

HUMAN RIGHTS COMMITTEE

R. S. v. Trinidad and Tobago

Communication No. 684/1996

14 October 1997

CCPR/C/61/D/684/1996 */

ADMISSIBILITY

Submitted by: R. S. (name deleted) [represented by a London law firm]

Victim: The author

State party: Trinidad and Tobago

Date of communication: 13 March 1996 (initial submission)

Documentation references: List - CCPR/C/CL/R.63/Add.2; Prior decisions - Special Rapporteur's combined rule 86/91 decision, transmitted to the State party on 14 March 1996 (not issued in document form)

Date of present decision: 14 October 1997

The Human Rights Committee, acting through its Working Group pursuant to rule 87, paragraph 2, of the Committee's rules of procedure, adopts the following decision on admissibility.

Decision on admissibility

1. The author of the communication is R. S., a Trinidadian citizen who at the time of submission of his communication was awaiting execution at the State Prison in Port-of-Spain, Trinidad and Tobago. He claims to a victim of violations by Trinidad and Tobago of articles 6, paragraph 1; 7; and 10, paragraph 1, of the International Covenant on Civil and Political Rights. He is represented by Saul Lehrfreund of the London law firm of Simons Muirhead and Burton. On 24 June 1996, the President of Trinidad and Tobago commuted the author's death sentence to 75 years of imprisonment with hard labour.

Facts as submitted

2.1 The author was convicted of murder and sentenced to death on either 14 January of 1991 or 1992. ^{1/}. The Court of Appeal of Trinidad and Tobago dismissed his appeal on 12 April 1994. The Judicial Committee of the Privy Council dismissed a subsequent petition for special leave to appeal on an unspecified date.

2.2 On 8 March 1996, the author was read a warrant for his execution to take place on 13 March 1996. On Tuesday 12 March 1996, a stay of execution was granted, with a view to obtaining a full psychiatric examination of the author. The author is believed to be mentally deficient, and counsel argued, in his initial submission, that it would be in violation of his rights under the Covenant to execute him under these circumstances.

2.3 On 9 March 1996, the author was visited at the State Prison by his counsel, D. M.. When counsel arrived at the prison gate and requested to see the author, the officer on duty made a circular motion with his index finger near his head, to indicate that Mr. R. S. was insane. The officer asked counsel whether in the circumstances he would still like to see the author and, upon counsel's insistence, said that special security arrangements would have to be made for the interview.

2.4 During the interview, counsel asked the author whether he wanted a constitutional motion to be filed on his behalf or not. At first, the author indicated that he wanted to be executed. After further discussion, Mr. R. S. agreed to the filing of a constitutional motion. When counsel pointed to the contradictory behaviour of the author, the latter replied that he was confused and could not decide. Counsel ended the interview by telling Mr. R. S. that he would return later in the day, to allow him to make up his mind.

2.5 Mr. R. S.'s appearance and demeanour, coupled with the prison guard's comments on his insanity, made counsel believe that the author was of unsound mind. He thus contracted a psychiatrist, P. L., who accompanied him to the prison in the afternoon of 9 March 1996. Mr. D.M. asked the author whether he wanted a constitutional motion to stop his execution to be filed, and the author replied in the affirmative. For the rest, counsel could not obtain further information from the author: he gave different dates for his conviction, was unaware that an appeal had been heard or that a petition to the Judicial Committee of the Privy Council had been filed. He could not remember the name of the lawyer who had represented him on trial and said that no lawyer had ever visited him for the preparation of the appeal. He further could not remember the name of the person of whose murder he had been convicted.

2.6 After interviewing the author, Mr. P. L. concluded in an affidavit that the author "is experiencing auditory hallucinations and is probably suffering from severe mental illness that may be significantly affecting his ability to think and behave normally. I recommend that a detailed examination of his mental status be conducted in order to determine the extent and nature of Mr. R.S.'s disorder".

Complaint

3.1 Counsel submits that to issue a warrant for the execution of a mentally incompetent prisoner is in violation of customary international law, and that the fact that Mr. R. S. was kept on death row facing execution until July 1996, in his state of mental disturbance, amount to violations of articles

6, 7 and 10(1) of the Covenant, juncto ECOSOC Resolutions 1984/50 and 1989/64. The lack of psychiatric care at the State Prison in Port-of-Spain is also said to constitute a violation of articles 22(1), 24 and 25 of the UN Standard Minimum Rules for the Treatment of Prisoners.

