

## HUMAN RIGHTS COMMITTEE

### Henry v. Trinidad and Tobago

Communication N° 752/1997

3 November 1998

CCPR/C/64/D/752/1997\*

### IEWS

*Submitted by: Allan Henry (represented by Mr. S. Lehrfreund of Simons, Muirhead & Burton, a law firm in London, England)*

*Alleged victim: The author*

*State party: Trinidad and Tobago*

*Date of communication: 9 September 1996*

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

Meeting on 3 November 1998,

Having concluded its consideration of communication No. 752/1997 submitted to the Human Rights Committee by Allan Henry, 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**

1.1 The author of the communication is Mr. Allan Henry, a Guyanese citizen serving a life sentence at the State Prison in Port-of-Spain, Trinidad. He claims to be a victim of violations by Trinidad & Tobago of articles 7 and 10, paragraph 1, as well as article 14, paragraph 1, of the Covenant. He is represented by Mr. Saul Lehrfreund of Simons, Muirhead & Burton,

a law firm in London, England.

1.2 On 8 July 1983, the author was sentenced to death for the murder of an English sailor. He was detained on death row until the commutation of his sentence to life imprisonment on 4 January 1994. <sup>1</sup> An earlier communication by Mr. Henry to the Human Rights Committee, claiming violations of articles 10 and 14 was declared inadmissible by the Committee for non-substantiation with regard to the claim under article 14, and for non-exhaustion of domestic remedies with regard to the claims under article 10. <sup>2</sup> In the present communication, the author requests that the Committee's previous decision with regard to the admissibility of his claims under article 10 be reviewed in accordance with rule 92, paragraph 2, of the Committee's rules of procedure.

#### Facts as submitted by the author

2.1 The author states that he was beaten on the head by prison officers on 3 May 1988, resulting in a head wound which required several stitches. The author states that he submitted a complaint to the Ombudsman, on an unspecified date<sup>3</sup>, and that on 16 July 1993 the Office of the Ombudsman replied that it had investigated his complaints and that the investigation revealed that the matters complained of were already receiving the attention of the Prison authorities.

2.2 The author further submits that the medical treatment in prison is wholly inadequate and deficient. According to the author, due to the lighting in his cell on death row, his eyes have become extremely sensitive to light and he has to wear dark glasses. He states that he saw an eye specialist on 10 March 1994, but that he still has not received any new eye glasses, although his eye sight has deteriorated.

2.3 The author states that during his detention on death row, he was confined in a 9 x 6' cell for 23 hours a day. A light burned in his cell 24 hours a day and no natural lighting existed. There was no integral sanitation in the cell. There was a ventilation hole, measuring 8" x 8", but no window. The exercise periods were insufficient and were not longer than one hour in a small exercise yard with handcuffs on.

2.4 According to the author, the conditions of his detention have not improved since the commutation of his death sentence. He shares a 9 x 6' cell with one other life timer and between eight and fourteen convicted prisoners, some of whom suffer from diseases or are drug addicts. The cells are filthy and infested with roaches, flies and rats. Since there is one iron bed with one mattress, the author and his cell mates are forced to sleep on the floor on pieces of a cardboard box. They are locked in the cell from 3:00 pm to 7:00 am, when breakfast is served, and then again from 8:00 am to 11:00 am. No sanitation is available in the cell other than one slop bucket to be shared by all cell inmates. The toilets are ten feet away from the kitchen, and the kitchen is infested with rats and insects. The author moreover states that no provisions are made for his dietary needs as a Muslim. No medication is available for his haemorrhoids.

2.5 Further, the author states that in June 1987, he requested legal aid for the filing of a

constitutional motion. A copy of the constitutional motion which was submitted by the author with his previous communication No. 302/1988, shows that the motion was based on the alleged unconstitutionality of the author's execution (as cruel punishment), as well as on the length of his stay on death row and the conditions of his detention. The author obtained legal assistance from a local humanitarian organization, which filed a constitutional motion on his behalf. However, the motion was abandoned when his representatives were informed that no financial assistance was made available by the judicial authorities. The author states that he made numerous attempts to obtain legal aid for a constitutional motion, to no avail.

