

HUMAN RIGHTS COMMITTEE

Phillip v. Trinidad and Tobago

Communication No. 594/1992

15 March 1996

CCPR/C/56/D/594/1992*

ADMISSIBILITY

Submitted by: Irvin Phillip (represented by counsel)

Alleged victim: The author

State party: Trinidad and Tobago

Date of communication: 13 February 1989 (initial submission)

Documentation references: Prior decision - Special Rapporteur's combined rule 86/rule 91 decision, transmitted to the State party on 16 December 1992 (not issued in document form)

Date of present decision: 15 March 1996

The Human Rights Committee, acting through its Working Group pursuant to rule 87, paragraph 2, of the Committee's rules of procedure, adopts the following decision on admissibility.

Decision on admissibility

1. The author of the communication is Irvin Phillip, a Trinidadian citizen serving a life sentence at the State Prison of Port-of-Spain, Trinidad and Tobago. He claims to be a victim of a violation of articles 7, 10 (1) and 14 (1), 14 (3) (b), (d) and (e) of the International Covenant on Civil and Political Rights by Trinidad and Tobago. He is represented by counsel.

The facts as submitted

2.1 The author, together with Peter Holder ^{1/} and Errol Janet, was jointly charged with the murder, on 29 March 1985, of one Faith Phillip (no relation to the author). On 5 May 1988, after a trial which lasted one month, the jury failed to return a unanimous verdict, and a retrial was ordered. On 18 June 1988, the accused were found guilty as charged and sentenced to death by the Second

Assizes Court of Port-of-Spain. On 5 April 1990, the Court of Appeal of Trinidad and Tobago dismissed the appeal of Messrs. Holder and Phillip, whereas it acquitted Errol Janet; it issued a written judgement two weeks later. Mr. Phillip's petition for special leave to appeal to the Judicial Committee of the Privy Council was dismissed on 24 April 1991. On 31 December 1993 Mr. Phillip's death sentence was commuted to life imprisonment.

2.2 The subject of the communication is Mr. Phillip's second trial, at which the Court denied the legal aid attorney's motion for an adjournment in order to better prepare for the defence or, in the alternative, to allow Mr. Phillip to engage other counsel.

2.3 Mr. Zelina Mohammed, cashier at the Zodiac Recreational Club in Port-of-Spain was the sole eye witness to the crime and the prosecution's main witness. At trial she testified that, on the morning of 29 March 1985, she was at work, inside the bar, and that Faith Phillip sat in front of the bar, when three men came in. Mr. Holder ordered a drink and after a while went downstairs; she heard a sound as if the gate to the entrance was being closed. When Mr. Holder came back, she asked Faith Phillip, to have a look. Shortly thereafter Mr. Phillip assaulted Faith Phillip, while Mr. Holder kicked open the door to the bar and entered the bar together with Mr. Janet. Both were holding knives. Mr. Holder forced Ms. Mohammed to open the cash register and give them \$300. She was also forced to show them the room of the Club's owner which was at the back. There, Mr. Holder tied her up, while Mr. Janet searched the room for valuables. She was told to face the wall, but before doing so she saw Mr. Phillip in the corridor, pulling Faith Phillip into another room. She then heard fighting, which continued for about five minutes. After it stopped she heard footsteps, as if the accused were leaving. Finally, she was untied by the Club's electrician who passed by and they found Faith Phillip lying on the floor, with her face swollen and blood running from her nose. The deceased was pronounced dead on arrival to hospital. The cause of death was a massive brain haemorrhage, resulting from blunt force injuries to her head.

2.4 At the identification parade held on 4 April 1985 Ms. Mohammed selected Mr. Phillip from a group of eight men as someone who "looked like" one of the persons involved in the crime. Mr. Phillip claims mistaken identification.

2.5 At the trial, Mr. Holder gave sworn testimony admitting participation in the robbery. He denied, however, having struck the deceased. He stated that while he and Mr. Janet were emptying the drawers in the Club owner's room, he saw Mr. Phillip going up the corridor with Faith Phillip. When they left the building, they met Mr. Phillip outside.

