



## Francis v. Jamaica

Communication No 606/1994

**Country:** Jamaica

**Region:** Americas

**Year:** 1995

**Court:** United Nations Human Rights Committee United Nations Human Rights Committee

**Health Topics:** Health care and health services, Mental health, Prisons

**Human Rights:** Freedom from torture and cruel, inhuman or degrading treatment, Right to due process/fair trial, Right to health

### Facts

Francis (F) had been convicted of murder and sentenced to death in February 1980. An appeal was dismissed in November 1981 and in October 1987 a note of the oral judgment was produced but nothing written was issued. His lawyers had apparently stated that they could find no grounds to argue on his behalf with which the court had agreed. A warrant for his execution was signed in February 1988 and he spent five days in the death cell but a stay was granted subject to special leave to appeal to the Judicial Committee of the Privy Council being lodged by the end of April 1988. However his lawyers did not receive the note of the appeal judgment until March 1989 and the Privy Council criticised the mechanism for distributing the reasons for appeal decisions.

F's offence was classified as non-capital in December 1992 and he was removed from death row to serve a further ten years' imprisonment before becoming eligible for parole. It was alleged that his mental condition deteriorated as a result of his stay on death row and that attempts to have him examined by a qualified psychiatrist had failed. It was also alleged that the executioner had taunted him about his impending execution in 1988, that he was kept in a small, dirty cell which was infested with rats and cockroaches, that he was only let out of the cell for a few minutes each day, that he was regularly beaten by warders and that there was excessive noise on death row. F complained about the failure to issue a written appeal court judgment, the failure of the legal aid lawyers to consult with him about the appeal, his treatment on death row, the issuing of the warrant of execution and his detention on death row while mentally disturbed and the lack of psychiatric care.

The United Nations Human Rights Committee (the "Committee") had found a previous communication to be inadmissible for non-exhaustion of domestic remedies but now found them to be exhausted.

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[Adapted from INTERIGHTS summary, with permission]

### Decision and Reasoning

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The Committee held: (1) that the serious deterioration of F's mental health, the prison conditions and the ridicule and strain to which he was subjected while awaiting execution in 1988 were circumstances revealing a violation of Arts 7 and 10; (2) that the inordinate delay in issuing a note of the appeal court's oral judgment was a violation of Art 14(3)(c) and (5) even though it did not ultimately prejudice F's appeal to the Judicial Committee; (3) that it was unnecessary to make findings in respect of other provisions of Art 14; and (4) that F was entitled to an effective remedy, including appropriate medical treatment, compensation and consideration for an early release.

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### Decision Excerpts

"9.1 The Committee must determine whether the author's treatment in prison, particularly during the nearly 12 years that he spent on death row following his conviction on 26 January 1981 until the commutation of his death sentence on 29 December 1992 entailed violations of articles 7 and 10 of the Covenant. With regard to the "death row phenomenon", the Committee reaffirms its well established jurisprudence 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 the particular penitentiary and their psychological impact on the person concerned.

9.2 In the instant case, the Committee finds that the failure of the Jamaican Court of Appeal to issue a written judgment over a period of more than 13 years, despite repeated requests on Mr. Francis' behalf, must be attributed to the State party. Whereas the psychological tension created by prolonged detention on death row may affect persons in different degrees, the evidence before the Committee in this case, including the author's confused and incoherent correspondence with the Committee, indicates that his mental health seriously deteriorated during incarceration on death row. Taking into consideration the author's description of the prison conditions, including his allegations about regular beatings inflicted upon him by warders, as well as the ridicule and strain to which he was subjected during the five days he spent in the death cell awaiting execution in February 1988, which the State party has not effectively contested, the Committee concludes that these circumstances reveal a violation of Jamaica's obligations under articles 7 and 10, paragraph 1, of the Covenant."

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