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Eighty-first session
5 - 30 July 2004

VIEWS

Communication N° 867/1999

Submitted by:	Mrs. Daphne Smartt (not represented by counsel)
Alleged victim:	The author's son, Mr. Collin Smartt
State party:	Republic of Guyana
Date of initial communication:	28 March 1999 (initial submission)
Documentation references:	Special Rapporteur's rule 86/91 decision, transmitted to the State party on 28 April 1999 (not issued in document form)
Date of adoption of Views:	6 July 2004

On 6 July 2004, the Human Rights Committee adopted the annexed draft as the Committee's Views, under article 5, paragraph 4 of the Optional Protocol, in respect of communication No. 867/1999. The text of the Views is appended to the present document.

[ANNEX]

* 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

Eighty-first session

Concerning

Communication N° 867/1999**

Submitted by: Mrs. Daphne Smartt (not represented by counsel)

Alleged victim: The author's son, Mr. Collin Smartt

State party: Republic of Guyana

Date of communication: 28 March 1999 (initial submission)

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

Meeting on 6 July 2004

Having concluded its consideration of communication No. 867/1999 submitted to the Committee on behalf of Collin Smartt 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

1.1 The author of the communication is Mrs. Daphne Smartt. She submits the communication on behalf of her son, Collin Smartt, a Guyanese citizen born in 1959, awaiting execution in Georgetown State Prison in Guyana. She claims that her son is an alleged victim

** The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Franco Depasquale, Mr. Maurice Glèlè Ahanhanzo, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Martin Scheinin, Mr. Ivan Shearer, Mr. Hipólito Solari Yrigoyen, Ms. Ruth Wedgwood and Mr. Roman Wieruszewski.

of human rights violations by Guyana[1]. Although she does not invoke any specific articles of the Covenant, the communication raises issues under articles 6 and 14 of the Covenant. The author is not represented by counsel.

1.2 In accordance with rule 86 of the Committee's Rules of Procedure, the Committee, on 28 April 1999, requested the State party not to carry out the death sentence against Mr. Collin Smartt, while the communication is under consideration by the Committee.2

The facts as submitted by the author

2.1 The author's son was charged with murder on 31 October 1993 and convicted and sentenced to death on 16 May 1996. On appeal, the Supreme Court confirmed both conviction and sentence.

2.2 From the notes of evidence submitted by the author, it appears that the case for the prosecution was that on 31 October 1993, the author's son, while incarcerated at Georgetown Prison, stabbed Mr. Raymond Sparman, another prisoner, with an instrument made from a stiff wire and a piece of sharpened metal. Mr. Sparman died from his injures shortly after the incident.

[1] The Covenant and the Optional Protocol entered into force for the State party respectively on 15 May 1977 and 10 August 1993. Upon ratification of the Covenant, the State party entered the following reservation in respect of sub-paragraph (d) of paragraph 3 of article 14: "While the Government of the Republic of Guyana accept the principle of Legal Aid in all appropriate criminal proceedings, is working towards that end and at present apply it in certain defined cases, the problems of implementation of a comprehensive Legal Aid Scheme are such that full application cannot be guaranteed at this time." On 5 January 1999, the State party notified the Secretary-General that it had decided to denounce the Optional Protocol with effect from 5 April 1999, that is subsequent to the initial submission of the communication. On that same date, the State party re-acceded the Optional Protocol with the following reservation: "[...] Guyana re-accedes to the Optional Protocol to the International Covenant on Civil and Political Rights with a Reservation to article 6 thereof with the result that the Human Rights Committee shall not be competent to receive and consider communications from any persons who is under sentence of death for the offences of murder and treason in respect of any matter relating to his prosecution, detention, trial, conviction, sentence or execution of the death sentence and any matter connected therewith.
Accepting the principle that States cannot generally use the Optional Protocol as a vehicle to enter reservations to the International Covenant on Civil and Political Rights itself, the Government of Guyana stresses that its Reservation to the Optional Protocol in no way detracts from its obligations and engagements under the Covenant, including its undertaking to respect and ensure to all individuals within the territory of Guyana and subject to its jurisdiction the rights recognised in the Covenant (in so far as not already reserved against) as set out in article 2 thereof, as well as its undertaking to report to the Human Rights Committee under the monitoring mechanism established by article 40 thereof."

[2] The State party has not informed the Committee as to its compliance with the request.

2.3 After he was informed of the murder charges against him, Collin Smart, on 31 October 1993, stated before the police that Mr. Sparman had assaulted and attacked him with a piece of wood. The author's son also stated that he could not remember what happened after the incident, as he had passed out and had only regained consciousness after he was brought to Brickton prison.

