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Sixty-first session
20 October - 7 November 1997

VIEWS

Communication No. 554/1993

Submitted by: Robinson LaVende
[represented by Interights, London]

Victim: The author

State party: Trinidad and Tobago

Date of communication: 4 October 1993 (initial submission)

Date of adoption of Views: 29 October 1997

On 29 October 1997, the Human Rights Committee adopted its Views under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 554/1993. The text of the Views is appended to the present document.

[ANNEX]

* Made public by decision of the Human Rights Committee.

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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
- Sixty-first session -

concerning

Communication No. 554/1993[**] [***]

Submitted by: Robinson LaVende [represented by Interights, London]

Victim: The author

State party: Trinidad and Tobago

Date of communication: 4 October 1993 (initial submission)

Date of decision on admissibility: 12 October 1995

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

Meeting on 29 October 1997,

Having concluded its consideration of communication No. 554/1993 submitted to the Human Rights Committee on behalf of Mr. Robinson LaVende 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, his counsel and the State party,

Adopts the following:

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[*] The following members of the Committee participated in the examination of the present communication: Mr. Nisuke Ando, Mr. Prafullachandra N. Bhagwati, Mr. Thomas Buergenthal, Ms. Christine Chanet, Lord Colville, Mr. Omran El Shafei, Ms. Elizabeth Evatt, Ms. Pilar Gaitan de Pombo, Mr. Eckart Klein, Mr. David Kretzmer, Ms. Cecilia Medina Quiroga, Mr. Fausto Pocar, Mr. Julio Prado Vallejo, Mr. Martin Scheinin, Mr. Maxwell Yalden and Mr. Abdallah Zakhia.

[**] Pursuant to rule 85 of the rules of procedure, Committee member Rajsoomer Lallah did not participate in the adoption of the Views.

[***] The text of an individual opinion signed by five Committee members is appended to the present document.

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

1. The author of the communication is Robinson LaVende, a Trinidadian citizen who, at the time of submission of his communication, was awaiting execution at the State Prison of Port-of-Spain, Trinidad and Tobago. He claims to be a victim of violations by Trinidad of articles 7, 10, paragraph 1, and 14, paragraph 3(d), of the International Covenant on Civil and Political Rights. On 31 December 1993, the author's death sentence was commuted to life imprisonment, in accordance with the Guidelines laid down in the judgment of the Judicial Committee of the Privy Council of 2 November 1993 in the case of Pratt and Morgan v. Attorney General of Jamaica. He is represented by Interights, a London-based organization.

The facts as submitted by the author

2.1 The author was tried for murder, found guilty as charged and sentenced to death in July 1975; no information is provided about the facts of the case or the conduct of the trial. The Court of Appeal of Trinidad and Tobago dismissed the author's appeal on 28 November 1977.

2.2 In early 1978, the author applied for legal aid to the Minister of National Security of Trinidad, so as to allow him to prepare and file a further appeal with the Judicial Committee of the Privy Council; the application for legal aid was refused. As a result, the author argues, he was unable to petition the Judicial Committee for special leave to appeal.

2.3 On 30 September 1993, a warrant for the author's execution on 5 October 1993 was read to him. A constitutional motion on his behalf was filed in the High Court of Trinidad and Tobago on 1 October 1993. A stay of execution was granted during the night of 4 to 5 October 1993.

2.4 The author argues that he has exhausted domestic remedies within the meaning of the Optional Protocol, and that the fact that a constitutional motion was filed on his behalf does not preclude his recourse to the Human Rights Committee. As to the denial of legal aid for the purpose of petitioning the Judicial Committee of the Privy Council, it is argued that the State party is now estopped from arguing that he was obliged to pursue this matter further before the domestic courts before bringing it before the Committee.

2.5 Counsel further contends that because of the very nature of her client's situation, he will necessarily invoke all available procedures, possibly until the scheduled time of execution. To require that all last minute procedures be exhausted before allowing a recourse to the Human Rights Committee would imply that the applicant either wait until a moment dangerously close in time to his execution, or that he refrain from invoking all potentially available domestic remedies. It is submitted that neither option is within the letter or the spirit of the Optional Protocol.

