arguments. The transcript discloses that one judge, Kirby J., questioned the solicitor for the Director of Public Prosecutions, asking whether, despite the fact that the author was in custody, there could be a telecommunications link to the prison so that detained

[1] As reported in The Daily Telegraph, 22 December 2000, "Killick jailed for 15 years – rehabilitation 'unlikely'".

appellants could have the same right as other citizens to appear. The judge noted that long as appellants were allowed to address the Court, he could not see why an appellant in custody should not be heard in the same way as any other appellant. He noted his dissatisfaction with the inequality of the situation that, contrary to the position in New South Wales, in other federal States of the State party detained appellants were brought to Court and could address it, a practice the judge noted could be helpful to the Court. The solicitor for the Director replied that he did not understand the reasons for this practice and was not in a position to comment. Lastly, the author states that she was charged with violating prison rules and transferred to another facility, the Berrima prison, where a stricter regime was in place.

The complaint

3. The author complains, without further provision of detail, that the State party violated articles 7, 9, 10 and 17 of the Covenant. The author further contends that the State party breached article 14, paragraphs 1, 2 and 3, of the Covenant in a number of respects. First, the State party allegedly failed to ensure that she was tried fairly, she was allegedly not tried by an impartial tribunal, and she was allegedly not afforded the presumption of innocence. The author argues that the alleged press interview given by Judge M., given his professional status, effectively portrayed her as guilty and influenced the outcome of the case and the opinion of the jurors. In general, the wide media portrayal of the author is said to have been inflammatory and prejudicial, with the result that the jurors formed a definite opinion as to her guilt and were exposed to an accusatory bias. The author further complains of excessive delay in the proceedings, that she was not allowed to be present at the hearing on her application to the High Court for leave to appeal, and that she was not afforded legal assistance for her application to the High Court for special leave to appeal.

State party's submissions on admissibility and merits

4.1 By Note verbale of 31 August 2005, the State party contested the admissibility and merits of the communication. In respect of the claims where the author provided no supporting argumentation, the State party submits that they should be struck out as insufficiently substantiated. In any event, these claims are said to be without merit. As to article 7, the State party argues that detention, in and of itself, is not a violation of article 7, and no evidence is provided nor any allegations made of any instances of torture or cruel, inhuman or degrading treatment or punishment. As to article 9, the State party argues that its detention of the complainant was at no stage unlawful or arbitrary, but on the contrary, was on reasonable grounds and in accordance with procedures are established by law. The author was detained following her arrest, and was tried and convicted by jury and sentenced in accordance with the law. The author had access to judicial review of the decision as evidenced by her appeal to the New South Wales Court of Criminal Appeal. As to article 10, the state party argues that the author has not specified the conditions of her detention that allegedly violate the article.

4.2 On article 14, paragraph 1, requiring a "fair" hearing in a criminal case, the State party submits that the author does not challenge the equality of persons before its courts, access to the courts, lawful establishment of the courts, procedural fairness, or the public nature of criminal trials. The State party argues that it has an independent and impartial judicial system, guaranteed by its Constitution and implemented in practice. Its legal system contains numerous safeguards

designed to protect the right of the accused to a fair trial, including the presumption of innocence, procedural and evidentiary rules, trial by jury and public trial, and there is no evidence that the author was denied the benefit of any of these safeguards. In respect of the specific requirement under article 14, paragraph 1, that persons are entitled to be tried by a competent and impartial tribunal, the State party submits that the complainant has not presented any evidence sufficient to suggest the trial court lacked impartiality. There is no allegation that the judge was a party to the case or had a disqualifying interest, nor is any evidence provided to suggest that there are circumstances that would lead a reasonable observer, properly informed, to find bias. The allegation of partiality appears to rest entirely on a comment allegedly made by the trial judge to Mr. Killick following his plea of guilty and subsequent conviction at a separate trial. The alleged conduct of the judge is said to be insufficient to suggest bias towards the author, since it concerned a different defendant in relation to his sentencing. The State party argues that where a particular judge has been regularly appointed, satisfied the criteria for appointment, taken an oath of impartiality, and the propriety of his participation in the case has not been questioned in domestic proceedings, it is incumbent upon whoever alleges partiality to provide substantial tangible evidence.