### The complaint

3.1 The author claims that the beatings of 3 May 1988, the lack of adequate medical treatment and the conditions of his detention both before and after the commutation of his death sentence constitute a violation of articles 7 and 10 of the Covenant.

3.2 The author moreover claims that he is a victim of a violation of article 14, paragraph 1, in conjunction with article 2, paragraph 3, of the Covenant, since he has not been granted legal aid to appeal to the Constitutional Court and he is thus denied access to court.

### State party's observations and counsel's comments

4.1 In its response, dated 27 November 1997, the State party denies that it is unwilling to grant legal aid for constitutional motions, and submits that legal aid is made available for the purpose. According to the State party, the author only applied for legal aid once, on 25 June 1987. His application was rejected by the Legal Aid Authority on 31 December 1987, after due consideration and in accordance with the Legal Aid and Advice Act. Since that date, the author has not formally applied for legal aid, but merely written to various persons and bodies in an attempt to have the rejection of legal aid reversed. The State party submits that the author can apply for legal aid at any time. It explains that the granting of legal aid is not automatic.<sup>4</sup>

4.2 In light of the above, the State party argues that the communication is inadmissible for failure to exhaust domestic remedies.

4.3 In order to expedite the consideration of the communication, the State party also addresses the merits of the author's complaint. With regard to the alleged beatings on 3 May 1988, the State party submits that the prison records show that the author was involved in an altercation with a prison officer. In self-defence, the officer struck the author with his regulation baton, which resulted in the author receiving a wound to his head. The author was charged with assault. Following an investigation by the prison authorities, the charge against the author was dismissed on 9 May 1988 because of insufficient evidence. The State party argues, however, that this does not reflect upon the veracity of the officer's evidence and maintains that the author's aggression necessitated the use of force and that no more than necessary force was used. The State party adds that the author's complaint against the officer was fully investigated. The State party further denies that the author has been singled out for exceptionally harsh treatment.

4.4 With regard to the author's complaint about the lack of medical treatment, the State party submits that the allegation is unfounded. According to the prison records the author first sought to have his spectacles renewed in 1991. This was done. Following a visit to an eye specialist the author was provided with a new pair of spectacles on 13 October 1995. In this context, the State party explains that prison regulations require that a death row prisoner be subject to constant observation, and that for this reason the light in the cell is on 24 hours a day. The State party further explains that all medical complaints made by inmates are dealt with as quickly as possible. According to the State party, records reveal that the author was seen by the Prison Medical Officer on numerous occasions and was satisfactorily treated.

4.5 With regard to the prison conditions, the State party denies that they amount to a violation of article 7 of the Covenant. It accepts, however, that article 10 is relevant in this context. According to the State party, the "issue before the Committee is whether the Applicant during his incarceration in the State Prison has been treated with humanity and with respect for the inherent dignity of the human person. It is respectfully submitted that in determining this question the Committee should treat with caution the allegations put forward by or on behalf of the Applicant which are largely unsubstantiated and grossly exaggerated."

4.6 The State party submits that since the commutation of his death sentence, the author shares his cell with no more than five other prisoners at the time. Every cell is constructed to allow for natural light. Additionally, each cell is fitted with sufficient bedding to avoid any inmate sleeping on cardboard on the floor. According to the State party, it is inevitable in a tropical climate that cockroaches will be found in all habitations; it submits that this is a problem which is not exclusive to the prison environment. The State party states that every effort is made to ensure that such pests are controlled and that health standards are maintained.

4.7 The State party explains that the slop buckets are emptied at least three times a day, at 6:00 am, 12:00 noon and 6:00 pm. The State party further submits that since the author's sentence has been commuted he enjoys at least four hours a day in the open air. Reading materials such as magazines and newspapers are available to the prisoners on a regular basis, and opportunity is provided to undertake correspondence courses.

4.8 The State party rejects the author's allegation that no provision is made for his special dietary needs as a Muslim. According to the State party, in the preparation of the meals consideration is given to inmates of the various religious groups. Strict standards of hygiene are observed. In this connection, the State party explains that personnel from the Ministry of Health visit the prisons regularly to ensure that health standards are observed.