The complaint

3.1 The author, who was confined to death row from the time of his conviction in July 1975 until the commutation of his death sentence on 31 December 1993, i.e. over 18 years, alleges a violation of article 7, on the ground that the period of time spent on death row amounts to cruel, inhuman and degrading treatment. He further contends that the time spent on death row is contrary to his right, under article 10, paragraph 1, to be treated with humanity and respect for the inherent dignity of his person. It is argued that the execution of a sentence of death after so many years on death row would amount to a violation of the above-mentioned provisions. In support of her arguments, counsel refers to recent jurisprudence, inter alia a recent judgment of the Supreme Court of Zimbabwe[1], the judgment of the European Court of Human Rights in the case of Soering[2], and the arguments of counsel for the applicants in the case of Pratt and Morgan v. Attorney General of Jamaica.

3.2 It is submitted that the State party violated article 14, paragraph 3(d), by denying the author legal aid for the purpose of petitioning the Judicial Committee for special leave to appeal. Counsel relies on the Committee's jurisprudence, pursuant to which legal aid must be made available to convicted prisoners under sentence of death, and that this applies to all stages of the criminal proceedings"[3] Reference is also made to judgments of the Supreme Court of the U.S.[4].

The Committee's admissibility decision

4.1 During the 55th session, the Committee considered the admissibility of the communication. It noted that the State party had forwarded a note dated 9 February 1994, stating that the author's death sentence had been commuted to life imprisonment on 31 December 1993; the State party observed that the commutation was the consequence of the judgment of the Judicial Committee of the Privy Council in Pratt and Morgan v. Attorney-General of Jamaica[5]. No further information under rule 91 of the Committee's rules of procedure was received from the State party, despite a reminder addressed to it on 7 December 1994.

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[1] Supreme Court of Zimbabwe, judgment No. S.C. 73/93 of June 1993.

[2] Soering v. United Kingdom, 11 EHRR 439 (1989).

[3] Views on communication No. 250/1987 (C. Reid v. Jamaica), adopted 20 July 1990, paragraph 11.4; Views on communication No. 230/1987 (Henry v. Jamaica), adopted 1 November 1991, paragraph 8.3.

[4] E.g. Lane v. Brown, 372 U.S. 477 (1963).

[5] Privy Council Appeal No.10 of 1993, judgment of 2 November 1993.

4.2 The Committee welcomed the information of 9 February 1994 but noted that the State party had not provided information and observations relating to the admissibility of the author's claims, which had not been made moot by the commutation of sentence. Due weight had thus to be given to the author's allegations, to the extent that they had been substantiated.

4.3 As to the claims under articles 7 and 10, paragraph 1, the Committee observed that the State party had itself commuted the author's death sentence, so as to comply with the Guidelines formulated by the Judicial Committee of the Privy Council in the above-mentioned case. The Government had not informed the Committee of the existence of any further remedies available to the author in respect of the above claims; indeed, the State party's silence in this respect constituted an admission that no such remedies existed.

4.4 Regarding the claim under article 14, paragraph 3(d), the Committee noted that the author was refused legal aid for the purpose of petitioning the Judicial Committee of the Privy Council for special leave to appeal. There being no indication that the author was not entitled to pursue such an appeal, the Committee concluded that this claim, which also appeared to raise issues under article 14, paragraph 5, should be considered on the merits.

4.5 On 12 October 1995, the Committee declared the communication admissible in so far as it appeared to raise issues under articles 7, 10, paragraph 1, and 14, paragraphs 3(d) and 5, of the Covenant.

Examination of the merits

5.1 The State party's deadline for the submission of information and observations under article 4, paragraph 2, of the Optional Protocol expired on 16 May 1996. No submission was received from the State party, in spite of a reminder addressed to it on 11 March 1997. The Committee regrets the lack of cooperation on the part of the State party. It has examined the present communication in the light of all the information made available to it by the parties, as provided for in article 5, paragraph 1, of the Optional Protocol.

5.2 The Committee must first determine whether the length of the author's detention on death row - from July 1975 to December 1993 (over 18 years) - amounts to a violation of articles 7 and 10, paragraph 1, of the Covenant. Counsel claims a violation of these provisions merely by reference to the length of detention the author was confined to death row at the State Prison in Port-of-Spain. The length of detention on death row in this case is unprecedented and a matter of serious concern. However, it remains the jurisprudence of the Committee that the length of detention on death row does not, *per se*, amount to a violation of articles 7 or 10, paragraph 1. The Committee's detailed Views on this issue were set out in the Views on

communication No. 588/1994 (Errol Johnson v. Jamaica)[6]. Because of the importance of the issue, the Committee deems it appropriate to reiterate its position.

