## H. Communication No. 232/1987, Daniel Pinto v. Trinidad and Tobago (views adopted on 20 July 1990, at the thirty-ninth session)

Submitted by: Daniel Pinto (represented by counsel)

Alleged victim: The author

State party concerned: Trinidad and Tobago

Date of communication: undated (received in June 1987)

Date of decision on admissibility: 18 July 1989

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

Meeting on 20 July 1990,

Having concluded its consideration of communication No. 232/1987, submitted to the Committee by Mr. Daniel Pinto under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all the information made available to it by the author of the communication and by the State party,

Adopts the following:

### Views under article 5, paragraph 4, of the Optional Protocol*

1. The author of the communication (initial undated letter, received in June 1987, and subsequent correspondence) is Daniel Pinto, a citizen of Trinidad and Tobago currently awaiting execution at the State Prison of Port-of-Spain, Trinidad. He claims to be the victim of a violation of his human rights by Trinidad and Tobago. He is represented by counsel.

2.1 The author, who claims to be innocent, was arrested at 1.20 a.m. on 18 February 1982 in Arima, and charged with the murder, on the previous day, of one Mitchell Gonsales. His trial took place in the Port-of-Spain Assizes Court, from 3 to 14 June 1985; he was found guilty and sentenced to death on 14 June 1985. On 18 July 1986, the Court of Appeal dismissed his appeal; it produced a reasoned judgment on 8 December 1986.

2.2 The author states that on the night of 17 February 1982 he was assaulted by five men and severely beaten. In the course of the struggle, one of the attackers attempted to stab him but accidentally hit another attacker, who subsequently died. The prosecution's contention was that on the night of the crime the author had approached five men, including Mr. Gonsales, who were sitting together on a bench outside a bar in Arima and that Mr. Pinto had told them that he had learned that two of them had made deprecatory remarks about him and sought to ascertain

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* An individual opinion by Mr. Bertil Wennergren is appended.

what the two, including the deceased, had said. The deceased sought in turn, to ascertain, what these remarks pertained to. He then remarked to the others that Mr. Pinto seemed to be under the influence of alcohol, upon which the author was said to have lashed out at Mr. Gonsales with a knife, stabbing him twice. Mr. Gonsales escaped but collapsed about 200 feet from the scene.

2.3 The author alleges that he was denied a fair trial, since the four men who had allegedly attacked him acted as the prosecution's witnesses against him. Furthermore, the legal aid attorney assigned to his case allegedly defended him poorly: according to the author, this lawyer never consulted with him prior to the trial and remained passive during most of it, without taking any notes or making any statements or objections. The author also alleges that the trial transcript was tampered with after conviction. Throughout the proceedings, the author maintained his innocence. Upon his conviction, his counsel appealed the sentence, among others, on the following grounds:

(a) that the trial judge failed to direct the jury adequately on the issue of self-defence;

(b) that the trial judge misdirected the jury by instructing the jurors that the issue of manslaughter did not arise for their consideration although there was in fact evidence which, if accepted, could have supported such a verdict as a result of provocation; this misdirection, according to counsel, constituted a "grave miscarriage of justice";

(c) that the trial judge failed to properly instruct the jury on the circumstantial nature of the evidence on which the prosecution relied, and that he did not properly warn the jury that it was dangerous to accept such evidence because it could have been "fabricated" so as to cast suspicion on the accused.

3. By decision of 22 July 1987, the Human Rights Committee transmitted the communication, for information, to the State party and requested it, under rule 86 of the rules of procedure, not to carry out the death sentence against the author before it had had the opportunity to consider further the question of the admissibility of the communication. The author was requested, under rule 91 of the rules of procedure, to provide a number of clarifications about the circumstances of his trial and his appeal.

4.1 In his reply, dated 18 August 1987, to the Committee's request for clarifications, the author indicated that an English law firm had agreed to represent him for purposes of a petition for special leave to appeal to the Judicial Committee of the Privy Council.

4.2 In a further submission, the author complained about irregularities in the administration of justice in Trinidad. He maintained that he sought special leave to appeal to the Judicial Committee of the Privy Council in 1986, but two years later, the Registry of the Privy Council had still not received the necessary documents and transcripts from the Court of Appeal in Trinidad. The author quotes from a letter to him by his representatives in London:

> "We have made enquiries at the Privy Council regarding your appeal and we have not yet had the final order of leave to appeal from the Supreme Court of Trinidad and Tobago. We understand that letters have been written twice to the Supreme Court, requesting the same, as this is holding up progress. We

have written to our agent in Trinidad, ..., and requested him to look into the matter urgently on our behalf. ..."