4.9 In the light of the above, the State party denies that the author has been subjected to treatment which would violate either article 7 or article 10 of the Covenant.

4.10 The State party contests the author's allegation that he has been denied access to Court, because he has not been given legal aid for a constitutional motion. The State party points out that in principle legal aid is available for constitutional motions. Section 23 of the Legal

Aid and Advice Act allows the Legal Aid Authority to grant aid if "the Authority is of the opinion that the Applicant has reasonable grounds for taking the proceedings". The author made his application for legal aid on 25 June 1987 and on 31 December 1987, legal aid was refused. According to the State party, no subsequent application for legal aid for a constitutional motion has been made by the author. Due to the legal privilege between the author and the Legal Aid Authority, the State party cannot ascertain the reasons for the refusal of legal aid. The State party submits that the author is free to apply again for legal aid if he so wishes. It considers without merit, however, his claim that he is being denied access to the courts on the basis of a legal aid application rejected in 1987.

4.11 It is the submission of the State party that all States which administer a legal aid scheme from public funds must have the right to reject applications which are frivolous, vexatious or without merit. There is no right of unlimited access to the courts at public expense in such cases. According to the State party, only if the author is able to argue that the refusal of legal aid was founded upon irregularity, irrationality or procedural impropriety should he be able to allege that he has been denied access to the courts.

5.1 In his comments on the State party's submission, dated 3 April 1998, counsel rejects the State party's argument that the communication is inadmissible for non-exhaustion of domestic remedies. He submits that the author requested legal aid for a constitutional motion, that this was refused, and that he has thus done everything in his power to exhaust domestic remedies.

5.2 With regard to the incident of 3 May 1988, counsel submits that the general denials of the State party are insufficient to satisfy the requirements of article 4(2) of the Optional Protocol. He argues that the State party has a duty to investigate in good faith all allegations of violations of the Covenant and inform the Committee accordingly. In this context, he notes that the State party relies on prison records which have not been made available to the Committee. He also notes that the State party has not provided any substantiation for its statement that the author's complaint against the police officer was fully investigated. Counsel further argues that the fact that the author was not charged with assault contradicts the State party's assertion that the officer was acting in self-defence.

5.3 Also with respect to the medical treatment, counsel notes that the State party has not provided copies of the medical records which allegedly show that the author has received medical treatment.

5.4 Counsel notes that the State party's reply in respect to the prison conditions only relates to the conditions since the commutation of the author's death sentence and that it has not addressed his complaint about the conditions during his detention on death row.

5.5 Counsel maintains that the conditions of the author's detention both before and after commutation constitute a violation of articles 7 and 10 of the Covenant.

Issues and proceedings before the Committee

6.1 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.

6.2 The State party has argued that the communication is inadmissible for non-exhaustion, because the author has not filed a constitutional motion. Counsel has argued that the author cannot file a constitutional motion, because no legal aid has been made available to him. In the circumstances, the Committee finds that the constitutional motion is not a remedy which is available to the author, within the meaning of article 5, paragraph 2(b), of the Optional Protocol.

6.3 The Committee has ascertained, as required under article 5, paragraph 2(a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

6.4 The Committee finds therefore that the communication is admissible. The State party has provided information on the merits, in order to expedite the consideration of the communication. The Committee thus proceeds without further delay to the examination of the merits of the communication.

7.1 With regard to the incident on 3 May 1988, during which the author was beaten on the head, the Committee notes that the State party has provided information that the use of force by the prison officer was necessary in self-defence. The author has challenged this information, and referred to the fact that he had not been charged with any offence in this connection. The Committee notes that from the information made available by the parties, it appears that the reason given by the State party to explain the force used over Mr. Henry, namely self-defence, was examined in the procedure before the Superintendent of Prisons in order to determine whether the author had committed an assault against the prison officer, and subsequently rejected, since the charge against the author was dismissed. In light of the above and considering that the State party has failed to inform the Committee about the outcome of the investigation of the author's complaint against the prison officer, the Committee finds that the State party has failed to show that the use of force on the author was necessary. Consequently, this constitutes a violation of article 7 of the Covenant.

