

HUMAN RIGHTS COMMITTEE

Francis et al. v. Trinidad and Tobago

Communication No. 899/1999

25 July 2002

CCPR/C/75/D/899/1999

VIEWS

Submitted by: Mr. Glenroy Francis et al. (represented by counsel Mr. Saul Lehrfreund)

State party concerned: Trinidad and Tobago

Date of communication: 14 May 1997 (initial submission)

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

Meeting on 25 July 2002,

Having concluded its consideration of Communication No. 899/1999, submitted to the Human Rights Committee by Mr. Glenroy Francis, Mr. Neville Glaude and Mr. Keith George 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 authors of the communication, dated 29 May 1997, are Glenroy Francis, Neville Glaude and Keith George, currently serving terms of 75 years' imprisonment at State Prison, Trinidad. They claim to be victims 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. They are represented by counsel.

The facts as presented by the authors

2.1 Messrs. Francis, Glaude and George were arrested on 24 July 1986, 23 July 1986 and 24 May 1987 respectively for suspicion of murder on 19 July 1986 of one Ramesh Harriral. Until their trial in November 1990, the authors were detained at the remand section of Golden Grove Prison, Arouca, in a cell measuring 9 feet by 6 feet with between 8 to 15 other inmates.

2.2 After a period of four years and three months for Messrs. Francis and Glaude, and of three years and five months for Mr. George, the authors were tried between 6 and 30 November 1990, convicted by unanimous jury verdict and sentenced to death for the murder charged. From their conviction on 30 November 1990 until the commutation of their sentences on 3 March 1997, the authors were confined on death row at Port of Spain Prison, Trinidad. They were detained in solitary confinement in a cell measuring 9 feet by 6 feet, containing an iron bed, mattress, bench and table.
(1)

2.3 In the absence of sanitation facilities in the cell, a plastic pail was provided as toilet. A small ventilation hole, measuring 8 inches by 8 inches, provided scarce and inadequate ventilation. The only light provided was by a fluorescent strip illuminated 24 hours a day located outside the cell above the door. The authors remained locked inside their cell continuously, save for collecting food, bathing, and slopping out the contents of their plastic pail. They enjoyed exercise outside their cell approximately once a month only in handcuffs. They were allowed only a limited number of personal items, excluding radios, and access to writing and reading material remained very limited. Mr. Francis further stated that he had no right to see copies of the Prison Rules, that he was not allowed to write to the Ministry of National Security complaining as to his conditions of detention, that doctors visits were irregular and that letters to his family had been intercepted and not processed without explanation. Mr. Glaude also stated that poor food had resulted in significant weight loss, and that no medicine had been provided to him.

2.4 On 10 October 1994, the authors applied for leave to appeal against their convictions to the Court of Appeal of Trinidad and Tobago. The Court of Appeal dismissed their application for leave on 13 March 1995. The authors' petitions to the Judicial Committee of the Privy Council for Special Leave to Appeal as Poor Persons were dismissed on 14 November 1996. On 3 March 1997 the authors' death sentences were commuted to 75 years' imprisonment.

2.5 From that point, the authors have been detained in Port of Spain Prison in conditions involving confinement to a cell measuring 9 feet by 6 feet together with 9 to 12 other prisoners. It is stated that such overcrowding leads to violent confrontations amongst the prisoners. One single bed is provided for the cell and therefore the authors sleep on the floor. One plastic bucket is provided as slop pail and is emptied once a day, such that it sometimes overflows or is spilled over. Inadequate ventilation consists of a 2 foot by 2 foot barred window. The prisoners are locked in their cell, on average 23 hours a day, with no educational opportunities, work or reading materials. The location of the prison food-preparation area, around 2 metres from where the prisoners empty their slop pails, creates an obvious health hazard. The quantity and quality of food are said not to meet the authors' nutritional needs, and the complaint mechanisms for prisoners are inadequate.

The complaint

3.1 The authors' complaints focus on alleged excessive delays in the judicial process in their case, and on the conditions of detention endured by them at various stages in that process.

