

HUMAN RIGHTS COMMITTEE

Sahadath v. Trinidad and Tobago

Communication No. 684/1996

2 April 2002

CCPR/C/74/D/684/1996

VIEWS

Submitted by: Mr. R. S. (Represented by Saul Lehrfreund of the London law firm of Simons Muirhead and Burton)

State party concerned: Trinidad and Tobago

Date of registered communication: 13 March 1996 (initial submission)

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

Meeting on 2 April 2002,

Having concluded its consideration of communication No. 684/1996, submitted to the Human Rights Committee by Mr. R. S. 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, dated 13 March 1996, is Mr. R. S., a Trinidadian citizen who claims to be a victim of a violation by Trinidad and Tobago^a of articles 6 (1), 7 and 10 (1) of the International Covenant on Civil and Political Rights (the Covenant). He is represented by counsel.

1.2 In accordance with rule 86 of the Committee's Rules of Procedure, the Committee

requested the State party not to carry out the death sentence against the author while this communication was being considered. By letter of 4 October 1996, the State party informed the Committee that the death sentence of the author had been commuted to a term of imprisonment with hard labour for a period of 75 years.

The facts as submitted by the author

2.1 The author was convicted of murder and sentenced to death on either 14 January of 1991 or 1992.^b The Court of Appeal of Trinidad and Tobago dismissed his appeal on 12 April 1994. The Judicial Committee of the Privy Council dismissed a subsequent petition for special leave to appeal on an unspecified date.

2.2 On 8 March 1996, the author was read a warrant for his execution on 13 March 1996. On Tuesday 12 March 1996, a stay of execution was granted, with a view to obtaining a full psychiatric examination of the author. The author is believed to be mentally deficient, and counsel argued, in his initial submission, that it would be in violation of his rights under the Covenant to execute him under these circumstances.

2.3 On 9 March 1996, the author was visited at the State Prison by his counsel, Douglas Mendes. When counsel arrived at the prison gate and requested to see the author, the officer on duty made a circular motion with his index finger near his head, to indicate that the author was insane. The officer asked counsel whether in the circumstances he would still like to see the author and, upon counsel's insistence, said that special security arrangements would have to be made for the interview.

2.4 During the interview, counsel asked the author whether he wanted a constitutional motion to be filed on his behalf or not. At first, the author indicated that he wanted to be executed. After further discussion, he agreed to the filing of a constitutional motion. When counsel pointed to the contradictory behaviour of the author, the latter replied that he was confused and could not decide. Counsel ended the interview by telling the author that he would return later in the day, to allow him to make up his mind.

2.5 The author's appearance and demeanour, coupled with the prison guard's comments on his insanity, made counsel believe that the author was of unsound mind. He thus contacted a psychiatrist, Peter Lewis, who accompanied him to the prison in the afternoon of 9 March 1996. Mr. Mendes asked the author whether he wanted a constitutional motion to stop his execution to be filed, and the author replied in the affirmative. For the rest, counsel could not obtain further information from the author: he gave different dates for his conviction, was unaware that an appeal had been heard or that a petition to the Judicial Committee of the Privy Council had been filed. He could not remember the name of the lawyer who had represented him on trial and said that no lawyer had ever visited him for the preparation of the appeal. He further could not remember the name of the person of whose murder he had been convicted.

2.6 After interviewing the author, Mr. Lewis concluded in an affidavit that the author "is experiencing auditory hallucinations and is probably suffering from severe mental illness that may

be significantly affecting his ability to think and behave normally. I recommend that a detailed examination of his mental status be conducted in order to determine the extent and nature of Mr. R. S.'s disorder".

2.7 With regard to the conditions of detention of the author, counsel submits that he visited the prison where the author was detained, on 16 July 1996, in order to meet with clients and to receive some information on this issue. Counsel then states the following^c:

" The information gained from 3 prisoners who had their sentences commuted from death to life imprisonment in 1984 reveal conditions which appear to be quite appalling, with far too many people sharing a single cell, no space to lie down let alone sleep, and degrading sanitary arrangements, to say nothing on the absence of useful employment, education and recreational facilities.

Prisoners who have had their sentence commuted to life imprisonment share cells measuring approximately 9' x 6' with between 9 and 12 other prisoners. Each cell consists of 2 bunks, therefore only 4 men can sleep at any one time. All the occupants of the cell share a single plastic bucket for all toilet functions. They are permitted to empty the contents of the bucket once a day. Ventilation consists of a single barred window measuring approximately 2 foot square. Each prisoner spends as average of 23 hours each day locked inside his cell, although exceptionally and unpredictably he and his cell mates are allowed out for as long as 6 hours."

