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HUMAN RIGHTS COMMITTEE
Seventy-fourth session
18 March – 5 April 2002

VIEWS

Communication No. 677/1996

Submitted by:	Mr. Kenneth Teesdale (represented by Nabarro Nathanson, a law firm in London)
Alleged victim:	The author
State party:	Trinidad and Tobago
Date of communication:	16 March 1995 (initial submission)
Document references:	- Special Rapporteur's rule 86/91 decision, transmitted to the State party on 13 March 1996 (not issued in document form) - CCPR/C/64/D/677/1996 – decision on admissibility dated 23 October 1998
Date of adoption of Views:	1 April 2002

On 1 April 2002 the Human Rights Committee adopted its Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 677/1996. The text of the Views is appended to the present document.

[ANNEX]

* Made public by decision of the Human Rights Committee.

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

Seventy-fourth session

concerning

Communication No. 677/1996**

Submitted by:	Mr. Kenneth Teesdale (represented by Nabarro Nathanson, a law firm in London)
Alleged victim:	The author
State party:	Trinidad and Tobago
Date of communication:	16 March 1995 (initial submission)
Decision on admissibility:	23 October 1998

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

Meeting on 1 April 2002,

Having concluded its consideration of communication No. 677/1996, submitted to the Human Rights Committee by Mr. Kenneth Teesdale 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:

** **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, Mr. Maurice Glèlè Ahanhanzo, Mr. Louis Henkin, 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. Hipólito Solari Yrigoyen and Mr. Maxwell Yalden.**

Individual opinions signed by Committee members Mr. David Kretzmer, Mr. Rajsoomer Lallah, Mr. Ivan Shearer and Mr. Hipólito Solari Yrigoyen are appended.

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

1. The author of the communication is Mr. Kenneth Teesdale, a Trinidadian citizen currently detained at State Prison in Port-of-Spain, Trinidad and Tobago. He claims to be the victim of violations by Trinidad and Tobago of articles 7, 9, 10 and 14 of the International Covenant on Civil and Political Rights. He is represented by Nabarro Nathanson, a law firm in London.

Facts as presented by the author

2.1 On 28 May 1988, the author was detained by the police and taken to hospital. On 31 May 1988 he was discharged from the hospital and on 2 June 1988 he was formally charged with the murder of his cousin "Lucky" Teesdale on 27 May 1988. After a trial, which started on 6 October 1989, the author was convicted and sentenced to death on 2 November 1989 by the San Fernando Assizes Court. He applied for leave to appeal against conviction and sentence. The Court of Appeal of Trinidad and Tobago dismissed the author's appeal on 22 March 1994, with reasons given on 26 October 1994. On 13 March 1995, the Judicial Committee of the Privy Council dismissed his petition for special leave to appeal. On 8 March 1996, a warrant for execution on 13 March was read out to the author. On 11 March, the author filed a constitutional motion to the High Court against the execution; the High Court granted a stay of execution. The Attorney General withdrew the case from the High Court and presented it before the Advisory Committee on the Power of Pardon. On 26 June, the author was informed that the President had commuted his death sentence to 75 years imprisonment with hard labour. It is submitted that all domestic remedies have been exhausted.

2.2 The case for the prosecution was that the author, in the presence of one Mr. E Stewart and S. Floyd, assaulted his cousin, hitting him several times with a cutlass and causing his death by haemorrhage shock. At the trial, two witnesses, Mr. Stewart and Mr. Floyd gave evidence for the prosecution that, on 27 May 1988, the author approached the deceased who was working at an illegal distillery of 'bush rum'. The witnesses were sitting on a log next to the distillery drinking rum. The author for no apparent reason pulled out a cutlass and proceeded to hack his cousin to death. Stewart and Floyd both ran from the scene but did not raise alarm nor did either of them report to the police. The deceased's body was found later the same day some 400 yards away from the distillery.

2.3 An investigating police officer gave evidence at the trial that in the evening of 27 May 1988, after having received a report concerning the incident, he saw the author in the street, who then ran away. The officer added that he did not observe any wounds on the author at the time. He said he saw him next the following morning in front of the police station, sitting in the tray of a truck with his hands tied together with a piece of rope and bleeding from a wound in the back of his head and also on his right arm. Upon demand by the police officer, the author told him that he received the wounds earlier that morning and that villagers brought him to the police station.