3.2 As to the allegation of delay, the authors contend that their rights under articles 9, paragraph 3, and 14, paragraph 3 (c), were violated by the delay of four years and three months in bringing Messrs. Francis and Glaude to trial, and the delay of three years and five months in bringing Mr. George to trial. These were the periods from the authors' arrests on 19 July 1986, 23 July 1986 and 24 May 1987, until the commencement of their trial on 6 November 1990.

Accordingly, they argue that the delay was unreasonable.

3.3 The authors cite the Committee's Views in *Celiberti de Casariego v. Uruguay*, *Millan Sequeira v. Uruguay* and *Pinkney v. Canada*, (2) where comparable periods of delay were found to be in violation of the Covenant. Relying on *Pratt Morgan v. Attorney-General of Jamaica*, (3) the authors argue that the State party is responsible for avoiding such periods of delay in its criminal justice system, and it is therefore culpable in this case. The authors contend that the delay was aggravated by the fact that there was little investigation that had to be performed by the police and that the evidence against them consisted simply of direct eyewitness testimony, statements under caution made by the authors, and forensic or scientific evidence bearing certificates of analysis dated between 24 July and 12 August 1986.

3.4 The authors also allege violations of articles 14, paragraphs 1, 3 (c) and 5, in the unreasonably protracted delay of over four years and three months which elapsed before the Court of Appeal heard and dismissed their appeal. The authors cite a variety of cases in which the Committee found comparable delays (as well as shorter ones) in breach of the Covenant. (4) The authors submit that in assessing the reasonableness of the delay it is relevant to consider the fact that they were under sentence of death, and detained throughout in unacceptable conditions.

3.5 The second portion of the complaint relates to the conditions of detention described above which the authors experienced post-conviction and, currently, post-commutation. These conditions are said to have been repeatedly condemned by international human rights organizations as breaching internationally accepted standards of minimum protection. (5) The authors claim that after their commutation, they remain in conditions of detention in manifest violation of, inter alia, a variety of both domestic Prison Rules standards and United Nations Standard Minimum Rules for the Treatment of Prisoners. (6)

3.6 Relying on the Committee's General Comments 7 and 9 on articles 7 and 10, respectively, and further on a series of communications where conditions of detention were found to violate the Covenant, (7) the authors argue that the conditions endured by them at each phase of the proceedings breached a minimum inviolable standard of detention conditions (to be observed regardless of a State party's level of development) and accordingly violated articles 7 and 10, paragraph 1 of the Covenant. In particular, the authors refer to the case of *Estrella v. Uruguay*, (8) where the Committee relied, in determining the existence of inhuman treatment at Libertad Prison, in part on "its consideration of

other communications which confirms the existence of a practice of inhuman treatment at Libertad". In *Neptune v. Trinidad and Tobago*, (9) the Committee found circumstances very similar to the present case to be incompatible with article 10, paragraph 1, and called on the State party to improve the general conditions of detention in order to avoid similar violations in the future. The authors underscore their claim of violation of articles 7 and 10, paragraph 1, by reference to international jurisprudence finding inappropriately severe conditions of detention to constitute inhuman treatment. (10)

3.7 Finally, the authors allege a violation of article 14, paragraph 1, in conjunction with article 2, paragraph 3, in that they are being denied the right of access to court to raise the above issues. The authors submit that the right to present a constitutional motion is not effective in the circumstances of the present case, owing to the prohibitive cost of instituting proceedings in the High Court to obtain constitutional redress, the absence of legal aid for constitutional motions and the well-known dearth of local lawyers willing to represent applicants free of charge. The authors cite the case of *Champagnie et al. v. Jamaica* (11) to the effect that in the absence of legal aid, a constitutional motion did not constitute an effective remedy for the indigent author in that case. The authors cite jurisprudence of the European Court of Human Rights (12) for the proposition that effective right of access to a court may require the provision of legal aid for indigent applicants. The author submits this is particularly pertinent in a capital case, and thus argues the lack of legal aid for constitutional motions per se violates the Covenant.