2.8 As to detention on death row, counsel refers to the affidavits made by four other prisoners on death row, who were due to be executed at the same time as the author, and concludes that similar conditions applied to the author. Counsels submits the following:

"The prisoners are kept confined in a very small cell measuring approximately nine feet by six. The cell contains a bed, table, chair and "Slop Pail", that is, a bucket provided to each prisoner to use as a toilet. There is no window, only a small ventilation hole, measuring eighteen inches by eight inches approximately. The entire cell block is illuminated by means of fluorescent lights which are kept on all night and affects my [sic] ability to sleep. They are kept in this cell twenty-three hours every day except on weekends, public holidays, and days of staff shortage, when they are shut in for the entire twenty-four hours. Apart from the customary one hour exercise in the exercise yard, they are only permitted to leave their cells to meet with visitors and to have a bath once a day during which time they clean out their slop pail.

The hour's exercise is conducted with handcuffs on in an extremely small enclosure thus making meaningful exercise extremely difficult if not impossible. Visiting and other privileges are severely restricted, They are allowed two visits per week each of only twenty minutes duration. Writing material are provided only upon a request being entered in the request book. Often there is no paper or pens available. Writing is permitted only between 4.30 pm and 7.15pm on weekends and public holidays.

The persons of death row are subjected to three searches of cell and body every day. The final such search is conducted at 9.30 at night at which time they are often asleep. They will be awakened and search accordingly. Shortly after this search, the three electronic alarm bells in death row are tested. The resulting effect of the noise makes it difficult to return to sleep, concluding that the author notes that cells measure approximately 9 by 6 feet, with an 18 inch hole for ventilation. The death row section is entirely illuminated by fluorescent lights, including at night, thereby impeding sleep. Prisoners are only allowed out of their cells one hour per day, except on weekends, when they are kept in 24 hours because of shortage of staff. Meaningful exercise is impossible, as prisoners remain handcuffed during the exercise period. They are permitted two twenty-minute visits per week, and writing pads and books are severely restricted.”

The Complaint

3.1 The author submits that to issue a warrant for the execution of a mentally incompetent prisoner is in violation of customary international law and claims that he is a victim of violations of articles 6, 7 and 10(1) of the Covenant, juncto ECOSOC Resolutions 1984/50 and 1989/64, as he was kept on death row facing execution until July 1996, in his state of mental disturbance. The lack of psychiatric care at the State Prison in Port-of-Spain is also said to constitute a violation of articles 22(1), 24 and 25 of the UN Standard Minimum Rules for the Treatment of Prisoners.

3.2 The author argues that the psychological stress to which he was submitted before and after the issue of the warrant for his execution amounts to a violation of articles 7 and 10(1). In this context, he points out that the practice in Trinidad was to read no more than two warrants of execution on the same day and at the same hour because the State Prison is not equipped to handle more executions simultaneously. In the author's case, five warrants were read on the same day and hour. In such circumstances, it is argued, the author would be forced to await his turn at the gallows, having to endure the sounds of and thoughts about the execution of the other prisoners taking place, possibly over hours.

3.3 Apart from the psychological stress, the author contends, the conditions of his detention both on death row and after commutation of his sentence at the end of June 1996 constitute violations of articles 7 and 10(1).

The State party's observations on the admissibility of the communication

4.1 In a submission dated 21 June 1996, the State party made its observations on the admissibility of the communication.

4.2 The State party argued that because of the author's pending constitutional motion, the complaint should be held inadmissible on the basis of non-exhaustion of domestic remedies.

Decision on admissibility

5.1 At its 61st session, the Committee considered the admissibility of the communication. It observed that the constitutional motion filed on behalf of the author had become moot with the commutation of his death sentence by the President of Trinidad and Tobago. Accordingly, there were no further available and effective remedies, which the author was required to exhaust.

5.2 The Committee noted that the author had sufficiently substantiated, for purposes of admissibility, his claims under articles 6, 7 and 10(1), in so far as they relate to the question of the circumstances of the issue of the warrant for his execution, lack of psychiatric treatment while on death row, and the conditions of detention both during his detention on death row and after commutation of his sentence. Accordingly, on 14 October 1997, the Committee declared the communication admissible as far as it raised issues under articles 6, 7 and 10(1), of the Covenant. It also requested the State party to transmit to the Committee a copy of the trial transcript and of the judgment of the Court of Appeal in the case.

