



International Covenant on Civil and Political Rights

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Human Rights Committee

Communication No. 1859/2009

Views adopted by the Committee at its 104th session, 12 to 30 March 2012

<i>Submitted by:</i>	William Kamoyo (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Zambia
<i>Date of communication:</i>	20 December 2008 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 20 January 2009 (not issued in document form)
<i>Date of adoption of Views:</i>	23 March 2012
<i>Subject matter:</i>	Death penalty, undue delay for hearing of appeal
<i>Procedural issues:</i>	None
<i>Substantive issues:</i>	Right to life; mandatory nature of the death penalty; torture, cruel, inhuman or degrading treatment; due process; right to trial without delay; right to judicial review
<i>Articles of the Covenant:</i>	6, 7 and 14, paragraphs 3 (c) and 5
<i>Article of the Optional Protocol:</i>	5, paragraph 2 (b)

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 (104th session)

concerning

Communication No. 1859/2009*

Submitted by: William Kamoyo (not represented by counsel)

Alleged victim: The author

State party: Zambia

Date of communication: 20 December 2008 (initial submission)

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

Meeting on 23 March 2012,

Having concluded its consideration of communication No. 1859/2009, submitted to the Human Rights Committee by William Kamoyo 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 is William Kamoyo, born in 1973, who is currently on death row in the Maximum Security Prison in Kabwe, Zambia. He claims to be a victim of violations by the State party of the International Covenant on Civil and Political Rights, as review of his case by the Supreme Court of Zambia has been unduly prolonged. Although he does not invoke any articles of the Covenant, his communication appears to raise issues under articles 6, 7 and 14 of the Covenant. He is not represented by counsel.¹

The facts as presented by the author

2.1 On 9 June 1992, the author was charged with murder. His jury trial started in May 1993, and he was sentenced to death on 12 June 1995.

* The following members of the Committee participated in the examination of the present communication: Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Walter Kälin, Ms. Zonke Zanele Majodina, Mr. Gerald L. Neuman, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Fabián Omar Salvioli, Mr. Marat Sarsembayev, Mr. Krister Thelin and Ms. Margo Waterval.

¹ Both the Covenant and the Optional Protocol entered into force for Zambia on 9 July 1984.

2.2 Less than 30 days after his conviction, the author lodged an appeal before the Supreme Court. At the time of submission of his communication to the Committee, that is, 13 years after he lodged his appeal, he was still awaiting review of his case by the Supreme Court, as his case file had been lost.

The complaint

3. The author claims that his appeal before the Supreme Court has been unduly delayed, which appears to raise issues under articles 6, 7 and 14, paragraphs 3 (c) and 5, of the Covenant.

State party's failure to cooperate

4. On 18 August 2009, 16 March 2010 and 24 January 2011, the State party was requested to submit information concerning the admissibility and merits of the communication. The Committee notes that this information has not been received. It regrets the State party's failure to provide any information with regard to the admissibility and/or substance of the author's claims. It recalls that, under the Optional Protocol, the State party concerned is required to submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by the State. In the absence of a reply from the State party, due weight must be given to those of the author's allegations that have been properly substantiated.²

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 93 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant. The Committee has ascertained, as required under article 5, paragraph 2 (a), of the Optional Protocol, that the matter is not being examined under another procedure of international investigation or settlement.

5.2 The Committee notes the State party's failure to provide any submission on this case. At the time of submission of his communication to the Committee, that is, 13 years after his conviction, the author was still waiting for his appeal hearing and remained on death row. The State party has provided no explanation for this delay, nor any other information of relevance to the author's communication. Thus, the Committee considers that the delay in the disposal of the author's appeal amounts to an unreasonably prolonged delay within the meaning of article 5, paragraph 2 (b), of the Optional Protocol and therefore declares the communication admissible.

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 in article 5, paragraph 1, of the Optional Protocol.

² See, inter alia, communications No. 1422/2005, *El Hassy v. Libyan Arab Jamahiriya*, Views adopted on 24 October 2007, para. 4; No. 1295/2004, *El Alwani v. Libyan Arab Jamahiriya*, Views adopted on 11 July 2007, para. 4; No. 1208/2003, *Kurbonov v. Tajikistan*, Views adopted on 16 March 2006, para. 4; and No. 760/1997, *Diergaardt et al. v. Namibia*, Views adopted on 25 July 2000, para. 10.2.

