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HUMAN RIGHTS COMMITTEE
Seventy-second session
9-27 July 2001

VIEWS

Communication No. 818/1998

Submitted by:	Mr. Sandy Sextus (represented by counsel, Mr. Saul Lehrfreund)
Alleged victim:	The author
State party:	Trinidad and Tobago
Date of communication:	23 April 1997 (initial submission)
Prior decisions:	Special Rapporteur's rule 91 decision, transmitted to the State party on 3 June 1998 (not issued in document form)
Date of adoption of Views:	16 July 2001

On 16 July 2001 the Human Rights Committee adopted its Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 818/1998. The text of the Views is appended to the present document.

[ANNEX]

* Made public by decision of the Human Rights Committee.

ANNEX

VIEWS OF THE HUMAN RIGHTS COMMITTEE UNDER ARTICLE 5, PARAGRAPH 4, OF THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Seventy-second session

concerning

Communication No. 818/1998**

Submitted by:	Mr. Sandy Sextus (represented by counsel, Mr. Saul Lehrfreund)
Alleged victim:	The author
State party:	Trinidad and Tobago
Date of communication:	23 April 1997 (initial submission)

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

Meeting on 16 July 2001,

Having concluded its consideration of communication No. 818/1998 submitted to the Human Rights Committee by Mr. Sandy Sextus 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, dated 23 April 1997, is Mr Sandy Sextus, a national of Trinidad and Tobago, presently an inmate of State Prison, Trinidad. He claims to be a victim of

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

violations of 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. He is represented by counsel.

The facts as presented by the author

2.1 On 21 September 1988, the author was arrested on suspicion of murdering his mother-in-law on the same day. Until his trial in July 1990, the author was detained on pre-trial remand at Golden Grove Prison, Arouca, in a cell measuring 9 feet by 6 feet which he shared with 7 to 11 other inmates. He was not provided with a bed, and forced to sleep on a concrete floor or on old cardboard and newspapers.

2.2 After a period of over 22 months, the author was brought to trial on 23 July 1990 in the High Court of Justice. On 25 July 1990, the author was convicted by unanimous jury verdict and sentenced to death for the murder charged. From this point (until commutation of his sentence), the author was confined in Port-of-Spain State Prison (Frederick Street) in a solitary cell measuring 9 feet by 6 feet, containing an iron bed, mattress, bench and table.[1] In the absence of integral sanitation, a plastic pail was provided as toilet. A small ventilation hole measuring 8 inches by 8 inches, providing inadequate ventilation, was the only opening. In the absence of any natural light, the only light was provided by a fluorescent strip light illuminated 24 hours a day (located above the door outside the cell). Due to his arthritis, the author never left his cell save to collect food and empty the toilet pail. Due to stomach problems, the author was placed on a vegetable diet, and when these were not provided the author went without food. The author did not receive a response from the Ombudsman on a written complaint on this latter matter.

2.3 After a period of over 4 years and 7 months, on 14 March 1995, the Court of Appeal refused the author's application for leave to appeal.[2] On 10 October 1996, the Judicial Committee of the Privy Council in London rejected the author's application for special leave to appeal against conviction and sentence. In January 1997, the author's death sentence was commuted to 75 years' imprisonment.

2.4 From that point, the author has 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, which overcrowding causes violent confrontations between prisoners. One single bed is provided for the cell and therefore the author sleeps on the floor. One plastic bucket is provided as slop pail and is emptied once a day, such that it sometimes overflows. Inadequate ventilation consists of a 2 foot by 2 foot barred window. The prisoner is locked in his 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 contention is repeated that the provision of food does not meet the author's nutritional needs.

The Complaint

3.1 The author's complaint centres on alleged excessive delays in the judicial process in his case, and the conditions of detention suffered by him at various stages in that process.

3.2 As to the allegation of delay, the author contends that his rights under articles 9, paragraph 3, and 14, paragraph 3 (c), were violated in that there was a 22-month delay in bringing his case to trial. That was the period from his arrest on 21 September 1988, being the day the offence for which he was convicted occurred, until the commencement of his trial on 23 July 1990. The author contends little investigation was performed by the police in his case.

3.3 The author cites the Committee's Views in Celiberti de Casariego v. Uruguay, Millan Sequeira v. Uruguay and Pinkney v. Canada,[3] where comparable periods of delay were found to be in violation of the Covenant. Relying on Pratt Morgan v. Attorney-General of Jamaica,[4] the author argues 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 author contends that the delay was aggravated by the fact that there was little investigation that had to be performed by the police, with one eyewitness providing direct testimony and three others providing circumstantial evidence. The only forensic evidence adduced at trial was a post-mortem examination report and certificate of blood sample analysis.

