UNITED NATIONS

CCPR

International covenant on civil and political rights

Distr.
RESTRICTED*

CCPR/C/77/D/908/2000
5 May 2003

Original: ENGLISH

HUMAN RIGHTS COMMITTEE
Seventy-seventh session
17 March-4 April 2003

VIEWS

Communication No. 908/2000

Submitted by:	Mr. Xavier Evans (represented by counsel Mr. Saul Lehrfreund)
Alleged victim:	The author
State party:	Trinidad and Tobago
Date of communication:	16 November 1999 (initial submission)
Document references:	Special Rapporteur's rule 91 decision, transmitted to the State party on 19 January 2000 (not issued in document form)
Date of adoption of Views:	21 March 2003

On 21 March 2003 the Human Rights Committee adopted its Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 908/2000. 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-seventh session

concerning

Communication No. 908/2000**

Submitted by: Mr. Xavier Evans (represented by counsel Mr. Saul Lehrfreund)

Alleged victim: The author

State party: Trinidad and Tobago

Date of communication: 16 November 1999 (initial submission)

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

Meeting on 21 March 2003,

Having concluded its consideration of communication No. 908/2000, submitted to the Human Rights Committee on behalf of Mr. Xavier Evans 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:

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* 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. Franco Depasquale, Mr. Maurice Glèlè Ahanhanzo, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Rafael Rivas Posada, Mr. Nigel Rodley, Mr. Martin Scheinin, Mr. Ivan Shearer and Ms. Ruth Wedgwood.

** The text of an individual opinion signed by the Committee member Ms. Ruth Wegwood is appended to the present document.

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

1. The author of the communication is Mr. Xavier Evans, a national of Trinidad and Tobago, currently serving a life sentence in a prison in Arouca. He claims to be a victim of violations by Trinidad and Tobago of articles 2, paragraph 3, 7, 9, paragraph 3, 10, paragraph 1, 14, paragraphs 1, 3 (c), and 5, of the International Covenant on Civil and Political Rights. He is represented by counsel.

The facts as presented by the author

2.1 On 17 March 1986, the author was arrested for murder alleged to have been committed on 28 February 1986 and was subsequently charged with murder. Following a Preliminary Inquiry conducted before a Magistrate's Court, the trial took place before the High Court of Justice of San Fernando between 22 June 1988 and 4 July 1988, and the author was convicted of murder and sentenced to death. On 4 January 1994, the death sentence was commuted to life imprisonment for the rest of his "natural life".

2.2 On 26 April 1994, the Court of Appeal of the Republic of Trinidad and Tobago dismissed his appeal against his conviction and sentence. The author was represented by court-appointed counsel during his trial and appeal. On 21 March 1997, the author lodged a petition for special leave to appeal to the Judicial Committee of the Privy Council in London. Leave was granted. The appeal was heard but was dismissed on 17 December 1998.

2.3 During the five years and six months that the author spent on death row, he was detained in solitary confinement in a cell measuring 9 by 6 feet containing a steel bed, table and bench. There was no integral sanitation and he was provided with a plastic pail for use as a toilet, which he was allowed to empty twice a day. There was no natural lighting. The only light was provided by a fluorescent strip light illuminated 24 hours a day located outside his cell above the door. He was allowed out of the cell on average once or twice a week for exercise and was restrained in handcuffs for the duration of this period. Food was inadequate and almost inedible. No provisions were made for his particular dietary requirements. He was provided with fresh water twice a day, when available. Requests for a doctor or dentist were infrequently granted. In support of these allegations, the author refers to an article in a national newspaper, dated 5 March 1995, in which the General Secretary of the Prison Officers' Association, was quoted, among other things, as stating that "the conditions are highly deplorable, unacceptable and pose a health hazard". The author submits that in the same article the General Secretary stated that limited resources, the spread of communicable diseases, such as chicken pox, tuberculosis and scabies, also makes the job of the prison officer more harrowing.[1] The author also submits that the medical officer failed to respond to complaints or take any steps to alleviate the intolerable sanitary conditions in the prison.

The complaint

3.1 The author claims that twenty-six months passed between the date of the murder and the author's trial, although the issues involved in the case were not complex. According to him, this period was unreasonably protracted. He contends that this delay deprived him of his right to a trial within a reasonable time in violation of articles 9, paragraph 3, and 14, paragraph 3 (c), of the covenant.[2] In assessing whether the period of delay is reasonable, the author submits that it

is relevant to consider the effect of the delay on the fairness of the trial. The author alleges that his defence was one of alibi and that the identification evidence was suggested or mistaken.