5. By decision of 22 March 1988, the Working Group of the Human Rights Committee reiterated the Committee's request to the State party, under rule 86 of the rules of procedure, that it not carry out the death sentence against the author while his communication is under examination by the Committee. It further requested the State party, under rule 91 of the rules of procedure, to provide information and observations relevant to the question of the admissibility of the communication. In this context the State party was asked to provide the Committee with the texts of the written judgments in the case and to indicate whether the Judicial Committee of the Privy Council had heard the petition for special leave to appeal and, if so, with what result.

6. The deadline for the State party's submission under rule 91 of the rules of procedure expired on 27 June 1988. In spite of two reminders sent to the State party on 16 September and 22 November 1988, no submission has been received.

7. By letter dated 13 June 1988, the author indicated that his application for leave to appeal to the Judicial Committee of the Privy Council was dismissed on 26 May 1988. By further letter dated 14 December 1988, he stated that all his submissions to the judicial authorities of Trinidad, including the Attorney General's Office, the Ministry of National Security and the Minister of External Affairs, have remained unanswered.

8. After the dismissal of his petition for special leave to appeal by the Judicial Committee of the Privy Council, the author sent a petition to the Mercy Committee, without, however, obtaining a reply.

9.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rules 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant. The Committee addressed the question of admissibility at its thirty-sixth session in July 1989.

9.2 The Committee ascertained, as it is required to do under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

9.3 The Committee noted with concern the absence of any co-operation from the State party on the matter under consideration. In respect of the requirement of exhaustion of domestic remedies, the State party had not made any submission relevant to the question of the admissibility of the communication. The Committee observed that the author's indication that his petition for special leave to appeal to the Judicial Committee of the Privy Council had been dismissed on 26 May 1988 had also remained uncontested. On the basis of the information before it, the Committee found that there were no further effective domestic remedies which the author could still pursue. It therefore concluded that the requirements of article 5, paragraph 2 (b), had been met.

9.4 On 18 July 1989, the Human Rights Committee therefore declared the communication admissible.

10. The deadline for the State party's explanations and statements on the merits of the communication expired on 17 February 1990. No submission was received despite two reminders addressed to it on 20 February and 29 March 1990. Under cover of a note of 12 March 1990, the State party did, however, forward copies of the court documents in the case, including the notes of evidence, the summing-up of the trial judge, the application for leave to appeal against conviction and sentence and the judgment of the Court of Appeal, which the Committee had requested two years earlier to facilitate consideration of the question of the admissibility of the communication.

11.1 In numerous submissions received after the Committee's decision on admissibility, the author provides further information about his case. Three main issues may be drawn from these submissions. He first reiterates his allegations of unfair trial and the alleged inadequacy of the judge's instructions to the jury.

11.2 Secondly, the author reaffirms that his representation before the trial court and the Court of Appeal was inadequate. Mr. I. K., who represented him before the Port-of-Spain Assizes Court, is said to have displayed no interest in the case and to have remained passive throughout the trial failing to challenge pieces of evidence presented by the prosecution. He is also accused of "conflict of interest" and "hidden agendas". Allegedly, the lawyer failed to raise the point that throughout the six days the author spent in police custody before being brought before an examining magistrate, he was not properly informed of his rights. Furthermore, the author claims that counsel did not raise the point that subsequent to his apprehension early in the morning of 18 February 1982, he was escorted to the hospital of Arima, where he was treated for injuries allegedly sustained at the hand of his attackers. According to the author, he never saw or approved the grounds of appeal and never had an opportunity to discuss the preparation of the appeal with I. K. In this context, he notes that prior to the hearing of the appeal, he had informed the Registrar of the Court of Appeal that an eminent lawyer from the United Kingdom would represent him; the Court of Appeal, however, completely ignored his letters and reappointed I. K. as his representative for the appeal, although all the formalities with the English lawyer had been settled. Finally, the author notes that his former representative is actively involved in Government politics, where he serves, among other duties, on the Crime Commission; during the spring of 1989 he is said to have made several statements calling for the speedy execution of prisoners under the sentence of death.

11.3 Thirdly, the author complains about the conditions of his detention on death row. Thus, he claims that, although he was given glasses after failing an eye test, his eye-sight is continuously deteriorating. He further claims that he has been in need of urgent dental care for several years, but that the prison authorities have informed him repeatedly that no funds were available for this purpose. More generally, the author affirms that it is difficult to obtain any medical treatment on death row, and that whoever speaks out about this situation is liable to administrative measures or harassment from the prison authorities.

12.1 The Human Rights Committee has considered the present communication in the light of the information provided by the parties, as provided for in article 5, paragraph 1, of the Optional Protocol.