2.4 The author made an unsworn statement from the dock, admitting that he had been with the deceased and the witnesses in the afternoon of 27 May 1988. He stated that an argument arose between the deceased and Stewart, upon which Stewart threatened the deceased with a cutlass. The author tried to intervene and received a blow at his right elbow, whereupon he fled the scene. Then he fell and his next recollection was that he awoke in the bush the following

morning. He then stopped a van, which took him to the police station. The driver treated the author's wounds with pieces of clothes. Upon arrival, he was taken to the hospital.

The complaint

3.1 The author claims that he is a victim of a violation of articles 7 and 10, paragraph 1, of the Covenant. Between the date of the arrest and the date of his trial the author was remanded in custody for almost one and a half years. During that time he was in a cell (12 x 8 ft.) in which conditions were totally unsanitary, as there was no sunlight, no air, the men had to urinate and defecate anywhere in the cell, no bedding, nowhere to wash. After being sentenced to death, he has been detained in similar surroundings (10 x 8 ft.) with a light bulb directly overhead, which is kept on day and night. The author claims that he does not get any visitors and lacks privacy. He is handcuffed and placed in a box (3 x 3 ft.) when he consults his attorney. During the interview at least two guards are standing directly behind the attorney. Furthermore, the author was denied an eye test until September 1996, even though his glasses did not fit since 1990. The author claims that he was prevented by the prison authorities to pick up his new glasses in person and that the glasses he received as prescribed do not sufficiently correct his sight.

3.2 It is also submitted that the long period of detention on death row constitutes a violation of article 7.

3.3 Furthermore, the author claims that he is a victim of a violation of articles 9, paragraph 3, and 14, paragraph 3 (c), since he was held for almost one and a half years in custody before being brought to trial on 6 October 1989.

3.4 It is further submitted that the author was deprived of his rights under article 14 of the International Covenant on Civil and Political Rights. In this context, the author submits that he should not have been prosecuted, since important facts had not been investigated and the evidence was not sufficient to convict him. In particular, he submits that no trail of blood was found between the distillery and the place where the corpse was found. Furthermore, at the time of arrest on 28 May 1988, the author was told that he was detained in order to assist the police in the investigation.

3.5 It is further alleged that the jury was misdirected by the judge on the evidence given by the witness Stewart, since the judge failed to give a corroboration warning although the witness had an obvious self-interest. Also, the Judge did not leave the issue of the impact of drunkenness upon the charge to the Jury, although there was sufficient evidence that the deceased and the witnesses were drunk at the time of the incident. It is further submitted that the judge's summing-up was highly prejudicial to the author.

3.6 It is submitted that the author never saw an attorney before the day of the trial. During the trial, legal assistance by way of legal aid was ordered and the attorneys advised the author to give unsworn evidence from the dock, threatening to withdraw from the case if he did not. This is said to constitute a violation of article 14, paragraph 3 (b) and (d).

3.7 As regards the appeal, it is submitted that, in December 1993, the author was assigned a legal aid attorney whom he did not want to represent him, since that attorney was just out of law school and did not know the case at all. Although, reportedly, the author informed the legal aid authorities of his objections, counsel continued to represent him, but never consulted with him. The author had no opportunity to give instructions to his attorney and was not present at the

appeal hearing. It is therefore submitted that the author has been deprived of an effective appeal in violation of article 14 (5).

3.8 It is stated that the same matter has not been submitted to another procedure of international investigation or settlement.

3.9 With regard to the commutation of his death sentence in June 1996, the author complains that the decision of the President to sentence him to 75 years of imprisonment with hard labour was unlawful and discriminatory. The author refers to the decision of the Judicial Committee of the Privy Council in the cases of *Earl Pratt and Ivan Morgan* and of *Lincoln Anthony Guerra*, and claims that his sentence should have been commuted to life imprisonment. The author submits that 53 other prisoners, who had been on death row for murder for more than five years, saw their sentence commuted to life imprisonment, which according to the author, means that they will be released after an average period of 12 to 15 years, whereas such parole is not available to him.