3.4 The author also alleges violations of articles 14, paragraphs 1, 3 (c) and 5, in the unreasonably protracted delay of over 4 years and 7 months which elapsed before the Court of Appeal heard and dismissed the author's appeal against conviction. The author cites a variety of cases in which the Committee found comparable delays (as well as shorter ones) to breach the Covenant.[5] The author states that a variety of approaches were made to the Registrar of the Court of Appeal, the Attorney-General and the Ministry of National Security and the Ombudsman. He states that by the time the appeal was heard, he had still not received the copies of depositions, notes of evidence and the trial judge's summing up he had requested. The author submits that in assessing the reasonableness of the delay it is relevant that he was under sentence of death, and detained throughout in unacceptable conditions.

3.5 The second portion of the complaint relates to the various conditions of detention described above which the author experienced pre-trial, 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.[6] The author claims that after his commutation, he remains 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.[7]

3.6 Relying on the Committee's General Comments 7 and 9 on articles 7 and 10,[8] respectively, and on a series of communications where conditions of detention were found to violate the Covenant,[9] the author argues that the conditions suffered by the author 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. In particular, the author refers to the case of Estrella v. Uruguay,[10] 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,[11] the Committee found circumstances very similar to the present case 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 author underscores his claim of violation of articles 7 and 10, paragraph 1, by reference to a variety of international jurisprudence finding inappropriately severe conditions of detention to constitute inhuman treatment.[12]

3.7 Finally, the author alleges a violation of article 14, paragraph 1, in conjunction with article 2, paragraph 3, in that he is being denied the right of access to court. The author submits 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 author cites the case of Champagnie et al. v. Jamaica[13] 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 author cites jurisprudence of the European Court of Human Rights[14] 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 observations on the admissibility and merits of the communication

4.1 By submission dated 6 September 1999, the State party responded contesting the admissibility and merits of the communication. As to the allegations of pre-trial delay and delay in hearing appeal, contrary to articles 9, paragraph 3, and 14, paragraphs 3 (c) and 5, the State party argues that prior to the communication the author did not seek to challenge the time periods elapsing in bringing the case to trial. The nature of the breach is such that the author was aware of a possible breach at the latest at the date of trial, but the issue was not raised at that point or on appeal. The State party argues that authors should not be allowed to sleep on their rights for an extended period, only years later to present allegations of breach to the Committee. Accordingly, it is not unreasonable to expect authors to seek redress by way of constitutional motion or application to the Committee at the time alleged breach occurs rather than years later, and this part of the communication should be declared inadmissible.

4.2 As to the merits of the claims of delay, the State party contends that neither of the relevant periods were unreasonable in the circumstances then prevailing in the State party in the years immediately following an attempted coup. The increase in crime placed great pressures on the courts in that period, with backlogs resulting. Difficulties experienced in the timely preparation of complete and accurate court records caused delays in bringing cases to trial and in hearing appeals. The State party states that it has implemented procedural reforms to avoid such delays, including the appointment of new judges at trial and appellate level. Increases in financial and other resources, including computer-aided transcription, have meant appeals are now being heard within a year of conviction. Regard should be paid to these improvements which have occurred.

4.3 As to the claims of inappropriate conditions of detention, in violation of articles 7 and 10, paragraph 1, the State party denies that the conditions under which the applicant was held when under sentence of death, and is now being held, violate the Covenant.[15] The State party refers to similar allegations made by others in respect of conditions at the same prison, which were held to be acceptable by the courts of the State party and which, on the information available, the

Committee found itself not in a position to make a finding of violation on when the matter came before it.[16] The Privy Council, in the case of Thomas v. Baptiste,[17] found that unacceptable prison conditions in that case, which breached Prison Rules, did not necessarily sink to the level of inhuman treatment, and accepted the Court of Appeal's decision to that effect. The State party submits that these various findings in the courts of the State party, the Privy Council and the Committee should be preferred over the unsubstantiated and general submissions of the author.

4.4 As to the claim of a breach of the right in article 14, paragraph 1, to access to the courts, the State party denies any denial of access to the courts by way of constitutional motions to seek redress for breaches of fundamental rights. Nineteen condemned prisoners currently have constitutional motions before the courts, and so it is incorrect and misleading to suggest any breach of article 14, paragraph 1.