4.3 On the claim under article 14, paragraph 2, the State party notes that the trial judge addressing Mr. Killick was in no way involved with the complainant's case, and accordingly challenges the author's standing to make this claim. The State party also says no evidence has been offered to substantiate that such statements were made by Judge M. As to the argument that the presumption of innocence was effectively removed due to the wide publicity which the author's case received in the media, the State party notes that the presumption of innocence is a central tenet of the Australian criminal justice system, and the Australian legal system contains numerous safeguards designed to protect the right of the accused to a fair trial. The claim of prejudicial publicity was contained in the author's appeals to the Criminal Court of Appeal and the High Court, and both courts considered and dismissed the contention. The allegations and the material before the Committee do not reveal any arbitrary or impartial behaviour on the part of the trial judge. Furthermore, the judge's instructions to the jury and the conduct of the trial have been reviewed by two domestic appellate courts and found to be in compliance with domestic law. The communication fails to establish that the publicity which the case received in the media resulted in any bias on the part of the jurors, or in any way affected the fair conduct of her trial. The author has not established that the wide publicity occurred at a time proximate to the trial, or that the judge's directions to the jury regarding the presumption of innocence were insufficient or amounted to a denial of justice. The author has thus failed to advance a sufficiently substantiated claim.

4.4 On the merits of this issue, the State party further notes that the complainant made an application to the trial judge for a permanent stay of proceedings on the basis of pre-trial publicity.[2] The judge reached the conclusion that, with proper directions to the jury, the complainant would receive a fair trial, and rejected the application. In summing up with regard to the issue of pre-trial publicity, the judge clearly directed the jury that they 'must not bring to consideration in this matter any preconceived views or ideas about the matter from what [they] may recall hearing or seeing at or around that time of March through to May of 1999 or even

[2] *Regina v Dudko* [2002] NSWCCA 336 (20 August 2002) para 18.

later … touching this particularly or appearing in the media.'[3] The Court of Criminal Appeal reviewed the author's allegation that the pre-trial publicity 'created prejudice in the minds of at least some of the jurors, thus causing a miscarriage of justice'.[4] The court found that the assertions of guilt in the media

> *…were particularly prominent in the immediate wake of the escape and became more sporadic and less prominent over time. The worst of the publicity occurred almost two years before the trial itself ... There is now a substantial body of judicial statements of the opinion that jurors accept their responsibility to perform their duties by differentiating between the evidence and what they have heard before the trial ... Her Honour gave clear and forceful directions to the jury in this regard.*[5]

The Court of Criminal Appeal emphasized that most of the publicity referred to occurred in 1999 and 2000, while the trial did not commence until March 2001. The trial judge directed the jury clearly and appropriately on the issue of pre-trial publicity.

4.5 As to the claims concerning delayed proceedings, denial of legal aid on appeal and inability to be present, the State party argues that the claims are inadmissible for failure to exhaust domestic remedies and for insufficient substantiation. On the issue of legal aid, the State party points out that the provision of legal aid in New South Wales is governed by the Legal Aid Commission Act 1979 (NSW). The author's application for legal aid in relation to her appeal to the High Court was refused by the New South Wales Legal Aid Commission of New South Wales. She was advised of her appeal rights under section 56 of the Legal Aid Commission Act, which provides for an appeal to the Legal Aid Review Committee against the decision to refuse legal aid. No appeal was lodged by the complainant against the decision to refuse legal aid.

4.6 The State party also argues that the author has not given sufficient evidence that its actions resulted in a breach of the right to be tried in one's presence. The author was present throughout her trial and Court of Criminal Appeal proceedings, and has failed to advance any claims showing that her High Court application proceeding *in absentia* caused any unfairness contrary to article 14. The State party recalls the Committee's jurisprudence in Mbenge v Zaire[6] that 'this provision and other requirements of due process enshrined in article 14 cannot be construed as invariably rendering proceedings in absentia inadmissible irrespective of the reasons for the accused person's absence'.[7] Finally, the communication fails to sufficiently establish that the refusal to grant the author legal assistance resulted in a breach of article 14, paragraph 3. The author fails to make any claims in regard to the determination by the Legal Aid Commission that the proposed appeal for which legal aid was sought had no reasonable prospects of success.

4.7 On the issue of delay, the State party argues that the author fails to provide evidence substantiating her allegation that the judicial proceedings in her case were unduly delayed. The communication sets out only three dates – those of arrest, delivery of the Court of Criminal

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[3] Ibid, para 18.
[4] Ibid, para 16.
[5] Ibid, paras 20-22.
[6] Communication No. 16/77, Views adopted on 25 March 1983.
[7] Ibid., at para 14.1.

