

HUMAN RIGHTS COMMITTEE

Bickaroo v. Trinidad and Tobago

Communication No. 555/1993^{2, 3}

29 October 1997

CCPR/C/61/D/555/1993¹

VIEWS

Submitted by: Ramcharan Bickaroo [represented by Interights, London]

Victim: The author

State party: Trinidad and Tobago

Date of communication: 5 October 1993 (initial submission)

Date of decision on admissibility: 12 October 1995

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

Meeting on 29 October 1997,

Having concluded its consideration of communication No. 555/1993 submitted to the Human Rights Committee on behalf of Mr. Ramcharan Bickaroo 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, his counsel and the State party,

Adopts the following:

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

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**. He is represented by Interights, a London-based organization.

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 1993⁴, 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 Zimbabwe⁵, the judgment of the European Court of Human Rights in the case of Soering⁶, and the arguments of counsel for the applicants in the case of **Pratt and Morgan v. Attorney-General of Jamaica**.

Committee's admissibility decision

4.1 During its 55th session, the Committee considered the admissibility of the communication. It noted that no submission under rule 91 had been received from the State party, in spite of a reminder addressed to it on 6 December 1994. The State party had merely forwarded a list with the names of individuals whose death sentences were commuted following the judgment of the Judicial Committee of the Privy Council in the case of **Pratt and Morgan**; the author's name had been included in that list. While welcoming this information, the Committee noted that the author's claims under the Covenant had not been made moot by the commutation of the death sentence. As the State party had failed to provide information under rule 91, due weight had to be given to the author's allegations, to the extent that they had been sufficiently substantiated.

4.2 As to the claims under articles 7 and 10, paragraph 1, the Committee observed that the State party had itself commuted the author's death sentence, so as to comply with the guidelines formulated by the Judicial Committee of the Privy Council in the case of **Pratt and Morgan v. Attorney-General**. The State party had not informed the Committee of the existence of any further remedies in respect of these claims; indeed, its silence in this respect constituted an admission that no such remedies existed.

4.3 On 12 October 1995, the Committee declared the communication admissible in so far as it appeared to raise issues under articles 7 and 10, paragraph 1, of the Covenant.

Examination of the merits

5.1 The State party's deadline for the submission of information and observations under article 4, paragraph 2, of the Optional Protocol expired on 16 May 1996. No submission was received from the State party, in spite of a reminder addressed to it on 11 March 1997. The Committee regrets the lack of cooperation on the part of the State party. It has examined the present communication in the light of all the information made available by the parties, as provided for in article 5, paragraph 1, of the Optional Protocol.

5.2 The Committee must determine whether the length of the author's detention on death row - between April 1978 and December 1993 - amounts to a violation of articles 7 and 10 of the Covenant. Counsel alleges a violation of these provisions merely by reference to the length of detention the author was confined to death row at the State Prison in Port-of-Spain. The length of detention on death row in this case is unprecedented and a matter of serious concern. However, it remains the jurisprudence of the Committee that the length of detention on death row does not, **per se**, amount to a violation of articles 7 or 10, paragraph 1. The Committee's detailed Views on this issue were set out in the Views on communication No. 588/1994 (**Errol Johnson v. Jamaica**)⁷. Because of the importance of the issue, the

Committee deems it appropriate to reiterate its position.

5.3 In assessing whether the mere length of detention on death row may constitute a violation of articles 7 and 10, the following factors must be considered:

(a) The Covenant does not prohibit the death penalty, though it subjects its use to severe restrictions. As detention on death row is a necessary consequence of imposing the death penalty, no matter how cruel, degrading and inhuman it may appear to be, it cannot, **of itself**, be regarded as a violation of articles 7 and 10 of the Covenant.

(b) While the Covenant does not prohibit the death penalty, the Committee has taken the view, which has been reflected in the Second Optional Protocol to the Covenant, that article 6 "refers generally to abolition in terms which strongly suggest that abolition is desirable". Reducing recourse to the death penalty may therefore be seen as one of the objects and purposes of the Covenant.

(c) The provisions of the Covenant must be interpreted in the light of the Covenant's objects and purposes (article 31 of the Vienna Convention on the Law of Treaties). As one of these objects and purposes is to promote reduction in the use of the death penalty, an interpretation of a provision in the Covenant that may encourage a State party that retains the death penalty to make use of that penalty should, where possible, be avoided.

5.4 In light of these factors, we must examine the implications of holding the length of detention on death row, per se, to be in violation of articles 7 and 10. The first, and most serious, implication is that if a State party executes a condemned prisoner after he has spent a certain period of time on death row, it will not be in violation of its obligations under the Covenant, whereas if it refrains from doing so, it will violate the Covenant. An interpretation of the Covenant leading to this result cannot be consistent with the Covenant's object and purpose. The above implication cannot be avoided by refraining from determining a definite period of detention on death row, after which there will be a presumption that detention on death row constitutes cruel and inhuman punishment. Setting a cut-off date certainly exacerbates the problem and gives the State party a clear deadline for executing a person if it is to avoid violating its obligations under the Covenant. However, this implication is not a function of fixing the maximum permissible period of detention on death row, but of making the time factor, **per se**, the determining one. If the maximum acceptable period is left open, States parties which seek to avoid overstepping the deadline will be tempted to look to the decisions of the Committee in previous cases so as to determine what length of detention on death row the Committee has found permissible in the past.