6.2 The Committee notes the author's allegation that his appeal had not yet taken place 13 years after his conviction, "because his case record was lost", and recalls that the State party has provided no arguments on the author's claim. It reaffirms that the burden of proof cannot rest on the author of the communication alone, especially considering that the author and the State party do not always have equal access to the evidence and frequently the State party alone has the relevant information. It is implicit in article 4, paragraph 2, of the Optional Protocol that the State party has the duty to investigate in good faith all allegations of violations of the Covenant made against it and its representatives and to furnish to the Committee the information available to it. 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.

6.3 The Committee notes that the author was convicted of murder, and recalls its jurisprudence³ as reflected in its general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial,⁴ that the rights contained in article 14, paragraphs 3 (c) and 5, read together, confer a right to review of a conviction without delay, and that the right of appeal is of particular importance in death penalty cases. It notes that 13 years after conviction, the author was still waiting for his appeal to be considered by the Supreme Court, due to apparent negligence resulting in the loss of his case record. The Committee recalls that at the time of examination of the present communication, that is, close to 17 years since the author's conviction, the State party has not submitted information indicating that the author's appeal has been heard. The Committee concludes that the delay in the instant case violates the author's right to review without delay, and consequently finds a violation of article 14, paragraphs 3 (c) and 5, of the Covenant.

6.4 The Committee recalls its jurisprudence that the imposition of a sentence of death upon conclusion of criminal proceedings in which the provisions of the Covenant have not been respected constitutes a violation of article 6 of the Covenant.⁵ In the present case, the author's death sentence has been pending on appeal for nearly 17 years, in violation of the right to a fair trial as guaranteed by article 14 of the Covenant, and therefore also in violation of article 6 of the Covenant.

6.5 The Committee further considers that the author's detention on death row, where, at the time of submission of his communication, he had been waiting for 13 years for the hearing of his appeal, raises issues under article 7 of the Covenant. The Committee recalls that prolonged delays in the execution of a sentence of death do not per se constitute cruel, inhuman or degrading treatment. On the other hand, each case must be considered on its own merits, bearing in mind the imputability of delays in the administration of justice on the State party, the specific conditions of imprisonment in a maximum security prison and their psychological impact on the person concerned.⁶ In the instant case, in addition to the psychological distress created by prolonged detention on death row, the uncontested

³ See for example communications No. 390/1990, *Lubuto v. Zambia*, Views adopted on 31 October 1995; No. 523/1992, *Neptune v. Trinidad and Tobago*, Views adopted on 16 July 1996; No. 614/1995, *Thomas v. Jamaica*, Views adopted on 31 March 1999; No. 702/1996, *McLawrence v. Jamaica*, Views adopted on 18 July 1997; and No. 588/1994, *Johnson v. Jamaica*, Views adopted on 22 March 1996.

⁴ *Official Records of the General Assembly, Sixty-second Session, Supplement No. 40*, vol. I (A/62/40 (Vol. I)), annex VI.

⁵ See for example communications No. 719/1996, *Levy v. Jamaica*, Views adopted on 3 November 1998; No. 730/1996, *Marshall v. Jamaica*, Views adopted on 3 November 1998; and No. 1096/2002, *Kurbanova v. Tajikistan*, Views adopted on 6 November 2003.

⁶ See, inter alia, *Johnson v. Jamaica* (note 3 above), paras. 8.4 ff., and communication No. 606/1994, *Francis v. Jamaica*, Views adopted on 25 July 1995, para. 9.1.

evidence before the Committee indicates that the author's case record was lost. The Committee concludes that the failure of the Supreme Court of Zambia to decide on the author's appeal within a reasonable period must be attributed to negligence by the State party. As a consequence, the Committee considers that the author's prolonged detention on death row constitutes a breach of the obligations of Zambia under article 7 of the Covenant.

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 State party has violated articles 6; 14, paragraph 3 (c); 14, paragraph 5; and 7 of the International Covenant on Civil and Political Rights.

8. 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, including either his retrial in conformity with all guarantees enshrined in the Covenant, or his release;⁷ as well as appropriate reparation, including adequate compensation. The State party is under an obligation to avoid similar violations in the future.

9. 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, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to its Views. The State party is also requested to publish the present Views and to have them widely disseminated in the official language of the State party.

[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.]

⁷ See, inter alia, *Kurbanova v. Tajikistan* (note 5 above), para. 9; and communication No. 1503/2006, *Akhadov v. Kyrgyzstan*, Views adopted on 25 March 2011, para. 9.