Appeal judgment, and delivery of the High Court decision. It omits any information concerning the dates of trial, length of trial, the dates on which appeals were lodged and the dates on which they were heard. The author does not assert that she or her counsel made any complaints to the state authorities regarding the delay. The State party recalls that the determination of 'undue delay' depends on the circumstances and complexity of the case.

4.8 The State party notes that in the overwhelming majority of cases where the Committee has found a violation of article 14, paragraph 3(c), the delay experienced by the defendant was in excess of two years. Each level of the courts has time standards duly applied for the conduct of criminal cases. The author was arrested on 9 May 1999, and was taken before the Parramatta Local Court on the same day charged with 14 offences. She was legally represented on that occasion, and at all other hearings in the local court, and did not at any time apply for bail. Her case was brought before the Central Local Court for mention every month until April 2000, at which time a hearing date in July 2000 was fixed for the hearing of defence applications in relation to the committal proceedings. The committal hearing concluded on 25 August 2000, and on this date the case was committed for trial to the Sydney District Court.

4.9 The author first appeared in the District Court on 1 September 2000, and was arraigned on 20 October 2000. On the same day, the trial date was set for 19 February 2001. Pre-trial applications were heard on 19 and 20 February 2001, and the trial commenced on 21 February 2001. The evidence concluded on 7 March 2001, and on 9 March 2001 the jury returned verdicts of 'guilty' on each count. The case was adjourned to 8 June 2001, when sentencing submissions were heard. The sentence was imposed on 20 July 2001. The State party noted that District Court requires 90% of trials to commence within 4 months of committal; and 100% of trials to commence within 12 months of committal, and the author's trial started within 6 months.

4.10 The author's appeal to the New South Wales Court of Criminal Appeal was lodged on 30 July 2001. It was initially listed for 10 September 2001, and was adjourned to callovers in October and December 2001, and February and April 2002. On each of those occasions, the author's appeal was not ready to proceed as she (or her legal advisers) had not filed grounds of appeal or submissions in support of the appeal. She lodged grounds of appeal only on 19 April 2002, and submissions on 23 May 2002. The Court of Criminal Appeal heard the case on 21 June 2002, and reserved its decision. The author requested additional time for further submissions in July and August 2002. On 20 August 2002, the Court dismissed the appeal. In the High Court, the complainant did not lodge a notice of application for leave to appeal in the High Court until 15 April 2003. Following the exchange of written submissions, the application for leave to appeal was heard and dismissed in the High Court on 16 March 2004.

4.11 The State party recalls that the author's case was complex, involving 14 charges and a co-defendant, who was tried separately. She was brought before the court at the first available opportunity, on the same day as her arrest, and her case was monitored regularly before the court to ensure its progression. The time taken to finalise her committal, trial and appeals was in accordance with the time standards laid down by the courts for criminal cases. In addition, significant delays were assertedly occasioned by the inaction or lack of preparation of the author or her legal advisers, particularly in relation to the appeal to the Court of Criminal Appeal and the High Court. In all the circumstances of the case, it cannot be said that the matter was unduly delayed.

4.12 Regarding the right to be tried in one's presence, the State party acknowledges that its obligation to conduct a criminal trial in the presence of the accused may be extended to appeal cases where the interests of justice so require.[8] This question must be decided on the basis of a consideration of the trial as a whole, and not on the basis of an isolated consideration.[9] The State party argues that the personal attendance of the defendant at an appeal does not take on the same crucial significance as it does for the trial hearing.[10] Accordingly, proceedings for leave to appeal, and proceedings involving only questions of law, as opposed to questions of fact, may comply with the requirements of a fair trial even though the appellant was not given the opportunity of being heard in person.[11] In this regard, the State party recalls the Committee's decision in R.M. v Finland,[12] where it stated that 'the absence of oral hearings in the appellate proceedings raises no issue under article 14 of the Covenant.'[13]

4.13 The State party notes that, in the High Court, there was no defence lawyer present, because legal aid had been refused with regard to the leave application. The author herself was not present in the High Court at the leave application because she was in custody, and the practice in New South Wales is that people in custody do not appear in the High Court. However, the author's absence from the leave application assertedly did not render the proceedings unfair, or in any way impinge upon their procedural fairness. She had been present throughout her trial, and at the appeal hearing in the New South Wales Court of Criminal Appeal. She was aware of the proceedings in the High Court, having instigated them herself, and was able to submit written arguments which were considered and referred to by the court.[14] That she was not present at the leave application did not result in any unfairness or otherwise breach article 14 of the Covenant.

