

HUMAN RIGHTS COMMITTEE

Bickaroo v. Trinidad and Tobago

Communication No. 555/1993

12 October 1995

CCPR/C/55/D/555/1993*

ADMISSIBILITY

Submitted by: Ramcharan Bickaroo

Alleged victim: The author

State party: Trinidad and Tobago

Date of communication: 5 October 1993 (initial submission)

Documentation references: Prior decisions - Special Rapporteur's combined rule 86/rule 91 decision, transmitted to the State party on 5 October 1993 (not issued in document form)

Date of present decision: 12 October 1995

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 Ramcharan Bickaroo, a Trinidadian citizen who, at the time of submission of his complaint, was awaiting execution at the State Prison in Port-of-Spain, Trinidad and Tobago. He claims to be a victim of violations by Trinidad of articles 7 and 10, paragraph 1, of the International Covenant on Civil and Political Rights. On 31 December 1993, his death sentence was commuted to life imprisonment by the President of Trinidad and Tobago, in accordance with the Guidelines laid down in the judgment of the Judicial Committee of the Privy Council of 2 November 1993 in the case of Pratt and Morgan v. Attorney General of Jamaica.

The facts as submitted by the author

2.1 The author was arrested in 1975 and charged with murder. No information is provided about

the circumstances or facts of the crime with which he was charged. He was tried for murder in the Port-of-Spain Assizes Court, found guilty as charged and sentenced to death on 5 April 1978. His appeal was dismissed by the Court of Appeal of Trinidad and Tobago on 21 June 1979.

2.2 On an unspecified date after the dismissal of the appeal, the author was informed by his counsel that there were no grounds on which a further appeal to the Judicial Committee of the Privy Council could be argued with any prospect of success. On 30 September 1993 ^{1/}, a warrant was issued for the execution of the author on 5 October 1993. A constitutional motion was filed on his behalf in the High Court of Trinidad and Tobago, and a stay of execution was granted during the night of 4 to 5 October 1993.

2.3 The author argues that he has exhausted domestic remedies within the meaning of the Optional Protocol, and that the fact that a constitutional motion was filed on his behalf in the High Court of Trinidad and Tobago should not preclude his recourse to the Human Rights Committee. He contends that because of the very nature of his situation, an individual on death row whose warrant of execution has been read will necessarily invoke all available procedures, possibly until the scheduled time of execution.

2.4 Counsel adds that to require that all last minute procedures be exhausted before allowing a recourse to the Human Rights Committee would imply that the applicant either wait until a moment dangerously close in time to his execution, or that he refrain from invoking all potentially available domestic remedies. It is submitted that neither option is within the letter or the spirit of the Optional Protocol.

The complaint

3.1 The author, who was confined to the death row section of the State Prison from the time of his conviction in April 1978 to 31 December 1993, i.e. close to 16 years, alleges a violation of article 7 of the Covenant, on the ground that the length of time spent on death row amounts to cruel, inhuman and degrading treatment. He further argues that the period of time spent on death row runs counter to his right, under article 10, paragraph 1, to be treated with humanity and respect for the inherent dignity of his person.

3.2 It is argued that the execution of the sentence after so many years on death row would amount to a violation of the above-mentioned provisions. In support of his argument, counsel refers to recent jurisprudence, *inter alia* a judgment of the Supreme Court of Zimbabwe ^{2/}, the judgment of the European court of Human Rights in the case of Soering ^{3/}, and the arguments of counsel for the applicants in the case of Pratt and Morgan v. Attorney General of Jamaica.

Issues and proceedings before the Committee

4.1 Before considering any claims contained in a communication, the Human Rights Committee must decide, in accordance with rule 87 of its rules of procedure, whether or not it is admissible under the Optional Protocol to the Covenant.

4.2 The communication was forwarded to the State party under rule 91 of the Committee's rules

of procedure on 5 October 1993, requesting it to provide information and observations on the admissibility of the author's complaints. No submission has been received from the State party, in spite of a reminder addressed to it on 6 December 1994. Under cover of a Note dated 18 February 1994, the State merely forwarded a list with the names of individuals whose death sentences had been commuted following the judgment of the Judicial Committee of the Privy Council in the case of Pratt and Morgan; the author's name was included in this list.

4.3 While welcoming the information contained in the State party's note verbale of 18 February 1994, the Committee notes that the State party has failed to provide information and observations in respect of the admissibility of any of the author's claims under the Covenant that have not been mooted by the commutation of the sentence. In the circumstances, due weight must be given to the author's allegations, to the extent that they have been sufficiently substantiated.

4.4 In respect of the author's claims under articles 7 and 10 (1), the Committee observes that the State party itself commuted the author's death sentence so as to comply with the Guidelines laid down by the Judicial Committee of the Privy Council in the case of Pratt and Morgan v. Attorney-General. The State party has not informed the Committee of any further effective remedy available to the author in respect of the above claims; the State party's silence in this respect must be deemed to constitute an admission that no such remedies exist.

4.5 The Committee considers that the author has sufficiently substantiated, for purposes of admissibility, his claim under the above-mentioned provisions of the Covenant. It should, accordingly, be considered on its merits.

5. The Human Rights Committee therefore decides:

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

(b) that the State party shall be requested, under article 4(2) of the Optional Protocol, to submit to the Committee, within six months of the date of transmittal to it of the present 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(3) of the Committee's rules of procedure, to the author and his counsel, with the request that any comments that they may wish to submit thereon should reach the Human Rights Committee in care of the Centre for Human Rights, United Nations Office at Geneva, within six weeks of the date of the transmittal;

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

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

1/ The date does not appear clearly in the communication; it appears, however, that the warrant was issued on the same day as another warrant for the execution of Robinson LaVende (communication No. 554/1993).

2/ Supreme Court of Zimbabwe, Judgment No. S.C. 73/93 of June 1993.

3/ Soering v. United Kingdom, 11 EHHR 439 (1989).