Issues and proceedings before the Committee

Consideration of admissibility

4. The communication was transmitted to the State party on 12 January 1996, and the State party was requested to make any submission relevant to the admissibility of the communication, not later than 12 March 1996. On 4 October 1996, the State party informed the Committee that the death sentence in the case of the author and in four other cases pending before the Committee had been commuted to a term of imprisonment with hard labour for a period of seventy-five years. No observations concerning the admissibility of the communication were received, despite a reminder sent to the State party on 20 November 1997.

5.1 At its sixty-fourth session in October 1998 the Committee considered the admissibility of the communication.

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

5.3 With regard to the requirement of exhaustion of domestic remedies, the Committee noted that the author appealed his conviction and that the Judicial Committee of the Privy Council rejected his application for special leave to appeal and that domestic remedies had been exhausted.

5.4 With regard to the author's claim that the judge's instructions to the jury were inadequate, the Committee referred to its prior jurisprudence and reiterated that it is generally not for the Committee, but for the appellate courts of States parties, to review specific instructions to the jury by the trial judge, unless it can be ascertained that the instructions to the jury were manifestly arbitrary or amounted to a denial of justice. The material before the Committee and the author’s allegations did not show that the trial judge's instructions or the conduct of the trial suffered from such defects. Accordingly, this part of the communication was inadmissible, as the author has failed to forward a claim within the meaning of article 2 of the Optional Protocol.

6. On 23 October 1998 the Human Rights Committee declared the communication admissible, insofar as it may raise issues under articles 7 and 10, paragraph 1, of the Covenant, concerning the conditions of the author's detention, both before and after conviction; under article 7, concerning the warrant for the author's execution after he had spent over six years on death row and after the judgment of the Privy Council in *Pratt and Morgan*; under articles 9, paragraph 3, and 14, paragraph 3(c), concerning the delays in bringing the author to trial and in hearing his appeal; article 14, paragraphs 3(b) and (d) and 5, concerning his representation at trial and at appeal; and article 26, concerning the author's claim that he is a victim of discrimination because of the sentence imposed upon him after commutation.

Consideration of the merits

7. In several letters received after the case has been declared admissible, the author repeated his earlier claims.

8.1 On 27 November 1998, 3 August 2000, 11 October 2001, the State party was requested to submit to the Committee information on the merits of the communication. The Committee notes that this information has not been received.

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

8.3 The Committee regrets that the State party has not provided any information with regard to the substance of the author's claims. The Committee recalls that it is implicit in the Optional Protocol that States parties make available to the Committee all information at their disposal. In the absence of a reply from the State party, due weight must be given to the author's allegations, to the extent that they are substantiated.

9.1 With regard to the conditions of the author's detention at State Prison, Port-of-Spain, both before and after conviction, the Committee notes that in his different submissions the author made specific allegations, in respect of the deplorable conditions of detention (see 3.1 above). The Committee recalls its earlier jurisprudence that certain minimum standards regarding the conditions of detention must be observed and that it appears from the author's submissions that these requirements were not met during the author's detention since 28 May 1988. In the absence of any response from the State party, the Committee must give due weight to the allegations of the author. Consequently, the Committee finds that the circumstances described by the author disclose a violation of articles 10, paragraph 1, of the Covenant. 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, is not necessary to consider separately the claims arising under article 7.

9.2 Concerning the warrant for the author's execution after he had spent over six years on death row, the Committee reaffirms its jurisprudence that prolonged delays in the execution of a sentence of death do not, *per se*, constitute cruel, inhuman or degrading treatment. The Committee, therefore, finds that the facts before it, in the absence of further compelling circumstances, do not disclose a violation of article 7 of the Covenant.

