

HUMAN RIGHTS COMMITTEE

Wanza v. Trinidad and Tobago

Communication No. 683/1996

26 March 2002

CCPR/C/74/D/683/1996

VIEWS

Submitted by: Mr. Michael Wanza (represented by Stephen Chamberlain of the London law firm of Nabarro Nathanson)

State party concerned: Trinidad and Tobago

Date of communication: 11 March 1996 (initial submission)

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

Meeting on 26 March 2002,

Having concluded its consideration of communication No. 683/1996, submitted to the Human Rights Committee by Mr. Michael Wanza 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:

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

1. The author of the communication is Michael Wanza, a Trinidadian citizen and former mason, born in 1964, who at the time of the submission of the communication was awaiting execution at the Frederick Street State Prison in Port-of-Spain. He claims to be a victim of violations by Trinidad and Tobago of articles 7, 10, paragraph 1, 14, paragraphs 3 (c) and 5, of the Covenant. He is represented by counsel. On 24 June 1996, the author's death sentence was commuted to 75 years' imprisonment with hard labour.

The facts as submitted by the author

2.1 Mr. Wanza was convicted of murder in the High Court of Port-of-Spain on 28 February 1989 and sentenced to death. The Court of Appeal of Trinidad and Tobago dismissed his appeal on 20 January 1994. A subsequent petition for special leave to appeal was dismissed by the Judicial Committee of the Privy Council on 11 December 1995.

2.2 On 8 March 1996, a warrant was read to Mr. Wanza for his execution to take place on 13 March 1996. A constitutional motion was filed on his behalf after the issuance of the warrant, with a view to obtaining a stay of execution. A stay was granted, pending the result of the hearing of the constitutional motion. On 11 March 1996, the author's representative submitted the case under the Optional Protocol; a request for interim protection under rule 86 of the Committee's rules of procedure was issued on 14 March 1996. In June 1996, the author's death sentence was commuted and he was removed from the death row section of the prison.

The complaint

3.1 Counsel contends that Mr. Wanza is a victim of a violation of articles 7 and 10, paragraph 1, since he was detained on death row for a period of seven years and four months between his conviction and the commutation of his death sentence in June 1996. In his initial submission, counsel argues that the delay would make the execution of the death sentence unconstitutional. Reference is made in this respect to the jurisprudence of the Judicial Committee of the Privy Council in *Pratt and Morgan* and in *Guerra v. Baptiste*, and of the Supreme Court of Zimbabwe¹.

3.2 Counsel contends that the anguish suffered by Mr. Wanza over a period exceeding seven years, during which he constantly faced the prospect of his own execution, combined with the conditions under which he was detained in the death row section of the State Prison, amount to cruel, inhuman and degrading treatment within the meaning of articles 7 and 10 (1) of the Covenant. In this context, counsel submits that the author was confined alone in his cell for 22 hours a day, and that he spends much of his time in enforced darkness.

3.3 From the author's affidavit in support of his constitutional motion, it appears that he claims that he is confined in a small cell (nine by six feet), which contains a bed, table, chair and a slop pail. There is no window, only a small ventilation hole of 18 by 8 inches. The entire cell block is illuminated by means of fluorescent lights which are kept on all night and affects the author's ability to sleep. Apart from the customary one hour exercise in the yard, he was only permitted to leave his cell to meet with visitors and to have a bath once a day. On Sundays and holidays he could not leave the cell because of lack of prison staff.

3.4 Counsel alleges a violation of article 14, paragraph 3 (c), *juncto* paragraph 5, because of the Court of Appeal's failure to hear Mr. Wanza's appeal within a reasonable time: it is submitted that a delay of almost five years for adjudicating an appeal against conviction and sentence in a capital case is wholly unacceptable. Reference is made to General Comment 13[21] of the Human Rights

Committee.

State party's observations

4. By submission received on 9 July 1996, the State party argues that because the author's pending constitutional motion, the complaint should be held inadmissible on the ground 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.