3.2 The author also claims that there was a delay of five years and nine months between his conviction and the hearing of his appeal. He submits that his right to appeal, as guaranteed in article 14, paragraphs 3 (c) and 5, of the Covenant, has been violated.[3] In this context, the author submits that it is relevant to consider the fact that he was under sentence of death throughout this entire period, and to take into account his conditions of confinement on death row.

3.3 The author claims that the inadequate conditions of confinement during his five years on death row constitute cruel, inhuman and degrading treatment in violation of articles 7 and 10, paragraph 1, of the Covenant. These conditions are said to have been repeatedly condemned by international human rights organizations as breaching internationally accepted standards of minimum protection. The author submits that the conditions to which he was subjected also violated the United Nations Standard Minimum Rules for the Treatment of Prisoners.

3.4 The author submits that his rights guaranteed in article 14, read together with article 2, paragraph 3, of the Covenant, have been violated. He claims that he was denied the right of access to court, as the law provided no opportunity to argue against imposition of a mandatory death sentence.

3.5 The author also claims that his rights under article 14, read together with article 2, paragraph 3, of the Covenant were violated as when his death sentence was commuted to life imprisonment, he was denied any opportunity to make representations before the sentence was commuted.

3.6 Finally, the author claims a violation of article 14, read together with article 2, paragraph 3 of the Covenant because a subsequent constitutional challenge to the High Court in relation to the length of the term imposed was not open to him as legal aid is not provided for such motions and the costs involved are beyond the means of the author. He states that an originating motion pursuant to article 14 (1) of the Constitution, could have been lodged on the basis that his life imprisonment for the rest of his "natural life" is arbitrary and cruel. However, because of the lack of legal aid for Constitutional Motions, the author claims that he is effectively barred from exercising his constitutional right to seek redress for the violation of his rights. He cites the Human Rights Committee's decision in Currie v. Jamaica[4] for the proposition that remedies in the Constitutional Court should be available and effective and in the context of a review of irregularities in a criminal trial legal assistance should be provided to those who have not the means to take such an action. He also cites jurisprudence from the European Court of Human Rights[5] for the proposition that effective right of access to a court may require the provision of legal aid for indigent applicants.

3.7 As to the admissibility of the communication, the author states that he has exhausted all effective and available domestic remedies. He contends that as regards the allegations concerning pre-trial delay or trial within a reasonable time, these complaints could not have been brought before the domestic courts of the State party. The author refers to two domestic cases in which it was decided that pre-trial delay does not constitute a competent ground of appeal, where no prejudice to the fairness of the trial can be shown, and that the Constitution of Trinidad and

Tobago does not provide for a right to a speedy trial or trial within a reasonable time. In addition, the author contends that he cannot be expected to pursue a Constitutional Motion before the Constitutional Court of the Republic of Trinidad and Tobago, as he lacks private means and legal aid is not available to him.[6]

The State party's submissions on admissibility and merits

4.1 The communication with its accompanying documents was transmitted to the State party on 19 January 2000. The State party has not responded to the Committee's request, under rule 91 of the rules of procedure, to submit information and observations in respect of the admissibility and merits of the communication, despite reminders addressed to it on 26 February and 11 October 2001.

Issues and proceedings before the Committee

Consideration of admissibility

5.1 Before considering the claims contained in the communication, the Human Rights Committee must, in accordance with rule 87 of the rules of procedure, decide whether or not the communication is admissible under the Optional Protocol to the Covenant. The Committee recalls that it is implicit in article 4, paragraph 2, of the Optional Protocol, that a State party examine in good faith all the allegations brought against it, and that it provide the Committee with all the information at its disposal. In light of the failure of the State party to cooperate with the Committee on the matter before it, due weight must be given to the author's allegations, to the extent that they have been substantiated.

5.2 The Committee has ascertained, as required 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. With respect to the exhaustion of domestic remedies, the Committee notes that the State party has not claimed that there are any domestic remedies yet to be exhausted by the author and therefore the Committee finds that the author has exhausted domestic remedies.

5.3 As to whether the author has fulfilled all other admissibility criteria, the Committee notes that with respect to the author's claim that the mandatory character of the death sentence constitutes a violation of article 14, paragraph 1, of the Covenant, on the ground that the law provides no opportunity to attempt to mitigate the sentence (para. 3.4), the Committee refers to its Views in the cases of Thompson v. St. Vincent and the Grenadines[7] and Kennedy v. Trinidad and Tobago[8] where it was established that mandatory capital punishment for certain categories of crime may constitute a violation of article 6, paragraph 1. However, contrary to the situation in those cases the author's death sentence in the present communication was commuted in 1994, that is several years before he submitted his case to the Committee. In the circumstances, the Committee considers that the application of mandatory capital punishment in his case does not give rise to a claim under the Optional Protocol. Consequently, the Committee considers that this part of the communication is inadmissible under article 2 of the Optional Protocol.