4.14 As to the right to be provided with legal assistance, the provision of legal aid, both at trial and on appeal, requires that the defendant must lack sufficient means to pay for legal assistance and that the 'interests of justice' require it. A State party has discretion to direct finite legal aid resources to meritorious arguments, taking into account the nature of the proceedings, the powers of the appellate court, the capacity of an unrepresented appellant to present a legal argument, and the importance of the issue at stake in view of the severity of the sentence. In this case, the 'interests of justice' did not require that legal aid be provided for the author's application for special leave to the High Court. She was granted legal aid for legal representation in the Local Court, the District Court, and the Court of Criminal Appeal, covering her pre-trial, trial and Court of Criminal Appeal proceedings.

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[8] *Delcourt v. Belgium* ECHR Series A, Vol. 11 pr. 25 (1970).
[9] *Nielsen v. Denmark*, A. 347/57, 4 YBECHR (1961) p.548.
[10] *Kamasinski v Austria* (9783/82) [1989] ECHR 24 (19 December 1989) para 106-7*; Ekbatani v Sweden* (10563/83) [1988] ECHR 6 (26 May 1988) para 31; *Prinz v Austria* (23867/94) [2000] ECHR 59 (8 February 2000) para 34; *Belziuk v. Poland,* Judgment of the ECtHR, 25 March 1998 [1998] IIHRL 20, para 37; *Helmers v. Sweden* judgment of 29 October 1991, Series A no. 212-A, paras. 31-32; *Kremzow v. Austria* (12350/86) [1993] ECHR 40 (21 September 1993) paras. 58-59.
[11] *Ekbatani v Sweden*, (10563/83) [1988] ECHR 6 (26 May 1988) para 31.
[12] Communication No. 301/1988.
[13] Communication No. 301/1988, para 6.4.
[14] Ibid, p. 3.

4.15 The Legal Aid Commission of New South Wales provides that appeals in criminal matters to the High Court of Australia are subject to both a means and merit test. The merit test considers whether a grant of legal aid is reasonable in the circumstances, including the nature and extent of any benefit that may accrue to the applicant by providing legal aid, the nature and extent of any detriment that the applicant may suffer if legal aid is refused, and whether the appellant has any reasonable prospects of success in the proceedings. In relation to the author's application for further legal aid, advice was sought from Counsel on the prospects of success of the proposed appeal, in accordance with the normal procedure followed by the Commission. Counsel advised that there was no merit in the appeal, and legal aid was refused. The State party submits that the decision not to grant legal aid for the special leave application was not contrary to the interests of justice because it was taken after careful consideration of the relevant factors, and there were no special features of the proceedings which necessitated State-funded legal aid in light of the absence of reasonable grounds of appeal. The author had already had the benefit of review by the Court of Criminal Appeal.

4.16 On the claim that article 17 of the Covenant was breached, the State party argues that no indication is given as to which aspect of the article the author alleges has been breached, nor are any claims of specific conduct advanced in support of the allegation. In the absence of such detail, the communication is said to be insufficiently substantiated. In addition, there are available and effective statute and common law remedies not pursued by the author where she could have sought redress for alleged attacks on their honour, privacy and reputation.

4.17 The State party also asserts that pre-trial publicity in the case could not support the author's claim under article 17, which would require an unlawful attack on her honour and reputation. The word 'attack' connotes a hostile assault of a certain intensity. The media articles were reportage of news and events in the normal course of reporting.

Author's comments on the State party's submissions

5.1 On 6 November 2005, the author responded to the State party's submissions, arguing that domestic remedies were exhausted for all claims not decided by the High Court, and that the refusal of "appropriate legal assistance" to the author made further pursuit of the claims impossible in view of their complexity. As to articles 7, 9 and 10, the author claims that the claims are sufficiently substantiated, contending that the State party created a "special atmosphere" around the author and engaged in "unacceptable" discussion in the media prior to judgment, and that she was required to wear an orange prison robe that showed she was a "high class criminal".