The Committee's admissibility decision

5.1 At the 61st session, the Committee considered the admissibility of the communication. It observed that the constitutional motion filed on the author's behalf has become moot with the commutation of his death sentence by the President of Trinidad and Tobago and that accordingly, there were no further available and effective remedies which the author would be required to exhaust.

5.2 The Committee considered that the author had sufficiently substantiated, for purposes of admissibility, his claims under articles 7 and 10 (1), in so far as they related to the conditions of his detention on death row, and under article 14, paragraph 3 (c), *juncto* paragraph 5, on account of the delay in the adjudication of his appeal.

6. Accordingly, on 14 October 1997, the Committee declared the communication admissible in so far as it appeared to raise issues under articles 7, 10 (1) and 14, paragraph 3 (c), *juncto* paragraph 5, of the Covenant.

State party's submission on the merits

7.1 By note of 12 May 1999, the State party forwarded its observations on the merits of the communication. With regard to the conditions of detention, the State party notes that the author has made only general allegations, such as that he was confined in a single cell for 22 hours per day and that much of his time was spent in enforced darkness. The State party denies that the conditions of the author's detention, either on death row or since the commutation of his sentence, violate the Covenant. In this connection, the State party refers to court judgements in cases where similar allegations were made² and where the court, after having heard both prison officials and convicts found that the circumstances did not amount to cruel treatment. The State party also refers to the Human Rights Committee's Views in the case of Dole Chadee et al³, where the Committee found no breach of article 10 of the Covenant with regard to prison conditions in Trinidad and Tobago. The State party concludes that at all times the author has been treated with respect for the inherent dignity of the human person and that he has produced no evidence to substantiate the allegation of torture, cruel, inhuman or degrading treatment or punishment.

7.2 With regard to the author's claim that he is a victim of a violation of articles 7 and 10 of the Covenant, because of the length of time spent on death row, the State party refers to the Human Rights Committee's jurisprudence that prolonged detention on death row does not per se constitute

cruel, inhuman or degrading treatment in the absence of some further compelling circumstances. In the present case, no such circumstances exist, according to the State party. The State party rejects the author's argument that conditions of detention may render the carrying out of the death sentence unlawful and refers in this context to *Fisher v. Minister of Public Safety (No.1)* [1998] A.C. 673 and *Hilaire and Thomas v. A.G. of Trinidad and Tobago* [1999].

7.3 With regard to the alleged delay in hearing the appeal, the State party argues that the period between the conviction and the hearing of the appeal was not unreasonable in the circumstances prevailing in the country at that time (following an attempted coup d'état). There had been an increase in the crime rate putting great pressure on the courts and leading to a backlog of cases. Difficulties were also experienced in the speedy preparation of a complete and accurate court record, causing delays. Since then, procedural reforms have been carried out to avoid such delays. Financial and other resources have been allocated to the judiciary and additional judges have been appointed both to the High Court and to the Court of Appeal. A computer aided transcription unit has been put in place to ensure the availability of a complete and accurate court record with the minimum of delay. As a result, appeals are now heard within one year of the conviction.

8. Despite two reminders, no comments to the State party's submissions were received from the author's counsel.

Issues and proceedings before the Committee

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

9.2 With regard to the author's claim that his conditions of detention amounted to a violation of articles 7 and 10(1) of the Covenant, the Committee notes that the information provided by counsel and the author contradicts itself in respect to the light in the cell. However, the remaining specific allegations on the poor conditions of detention, in particular, that the cell is small and does not contain a window but a ventilation hole of 18 by 8 inches, that the author was kept in this cell for 22 to 23 hours a day, and that on weekends and holidays he was not allowed to leave the cell because of lack of prison staff, have not been contested by the State party, except in a very general way. According to the Committee's prior jurisprudence, such conditions sustain the finding of a violation of article 10(1) in the instant case. In the 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 to consider separately the claims arising under article 7.