5.3 In assessing whether the mere length of detention on death row may constitute a violation of articles 7 and 10, the following factors must be considered:

(a) The Covenant does not prohibit the death penalty, though it subjects its use to severe restrictions. As detention on death row is a necessary consequence of imposing the death penalty, no matter how cruel, degrading and inhuman it may appear to be, it cannot, of itself, be regarded as a violation of articles 7 and 10 of the Covenant.

(b) While the Covenant does not prohibit the death penalty, the Committee has taken the view, which has been reflected in the Second Optional Protocol to the Covenant, that article 6 "refers generally to abolition in terms which strongly suggest that abolition is desirable". Reducing recourse to the death penalty may therefore be seen as one of the objects and purposes of the Covenant.

(c) The provisions of the Covenant must be interpreted in the light of the Covenant's objects and purposes (article 31 of the Vienna Convention on the Law of Treaties). As one of these objects and purposes is to promote reduction in the use of the death penalty, an interpretation of a provision in the Covenant that may encourage a State party that retains the death penalty to make use of that penalty should, where possible, be avoided.

5.4 In light of these factors, we must examine the implications of holding the length of detention on death row, per se, to be in violation of articles 7 and 10. The first, and most serious, implication is that if a State party executes a condemned prisoner after he has spent a certain period of time on death row, it will not be in violation of its obligations under the Covenant, whereas if it refrains from doing so, it will violate the Covenant. An interpretation of the Covenant leading to this result cannot be consistent with the Covenant's object and purpose. The above implication cannot be avoided by refraining from determining a definite period of detention on death row, after which there will be a presumption that detention on death row constitutes cruel and inhuman punishment. Setting a cut-off date certainly exacerbates the problem and gives the State party a clear deadline for executing a person if it is to avoid violating its obligations under the Covenant. However, this implication is not a function of fixing the maximum permissible period of detention on death row, but of making the time factor, per se, the determining one. If the maximum acceptable period is left open,

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[6] Views on communication No. 588/1994 (Errol Johnson v. Jamaica), adopted 22 March 1996, paragraphs 8.1 to 8.6.

States parties which seek to avoid overstepping the deadline will be tempted to look to the decisions of the Committee in previous cases so as to determine what length of detention on death row the Committee has found permissible in the past.

5.5 The second implication of making the time factor per se the determining one, i.e. the factor that turns detention on death row into a violation of the Covenant, is that it conveys a message to States parties retaining the death penalty that they should carry out a capital sentence as expeditiously as possible after it was imposed. This is not a message the Committee would wish to convey to States parties. Life on death row, harsh as it may be, is preferable to death. Furthermore, experience shows that delays in carrying out the death penalty can be the necessary consequence of several factors, many of which may be attributable to the State party. Sometimes a moratorium is placed on executions while the whole question of the death penalty is under review. At other times the executive branch of government delays executions even though it is not feasible politically to abolish the death penalty. The Committee would wish to avoid adopting a line of jurisprudence which weakens the influence of factors that may very well lessen the number of prisoners actually executed. It should be stressed that by adopting the approach that prolonged detention on death row cannot, per se, be regarded as cruel and inhuman treatment or punishment under the Covenant, the Committee does not wish to convey the impression that keeping condemned prisoners on death row for many years is an acceptable way of treating them. It is not. However, the cruelty of the death row phenomenon is first and foremost a function of the permissibility of capital punishment under the Covenant. This situation has unfortunate consequences.

5.6 To accept that prolonged detention on death row does not per se constitute a violation of articles 7 and 10, paragraph 1, does not imply that other circumstances connected with detention on death row may not turn that detention into cruel, inhuman or degrading treatment or punishment. The Committee's jurisprudence has been that where further compelling circumstances relating to the detention are substantiated, that detention may constitute a violation of articles 7 and/or 10, paragraph 1, of the Covenant.

5.7 In this case, counsel has not alleged the existence of circumstances, over and above the mere length of detention, which would have turned the author's detention on death row at the State Prison into a violation of articles 7 and 10, paragraph 1. As the Committee must, under article 5, paragraph 1, of the Optional Protocol, consider the communication in the light of all the information of the parties, the Committee cannot, in the absence of information on additional factors, conclude that there has been a violation of these provisions.

