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HUMAN RIGHTS COMMITTEE
Fifty-first session

DECISIONS

Communication No. 567/1993

Submitted by:	Ponsamy Poongavanam
Alleged victim:	The author
State party:	Mauritius
Date of communication:	1 September 1993 (initial submission)
Documentation references:	<u>Prior decisions</u> : none
Date of present decision:	26 July 1994

[Annex]

*/ Made public by decision of the Human Rights Committee.
DEC567.51e cb

ANNEX

**Decision of the Human Rights Committee under the Optional Protocol
to the International Covenant on Civil and Political Rights
- Fifty-first session -**

concerning

Communication No. 567/1993

Submitted by: Ponsamy Poongavanam
Alleged victim: The author
State party: Mauritius
Date of communication: 1 September 1993 (initial submission)

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

Meeting on 26 July 1994,

Adopts the following:

Decision on admissibility ^{*/}

1. The author of the communication is Ponsamy Poongavanam, a citizen of Mauritius currently detained at the prison of Beau Bassin, Mauritius. He claims to be a victim of violations by Mauritius of articles 2, 3, 14, 25(c) and 26 of the International Covenant on Civil and Political Rights.

The facts as submitted by the author:

2.1 On 28 March 1987, the author was convicted of murder and sentenced to death in the Assizes Court of Mauritius. He was tried before a judge and a jury of nine men, whose verdict was unanimous. He appealed to the Court of Appeal of Mauritius, on the grounds that the judge had misdirected the jury and committed other procedural errors in the course of the trial.

^{*/} Pursuant to rule 84 of the Committee's rules of procedure, Committee member Mr. Rajsoomer Lallah did not take part in the examination of the communication.

2.2 The author then applied for leave to appeal to the Judicial Committee of the Privy Council; leave was granted, but on a ground that had not been raised in the lower courts, namely that the author's conviction should have been quashed because the trial was unconstitutional, having regard to the composition of the jury, which had been composed of men only. On 6 April 1992, the Judicial Committee dismissed the author's petition on its merits.

2.3 The author subsequently requested the President of Mauritius to exercise his prerogative of mercy. On 29 April 1992, the death sentence was commuted to 20 years' imprisonment, without possibility of parole. Leave was granted to apply to the Supreme Court of Mauritius for constitutional redress. On 16 March 1993, the author's constitutional motion was dismissed. With this, the author submits, all available domestic remedies have been exhausted.

The complaint:

3.1 The author challenges the compatibility with the Covenant of Section 42(2) of the Courts Act and Section 2 of the Jury Act (as they applied prior to 1990). At the time of conviction (March 1987), the Jury Act provided as follows:

"Every male citizen of Mauritius who has resided in Mauritius at any time at least one full year, and who is between the ages of 21 and 65, shall be qualified and liable to serve as a juror..."

In 1990, the Jury Act was amended to allow women to have access to trial juries. The Courts Act has not been amended in the same way.

3.2 The author claims that Section 42 of the Courts Act, which provides for a jury "consisting of nine men qualified as provided in the Jury Act" violates article 3 of the Covenant, as it is discriminatory vis-à-vis women, who remain in practice excluded from jury service.

3.3 It is further submitted that article 25(c) of the Covenant was violated, as Mauritian women did not and in practice do not have access, on general terms of equality, to public service, service in a trial jury being interpreted as constituting public service.

3.4 The author contends that the State party violated article 26 of the Covenant, as the exclusion of women from jury service in fact means that their equality before the law is not guaranteed.

3.5 Finally, the author contends that he did not have a fair trial. He argues that the Register of jury members had not been compiled in accordance with the law. Secondly, he notes that the list of potential jurors from which the nine members of the jury were chosen did not comprise more than 4,000 names, whereas 176,298 Mauritian men would have qualified, in 1987, for jury service. This, according to the author, means that the jurors' list was

incomplete and unrepresentative of Mauritian society. The author notes that this practice goes back many years and contends that due to the unrepresentativity of juries in the Assizes Court, the court cannot be considered as an independent and impartial tribunal within the meaning of article 14, paragraph 1, of the Covenant.

3.6 It should be noted that the Supreme Court of Mauritius, in its judgment of 16 March 1993, addressed the latter point in some detail, in the light of the fair trial provision of the Mauritian Constitution (Section 10), but found no merit in it. As to the representativity of the jury, the Judicial Committee carefully analyzed the applicable common law and United States jurisprudence on the subject. It concluded that there was "... no basis for concluding that before the enactment of the legislative change in 1990 [sc.: in the Jury Act] (which appears to have been promoting rather than following a change in public opinion on the matter) the exclusion of women from juries in Mauritius had ceased to have objective justification".

3.7 In an additional submission, the author alleges that his trial was unfair because no stenographers were present throughout its duration, that the judge himself took the notes, and that only the judge's summing up to the jury was made available in the form of a transcript. He claims that, in a capital case, Mauritian law prescribes the presence of a stenographer throughout the trial. He adds that the absence of a trial transcript documenting the entire proceedings prevented him from proving inconsistencies and inaccuracies in the pleadings of the prosecutor, whose version of the facts is said to prove that the victim's death was not caused with premeditation, which implies that it could not have sustained a verdict of murder.

Issues and proceedings before the Committee:

4.1 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.

4.2 The Committee has noted the author's claim that he is a victim of violations by Mauritius of articles 3, 25(c) and 26, because women were excluded from jury service at the time of his trial. The author has failed to show, however, how the absence of women on the jury actually prejudiced the enjoyment of his rights under the Covenant. Therefore, he cannot claim to be a "victim" within the meaning of article 1 of the Optional Protocol.

4.3 As to the author's claim that the jury lists drawn up by the State party's authorities are unrepresentative of Mauritian society, and that therefore the Assizes Court is not an independent and impartial tribunal within the meaning of article 14, the Committee notes that there is not indication that the jury lists referred to by the author were compiled in an arbitrary manner. In the circumstances, it concludes that the author has failed to substantiate, for purposes of admissibility, his claim of a violation of article 14, paragraph 1, in this respect.

4.4 Concerning the author's other claims of unfair trial, the Committee notes that they relate primarily to the evaluation of the evidence by the trial judge and the Assizes Court. The Committee recalls that it is primarily for the appellate courts of States parties to the Covenant

and not for the Committee to evaluate facts and evidence placed before the domestic courts; similarly, it is for the appellate courts and not for the Committee to review instructions to the jury by the judge, unless it is apparent that these instructions were clearly arbitrary or amounted to a denial of justice, or that the judge otherwise violated his obligation of impartiality. The material before the Committee does not show that the author's trial and the appeal suffered from such defects; this applies equally to the alleged absence of shorthand writers during the trial, which the author has not shown to have prejudiced the trial in one of the ways indicated above. This part of the communication is therefore inadmissible as incompatible with the provisions of the Covenant, pursuant to article 3 of the Optional Protocol.

5. The Human Rights Committee therefore decides:

(a) that the communication is inadmissible under articles 1, 2 and 3 of the Optional Protocol;

(b) that this decision shall be transmitted to the author of the communication and, for information, to 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.]