7.2 With regard to the author's complaint that he does not receive proper medical treatment and in particular, that he has not been given new eye-glasses since 1994, the Committee notes that the State party has stated that according to the medical records the author received new spectacles in October 1995. The Committee is of the opinion that the facts before it do not show that the Covenant has been violated in this respect.

7.3 The State party has failed to provide any information with regard to the conditions of the author's detention on death row. In the circumstances due weight must be given to the author's allegations, if substantiated. The Committee finds that the circumstances of detention as described by the author amount to a violation of article 10, paragraph 1, of the Covenant.

7.4 The State party has contested the information provided by the author concerning the circumstances of his detention since the commutation of his death sentence. The Committee notes, however, that the State party admits that the author is being kept in a 9 x 6' cell together with five other inmates; nor has the State party challenged that the prisoners share a single slop pail. The Committee finds that such overcrowding is not in compliance with the requirement that prisoners be treated with humanity and with respect for the inherent dignity of the human person and constitutes a violation of article 10, paragraph 1.

7.5 Counsel has claimed that the absence of legal aid for the purpose of filing a constitutional motion in itself constitutes a violation of the Covenant. The State party has challenged this claim saying that legal aid is in principle available for constitutional motions, but that the granting of legal aid is not automatic but subject to conditions. The Committee has held on previous occasions that the determination of rights in the hearing of constitutional motions must conform with the requirements of a fair hearing in accordance with article 14, paragraph 1, and that legal assistance must be provided free of charge where a convicted person seeking constitutional review of irregularities in a criminal trial has insufficient means to meet the costs of legal assistance in order to pursue his constitutional remedy and where the interest of justice so requires.<sup>5</sup>

7.6 In this particular case, the issue which the author wished to bring in the constitutional motion was the question of whether his execution, the conditions of his detention or the length of his stay on death row amounted to cruel punishment. The Committee considers that, although article 14, paragraph 1, does not expressly require States parties to provide legal aid outside the context of the criminal trial, it does create an obligation for States to ensure to all persons equal access to courts and tribunals. The Committee considers that in the specific circumstances of the author's case, taking into account that he was in detention on death row, that he had no possibility to present a constitutional motion in person, and that the subject of the constitutional motion was the constitutionality of his execution, that is, directly affected his right to life, the State party should have taken measures to allow the author access to court, for instance through the provision of legal aid. The State party's failure to do so, was therefore in violation of article 14, paragraph 1.

8. 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 violations of articles 7, 10, paragraph 1 and 14, paragraph 1, of the Covenant.

9. Under article 2, paragraph 3(a), of the Covenant, the State party is under the obligation to provide Mr. Allan Henry with an effective remedy, including compensation. The State party is under an obligation to take measures to prevent similar violations in the future.

10. Bearing in mind that, by becoming a State party to the Optional Protocol, Trinidad and Tobago have recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and 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 ninety days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the Committee's Views.

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\*/ The following members of the Committee participated in the examination of the present communication: Mr. Nisuke Ando, Mr. Prafullachandra N. Bhagwati, Mr. Th. Buergenthal, Lord Colville, Mr. Omran El Shafei, Ms. Elizabeth Evatt, Mr. Eckart Klein, Mr. David Kretzmer, Ms. Cecilia Medina Quiroga, Mr. Fausto Pocar, Mr. Martin Scheinin, Mr. Roman Wieruszewski, Mr. Maxwell Yalden and Mr. Abdallah Zakhia.

1/ The author's death sentence was commuted following the judgement of the Judicial Committee of the Privy Council in Pratt & Morgan v. Jamaica of 3 November 1993.

2/ Communication No. 302/1988, declared inadmissible on 31 October 1990.

3/ But apparently after the Committee's decision of 31 October 1990 with regard to his earlier communication No. 302/1988.

4/ See below, paras 4.10 and 4.11.

5/ See inter alia the Committee's Views in respect of communications Nos. 377/1989 (Anthony Currie v. Jamaica), adopted on 29 March 1994, and 705/1996 (DesomdTaylor v. Jamaica), adopted on 2 April 1998.

[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.]