9.3 With regard to the delays in bringing the author to trial, the Committee notes that the author was detained on 28 May 1988 and formally charged with murder on 2 June 1988. His trial

began on 6 October 1989 and he was sentenced to death on 2 November 1989. Under article 9, paragraph 3, of the Covenant anyone arrested or detained on a criminal charge shall be entitled to trial within a reasonable time. It appears from the transcript of the trial before the San Fernando Assize Court that all evidence for the case of the prosecution was gathered by 1 June 1988 and no further investigations were carried out. The Committee is of the view that in the context of article 9, paragraph 3, in the specific circumstances of the present case and in the absence of any explanation for the delay by the State party, the length of time that the author was in pre-trial detention is unreasonable and, therefore, constitutes a violation of this provision.

9.4 With regard to the delays in hearing the author's appeal, the Committee notes that he was convicted on 2 November 1989 and that his appeal was dismissed on 22 March 1994. The Committee recalls that all stages of the procedure must take place 'without undue delay' within the meaning of article 14, paragraph 3 (c). Furthermore, the Committee recalls its previous jurisprudence that article 14, paragraph 3 (c), should be strictly observed in any criminal procedure. In the absence of an explanation by the State party, the Committee, therefore, finds that a delay of four years and five months between the conviction and the dismissal of his appeal constitutes a violation of article 14, paragraph 3 (c), of the Covenant in this regard.

9.5 Concerning the author's representation at trial, the Committee notes that counsel was not assigned to him until the day of the trial itself. The Committee recalls that article 14, paragraph 3 (b), provides that the accused must have time and adequate facilities for the preparation of his defence. Therefore, the Committee finds that article 14, paragraph 3 (b), was violated.

9.6 The author further claims that at the Appeals Court he was assigned a legal aid attorney, whom he rejected as his representative. Article 14, paragraph 3 (d), stipulates the right to defend oneself in person or through legal assistance of his own choosing. However, the Committee recalls its previous jurisprudence that an accused is not entitled to choice of counsel if he is being provided with a legal aid lawyer, and is otherwise unable to afford legal representation. Therefore, the Committee finds that article 14, paragraph 3 (d), was not violated in the present case.

9.7 Furthermore, the author claims that he was deprived of an effective appeal because he was represented by an attorney who never consulted him and to whom the author could give no instructions. In this connection the Committee considers that appeals are argued on the basis of the record and that it is for the lawyer to use his professional judgement in advancing the grounds for appeal, and in deciding whether to seek instructions from the defendant. The State party cannot be held responsible for the fact that the legal aid attorney did not consult with the author. In the circumstances of the instant case, the Committee is not in a position to find a violation of article 14, paragraph 3 (d) and 5, with regard to the author's appeals hearing.

9.8 Concerning the author's claim that he is a victim of discrimination because of the commutation of his death sentence to 75 years of imprisonment with hard labour, the Committee notes that according to information provided by the author, the State party in 1996 commuted death sentences of prisoners who had been on death row for more then five years to life imprisonment in 53 cases, on the basis of constitutional provisions on commutation of death sentences. The Committee recalls its established jurisprudence that article 26 of the Covenant prohibits discrimination in law and in fact in any field regulated and protected by public authorities. The Committee considers that the decision to commute a death sentence and the determination of a term of imprisonment is within the discretion of the President and that he exercises this discretion on the basis of many factors. Although the author has referred to 53

cases where the death penalty was commuted to life imprisonment, he has not provided information on the number or nature of cases where death sentences were commuted to imprisonment with hard labor for a fixed term. The Committee is therefore unable to make a finding that the exercise of this discretion in the author's case was arbitrary and in violation of article 26 of the Covenant.

10. 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 before it disclose violations of articles 7; 9, paragraph 3; 10, paragraph 1; and 14, paragraphs 3 (b) and (c) of the Covenant.

11. Under article 2, paragraph 3, of the Covenant, Mr. Teesdale is entitled to an effective remedy, including compensation and consideration by the appropriate authorities of a reduction in sentence. The State party is under an obligation to ensure that similar violations do not occur in the future.

12. On becoming a State Party to the Optional Protocol, Trinidad and Tobago 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 Trinidad and Tobago'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 ninety 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.

[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.]

Appendix

Individual opinion by Committee member Mr. Rajsoomer Lallah (concurring)

I agree with the views of the Committee but would wish to add some observations on the length of the term of imprisonment of 75 years to which the sentence of the author was commuted.