The author's comments on the State party's submissions

5.1 By submission dated 19 November 1999, the author responded to the State party's submissions. On the arguments regarding delay, the author points to a contradiction in the State party denying that unreasonable delay had occurred but pointing to commonplace problems in the administration of criminal justice during the relevant period. The author considers the State party to have conceded the various delays were unreasonable, as otherwise there would have been no need to make improvements to avoid such delays. The author also points to the Committee's decision in Smart v. Trinidad and Tobago[18] holding that a period of over two years from arrest until trial violated articles 9, paragraph 3, and 14, paragraph 3 (c).

5.2 The author contends that the issues of delay could not have been brought to the Committee at an earlier stage, because only with the Privy Council's denial of leave to appeal on 10 October 1996 were all available domestic remedies exhausted. The author also claims that, in any event, no constitutional remedy for the delays was available, as the Privy Council had determined in DPP v. Tokai[19] that the Constitution of Trinidad and Tobago, while providing a right to a fair trial, did not provide a right to a speedy trial or a trial within a reasonable time.

5.3 As to the claims of inappropriate conditions of detention, contrary to articles 7 and 10, paragraph 1, the author points out that the Privy Council's Thomas v. Baptiste decision relied on by the State party accepted that the appellants in that case were detained in cramped and foul-smelling cells and were deprived of exercise or access to open air for long periods. When exercising in fresh air they were handcuffed. The Privy Council, by a majority, held that these conditions were in breach of Prison Rules and unlawful, but not necessarily cruel and inhuman treatment, stating that value judgement depended on local conditions both in and outside the prison. It considered that, although the conditions were "completely unacceptable in a civilized society", the cause of human rights would not be served to set such demanding standards that breaches were common.

5.4 The author points out that, while the Privy Council majority accepted lesser standards on the basis that third world countries "often fall lamentably short of the minimum which would be acceptable in more affluent countries", the Committee has insisted on certain minimum standards of imprisonment that must always be observed irrespective of the country's level of

development.[20] The author insists accordingly that a fundamental breach of irreducible minimum standards of treatment recognized among civilized nations does amount to cruel and inhuman treatment.

5.5 As to the claim of a right of access to the courts, the author relies on the Committee's admissibility decision in Smart v. Trinidad and Tobago[21] that, in the absence of legal aid being available to enable pursuit of a constitutional remedy, it could not be considered an effective remedy in the circumstances. The author questions how many of the 19 constitutional cases the State party refers to were granted legal aid, stating that he understands most were represented pro bono (cases not generally taken by local lawyers).[22]

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 As to the author's allegations of delay, the Committee notes the State party's argument that domestic remedies have not been exhausted as (i) no issues of delay were raised at trial, or on appeal, and (ii) the author has not pursued a constitutional motion. The State party has not shown that raising issues of delay before the trial court or upon appeal could have provided an effective remedy. As to the State party's argument that a constitutional motion was and is available to the author, the Committee recalls its jurisprudence that for that remedy to be considered available to an indigent applicant, legal aid must be available. While the State party has supplied figures that this remedy is being exercised by other prisoners, the State party has failed to demonstrate that the remedy would be available to this particular author in the circumstances of indigency he raises. In any event, with respect to the claims of undue delay, the Committee notes that, according to the Privy Council's interpretation of the relevant constitutional provisions, there is no constitutional remedy available through which these allegations can be raised. The Committee finds therefore that it is not precluded under article 5, paragraph 2 (b), of the Optional Protocol from considering the communication.

6.3 As to the allegations concerning inappropriate conditions of detention in violation of articles 7 and 10, the Committee notes that the author has provided specific and detailed allegations on the conditions suffered by him in detention. Rather than responding to the individual allegations, the State party states simply that the author has not substantiated his allegations. In the circumstances, the Committee considers that the author has substantiated these claims sufficiently, for the purposes of admissibility.

7.1 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 parties, as required by article 5, paragraph 1, of the Optional Protocol.

7.2 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".[23] In the present case, where the author was arrested on the day of the offence, charged with murder and held until trial, and where the factual evidence was straightforward and apparently required little police investigation, the Committee considers that substantial reasons must be shown to justify a 22-month delay until trial. The State party points only to general problems and instabilities following a coup attempt, and acknowledges delays that ensued. In the circumstances, the Committee concludes that the author's rights under article 9, paragraph 3 and article 14, paragraph 3 (c), have been violated.

7.3 As to the claim of a delay of over four years and seven months between conviction and the judgment on appeal, the Committee also recalls its jurisprudence that the rights contained in article 14, paragraphs 3 (c) and 5, read together, confer a right to a review of a decision at trial without delay.[24] In Johnson v. Jamaica,[25] the Committee established that, barring exceptional circumstances, a delay of four years and three months was unreasonably prolonged. In the present case, the State party has pointed again simply to the general situation, and implicitly accepted the excessiveness of the delay by explaining remedial measures taken to ensure appeals are now disposed of within a year. Accordingly, the Committee finds a violation of article 14, paragraphs 3 (c) and 5.