5.8 Regarding the claim under article 14, paragraph 3(d), the State party has not denied that the author was denied legal aid for the purpose of petitioning the Judicial Committee of the Privy Council for special leave to appeal. The Committee recalls that it is imperative that legal aid be

available to a convicted prisoner under sentence of death, and that this applies to all stages of the legal proceedings[7]. Section 109 of the Constitution of Trinidad and Tobago provides for appeals to the Judicial Committee of the Privy Council. It is uncontested that in the present case, the Ministry of National Security denied the author legal aid to petition the Judicial Committee in forma pauperis, thereby effectively denying him legal assistance for a further stage of appellate judicial proceedings which is provided for constitutionally; in the Committee's opinion, this denial constituted a violation of article 14, paragraph 3(d), whose guarantees apply to all stages of appellate remedies. As a result, his right, under article 14, paragraph 5, to have his conviction and sentence reviewed "by a higher tribunal according to law" was also violated, as the denial of legal aid for an appeal to the Judicial Committee effectively precluded the review of Mr. LaVende's conviction and sentence by that body.

6. 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 the Committee reveal a violation of article 14, paragraphs 3(d) juncto 5, of the Covenant.

7. Under article 2, paragraph 3(a), of the Covenant, the author is entitled to an effective remedy. While the Committee welcomes the commutation of the author's death sentence by the State party's authorities on 31 December 1993, it considers that an effective remedy in the instant case should include a further measure of clemency.

8. Bearing in mind that, by becoming a State party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and 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, and while reiterating its satisfaction over the commutation of the author's death sentence, the Committee wishes to receive from the State party, within 90 days, information about the measures taken to give effect to its Views.

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

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[7] See Views on communication No. 230/1987 (Raphael Henry v. Jamaica), adopted 1 November 1991, paragraph 8.3.

APPENDIX

Individual opinion by Committee member Fausto Pocar, approved by Mr. Prafullachandra N. Bhagwati, Ms. Christine Chanet, Ms. Pilar Gaitan de Pombo, Mr. Julio Prado Vallejo and Mr. Maxwell Yalden, regarding the cases of LaVende and Bickaroo

The Committee reiterates in the present cases the views that prolonged detention on death row cannot per se constitute a violation of article 7 of the Covenant. This view reflects a lack of flexibility that would not allow the Committee to examine the circumstances of each case, in order to determine whether, in a given case, prolonged detention on death row constitutes cruel, inhuman or degrading treatment within the meaning of the above-mentioned provision. This approach leads the Committee to conclude, in the present cases, that detention on death row for almost sixteen/eighteen years after the exhaustion of local remedies does not allow a finding of violation of article 7. We cannot agree with this conclusion. Keeping a person detained on death row for so many years, after exhaustion of domestic remedies, and in the absence of any further explanation of the State party as to the reasons thereof, constitutes in itself cruel and inhuman treatment. It should have been for the State party to explain the reasons requiring or justifying such prolonged detention on death row; however, no justification was offered by the State party in the present cases.

Even assuming, as the majority of the Committee does, that prolonged detention on death row cannot per se constitute a violation of article 7 of the Covenant, the circumstances of the present communication would in any case reveal a violation of the said provision of the Covenant. The facts of the communication, as submitted by the author and uncontested by the State party, show that "on 30 September 1993 a warrant for the author's execution on 5 October 1993 was read to him... A stay of execution was granted during the night of 4 to 5 October 1993". In our view, reading a warrant of execution to a detainee remaining confined to death row for such a long time, and attempting to proceed to his execution after so many years - at a time when the State party had raised in the detainee a legitimate expectation that the execution would never be carried out - constitute in themselves cruel and inhuman treatment within the meaning of article 7 of the Covenant, to which the author was subjected. Moreover, they constitute such further "compelling circumstances" that should have led the Committee, even if it wanted to reaffirm its previous jurisprudence, to find that prolonged detention on death row revealed, in the present cases, a violation of article 7 of the Covenant.

F. Pocar [signed]
P. N. Bhagwati [signed]
Ch. Chanet [signed]
J. Prado Vallejo [signed]
M. Yalden [signed]