9.3 With regard to the author's claim that his prolonged detention on death row constitutes a violation of articles 7 and 10(1), the Committee notes that the author was kept on death row from his conviction on 28 February 1989 until 24 June 1996, when his sentence was commuted. The Committee refers to its previous jurisprudence⁴ that prolonged detention on death row per se does not constitute a violation of articles 7 and 10(1) of the Covenant, in the absence of further compelling circumstances. In the Committee's opinion, the facts before it do not show the existence of further

compelling circumstances beyond the length of detention on death row. The Committee concludes that in this respect the facts do not reveal a violation of articles 7 and 10, paragraph 1 of the Covenant.

9.4 With regard to the delay of almost five years between the author's conviction and the determination of his appeal, the Committee has noted the State party's explanations in particular its statement that it has taken steps to remedy the situation. Nevertheless, the Committee wishes to emphasize that the rights set forth in the Covenant constitute minimum standards which all States parties have agreed to observe.⁵ Article 14, paragraph 3(c), states that all accused shall be entitled to be tried without delay, and this requirement applies equally to the right of review of conviction and sentence guaranteed by article 14, paragraph 5. The Committee considers that the period of almost five years between the author's conviction in February 1989 and the judgement of the Court of Appeal, dismissing his appeal, in January 1994, is incompatible with the requirements of article 14, paragraph 3(c) juncto article 14, paragraph 5 of the Covenant.

10. 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 it disclose a violation of articles 10, paragraph 1, and 14, paragraph 3 (c) juncto paragraph 5, of the Covenant.

11. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide Mr. Wanza with an effective remedy, which includes consideration of early release.

12. On becoming a State party to the Optional Protocol, Trinidad and Tobago 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 Trinidad and Tobago's denunciation of the Optional Protocol became effective on 27 June 2000; in accordance with article 12 (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 the Committee's Views.

** The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhango, Mr. Louis Henkin, Mr. Ahmed Tawfik Khalil, Mr. Eckart Klein, Mr. David Kretzmer, Mr. Rajsoomer Lallah, Ms. Cecilia Medina Quiroga, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Martin Scheinin, Mr. Ivan Shearer, Mr. Hipólito Solari Yrigoyen and Mr. Maxwell Yalden.

Notes

¹ Pratt and *Morgan v. Attorney-General of Jamaica et al.*, Privy Council Appeal No.10 of 1993, judgment of 2 November 1993; *Guerra v. Baptiste* and others [1995] All ER 583; Supreme Court of Zimbabwe, judgment S.C. 73/93 of 24 June 1993 in *Catholic Commission for Justice and Peace in Zimbabwe v. The Attorney-General of Zimbabwe*.

² Joey Ramiah v. the Attorney General of Trinidad and Tobago and the Commissioner of Prisons, H.C.A No. 1164 of 1998, High Court of Justice, 13 November 1998. The State party further refers to the Privy Council's acceptance of the findings by the Court of Appeal of Trinidad and Tobago in the case of Thomas and Hilaire that prison conditions did not amount to cruel and unusual treatment in violation of section 5(2)(b) of the Constitution.

³ Communication No. 813/1998, CCPR/C/63/D/813/1998, Views adopted on 29 July 1998.

⁴ See inter alia the Committee's Views in communication No. 558/1994, *Erroll Johnson v. Jamaica*, para. 8.2 - 8.5, Views adopted on 22 March 1996; CCPR/C/66/D/709/1996, *Everton Bailey v. Jamaica*, Views adopted on 21 July 1999, para. 7.6.

⁵ See the Committee's Views in *Lubuto v. Zambia*, CCPR/C/55/D/390/1990, adopted on 31 October 1995, para. 7.3. See also the Committee's Views in *Sextus v. Trinidad & Tobago*, CCPR/C/72/D/818/1998, Views adopted on 16 July 2001, para. 7.3.