2.4 On 31 October 1993, the author's son was charged with murder. Thereafter, several prosecution witnesses were heard during the preliminary inquiry (committal hearings) before the Georgetown Magisterial Court. These started on 16 November 1993 with the testimony of the sister of the deceased, who identified him as Raymond Sparman. The author's son was present during the committal hearings, but he was not represented by counsel.

2.5 The prosecution's main witness, Mr. Edward Fraser, Chief Officer at Georgetown Prison, testified that he was on duty on 31 October 1993. At 8.50 a.m., he saw Mr. Sparman standing in the East of the prison yard, with blood running from under one of his eyes. Sparman ran past him and picked up a piece of wood. Mr. Fraser then noticed Collin Smart running towards him, holding a ten-inch long wire. He ignored Mr. Fraser's order to put down the instrument and went after Mr. Sparman. When Mr. Fraser reached them, he saw the author's son swinging the wire at Mr. Sparman. However, he did not see whether it struck him. He caught the right hand of Mr. Smartt, who was fighting with Sparman. The latter broke loose, fell down, got up and ran towards the gate area, followed by several prisoners. The author's son then also ran after Sparman, and Mr. Fraser followed the crowd. He noticed that some prisoners were bringing the author's son towards him. He locked him up and returned to the front gate area, where he found Sparman lying on the ground. Upon cross-examination by the author's son, Mr. Fraser stated that he did not see the author's son injure Sparman.

2.6 Another prosecution witness, Clifton Britton, also a prison officer, testified that, on 31 October 1993, he saw the author's son and Sparman having an argument in the prison yard. He separated them with the help of other prisoners. Mr. Britton's testimony was similar to that of Mr. Fraser. Under cross-examination by the author's son, Mr. Britton stated that he did not see him injure Sparman.

2.7 The forensic report of 5 November 1993 confirms that Mr. Sparman's corpse displayed a lacerated wound on the right cheek below the right eye and a small wound on the left abdomen, and states as cause of death: "Haemorrhage and shock due to perforation of blood vessels in abdomen and perforation of intestines by stab wound."

2.8 At the end of the hearing, the author's son proclaimed his innocence and, in response to the question whether he wished to say anything in answer to the charge, reserved his defence, without calling witnesses. The Magistrate committed him to stand trial on the charge of murder, to be held in the criminal division of the Supreme Court, to begin in June 1994.

2.9 During the trial itself, the author's son was represented by a lawyer of his choosing. Counsel did not call any defence witnesses, limiting himself to cross-examining the prosecution witnesses. Most of the prosecution witnesses repeated their testimony, but in more detail, during the trial.

2.10 Following the hearing of all prosecution witnesses, counsel argued in the absence of the jury, that the prosecution had failed to establish a *prima facie* case, that no direct evidence had been adduced which proved that the author's son had inflicted the fatal injury on Mr. Sparman, and that the wound could have been inflicted by someone else. The jury would thus have to speculate. In a statement from the dock, the author's son denied having stabbed Mr. Sparman and submitted that other prisoners had motive and opportunity to kill the latter.

2.11 On 16 May 1996, after detailed instructions by the Chief Justice, the jury unanimously found the author's son guilty of murder and sentenced him to death.

2.12 On 23 May 1996, the author's son appealed his conviction, through counsel, to the Supreme Court of Judicature, on grounds that the trial judge erred in finding that a prima facie case had been made out against him, that his defence was not adequately put to the jury, and that the directions of the trial judge relating to circumstantial evidence were inadequate, as it was not sufficiently impressed upon the members of the jury that, in arriving at their verdict, it was necessary for them to consider the evidence as a whole rather than the individual evidential links, and since no attempt was made to assist the jury by explaining the law as regards the drawing of inferences to the evidence in the case. The appeal was dismissed, and the death sentence against the author's son confirmed on 26 March 1999.

2.13 On 4 August and 24 September 2003, the author provided additional information, stating that her son was still on death row, that his death sentence had not been commuted into a lifelong prison sentence, and that she had not received any notice of a date of execution.

The complaint

3.1 The author claims that the trial against her son was unfair, as the only evidence against him was the testimony of Mr. Fraser, who had stated that her son had directed a stab at the deceased which had missed him.

3.2 The author claims further that no witnesses were allowed to give evidence on behalf of her son, who stood alone against the State party.

3.3 The author asks for the death sentence against her son to be commuted into a lifelong prison term, or for her son to be pardoned or to be set free, as appropriate.

Committee's request for State party's observations

4. By note verbale of 28 April 1999, the Committee requested the State party to submit its observations on the admissibility and merits of the communication. Despite four reminders dated 14 December 2000, 24 July 2001, 11 March 2003 and 10 October 2003, no such information was received.

Issues and proceedings before the Committee

Consideration of admissibility

5.1 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 the communication is admissible under the Optional Protocol to the Covenant.