2.6 The prosecution stated that all three defendants made statements under caution, witnessed by a justice of the peace, admitting their involvement in the crime. In his statement the author admitted the robbery but denied taking any part in the beating of the deceased. At trial, however, he gave sworn testimony denying knowledge of the crime, claiming that he had never left his home on 29 March 1985 and challenging the identification by Ms. Mohammed. His statement to the police was admitted into evidence after a voir dire.

2.7 Mr. Janet affirmed upon oath his previous statement to the police. He stated that the robbery was planned by Messrs. Holder and Phillip, who had received information that the owner of the Club kept all his money at the Club. Out of fear of both men, he assisted in the robbery. He further stated

that he prevented Mr. Holder from further hitting the deceased.

The complaint

3.1 The author claims that his trial was unfair in breach of article 14, paragraph 1, of the Covenant. In this context he complains about the inconsistency in the testimony of witnesses during the first trial. He points out that, as the prosecution failed to prove his guilt at the first trial, he should have been acquitted. The author further claims that, as the prosecution had failed to prove his mens rea, the judge should have brought the issue of manslaughter to the attention of the jury.

3.2 With respect to the time and facilities to prepare his defence in the retrial, the author claims that counsel was appointed on Friday 10 June 1988 and that the trial commenced on Monday 13 June 1988. Counsel's request for additional time to prepare the defence and to meet with Mr. Phillip was denied, in violation of article 14, paragraphs 3 (b) and (e) of the Covenant.

3.3 He further complains that he was denied a counsel of his choosing at the retrial, in violation of article 14, paragraph 3 (d). It appears from the notes of evidence that during the retrial the author complained about the performance of his counsel who was young and had never tried a capital case. Accordingly the author requested an adjournment to obtain a counsel of his own choice. The judge advised counsel to make his application to withdraw from the case in court. The court subsequently refused counsel's application. The author states that the judge told him that he could not afford an attorney of his own choice and that therefore the case would not be postponed. According to the author, his conviction is attributable to the judge's tyrannical behaviour in addition to the inexperience of counsel.

3.4 With respect to the conditions under which Mr. Phillip is detained, counsel argues that the prison cell is underground, filthy, with bad ventilation and infested with cockroaches and rats. He sleeps on pieces of carpet and torn cardboard box on the cold concrete floor without any bedding. Food is inadequate. There are no toiletries or medication. The complaints, however, have not been reported to any authorities, because the author fears reprisal from the warders and claims to be living in complete fear for his life. These conditions are said to constitute violations of articles 7 and 10 (1) of the Covenant.

State party's observations and author's comments

4.1 In its submission of 23 September 1993 the State party objects to the admissibility of the communication and refers, in particular, to the Committee's jurisprudence according to which the evaluation of facts and evidence is for the Courts of States parties.

4.2 It further informs the Committee that on 23 August 1993, Irvin Phillip filed a constitutional motion in the High Court in which he is seeking a declaration that the execution of the sentence of death on him will be unconstitutional, null and void as well as an order vacating the sentence of death and staying the execution. On 23 August 1993, the Court granted a conservatory order directing the State to undertake that no action would be taken to carry out the sentence of death on the author until the hearing and determination of the motion.

4.3 Moreover, the State party argues:

- (a) The author has not indicated the provision or provisions of the Covenant on Civil and Political Rights which he alleges have been violated by the Republic of Trinidad and Tobago; and
- (b) The facts as submitted do not raise issues under any of the provisions of the Covenant;
- (c) According to the constant jurisprudence of the Human Rights Committee, it is in principle not for the Committee but for the Courts of States parties to the Covenant to evaluate facts and evidence in a particular case. The decision of the courts in Trinidad and Tobago and the Privy Council in this case cannot be viewed as being arbitrary or as amounting to a denial of justice;
- (d) By reasons of the foregoing, the communication is incompatible with the provisions of the Covenant.

4.4 In its submission of 9 February 1995, the State party informs the Committee that pursuant to the judgment of the Judicial Committee of the Privy Council in the case of Earl Pratt and Ivan Morgan v. the Attorney General of Jamaica, the sentences of death against Messrs. Peter Holder and Irvin Phillip were commuted to sentences of life imprisonment.

5.1 By letter of 21 June 1994, Interrights, a non-governmental organization in the United Kingdom informed the Committee that it had been asked by Mr. Phillip to represent him before the Committee.