12.2 In formulating its views, the Human Rights Committee notes with concern the failure of the State party to co-operate with it. Apart from furnishing copies of court documents (see para. 10 above), no submission has been received from the

State party. Article 4, paragraph 2, of the Optional Protocol enjoins a State Party to investigate in good faith all the allegations of violations of the Covenant made against it and its judicial authorities, and to forward to the Committee all the information available to it. The Committee notes with concern that in spite of two reminders, no explanations or statements on the substance of the present communication have been received from the State party. In the circumstances, due weight must be given to the author's allegations.

12.3 The Committee notes that part of the author's claims relate to the alleged inadequacy of the judge's evaluation of the evidence in the case, as well as the alleged prejudicial nature of his summing-up of the case to the jury. It reaffirms that while article 14 of the Covenant guarantees the right to a fair trial, it is for the appellate courts of States parties to the Covenant to evaluate facts and evidence in a particular case. It is not, in principle, for the Committee to review specific instructions to the jury by the judge in a trial by jury, unless it can be ascertained that the instructions to the jury were clearly arbitrary or amounted to a denial of justice. In the Committee's opinion, the judge's instructions to the jury must meet particularly high standards as to their thoroughness and impartiality in cases in which a capital sentence may be pronounced on the accused; this applies, a fortiori, to cases in which the accused pleads legitimate self-defence.

12.4 After careful consideration of the material placed before it, the Committee concludes that the judge's instructions to the jury on 14 June 1985 were neither arbitrary nor amounted to a denial of justice. As the judgement of the Court of Appeals states, the trial judge put the respective versions of the prosecution and the defence fully and fairly to the jury. The Committee therefore finds that in respect of the evaluation of evidence by the trial court there has been no violation of article 14.

12.5 Concerning the issue of the author's representation before the Court of Appeal of Trinidad and Tobago, the Committee reiterates that it is axiomatic that legal representation must be made available in capital cases. a/ This does not only apply to an accused person at the trial in the court of first instance, but also in appellate proceedings. In the instant case, it is uncontested that counsel was assigned to the author for the appeal. What is at issue is whether the author had a right to object to the choice of his court-appointed attorney, who had also, in his opinion, inadequately represented him at the trial of first instance. It is uncontested that the author never saw or approved the grounds of appeal filed on his behalf, and that he was never provided with an opportunity to consult with his counsel on the preparation of the appeal. From the material before the Committee, it can be clearly inferred that the author did not wish his counsel to represent him beyond the first instance; this is corroborated by the fact, which has remained uncontested, that he had made the necessary arrangements to have another lawyer represent him before the Court of Appeal. In the circumstances, and bearing in mind that this is a case involving the death penalty, the State party should have accepted the author's arrangements for another attorney to represent him for purposes of the appeal, even if this would have entailed an adjournment of the proceedings. The Committee is of the opinion that legal assistance to the accused in a capital case must be provided in ways that adequately and effectively ensure justice. This was not done in the author's case. To the extent that the author was denied effective representation during the appeal proceedings, the requirements of article 14, paragraph 3 (d), have not been met.

12.6 The Committee is of the opinion that the imposition of a sentence of death upon the conclusion of a trial in which the provisions of the Covenant have not been respected constitutes, if no further appeal against the sentence is available, a violation of article 6 of the Covenant. As the Committee noted in its general comment 6 (16), the provision that a sentence of death may be imposed only in accordance with the law and not contrary to the provisions of the Covenant implies that "the procedural guarantees therein prescribed must be observed, including the right to a fair hearing by an independent tribunal, the presumption of innocence, the minimum guarantees for the defence, and the right to review by a higher tribunal". In the present case, since the final sentence of death was passed without having met the requirements for a fair trial set forth in article 14, it must be concluded that the right protected by article 6 of the Covenant has been violated.

12.7 As to the author's allegations that he has been denied adequate medical care during his detention on death row, in particular in respect of ophthalmologic and dental treatment, the Committee notes, firstly, that these allegations were made at a late stage, after the communication was declared admissible, as it stood on 18 July 1989, and, secondly, that these additional allegations have not been sufficiently corroborated, for instance by medical certificates, to justify a finding of a violation of article 10, paragraph 1, of the Covenant. The Committee reaffirms, however, that the obligation to treat individuals deprived of their liberty with respect for the inherent dignity of the human person encompasses the provision of adequate medical care during detention, and that this obligation, obviously, extends to persons under the sentence of death.

13.1 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, as found by the Committee, disclose a violation of articles 6 and 14, paragraph 3 (d), of the Covenant.

13.2 The Committee observes that, in capital punishment cases, the duty of States parties to observe rigorously all the guarantees for a fair trial set out in article 14 of the Covenant is even more imperative. The Committee is of the view that Mr. Daniel Pinto, a victim of a violation of articles 6 and 14, paragraph 3 (d), is entitled to remedy entailing his release.

14. The Committee would wish to receive information on any relevant measures taken by the State party in respect of the Committee's views.

