

HUMAN RIGHTS COMMITTEE

Barry v. Trinidad and Tobago

Communication No. 471/1992

18 July 1994

CCPR/C/51/D/471/1992*

ADMISSIBILITY

Submitted by: Theophilus Barry [represented by counsel]

Alleged victim: The author

State party: Trinidad and Tobago

Date of communication: 29 September 1991

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

Meeting on 18 July 1994,

Adopts the following:

Decision on admissibility

1. The author of the communication is Theophilus Barry a Trinidadian citizen, currently detained at the State Prison in Port-of-Spain, Trinidad and Tobago. Although he does not invoke the International Covenant on Civil and Political Rights, it appears from his submissions that he claims to be a victim of violations by Trinidad and Tobago of article 14 of the Covenant. He is represented by counsel.

The facts as submitted by the author:

2.1 The author was arrested on 3 April 1980 and charged with the murder of one C.A. at a recreation club, which had occurred earlier the same day. He was brought before an examining magistrate on 6 April; the preliminary hearing was held in July 1980. The author was tried in the Port-of-Spain Assizes Court; on 17 July 1981, he was found guilty as

charged and sentenced to death. The Court of Appeal of Trinidad and Tobago dismissed his appeal on 8 February 1983. The Judicial Committee of the Privy Council dismissed his subsequent petition for special leave to appeal in February 1985.

2.2 In March 1985, the author submitted a petition to the Trinidadian Advisory Council for Pardons; he did not receive a reply. A warrant for his execution, to take place on 10 July 1986, was read out to him less than 24 hours before the scheduled date of execution. His legal aid lawyer in Trinidad and Tobago obtained a stay of execution and filed a constitutional motion on his behalf; it is not clear whether this motion has ever been heard. On 4 January 1994, the author was informed that his death sentence had been commuted to life imprisonment by order of the President of Trinidad and Tobago, as a result of the findings of the Judicial Committee of the Privy Council in the case of **Earl Pratt and Ivan Morgan v. the Attorney-General of Jamaica**.¹

2.3 The case for the prosecution was that, during the night of 2 April 1980, C.A. and the author had been in the recreation club; C.A. had left the club at about 4:00 a.m., but had returned at about 6:00 a.m., and had gone into a separate room. The author, who was still in the club, was seen to enter this room, together with a woman who pointed out C.A. to him. The author and the woman then left the club. After approximately thirty minutes, the author returned to the club, went to the room where C.A. was now asleep on the floor, and stabbed him in the chest with a knife. The stabbing was witnessed by one person; several other witnesses testified that when the author emerged from the room, with a blood-stained knife in his hand, he made certain remarks from which it could be inferred that he had stabbed C.A. The prosecution further relied on an incriminating statement allegedly made by the author to the police in the morning of 3 April 1980. The statement was admitted in evidence after a **voir dire**.

2.4 During the trial, the author testified that he had been robbed by C.A., that this had been witnessed by a woman and that, upon her advice, he had gone to the nearest police station to report the incident. He had then returned to the club, and told C.A. that he had reported him to the police, whereupon C.A. attacked him with a knife and was killed in the ensuing struggle. The author further testified that the investigating officer had forced him to sign a confession statement under duress. The defense did not call any witnesses to testify on the author's behalf.

The complaint:

3.1 The author claims that his trial was unfair, in violation of article 14 of the Covenant. In this context, he states that the attorney initially assigned to him for the trial did not represent him in the Assizes Court; another lawyer was then assigned to him. He contends that although he instructed this lawyer, the latter disregarded his instructions and did not challenge numerous discrepancies in the testimonies of the prosecution witnesses.

3.2 The author further states that the investigating officer testified in court that he had charged the author with murder in the morning of 3 April 1980, whereas the result of the post-mortem examination performed by the forensic expert was not known until the

afternoon of the same day. According to the author, it was illegal to charge him before the result of the post-mortem examination was known. Furthermore, he contends that the person performing the post-mortem examination was not a qualified pathologist, and that his diagnosis was therefore unreliable. He complains that no chemistry report (relating to the blood stains or fingerprints on the knife) was produced in court, nor was the gun produced with which the investigating officer allegedly threatened and forced him to sign the statement.

3.3 The author submits that the judge should not have allowed the trial to proceed, because of the discrepancies in the evidence and because it was clear that his attorney was not properly representing him. He adds that he would like to submit corroborative evidence, but that he has encountered difficulties, since 1983, to obtain all the relevant court documents. Numerous requests to obtain these documents from the Office of the Attorney-General, the Registry of the Assizes Court, the Court of Appeal and his lawyers went unanswered.

The State party's observations and the author's comments thereon:

4. The State party, in its submission of 27 July 1992, confirms that the author has exhausted domestic remedies in his criminal case, and adds that a constitutional motion was filed on his behalf.

5. In subsequent submissions, the author reiterates his complaint that the judicial authorities in Trinidad and Tobago have failed to provide him with the relevant court documents for the purpose of his communication to the Human Rights Committee. Furthermore, by letters of 27 May and 7 July 1993, counsel in London, who represents the author before the Committee, submits that all her requests to obtain the court documents from the competent authorities and the author's legal aid lawyers in Trinidad and Tobago have been unsuccessful; counsel indicates that, without the documents, she is unable to make representations on Mr. Barry's behalf.

6. Under cover of a note verbale, dated 2 July 1993, the State party forwards to the Committee the Court of Appeal's written judgment in Theophilus Barry's case.

Issues and proceedings before the Committee:

7.1 Before considering any claims 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.

7.2 The Committee notes that the State party does not object to the admissibility of the communication. Nevertheless, it is the Committee's duty to ascertain whether all the admissibility criteria laid down in the Optional Protocol have been met.

7.3 The Committee considers that the author has failed to substantiate, for purposes of admissibility, that he was inadequately represented during his trial and that this made the trial an unfair one. He has not indicated which instructions he wanted his lawyer to carry out,

or on what issues the lawyer failed to cross-examine the prosecution witnesses. Rather his claims have remained blanket allegations. This part of the communication is therefore inadmissible under article 2 of the Optional Protocol.^{7.4} The Committee further observes that the author's other allegations all relate to the evaluation of facts and evidence by the trial judge. It recalls that it is generally for the appellate courts of States parties to the Covenant to evaluate the facts and the evidence in a particular case. It is not, in principle, for the Committee to review the facts and evidence presented to, and evaluated by, the domestic courts, unless it can be ascertained that the proceedings were arbitrary, that there were procedural irregularities amounting to a denial of justice, or that the judge violated his obligation of impartiality. After consideration of the material placed before it, the Committee does not find that the trial suffered from such defects. Accordingly, this part of the communication is inadmissible under article 3 of the Optional Protocol.

8. The Human Rights Committee therefore decides:

- (a) that the communication is inadmissible under articles 2 and 3 of the Optional Protocol;
- (b) that this decision shall be transmitted to the State party, to the author and to his counsel.

[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.]

Footnotes

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

1/ Privy Council Appeal No. 10 of 1993; judgment delivered on 2 November 1993.