3.2 Counsel argues that the psychological stress the author was submitted to before and after the issue of the warrant for his execution amounts to a violation of articles 7 and 10(1). In this context, he points out that the practice in Trinidad was to read no more than two warrants of execution on the same day and at the same hour because the State Prison is not equipped to handle more executions simultaneously. In Mr. R. S.'s case, five warrants were read on the same day and hour. In such circumstances, it is argued, the author would be forced to await his turn at the gallows, having to endure the sounds of and thoughts about the execution of the other prisoners taking place, possibly over hours.

3.3 Apart from the psychological stress, counsel contends, the conditions of the author's detention both on death row and after commutation of his sentence at the end of June 1996 constitute violations of articles 7 and 10(1). As to the detention on death row, counsel notes that cells measure approximately 9 by 6 feet, with an 18 inch hole for ventilation. The death row section is entirely illuminated by fluorescent lights, including at night, thereby impeding sleep. Prisoners are only allowed out of their cells one hour per day, except on weekends, when they are kept in 24 hours because of the shortage of staff. Meaningful exercise is impossible, as prisoners remain handcuffed during the exercise period. They are permitted two twenty-minute visits per week, and writing pads and books are severely restricted.

3.4 In as much as the conditions of the author's confinement since the commutation of his sentence are concerned, counsel contends that on the basis of his observations made during a visit to clients and to the author in July 1996, prisoners whose sentence was commuted to life imprisonment share cells measuring approximately 9 by 6 feet with between 9 and 12 other prisoners. Each cell consists of two bunks, which means that only four men can sleep at any one time. All cell occupants share a single plastic bucket for all toilet functions; they can empty its contents once a day. Ventilation consists of a single barred window measuring approximately 2 foot square. Each prisoner spends an average of 23 hours per day locked in, although unpredictably and exceptionally, prisoners may be allowed out for six hours. Most of the time, prisoners are allowed out of their cells only one hour, which includes time spent for personal hygiene, collecting food and slopping out, as well as any type of outdoor exercise. The overcrowding of the cells causes violent confrontations between the prisoners, and there are regular outbreaks of violence as well as homosexual threats and assaults. Prison guards are allegedly aware of the homosexual assaults but turn a blind eye to them. There no educational opportunities, nor any work nor reading materials for long term prisoners.

State party's observations

4. By submission of 21 June 1996, the State party argues that because of the author's pending constitutional motion, the complaint should be held inadmissible on the basis of non-exhaustion of domestic remedies. On 4 October 1996, the State party confirms the commutation of the author's death sentence to 75 years' imprisonment with hard labour.

Admissibility considerations

5.1 As required, the Committee has considered whether the conditions for admissibility under the Optional Protocol have been met in the present case. It observes that the constitutional motion filed on behalf of Mr. R. S. has become moot with the commutation of his death sentence by the President of Trinidad and Tobago. Accordingly, there are no further available and effective remedies which the author would be required to exhaust.

5.2 The Committee notes that the author has sufficiently substantiated, for purposes of admissibility, his claims under articles 6, 7 and 10(1), in so far as they relate to the question of the circumstances of the issue of the warrant for his execution, lack of psychiatric treatment while on death row, and the conditions of detention both during his detention on death row and after commutation of his sentence. These claims should therefore be considered on their merits.

6. The Human Rights Committee therefore decides:

(a) that the communication is admissible in so far as it appears to raise issues under articles 6, 7 and 10 (1), of the Covenant;

(b) that, in accordance with article 4, paragraph 2, of the Optional Protocol, the State party shall be requested to submit to the Committee, within six months of the date of transmittal to it of this decision, written explanations or statements clarifying the matter and the measures, if any, that may have been taken by it;

(c) that any explanations or statements received from the State party shall be communicated by the Secretary-General under rule 93, paragraph 3, of the rules of procedure to the author, with the request that any comments which he may wish to make should reach the Human Rights Committee, in care of the Office of the High Commissioner for Human Rights, United Nations Office at Geneva, within six weeks of the date of the transmittal. The State party is requested in particular to transmit to the Committee a copy of the trial transcript and of the judgement of the Court of Appeal in the case;

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

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

*/ All persons handling this document are requested to respect and observe its confidential nature.

1/ Counsel in Trinidad indicates that these contradictory dates appear in the Court of Appeal file. The author himself is unclear about the dates.