[Done in English, French, Russian and Spanish, the English text being the original version.]

Notes

a/ See Communication No. 223/1987 (Robinson v. Jamaica), views adopted on 30 March 1989, para. 10.3.

## APPENDIX

### Individual opinion submitted by Mr. Bertil Wennergren pursuant to rule 94, paragraph 3, of the Committee's rules of procedure, concerning the views of the Committee on communication No. 232/1987, Daniel Pinto v. Trinidad and Tobago

The Vienna Convention on the Law of Treaties states, inter alia, that a treaty provision shall be interpreted in accordance with the ordinary meaning to be given to its terms, placed in their context and in the light of the treaty's object and purpose. The object and purpose of article 6, paragraph 2, of the Covenant is obvious. It is to circumscribe the imposition of death sentences. The travaux préparatoires characterize it as a yardstick to which national law authorizing the imposition of the death sentence must conform. This yardstick consists of a number of prerequisites, some of which reflect guarantees also laid down in other articles of the Covenant. The prerequisites are: (a) "only for the most serious crimes"; (b) "only in accordance with the law in force at the time of the commission of the crime", cf. article 15, paragraph 1; (c) "only pursuant to a final judgment rendered by a competent court", cf. article 14, paragraph 1. The same requirements are to be found in article 4 of the American Convention on Human Rights, which reads: the death penalty "may be imposed only for the most serious crimes and pursuant to a final judgment rendered by a competent court and in accordance with a law establishing such punishment, enacted prior to the commission of the crime." Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms is less complete. It merely states that "no one shall be deprived of his life intentionally save in the execution of a sentence of a court following conviction of a crime for which this penalty is provided by law". Thus the Convention provision focuses more than similar provisions on the purpose to protect an individual from any intentional deprivation of his life by State organs. Article 6, paragraph 2, of the Covenant adds a prerequisite that is not included in either the European or the American Conventions, namely (d) "not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide". The latter Convention includes provisions that prohibit any killing - i.e. also execution pursuant to a death sentence - that can be subsumed under the term genocide. Article 6, paragraph 5, of the Covenant prohibits in addition the imposition of a sentence of death for crimes committed by persons below 18 years of age. Thus the prerequisite (d) evidently in the first place aims at those provisions in the Covenant and the Genocide Convention dealing with the imposition and execution of death sentences. It is, however, worded in such general terms that it might be understood as applying to other provisions of the Covenant as well, and not merely to provisions which would apply to the imposition itself of a death sentence, for instance article 26. The Committee has in this case interpreted it that way and found that a violation of the provisions in article 14 about a fair trial has to be looked upon as a violation also of article 6, paragraph 2, when the trial ended with a death sentence. I cannot find grounds for such an interpretation for the following reason: in the context where this prerequisite has been placed - i.e. in paragraph 2 and not in paragraph 1 - and in the light of the object and purpose of that paragraph, it is difficult to assume that it should be given an independent significance apart from its specific purpose (paragraph 5 and article 26 observance) and that it adds to what already is made clear by article 6, paragraph 5. The travaux préparatoires do not provide any useful guidance; moreover, any State power to investigate a crime that may lead to a death sentence,

indict a person for such a crime and conduct a trial against him is outside the focal point of article 6, paragraph 2, that deals only with the power to sentence an individual to death. The exercise of these related powers will then instead fall under paragraph 1, which provides that no one shall be arbitrarily deprived of his life, a term which according to the travaux préparatoires was preferred to "without due process of law". In my opinion violations of the safeguards for a fair trial in article 14 in a capital punishment case cannot be deemed to also constitute violations of article 6, paragraph 2. However, I agree with the Committee that unfairness in a capital case is of utmost gravity. When someone's life is at stake, all possible precautions and safeguards must come into full play. A breach of article 14 in such a case therefore constitutes a particularly grave violation. But, it cannot, even for that reason, be deemed to constitute a violation of article 6, paragraph 2. It is only - and only then - if the trial does not display the characteristics of a real trial but rather those of a mock trial, lacking the paramount characteristics of due process of law, that a violation of article 6 of the Covenant besides a violation of article 14 of the Covenant may arise, namely a violation of article 6, paragraph 1. The trial in this case undoubtedly was a very unsatisfactory one, but the information available does not, in my view, justify the conclusion that the elements of unfairness were such that the trial may be looked upon as arbitrary. I note in this connection that the Judicial Committee of the Privy Council received a petition from the author for special leave to appeal because of the trial deficiencies, but that the Judicial Committee did not grant leave. My conclusion therefore is that, just as under the American and European Conventions, violations of the fair trial safeguards cannot as such at the same time be deemed to be violations of provisions concerning the imposition of death sentences.

Bertil WENNERGREN