The State party's submissions on the admissibility and merits

4. Notwithstanding the Committee's request to the State party by Note Verbale of 30 November 1999, and the Secretariat's reminders of 18 December 2001, 26 February 2001 and 10 October 2001, the State party has not made any submission on the admissibility and/or the merits of the case.

Issues and proceedings before the Committee

Consideration of admissibility

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 the communication is admissible under the Optional Protocol to the Covenant.

5.2 The Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement for purposes of article 5, paragraph 2 (a), of the Optional Protocol, and that available domestic remedies have been exhausted for purposes of article 5, paragraph 2 (b), of the Optional Protocol. In the absence of any information provided by the State party, the Committee considers that the authors have substantiated their claims sufficiently, for the purposes of admissibility.

5.3 Accordingly, the Committee finds the communication admissible and proceeds to an examination of the substance of those claims in the light of all the information made available to it by the authors, as required by article 5, paragraph 1, of the Optional Protocol. The Committee notes

with concern the lack of any cooperation on the part of the State party, both in respect of the admissibility and the substance of the authors' allegations. It is implicit in rule 91 of the rules of procedure and article 4, paragraph 2, of the Optional Protocol, that a State party to the Covenant should investigate in good faith all the allegations of violations of the Covenant made against it, and is required to submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State. In the circumstances, due weight must be given to the authors' allegations, to the extent that they have been substantiated.

Consideration of the merits

5.4 As to the claim of unreasonable pre-trial delay, the Committee recalls its jurisprudence that "[i]n cases involving serious charges such as homicide or murder, and where the accused is denied bail by the court, the accused must be tried in as expeditious a manner as possible". (13) In the present case, where the factual evidence was straightforward and apparently required little police investigation, the Committee considers that very exceptional reasons must be shown to justify delays of four years and three months, and three years and five months, respectively, until trial. In the absence of any justification advanced by the State party for these delays, the Committee concludes that the author's rights under article 9, paragraph 3, and article 14, paragraph 3 (c), of the Covenant have been violated.

5.5 As to the claim of a delay of four years and three months between conviction and the judgement on appeal, the Committee notes that the authors lodged their application for leave to appeal in November 1994, and that the Court disposed of the appeal some five months later in March 1995. In the absence of any argument by the authors that responsibility for the delay in lodging the appeal could be imputed to the State party, the Committee is unable to find that there has been a violation of article 14, paragraphs 3 (c) and 5, of the Covenant.

5.6 As to the authors' claims that the conditions of detention in each phase of their imprisonment violated articles 7 and 10, paragraph 1, in the absence of any responses by the State party to the allegations concerning the conditions of detention as described by the authors, the Committee must give due consideration to the authors' allegations since they have not been properly refuted. The Committee considers that the authors' conditions of detention as described violate their right to be treated with humanity and with respect for the inherent dignity of the human person, and are therefore contrary to article 10, paragraph 1, of the Covenant. 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 separately to consider the claims arising under article 7 of the Covenant.

5.7 As to the authors' claims under article 14, paragraph 1, in conjunction with article 2, paragraph 3, in that they are being denied the right of access to court to press the above claims, the Committee considers that, in light of its findings above, it is not necessary to decide on this issue.

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 it disclose a violation of articles 9, paragraph 3, 10, paragraph 1, and 14, paragraph 3 (c), of the

Covenant.

7. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the authors with an effective remedy, including adequate compensation. In the light of the long years spent by the authors in deplorable conditions of detention that violate article 10 of the Covenant, the State party should consider release of the authors. The State party should, in any event, improve the conditions of detention in its prisons without delay, in order to bring the authors' conditions of detention into line with article 10 of the Covenant.

8. 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 State party is requested to publish the Committee's Views.