5.2 The Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement for purposes of article 5, paragraph 2 (a), of the Optional Protocol[3] and that the author's son has exhausted all available domestic remedies[4], in accordance with article 5, paragraph 2 (b) of the Optional Protocol.

5.3 As to the allegation that the conviction of the author's son was based on insufficient evidence, the Committee notes that this claim relates to the evaluation of facts and evidence by the trial judge and the jury. The Committee recalls that it is generally for the appellate courts of States parties to the Covenant and not for the Committee to evaluate the facts and evidence in a particular case, unless it could be ascertained that the evaluation of evidence and the instructions to the jury were clearly arbitrary or otherwise amounted to a denial of justice.[5] The Committee notes that the fact that a criminal conviction may be based on circumstantial evidence, as maintained by the author in the present case, does not of itself warrant a finding that that the evaluation of facts and evidence, or the trial as such, was manifestly tainted by arbitrariness or amounted to a denial of justice. Accordingly, this part of the communication is inadmissible under article 2 of the Optional Protocol, as the author has failed to substantiate her claim for purposes of admissibility in this respect.

5.4 As regards the author's allegation that her son was denied the right to obtain the examination of witnesses on his behalf, the Committee notes that the trial documents do not corroborate this claim. Thus, when asked by the Court whether he wished to call any witness for the defense, counsel answered in the negative. The Committee observes that counsel was privately retained by the author's son and that his alleged failure to properly represent the author's son cannot be attributed to the State party. Consequently, the author has failed to substantiate this claim, for purposes of admissibility. This part of the communication is therefore inadmissible under article 2 of the Optional Protocol.

5.5 With respect to the author's claim that the trial against her son was otherwise unfair, the Committee notes that the trial documents submitted by the author reveal that her son was not represented by counsel during the committal hearings. It also notes with concern that, despite three reminders addressed to it, the State party has failed to comment on the communication, including on its admissibility. In the absence of any such comments, the Committee considers that the author has sufficiently substantiated, for purposes of admissibility, that the trial

[3] The Republic of Guyana is not a member state of the OAS.
[4] Guyana does not recognize the jurisdiction of the Judicial Committee of the Privy Council as the final instance of appeal.
[5] See e.g. Communication No. 329/1988, *D. S. v. Jamaica*, Decision on admissibility adopted on 26 March 1990, at para. 5.2.

against her son was unfair, and declares the communication admissible, insofar as it may raise issues under articles 6 and 14, paragraph 3 (d), of the Covenant.

Consideration of the merits

6.1 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 for in article 5, paragraph 1, of the Optional Protocol. Moreover, 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. The Committee recalls in this respect that a State party has an obligation under article 4, paragraph 2, of the Optional Protocol to cooperate with the Committee and to submit written explanations or statements clarifying the matter and the remedy, if any, that may have been granted.

6.2 The issue before the Committee is whether the absence of legal representation of the author's son during the committal hearings amounts to a violation of article 14, paragraph 3 (d), of the Covenant.

6.3 The Committee recalls its jurisprudence that legal representation must be available at all stages of criminal proceedings, particularly in cases involving capital punishment.[6] The pre-trial hearings, having taken place before the Georgetown Magisterial Court between 16 November 1993 and 6 May 1994, that is after the author's son had been charged of murder on 31 October 1993, formed part of the criminal proceedings. Furthermore, the fact that most witnesses of the prosecution were examined at this stage of the proceedings for the first time, and were subject to cross-examination by the author's son, shows that the interests of justice would have required securing legal representation to the author's son through legal aid or otherwise. In the absence of any submission by the State party on the substance of the matter under consideration, the Committee finds that the facts before it disclose a violation of article 14, paragraph 3 (d), of the Covenant.

6.4 The Committee recalls that the imposition of a sentence of death upon conclusion of a trial in which the provisions of the Covenant have not been respected constitutes a violation of article 6 of the Covenant.[7] In the present case, the sentence of death was passed without meeting the requirements of a fair trial set out in article 14 of the Covenant, and thus also in breach of article 6.

7. 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 articles 6 and 14, paragraph 3 (d), of the Covenant.

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[6] See e.g. Communication No. 1096/2002, *Kurbanova v. Tajikistan*, Views adopted on 6 November 2003, at para. 6.5.; Communication No. 781/1997, *Aliev v. Ukraine*, Views adopted on 7 August 2003, at para. 7.3; Communication No. 775/1997, *Brown v. Jamaica*, Views adopted on 23 March 1999, at para. 6.6.

[7] See *ibid.*, at paras. 7.7, 7.4 and 6.15, respectively.

8. In accordance with article 2, paragraph 3, of the Covenant, the author's son is entitled to an effective remedy, including the commutation of his death sentence. The State party is also under an obligation to take measures to prevent similar violations in the future.

9. 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, that State party has undertaken to ensure all individuals within its territory or 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 in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]