5.5 The second implication of making the time factor **per se** the determining one, i.e. the factor that turns detention on death row into a violation of the Covenant, is that it conveys a message to States parties retaining the death penalty that they should carry out a capital sentence as expeditiously as possible after it was imposed. This is not a message the Committee would wish to convey to States parties. Life on death row, harsh as it may be, is preferable to death. Furthermore, experience shows that delays in carrying out the death penalty can be the necessary consequence of several factors, many of which may be

attributable to the State party. Sometimes a moratorium is placed on executions while the whole question of the death penalty is under review. At other times the executive branch of government delays executions even though it is not feasible politically to abolish the death penalty. The Committee would wish to avoid adopting a line of jurisprudence which weakens the influence of factors that may very well lessen the number of prisoners actually executed. It should be stressed that by adopting the approach that prolonged detention on death row cannot, **per se**, be regarded as cruel and inhuman treatment or punishment under the Covenant, the Committee does not wish to convey the impression that keeping condemned prisoners on death row for many years is an acceptable way of treating them. It is not. However, the cruelty of the death row phenomenon is first and foremost a function of the permissibility of capital punishment under the Covenant. This situation has unfortunate consequences.

5.6 To accept that prolonged detention on death row does not, **per se**, constitute a violation of articles 7 and 10, does not imply that other circumstances connected with detention on death row may not turn that detention into cruel, inhuman or degrading treatment or punishment. The Committee's jurisprudence has been that where further compelling circumstances relating to the detention are substantiated, that detention may constitute a violation of articles 7 and/or 10, paragraph 1, of the Covenant.

5.7 In this case, counsel has not alleged the existence of circumstances, over and above the mere length of detention, which would have turned the author's detention on death row at the State Prison into a violation of articles 7 and 10, paragraph 1. As the Committee must, under article 5, paragraph 1, of the Optional Protocol, consider the communication in the light of all the information of the parties, the Committee cannot, in the absence of information on additional factors, conclude that there has been a violation of these provisions.

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 the Committee do not reveal a violation by Trinidad and Tobago of any of the provisions of the Covenant.

7. The Committee welcomes the commutation of Mr. Bickaroo's death sentence by the State party's authorities in December of 1993.

*/ Made public by decision of the Human Rights Committee.

1/ The following members of the Committee participated in the examination of the present communication: Mr. Nisuke Ando, Mr. Prafullachandra N. Bhagwati, Mr. Thomas Buergenthal, Ms. Christine Chanet, Lord Colville, Mr. Omran El Shafei, Ms. Elizabeth Evatt, Ms. Pilar Gaitan de Pombo, Mr. Eckart Klein, Mr. David Kretzmer, Ms. Cecilia Medina Quiroga, Mr. Fausto Pocar, Mr. Julio Prado Vallejo, Mr. Martin Scheinin, Mr. Maxwell Yalden and Mr. Abdallah Zakhia.

2/ Pursuant to rule 85 of the rules of procedure, Committee member Rajsoomer Lallah did not participate in the adoption of the Views.

3/ The text of an individual opinion signed by five Committee members is appended to the present document.

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

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

6/ **Soering v. United Kingdom**, 11 EHRR 439 (1989).

7/ Views on communication No. 588/1994 (**Errol Johnson v. Jamaica**), adopted 22 March 1996, paragraphs 8.1 to 8.6.

[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 by Committee member Fausto Pocar, approved by Mr. Prafullachandra N. Bhagwati, Ms. Christine Chanet, Ms. Pilar Gaitan de Pombo, Mr. Julio Prado Vallejo and Mr. Maxwell Yalden regarding the cases of LaVende and Bickaroo

The Committee reiterates in the present cases the views that prolonged detention on death row cannot per se constitute a violation of article 7 of the Covenant. This view reflects a lack of flexibility that would not allow the Committee to examine the circumstances of each case, in order to determine whether, in a given case, prolonged detention on death row constitutes cruel, inhuman or degrading treatment within the meaning of the above-mentioned provision. This approach leads the Committee to conclude, in the present cases, that detention on death row for almost sixteen/eighteen years after the exhaustion of local remedies does not allow a finding of violation of article 7. We cannot agree with this conclusion. Keeping a person detained on death row for so many years, after exhaustion of domestic remedies, and in the absence of any further explanation of the State party as to the reasons thereof, constitutes in itself cruel and inhuman treatment. It should have been for the State party to explain the reasons requiring or justifying such prolonged detention on death row; however, no justification was offered by the State party in the present cases.

Even assuming, as the majority of the Committee does, that prolonged detention on death row cannot per se constitute a violation of article 7 of the Covenant, the circumstances of the present communication would in any case reveal a violation of the said provision of the

Covenant. The facts of the communication, as submitted by the author and uncontested by the State party, show that "on 30 September 1993 a warrant for the author's execution on 5 October 1993 was read to him... A stay of execution was granted during the night of 4 to 5 October 1993". In our view, reading a warrant of execution to a detainee remaining confined to death row for such a long time, and attempting to proceed to his execution after so many years - at a time when the State party had raised in the detainee a legitimate expectation that the execution would never be carried out - constitute in themselves cruel and inhuman treatment within the meaning of article 7 of the Covenant, to which the author was subjected. Moreover, they constitute such further "compelling circumstances" that should have led the Committee, even if it wanted to reaffirm its previous jurisprudence, to find that prolonged detention on death row revealed, in the present cases, a violation of article 7 of the Covenant.

F. Pocar [signed]

P. N. Bhagwati [signed]

Ch. Chanet [signed]

J. Prado Vallejo [signed]

M. Yalden [signed]