5.4 With respect to the other claims made by the author in paragraphs 3.1, 3.2, 3.3, 3.5 and 3.6, on the basis of the information before it, the Committee is of the view that these parts of the communication are admissible and proceeds to a consideration of the merits.

Consideration of the merits

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

6.2 As to the claim of unreasonable pre-trial delay, the Committee observes that the relevant dates, for the purpose of determining the length of the delay in the author's case, are the dates between the author's arrest and trial and not, as the author claims, between the date of the alleged crime, that is to say the date of the murder, and the date of the author's trial. In this regard, the Committee observes that, although there appears to be some confusion in the explanations provided by the author's counsel as to the date of the author's arrest, it is abundantly clear from the trial transcript that the author was arrested on 17 March 1986 and not 17 March 1988 (see paragraph 2.1 and footnote 1). Consequently, the Committee considers that a delay of 2 years and 3 months between the author's arrest and his trial, which has remained unexplained by the State party, constitutes a violation of the author's right under article 9, paragraph 3, of the Covenant to be tried within a reasonable time or to release, subject however to conditions, and equally of the author's right under article 14, paragraph 3 (c), of the Covenant to be tried without undue delay.

6.3 As to the claim of a delay of five years and nine months between conviction and the dismissal of his appeal by the Court of Appeal of the Republic of Trinidad and Tobago, which has also remained unexplained by the State party, the Committee recalls its jurisprudence that the rights contained in article 14, paragraphs 3 (c), and 5, read together, confer a right to review of a decision at trial without delay.[9] In Johnson v. Jamaica,[10] the Committee considered that, barring exceptional circumstances, a delay of four years and three months was unreasonably prolonged. As a result of these considerations, the Committee finds a violation of article 14, paragraphs 3 (c), and 5, of the Covenant.

6.4 As to the claim that the conditions of detention to which the author was subjected during his period on death row violated articles 7 and 10, paragraph 1, the Committee notes that, in the absence of any explanation from the State party, it must give due weight to the author's allegations. The Committee notes that the author was detained in solitary confinement on death row for a period of five years in a cell measuring 6 by 9 feet, with no sanitation except for a slop pail, no natural light, being allowed out of his cell only once or twice a week during which he was restrained in handcuffs, and with wholly inadequate food that did not take into account his particular dietary requirements. The Committee considers that these - uncontested - conditions of detention, taken together, amount to a violation of article 10, paragraph 1, of the Covenant. In 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 separately to consider the claims arising under article 7 of the Covenant.

6.5 As to the author's claim that he was denied access to the courts by not being allowed to make representations when his death sentence was commuted to life imprisonment for his "natural life", the Committee recalls its jurisprudence in Kennedy v. Trinidad and Tobago,[11] in which it decided that State parties retain discretion for spelling out the modalities of the exercise of the right to seek commutation of the sentence of death (art. 6, para. 4) and that this right is not governed by the procedural guarantees of article 14. The Committee finds therefore that the author has not shown that his inability to make representations on the commutation of his sentence is such as to violate any of his rights protected under the Covenant.

6.6 As to the claim that he was denied access to the courts in not being provided with legal aid to make a constitutional challenge on the issue of the length of the sentence imposed upon commutation, the Committee recalls its prior jurisprudence[12] that the Covenant does not contain an express obligation as such for any State party to provide legal aid to individuals in *all* cases but only in the determination of a criminal charge where the interest of justice so require. The Committee is therefore of the view that the State party is not expressly required to provide legal aid outside the context of a criminal trial. As the author's claim relates to the commutation of his sentence rather than the fairness of the trial itself, the Committee cannot find that there has been a violation of article 14, paragraph 1, of the Covenant, in this respect.

7. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol, is of the view that the facts before it disclose violations of articles 9, paragraph 3, 14, paragraphs 3 (c) and 5, and 10, paragraph 1, of the International Covenant on Civil and Political Rights.

8. 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 consideration of early release. As long as the author is in prison he should be treated with humanity and not subjected to cruel, inhuman or degrading treatment. The State party is also under an obligation to ensure that similar violations do not occur in the future.

9. 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, paragraph 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 its Views. The State party is 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.]

Individual opinion of Committee member Ms. Ruth Wedgwood (concurring in part, dissenting in part)

Per the parallel opinion of Messrs. Nisuke Ando, Eckart Klein, and David Kretzmer in Kennedy v. Trinidad and Tobago, Case No. 845/1998, in the instant case I would respect the State party's reservation of 26 May 1998, upon its reaccession to the Optional Protocol. The reservation provides as follows:

> "… Trinidad and Tobago re-accedes to the Optional Protocol to the International Covenant on Civil and Political Rights with a Reservation to article 1 thereof to the effect that the Human Rights 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 herewith."