The author did not raise any issue on the possible impact of the commuted sentence, by reason of its length, on the author's rights and the State party's obligations under Article 10 (1) and (3) of the Covenant. The result is that the State party was not given an opportunity of responding to that issue and the Committee could not make a pronouncement on it.

The issue is nevertheless important as Article 10 (1) requires that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. Would imprisonment for 75 years meet that standard?

Further, Article 10 (3) requires that the penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Both reformation and social rehabilitation assume that a prisoner will be released during his expected lifetime. Would the commuted sentence meet this requirement?

The State party may still wish to take these observations into account in considering the reduction of the sentence of the author.

[Signed] Rajsoomer Lallah

[Done in English, French and Spanish, the English text being the original version. Subsequently to be translated also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

Individual Opinion by Committee Members Mr. David Kretzmer and Ivan Shearer
(partly dissenting)

In the present case the author claimed he was a victim of discrimination since his death sentence was commuted to 75 years' imprisonment with hard labour, while in the same year, the State party commuted the death sentences of 53 prisoners to life imprisonment. The State party did not contest these facts, nor did if offer any explanation as to the alleged difference in treatment between the author and the other persons who had been sentenced to death. While we accept that the power to grant a pardon or commutation of sentence is by its very nature subject to wide discretion and that its exercise will be based on various factors, this power, like any other governmental power, must be exercised in a non-discriminatory manner so as to ensure the right of all individuals to equality before the law. Once the author had argued that he had been treated in a different way from people in a like situation, it was incumbent on the State party to show that the difference in treatment was based on reasonable and objective criteria. In our mind, in the absence of such an explanation by the State party the Committee should have held that the right of the author to equality before the law under article 26 of the Covenant was violated.

[Signed] David Kretzmer
[Signed] Ivan Shearer

[Done in English, French and Spanish, the English text being the original version. Subsequently to be translated also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

Individual Opinion by Committee Member Mr. Hipólito Solari Yrigoyen
(partly dissenting)

I disagree with the Committee's conclusions with regard to the present communication on the grounds set forth below.

The author claims that he is a victim of discrimination because his death sentence was commuted to 75 years of imprisonment with hard labour, whereas that same year the President of the State party, on the basis of sections 87-89 of the Constitution of the Republic of Trinidad and Tobago, commuted death sentences to life imprisonment in the cases of 53 prisoners who, like him, had been on death row for murder for more than five years. The difference between the commutation of the sentences lies in the fact that in the case of life imprisonment prisoners are eligible for parole, whereas such parole is not available in the case of commutation to 75 years of imprisonment. The State party has not contested the merits, but only the claim that there were 53 cases of commutation to life imprisonment, maintaining that there were somewhat fewer.

The Committee notes that the commutation or pardoning of a sentence in the State party is at the discretion of the President of the Republic. Commutation or pardon to reduce or annul a sentence imposed for one or more offences is a well-established legal tradition. In the Middle Ages absolute monarchs exercised the right to grant clemency, which, in modern legal systems, has devolved upon constitutional monarchs, presidents or other authorities of the highest rank in the executive institutions of a State. But this discretionary authority has undergone significant changes over time. While it is a prerogative of and may also be at the discretion of the holder of this authority, in this case the President of the Republic, the discretional element relates to the appropriateness of the decision; discretion is not absolute and must be based on reasonable criteria, founded in ethics and equity, so as to exclude arbitrariness.

The right in all cases to seek pardon or commutation of a sentence, recognized by the International Covenant on Civil and Political Rights in its article 6 (4), is an absolute right possessed by any person condemned to death, but such is not true for the person with the authority to grant commutation, since this must be based on the criteria indicated above in conformity with the provisions of the Covenant. In the present case, as stated by the author, the President of the Republic has applied treatment to the author which differs from that accorded many other convicted prisoners in similar circumstances, without there being any explanation whatsoever by the State party that the distinction was based on reasonable and objective criteria. Accordingly the Committee concludes that the author is a victim of a violation of article 26 of the Covenant.

[Signed] Hipólito Solari-Yrigoyen

[Done in English, French and Spanish, the Spanish text being the original version. Subsequently to be translated also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]