* Initially, the Optional Protocol entered into force for Trinidad and Tobago on 14 February 1981. On 26 May 1998, the Government of Trinidad and Tobago denounced the Optional Protocol to the International Covenant on Civil and Political Rights. On the same day, it re-acceded, including in its instrument of re-accession a reservation "to the effect that the 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 therewith". On 2 November 1999, the Committee decided that this reservation was not valid, as it was not compatible with the object and purpose of the Optional Protocol. On 27 March 2000, the Government of Trinidad and Tobago denounced the Optional Protocol again.

** The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Glèlèlè Ahanhanzo, Mr. Ahmed Tawfik Khalil, Mr. Eckart Klein, Mr. David Kretzmer, Mr. Rajsoomer Lallah, Mr. Rafael Rivas Posada, Mr. Martin Scheinin, Mr. Ivan Shearer, Mr. Hipólito Solari Yrigoyen, Mr. Patrick Vella and Mr. Maxwell Yalden.

*** The text of a partly dissenting individual opinion by Committee member Mr. Hipólito Solari Yrigoyen is appended to this document.

[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.]

Appendix

Individual opinion of Committee member Mr. Hipóólito Solari Yrigoyen (dissenting in part)

In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the authors with an effective remedy, including adequate compensation. In the light of the long years spent by the authors in deplorable conditions of detention that violate article 10 of the Covenant, the State party should release the authors. The State party should, in any event, improve the conditions of detention in its prisons without delay, in order to bring the authors' conditions of detention into line with article 10 of the Covenant.

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Notes

1. Counsel's description of these conditions of confinement on death row is derived from a visit by him to, and interviews with, the authors on 15 July 1996. The description of conditions post-commutation is derived from counsel's visits to, and interviews with, other prisoners at the same prison on the same day.
2. Communications 56/1979, 6/1977 and 27/1978 respectively.
3. [1994] 2 AC 1 (Privy Council).
4. The authors refer to *Pinkney v. Canada* (Communication 27/1978), *Little v. Jamaica* (Communication 283/1998), *Pratt and Morgan v. Jamaica* (Communications 210/1986 and 226/1987), *Kelly v. Jamaica* (Communication 253/1987) and *Neptune v. Trinidad and Tobago* (Communication 523/1992).
5. The authors refer to a general analysis of conditions in Port of Spain described in Vivian Stern, *Deprived of their Liberty* (1990).
6. The author also refers, in terms of the general situation, to a media quotation of 5 March 1995 of the General Secretary of the Prison Officers' Association to the effect that sanitary conditions are "highly deplorable, unacceptable and pose a health hazard". He also stated that limited resources and the spread of serious communicable diseases make a prison officer's job more harrowing.
7. *Valentini de Bazzano v. Uruguay* (Communication 5/1977), *Buffo Carballal v. Uruguay*

(Communication 33/1978), *Sendic Antonaccio v. Uruguay* (Communication 63/1979), *Gomez De Voituret v. Uruguay* (Communication 109/1981), *Wight v. Madagascar* (Communication 115/1982), *Pinto v. Trinidad and Tobago* (Communication 232/1987), *Mukong v. Cameroon* (Communication 458/1991).

8. Communication 27/1980.

9. Communication 532/1992. The conditions described include a 6 foot by 9 foot cell with six to nine fellow prisoners, with three beds, insufficient light, half an hour of exercise every two or three weeks and inedible food.

10. Reference was made to the jurisprudence on article 3 of the European Court of Human Rights, and to the Supreme Court of Zimbabwe in *Conjwayo v. Minister of Justice, Legal and Parliamentary Affairs et al.* (1992) 2 SA 56, Gubay CJ for the Court.

11. Communication 445/1991, declared admissible on 18 March 1993.

12. *Golder v. United Kingdom* [1975] 1 EHRR 524 and *Airey v. Ireland* [1979] 2 EHRR 305. The author also cites the Committee's Views in *Currie v. Jamaica* (Communication 377/1989) to the effect that, where the interests of justice require, legal assistance should be available to a convicted applicant to pursue a constitutional motion in respect of irregularities in a criminal trial.

13. *Barroso v. Panama* (Communication 473/1991, at 8.5).