The State party's observations on the merits of the communication

6. Despite having been invited to do so by the decision of the Committee of 14 October 1997 and by two reminders of 22 September 2000 and 11 October 2001, the State party has not submitted any observations or comments on the merits of the case.

Issues and proceedings before the Committee

7.1 Having found the case admissible, the Committee proceeds to an examination of the substance of the author's claims, in the light of all the information made available to it by the parties, as required by article 5, paragraph 1, of the Optional Protocol.

7.2 As to the author's claim that issuing of a warrant for the execution of a mentally incompetent person constitutes a violation of articles 6 and 7 of the Covenant, the Committee notes that the author's counsel does not claim that his client was mentally incompetent at the time of imposition of the death penalty and his claim focuses on the time when the warrant for execution was issued. Counsel has provided information that shows that the author's mental state at the time of the reading of the death warrant was obvious to those around him and should have been apparent to the prison authorities. This information has not been contested by the State party. The Committee is of the opinion that in these circumstances issuing a warrant for the execution of the author constituted a violation of article 7 of the Covenant. As the Committee has no further information regarding the author's state of mental health at earlier stages of the proceedings, it is not in a position to decide whether the author's rights under article 6 were also violated.

7.3 As to the author's claims that the conditions of detention in the various phases of his imprisonment violated articles 7 and 10, paragraph 1, in the absence of a responses by the State party to the conditions of detention as described by the author, the Committee notes that author's counsel has provided a detailed description of the conditions in the prison in which the author was detained and has also claimed that no psychiatric treatment was available in the prison. As the State party has made no attempt to challenge the detailed allegations made by author's counsel, nor to contest that these conditions applied to the author himself, the Committee must give due

credence to the counsel's allegations. As to whether the conditions as described violate the Covenant, the Committee considers, as it has repeatedly found in respect of similar substantiated allegations^d, that the author's conditions of detention as described violate his right to be treated with humanity and with respect for the inherent dignity of the human person, and are therefore contrary to article 10, paragraph 1. In the light of this finding in respect of article 10, a provision of the Covenant dealing specifically with the situation of persons deprived of their liberty and encompassing for such persons the elements set out generally in article 7, it is not necessary to consider separately the claims arising under article 7

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol, is of the view that the facts before it disclose a violation of article 7 and 10, paragraph 1 of the International Covenant on Civil and Political Rights.

9. 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 appropriate medical and psychiatric care. The State party is also under an obligation to improve the present conditions of detention so as to ensure that the author is detained in conditions that are compatible with article 10 of the Covenant, or to release him, and to prevent similar violations in the future.

10. On becoming a party to the Optional Protocol, the State party recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not. This case was submitted for consideration before the State party's denunciation of the Optional Protocol became effective on 27 June 2000; in accordance with article 12 (2) of the Optional Protocol it continues to be subject to the application of the Optional Protocol. Pursuant to article 2 of the Covenant, the State party has undertaken to ensure to 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.

** The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Maurice Glele Ahanhanzo, Mr. Ahmed Tawfik Khalil, Mr. Eckart Klein, Mr. David Kretzmer, Mr. Rajsoomer Lallah, Ms. Cecilia Medina Quiroga, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Martin Scheinin, Mr. Ivan Shearer, Mr. Hipolito Solari Yrigoyen, Mr. Patrick Vella and Mr. Maxwell Yalden.

[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.]

Notes

^a Initially, the Optional Protocol entered into force for Trinidad and Tobago on 14 February 1981. On 26 May 1998, the Government of Trinidad and Tobago denounced the Optional Protocol to the International Covenant on Civil and Political Rights. On the same day, it reaccessed, including in its instrument of re-accession a reservation “to the effect that the Committee shall not be competent to receive and consider communications relating to any prisoner who is under sentence of death in respect of any matter relating to his prosecution, his detention, his trial, his conviction, his sentence or the carrying out of the death sentence on him and any matter connected therewith.” On 2 November 1999, the Committee decided that this reservation was not compatible with the object and purpose of the Optional Protocol and thus the Committee was not precluded from considering the communication. On 27 March 2000, the Government of Trinidad and Tobago denounced the Optional Protocol again.

^c Counsel refers to general conditions of detention in the prison but does not expressly state that the author was personally subjected to these conditions.

^d See, for example, *Kelly v. Jamaica* (Communication 253/1987) and *Taylor v. Jamaica* (Communication 707/1996).