

C. Communication No. 302/1988, A.H. v. Trinidad and Tobago
(Decision of 31 October 1990, adopted at the fortieth
session)

Submitted by: A.H. (name deleted)

Alleged victim: The author

State party concerned: Trinidad and Tobago

Date of communication: 27 September 1987 (date of initial letter)

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

Meeting on 31 October 1990,

Adopts the following:

Decision on admissibility*

1. The author of the communication (initial letter dated 27 September 1987 and subsequent correspondence) is A. H., a Guyanese citizen currently awaiting execution at the State Prison in Port-of-Spain, Trinidad. He claims to be a victim of a violation of his rights under the International Covenant on Civil and Political Rights by the Government of Trinidad and Tobago. He is represented by counsel.

2.1 The author states that on 8 July 1983, he was convicted and sentenced to death for the murder of an English seaman. He claims that, during the trial, the Prosecutor failed to produce upon request a document prepared in the course of the preliminary inquiry describing the persons participating in the identification parade in the course of which the author was identified. The Prosecutor stated that the document, with the code "I. M. 2", had been lost. The author alleges that this is in contravention of guidelines requiring records of identifications of suspects by witnesses to be kept by the police, including statements by witnesses describing what they have seen. Failing this, the author alleges, the court must provide the defence with the names and addresses of all such witnesses. The author claims that such records were deliberately removed from the Registry of the High Court in order to obtain a conviction.

2.2 The author claims that the Court of Appeal acknowledged that "unspecified irregularities" took place during the trial but rejected his request for relief. On 19 February 1987, the author's petition to the Judicial Committee of the Privy Council was dismissed.

* An individual opinion by Committee member Mr. Bertil Wennergren is reproduced in an Appendix to this document.

2.3 After the dismissal of his petition for special leave to appeal, the author applied to the Pardons Committee for the commutation of his sentence. He also sought to file a constitutional motion and complain that his initial request to the Legal Aid Board for the granting of legal assistance for this purpose was either ignored or denied. On an unspecified subsequent date, however, he obtained legal assistance from a local humanitarian organization. He notes that the hearing of his constitutional motion, initially scheduled for February 1989, has been postponed on numerous occasions. This situation appears to be partly attributable to the decision of his representative not to seek a new hearing date until after the Commission of Inquiry into the Use of the Death Penalty has issued its report. Allegedly, his representative has also been informed by the judicial authorities that no financial assistance is provided for constitutional motions. As a result, he claims, the representative has become reluctant to diligently pursue the constitutional motion.

2.4 Concerning the conditions of his detention on death row, the author claims that he is forced to pay for many necessities of daily life in the prison, including food and postage. He further alleges that the prison officials are withholding from him medical records pertaining to head injuries allegedly inflicted on him by a prison officer. No specific information about ill-treatment on death row is, however, provided.

3. By its decision of 8 July 1988, the Working Group of the Human Rights Committee decided to transmit the communication to the State party and to request it, under rule 91 of the rules of procedure, to provide information and observations relevant to the question of the admissibility of the communication. It further requested the State party, under rule 86, not to carry out the death sentence against the author while his communication was under consideration by the Committee.

4. In its submission under rule 91 of the rules of procedure, dated 14 November 1988, the State party contends that the communication is inadmissible on grounds of non-exhaustion of domestic remedies, as required under article 5, paragraph 2 (b), of the Optional Protocol. The State party refers in particular to a constitutional motion filed on the author's behalf, which was set for hearing in February 1989. The State party further asserts that even after the completion of court proceedings, no prisoner is executed in Trinidad and Tobago without further review by the Advisory Committee on the Power of Pardon, its advice thereon to the Minister of Justice and the latter's advice to the President of the Republic.

5. In his comments, dated 9 February 1989, counsel notes that the transcript of the judgment of the Court of Appeal "reveals that the Court of Appeal did not recognise that there were irregularities during the trial. It was strongly contended on appeal that the identification parade was irregularly conducted". He further states that witnesses for the prosecution were cross-examined and that the author and his legal representative for the trial opted for the accused to make an unsworn statement from the dock, although the author was given the opportunity of giving evidence under oath and calling witnesses. Counsel adds that the author was represented before the Judicial Committee of the Privy Council by a legal aid attorney.

6.1 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.

6.2 The Committee has considered the material placed before it by the author in respect of alleged irregularities in the judicial proceedings in his case, which are said to constitute a violation of article 14 of the Covenant. A careful examination of the author's submissions does not show how the disappearance of the document, referred to as "I.M.2", could have influenced the court proceedings to such an extent as to raise *prima facie* issues under article 14. Moreover, the author has not sufficiently substantiated his claim that the proceedings suffered from other procedural defects. In this respect, therefore, he has failed to advance a claim under the Covenant within the meaning of article 2 of the Optional Protocol.

6.3 With respect to issues that could arise under article 10 of the Covenant, the Committee notes that the author has not indicated what steps, if any, he has taken to denounce his alleged ill-treatment to the competent prison authorities, and what investigations, if any, have been carried out. Accordingly, the Committee finds that in this respect, the author has failed to exhaust domestic remedies.

7. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 2 of the Optional Protocol in respect of the author's claims under article 14 of the Covenant, and inadmissible under article 5, paragraph 2 (b), of the Optional Protocol in respect of his claim under article 10 of the Covenant;

(b) That the Committee's decision may be reviewed under rule 92, paragraph 2, of its rules of procedure upon receipt of a written request by or on behalf of the author containing information to the effect that the reasons for inadmissibility in respect of his claim under article 10 of the Covenant no longer apply;

(c) That, since this decision may be reviewed under rule 92, paragraph 2, of the Committee's rules of procedure, the State party shall be requested, under rule 86 of the Committee's rules of procedure, not to carry out the death sentence against the author before he has had reasonable time to complete the effective domestic remedies available to him and to request the Committee to review the present decision;

(d) That this decision shall be transmitted to the State party, to the author and to his counsel.

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

APPENDIX

Individual opinion submitted by Mr. Bertil Wennergren pursuant to rule 92, paragraph 3, of the Committee's rules of procedure concerning the Committee's decision to declare communication No. 302/1988, A.H. v. Trinidad and Tobago, inadmissible

On 25 May 1989, the author submitted comments on the State party's submission under rule 91 of the rules of procedure, dated 14 November 1988. After having expressed his concerns about not having been granted legal aid for purposes of a constitutional motion, he stated the following: "And the prison authorities do not want to give me a copy of the medical certificate for an incident that took place on May 2, 1988; a prison officer by the name of C. burst my head at about 5.30 PM o'clock that Monday afternoon, and I get 4 stitches." A copy of that submission was sent to the State party on 14 June 1989 "for information and in order to complete the files of the State party". As the author's allegations may raise an issue under article 19, paragraph 2, of the Covenant regarding his right to freedom to seek and receive information, the State party should, in my opinion, be requested under rule 91 of the rules of procedure, to submit additional written information or observations relevant to the question of admissibility of the author's new allegation. The Committee's decision to declare the communication inadmissible under article 5, paragraph 2 (b), of the Protocol, may, however, be reviewed at a later date by the Committee upon a written request, by the author containing information to the effect that the reasons for inadmissibility referred to in article 5, paragraph 2 (b), no longer apply, i.e. that available domestic remedies have been exhausted.

Bertil WENNERGREN