5.2 In respect of article 14, the author argues that the State party did not provide her with the opportunity to defend herself effectively, and that the trial judge's remarks concerning her co-defendant raises strong inference that her case was not heard fairly. While Judge M. was not the trial judge, he was a known and respected legal figure whose views on a case prior to its definitive conclusion had the capacity of influencing both jurors and the wider public. The State party's argument that domestic law was complied with is of itself no answer to the Covenant claims. Concerning the delay in the trial and appeal, the author disputes that the complexity of the case was such as to justify the length in question, and contends that no delay was attributable to her. Lastly, the author notes the importance of legal assistance for accused. In the proceedings

before the High Court, she lacked legal assistance and was unable to participate in person, while the prosecutor took part actively and in person. If the case was sufficiently complex to justify lengthy delay, then the same complexity would justify legal assistance on appeal.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with article 93 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 The claims under articles 7, 9, 10 and 17 of the Covenant are inadmissible for lack of sufficient substantiation, pursuant to article 2 of the Optional Protocol. In respect of the denial of legal aid in the High Court, the Committee notes that section 56 of the Legal Aid Commission Act provides for an appeal to the Legal Aid Review Committee against the decision to refuse legal aid. The author, though advised of this option, declined to pursue it and has not provided any explanation for this course. As to the claim that the presumption of innocence was infringed and the author's trial was prejudiced by judicial comment at her co-defendant's sentencing, following a plea of guilty, the Committee notes that this issue was not raised on appeal. Accordingly, both claims are inadmissible for failure to exhaust domestic remedies, under article 5, paragraph 2(b), of the Optional Protocol.

6.3 In respect of the claim of an unfair trial on account of pre-trial publicity, under article 14, paragraph 1, of the Covenant, the Committee notes that the jury was given clear instructions to consider only the evidence at trial. The impact of publicity is primarily a question of fact, and was considered by the trial court and the appeals court. Their judgment does not appear to have been arbitrary or to have amounted to a denial of justice, and accordingly the author's claim is insufficiently substantiated, for purposes of admissibility. As to the claim of unreasonable delay in the legal proceedings, under article 14, paragraph 3(c), the Committee notes with some concern that there was a delay of 15 months between the arrest of the author and the committal proceedings, and a further six months until the commencement of trial. However, the author has not presented sufficient information to indicate that this delay was excessive, in light of the State party's submissions concerning the complexities of the case and the difficulties occasioned by the trying the parallel case of the co-offender. It follows that both these claims are inadmissible under article 2 of the Optional Protocol.

6.4 As to the issue of the author's inability to participate in person at the High Court proceedings conducted orally, the Committee considers that this claim has been sufficiently substantiated, for purposes of admissibility, inasmuch as it relates to the right of equality before the courts, protected by article 14, paragraph 1, first sentence, of the Covenant.

Consideration of the merits

7.1 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.

7.2 In regard to the author's claim of a right to be present at the High Court proceedings, the Committee notes its previous jurisprudence that the disposition of an appeal does not necessarily require an oral hearing. The Committee also notes that the defendant had the opportunity to submit written papers to the High Court, acting *pro se*, and that she failed to appeal her denial of legal aid before the Legal Aid Review Committee.

7.3 However, the High Court *did* choose to conduct an oral hearing in its consideration of the author's application for leave to appeal. A solicitor representing the Director of Public Prosecutions was present and presented arguments at that oral hearing. A question of fact was put by the court to the solicitor for the Director of Public Prosecutions, and the author had no opportunity, either in person or through counsel, to comment on that question. One member of the High Court noted that there was no apparent reason why a defendant held in custody could not, at a minimum, be enabled to take part in the hearing by means of a telecommunications link, at least where he or she did not otherwise enjoy any representation. The same judge noted that a right to attend appellate hearings is already the practice in several jurisdictions of the State party. The State party offered no explanation, other than to say it was not the practice in New South Wales.

7.4 The Committee observes that when a defendant is not given an opportunity equal to that of the State party in the adjudication of a hearing bearing on the determination of a criminal charge, the principles of fairness and equality are engaged. It is for the State party to show that any procedural inequality was based on reasonable and objective grounds, not entailing actual disadvantage or other unfairness to the author. In the present case, the State party has offered no reason, nor does the file reveal any plausible reason, why it would be permissible to have counsel for the State take part in the hearing in the absence of the unrepresented defendant, or why an unrepresented defendant in detention should be treated more unfavourably than unrepresented defendant *not* in detention who can participate in the proceedings. Accordingly, the Committee concludes that a violation of the guarantee of equality before the courts in article 14, paragraph 1, occurred in the circumstances of the case.

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 reveal a violation of article 14, paragraph 1, of the Covenant.

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 State party is also under an obligation to ensure that similar 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. The State party is also requested to publish 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.]
