

## HUMAN RIGHTS COMMITTEE

### Gonzales v. Trinidad and Tobago

Communication N° 673/1995

23 March 1998

CCPR/C/65/D/673/1995\*

### ADMISSIBILITY

*Submitted by: Franklyn Gonzales (represented by Barlow Lyde & Gilbert, a law firm in London)*

*Alleged victim: The author*

*State party: Trinidad and Tobago*

*Date of communication: 12 December 1994*

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

Meeting on 23 March 1998

Adopts the following:

### **Decision on admissibility**

1. The author of the communication is Franklyn Gonzales, a Trinidadian citizen. He claims to be the victim of a violation by Trinidad and Tobago of articles 7 and 14 of the International Covenant on Civil and Political rights. He is represented by Barlow Lyde & Gilbert, a London law firm. The author's death sentence has been commuted.

The facts as presented by the author

2.1 On 17 April 1989, the author was convicted of the murder of one Indra Gajadhar (in May 1985), and sentenced to death by the San Fernando Assizes. The Court of Appeal of Trinidad and Tobago dismissed the author's appeal on 30 March 1994. His application for special leave to appeal to the Privy Council was dismissed on 12 December 1994. With this it is

submitted that all available domestic remedies have been exhausted.

2.2 The prosecution's case was based on evidence given by two eyewitness. Cecilia de Leon (the deceased's sister-in-law) and David Ballack (a friend of both the deceased and Ms. de Leon) were sitting some one hundred feet away from the scene of the crime. They testified that they saw Mrs Gajadhar arrive home, and that Mr Gonzales appeared from behind her house and attacked her without prior argument or provocation. It appears from the medical evidence that Mrs. Gajadhar suffered several wounds, and that she was decapitated.

2.3 There are a number of inconsistencies between Mr. Ballack's testimony during the trial and his original deposition, in which he had said that he had seen Mr. Gonzales watering peppers in his garden, and that there were some pea trees between where he was sitting and the scene of the crime. During the trial he said that he could not remember having said that the author had been watering peppers in his garden, and that the pea trees were in fact between the houses of the deceased and the author, so his vision of the scene of the crime had not been impaired.

2.4 The case for the defence was one of self-defence and provocation. The author claimed that Ms. Gajadhar subjected his family to verbal obscenities and racial insults, had stoned his house the night before the incident when his wife and new born baby were alone and deliberately cut his water hose.

2.5 The author claims that Ms. Gajadhar arrived home from her job, harvesting cocoa, carrying a "swipper" (harvesting cutlass) together with her handbag and a water bottle. Mr. Gonzales in his unsworn statement from the dock said that, when he confronted her about the stone throwing, Ms. Gajadhar verbally abused him and threatened him with the swipper, cutting him several times on the hand. He entered his house, grabbed his cutlass, returned outside, and fought with her. He admits that he struck her several times, resulting in her death.

2.6 The author turned himself in to the police officer who arrived at the scene of the crime, on 17 May 1985. He was taken into custody, gave a full statement and was duly cautioned.

2.7 There are several inconsistencies between the author's unsworn testimony from the dock and his statement to the police. In his statement he did not mention a confrontation with Ms. Gajadhar, as to why she had been throwing stones at his house; instead he said that she had demanded to know what he was looking at when she arrived at home, at which point he went to get his cutlass and began fighting with her. The author makes no reference to an initial attack by Ms. Gajadhar, whereas he mentions that he subsequently set the deceased's curtains on fire. The author claims that these inconsistencies arose because Corporal Ramdath did not record all the details of his declaration. No Justice of the Peace was present, nor was the author told that he could have counsel present while he was being interrogated.

2.8 A psychiatrist, Dr. Iqbal Ghany, gave evidence for the defence to the effect that the author has a compulsive personality disorder, and that he was suffering from post-traumatic stress syndrome and reactive depression. It is further submitted that the author sustained a

head injury during a motor vehicle accident in 1979, which together with a reactive depressive state, could facilitate his loss of self control.

### The complaint

3.1 Counsel claims that the author is a victim of a violation of article 14 paragraph 1, because the Court of Appeal failed to remedy the trial judge's misdirections to the jury on several issues:

(a) The trial judge directed the jury that in assessing whether the author had been provoked into losing his self-control they should consider whether the provocation was sufficient to make a reasonable man do as he did, and should take into account everything said or done. However, he failed to direct them that the "reasonable man" with whom the author should be compared was also someone who would have the same personality disorder and racial characteristics of the author.

(b) The trial judge erred when he admitted into evidence part of the author's statement which referred to the author returning to the deceased's house and setting the curtains alight. Counsel states that the prejudicial effect of this outweighed its probative value.

(c) The trial judge erred in his comments regarding counsel's suggestion that corporal Ramdath had omitted part of the author's statement under caution. The judge told the jury that the author had chosen to give an unsworn statement from the dock rather than a sworn statement and be cross-examined. The trial judge made reference to the possible sanctions which would befall Corporal Ramdath if the author's allegations were true. This is said to have unfairly influenced the jury into believing Corporal Ramdath in detriment of the author.

3.2 Counsel points out that the author has been held on death row since his conviction, for over six years. Reference is made to the decision of the Judicial Committee of the Privy Council in the case of Pratt and Morgan<sup>1</sup>. Counsel submits that the author's prolonged stay on death row amounts to a violation of article 7, and also that his execution after such a prolonged period would amount to a violation of article 7.

### Facts and proceedings before the Committee

4.1 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 author's death sentence 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.

4.2 The Committee recalls that is implicit in the Optional Protocol that States parties make available to the Committee all information at its disposal and regrets the lack of cooperation of the State party.

5.1 Before considering any claim 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.

5.2 With regard to the author's claim that the judge's instructions to the jury were inadequate, the Committee refers to its prior jurisprudence and reiterates 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 do not show that the trial judge's instructions or the conduct of the trial suffered from such defects. Accordingly, this part of the communication is inadmissible as the author has failed to forward a claim within the meaning of article 2 of the Optional Protocol.

5.3 With respect to the author's claim that the period of seven years which he spent on death row constitutes a violation of article 7 of the Covenant, the Committee refers to its jurisprudence<sup>2</sup> that detention on death row for a specific period of time per se does not violate the Covenant, in the absence of further compelling circumstances. In the instant case, the author has not invoked any ground other than the period of time in substantiation of his claim. This part of the communication is thus inadmissible under article 2 of the Optional Protocol.

6. The Human Rights Committee therefore decides:

(a) that the communication is inadmissible;

(b) that this decision shall be communicated to the State party and to the author.

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\*/ The following members of the Committee participated in the examination of the communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Thomas Buergenthal, Lord Colville, Ms. Elizabeth Evatt, Mr. Eckart Klein, Mr. David Kretzmer, Mr. Rajsoomer Lallah, Ms. Cecilia Medina Quiroga, Mr. Fausto Pocar, Mr. Martin Scheinin, Mr. Hipólito Solari Yrigoyen, Mr. Roman Wieruszewski, and Mr. Abdallah Zakhia.

1/ Earl Pratt and Ivan Morgan v. Attorney-General of Jamaica; PC Appeal No. 10 of 1993, judgment delivered on 2 November 1993.

2/ See communication No. 558/1994 (Erroll Johnson v. Jamaica), Views adopted on 22 March 1996.

[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]