The author's communication to the Committee in the instant case is dated 16 November 1999, after the State party's reservation took effect. Commutation of the death sentence in this case in 1994 does not evidently displace the effect of the reservation.

In my view, it is important for the Committee to respect State party reservations, which are conditions to their consent to the Optional Protocol. Even if one shares the view that the Committee should independently judge the consistency of State reservations with the object and purpose of the Optional Protocol, and concludes that Trinidad and Tobago's reservation fails that test, nonetheless States parties are entitled under general international law and the law of treaties to condition their consent to be bound to a treaty, including the Optional Protocol, upon the acceptance of a reservation. To that extent, I disagree with the earlier view of the Committee in general comment No. 24 (1994). The failure of the State party to cooperate with the Committee in the examination of the merits in this case and in the earlier case of Kennedy v. Trinidad and Tobago may bear some relation to the disregard of its reservation. (Indeed, the same problem may account for the State party's decision to denounce and withdraw from the Optional Protocol altogether, effective 23 July 2000, which is a step permitted to State parties under article 12 of the Optional Protocol. That denunciation is not formally applicable in this case.)

Since the Committee has found the instant communication to be admissible, I would agree on the merits that the jail conditions on death row, as alleged by the author, appear to have been seriously deficient. The United Nations Standard Minimum Rules for the Treatment of Prisoners note that some countries face challenges of budget and resources. Nonetheless, these are "minimum conditions which are accepted as suitable by the United Nations". The conditions in which the author was confined during his years on death row did not meet the requirements of,

inter alia, paragraphs 11 (a), 20 (1), and 21 (1) of the United Nations Standard Minimum Rules. These standards properly inform the Committee's construction of article 10 (1) of the Covenant on Civil and Political Rights.

(*Signed*): Ruth Wedgwood

[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.]

Notes

[1] In further support of these allegations, the author provides newspaper articles on prison conditions, an affirmation from counsel who visited the prison in question and who supplied in his affirmation information on prison conditions as described by inmates. The author was not one of these inmates.

[2] The author refers to the case of Lilian Celiberti de Casariego v. Uruguay, Case No. 56/1979,Views adopted on 29 July 1981, Millan Sequeira v. Uruguay, Case No. 6/1977, Views adopted on 29 July 1980, Pinkney v. Canada, Case No. 27/1979, Views adopted 29 October 1981, Smart v. Trinidad and Tobago, Case No. 672/1995, Views adopted on 29 July 1998, as well as jurisprudence of the Inter-American Commission of Human Rights where two years and four months was held to be a violation of article 7, paragraph 5, of the American Convention on Human Rights.

[3] The author refers to Pinkney v. Canada, op. cit., Little v. Jamaica, Case No. 283/1998, Views adopted on 11 November 1991, Pratt and Morgan v. Jamaica, Case Nos. 210/1986 and 225/1987, Views adopted on 6 April 1989, Kelly v. Jamaica, Case No. 253/1987, Views adopted on 17 July 1996, Neptune v. Trinidad and Tobago, Case No. 523/1992, Views adopted on 16 July 1996.

[4] Communication No. 377/1989, Views adopted on 29 March 1994, where the Committee found that "where a convicted person seeking constitutional review of the irregularities in a criminal trial has not sufficient means to meet the costs of legal assistance in order to pursue his constitutional remedy and where the interests of justice so require, legal assistance should be provided by the State. In the present case the absence of legal aid has denied to the author the opportunity to test the irregularities of his criminal trial in the Constitutional Court and a fair hearing, and is thus a violation of article 14, paragraph 1, juncto article 2, paragraph 3".

[5] Golder v. UK [1975] 1 EHRR 524, and Airey v. Ireland [1979] 2 EHRR 305.

[6] In this regard, the author refers to the following cases of the Human Rights Committee: Little v. Jamaica, op. cit.; Reid v. Jamaica, Case No. 250/1987, Views adopted on 20 July 1990; Collins v. Jamaica, Case No. 356/1989, Views adopted on 25 March 1993; Smith v. Jamaica, Case No. 282/1988, Views adopted on 31 March 1993; and Smart v. Trinidad and Tobago, op. cit.

[7] Case No. 806/1998, Views adopted on 18 October 2000.

[8] Case No. 845/1998, Views adopted on 26 March 2002.

[9] Lubuto v. Zambia, Case No. 390/1990, Views adopted on 31 October 1995 and Neptune v. Trinidad and Tobago, op. cit.

[10] Case No. 588/1994, Views adopted on 22 March 1996.

[11] Op. cit.

[12] Kennedy v. Trinidad and Tobago, op. cit.