5.2 By letter of 27 March 1995 Interrights resubmitted the communication on behalf of Mr. Phillip, enclosing the text of the notes of evidence and the transcript of the trial before the Second Assize Court in Port-of-Spain against Messrs. Peter Holder, Irvin Phillip and Errol Janet.

Issues and proceedings before the Committee

6.1 By decision of 16 December 1992, the Special Rapporteur on New Communications of the Human Rights Committee transmitted communication No. 515/1992 concerning Messrs. Peter Holder and Irvin Phillip to the State party, requesting it, under rule 91 of the rules of procedure, to submit information and observations in respect of admissibility. At its fifty-first session in July 1994, the Committee separated consideration of Mr. Phillip's case from that of Mr. Peter Holder, and reregistered Mr. Phillip's communication under No. 594/1992.

6.2 The Special Rapporteur also requested, pursuant to rule 86 of the Committee's rules of procedure, that the State party refrain from carrying out the death sentence against the authors during the Committee's examination of the communication. The Committee expresses its satisfaction with the State party's cooperation in granting a stay of execution and, on 31 December 1993, commuting their death sentences.

6.3 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.

6.4 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.

6.5 As to the requirement in article 5, paragraph 2 (b), of the Optional Protocol that domestic remedies be exhausted, the Committee notes that the Privy Council has dismissed the author's application for leave to appeal. Therefore, with regard to the author's allegations of unfair trial, the Committee is satisfied that domestic remedies have been exhausted for purposes of the Optional Protocol. In this connection, the Committee also notes that, following the commutation of the author's death sentence, the author's constitutional motion before the High Court has become moot.

6.6 As regards the author's claim that the conditions of his detention are cruel, inhuman and degrading, the Committee notes that the State party has so far not attempted to refute his claim nor has it provided information about effective domestic remedies available to the author. In these circumstances, given the author's statement that he did not file a complaint because of his fears of the warders, the Committee considers that it is not precluded by article 5, paragraph 2 (b), of the Optional Protocol from examining the complaint, which may raise issues under articles 7 and 10 of the Covenant.

6.7 With regard to that part of the author's communication relating to the evaluation of evidence and to the instructions given by the judge to the jury, in particular, the failure to instruct the jury on the possibility of manslaughter, the Committee refers to its established jurisprudence that it is, in principle, for the appellate courts of States parties to the Covenant, and not for the Committee, to evaluate facts and evidence in a particular case. As to the author's allegation that he had not made any admission to the police and that the identification by the main prosecution witness was faulty, the Committee notes that these matters were the subject of a voir dire, at which the facts and evidence were evaluated. Similarly, it is not for the Committee to review specific instructions to the jury by the judge, unless it can be ascertained that the instructions to the jury were clearly arbitrary or amounted to a denial of justice, or that the judge manifestly violated his obligation of impartiality. The material before the Committee does not reflect that the trial judge's instructions or the conduct of the trial suffered from such defects. This part of the communication is therefore inadmissible under article 3 of the Optional Protocol.

6.8 As to the other claims under article 14, paragraph 3, the Committee finds that the author has substantiated, for purposes of admissibility, his allegations that at the retrial he did not have sufficient time and facilities to prepare his defence, that his defence counsel was inexperienced and that he was denied the opportunity to obtain counsel of his own choosing. The Committee considers that it should examine this part of the communication on the merits.

7. The Human Rights Committee therefore decides:

(a) that the communication is admissible in so far as it may raise issues under articles 7, 10 and 14 of the Covenant;

(b) that, in accordance with article 4, paragraph 2, of the Optional Protocol, the State party shall be requested to submit to the Committee, within six months of the date of transmittal to it of this

decision, written explanations or statements clarifying the matter and the measures, if any, that may have been taken by it;

(c) that any explanations or statements received from the State party shall be communicated by the Secretary-General under rule 93, paragraph 3, of the rules of procedure to the author, with the request that any comments which he may wish to make should reach the Human Rights Committee, in care of the Centre of Human Rights, United Nations Office at Geneva, within six weeks of the date of transmittal;

(d) that this decision shall be communicated to the State party, to the author and to his counsel.

*/ All persons handling this document are requested to respect and observe its confidential nature.

1/ Communication No. 515/1992, declared inadmissible on 19 July 1995 because of non-exhaustion domestic remedies.