7.4 As to the author's claims that the conditions of detention in the various phases of his imprisonment violated articles 7 and 10, paragraph 1, the Committee notes the State party's general argument that the conditions in its prisons are consistent with the Covenant. In the absence of specific responses by the State party to the conditions of detention as described by the author,[26] however, the Committee must give due credence to the author's allegations as not having been properly refuted. As to whether the conditions as described violate the Covenant, the Committee notes the State party's arguments that its courts have, in other cases, found prison conditions in other cases satisfactory.[27] The Committee cannot regard the courts' findings on other occasions as answering the specific complaints made by the author in this instance. The Committee considers, as it has repeatedly found in respect of similar substantiated allegations,[28] that the author's conditions of detention as described violate his 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. 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 separately consider the claims arising under article 7.

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 a violation of articles 9, paragraph 3, 10, paragraph 1, and 14, paragraphs 3 (c) and 5, of the Covenant.

9. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide Mr. Sextus with an effective remedy, including adequate compensation. The State party is also under an obligation to improve the present conditions of detention of the author, or to release him.

10. 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.

Notes

[1] Counsel's description of these conditions is derived from the author's correspondence and a personal visit by counsel to the author in custody in July 1996.

[2] On this date, after hearing argument, the Court refused leave to appeal and affirmed the conviction and sentence. The reasons for judgement (20 pages) were delivered shortly thereafter on 10 April 1995.

[3] Communications 56/1979, 6/1977 and 27/1978, respectively.

[4] [1994] 2 AC 1 (Privy Council).

[5] The author refers 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).

[6] The author refers to a general analysis of conditions in Port of Spain Prison described in Vivian Stern, Deprived of their Liberty (1990).

[7] 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.

[8] These General Comments have since been replaced by General Comments 20 and 21 respectively.

[9] 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).

[10] Communication 27/1980.

[11] Communication 523/1992. The conditions described (and not contested by the State party) include a six foot by nine foot cell with six to nine fellow prisoners, with three beds, insufficient light, half an hour of exercise every two to three weeks and inedible food.

[12] In the European Court: Greek Case 12 YB 1 (1969) and Cyprus v. Turkey (Appln. No. 6780/74 and 6950/75); in the Supreme Court of Zimbabwe: Conjwayo v. Minister of Justice, Legal and Parliamentary Affairs et al. (1992) 2 SA 56, Gubay CJ for the Court.

[13] Communication 445/1991, declared admissible on 18 March 1993.

[14] 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.

[15] The State party makes no reference to the conditions of detention pre-trial.

[16] See the majority view in Chadee v. Trinidad and Tobago (Communication 813/1998).

[17] [1999] 3 WLR 249.

[18] Communication 672/1995.

[19] [1996] 3 WLR 149.

[20] Mukong v. Cameroon (Communication 458/1991). The dissenting judgement of Lord Steyn in Thomas and Hilaire is to similar effect.

[21] Op. cit.

[22] The author states that where a death warrant has been read free legal representation is provided.

[23] Barroso v. Panama (Communication 473/1991, at 8.5).

[24] Lubuto v. Zambia (Communication 390/1990) and Neptune v. Trinidad and Tobago (Communication 523/1992).

[25] Communication 588/1994.

[26] In the case of Chadee v. Trinidad and Tobago (Communication 813/1998) which the State party refers to, the State party did provide details of fact and the Committee, by a majority, ultimately found itself not in a position to make a finding of a violation of article 10.

[27] These cases have interpreted a constitutional provision analogous in its terms to article 7 of the Covenant, and therefore might have bearing only upon the evaluation of the claims presently made under article 7 but not on the different standard contained in article 10.

[28] See, for example, Kelly v. Jamaica (Communication 253/1987) and Taylor v. Jamaica (Communication 707/1996).

[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. Hipólito Solari Yrigoyen, in accordance with rule 98 of the rules of procedure:

I should like to express an individual opinion with regard to paragraph 9, which I believe should read:

> "In accordance with article 2, paragraph 3 (a), of the International Covenant on Civil and Political Rights, the State party is under an obligation to provide Mr. Sextus with an effective remedy, including adequate compensation. The State party is also under an obligation to release the author."

(Signed) Mr. Hipólito Yrigoyen

[Done in English, French and Spanish, the Spanish text being the original version. Subsequently to be translated into Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly]
