

HUMAN RIGHTS COMMITTEE

Mansaraj et al v. Sierra Leone

Communication No. 839, 840, 841/1998

16 July 2001

CCPR/C/72/D/839/1998

VIEWS

Submitted by: Mr. Anthony B. Mansaraj et al ; Mr. Gborie Tamba et al.;
Mr. Abdul Karim Sesay et al.

Alleged victim: The authors

State party: Sierra Leone

Date of communication: 12 and 13 October 1998 (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 communications No. 839/1998, 840/1998 and 841/1998, submitted to the Human Rights Committee by Mr. Anthony B. Mansaraj et al, Mr. Gborie Tamba et al. and Mr. Abdul Karim Sesay et al. 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 authors of the communication, and the State party,

Adopts the following:

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

1.1 The authors of the communications are Messrs. Anthony Mansaraj, Gilbert Samuth Kandu-Bo and Khemalai Idrissa Keita (communication No. 839/1998), Tamba Gborie, Alfred Abu Sankoh (alias Zagalo), Hassan Karim Conteh, Daniel Kobina Anderson, Alpha Saba Kamara, John Amadu

Sonica Conteh, Abu Bakarr Kamara (communication No. 840/1998), Abdul Karim Sesay, Kula Samba, Nelson Williams, Beresford R. Harleston, Bashiru Conteh, Victor L. King, Jim Kelly Jalloh and Arnold H. Bangura (communication No. 841/1998). The authors are represented by counsel.

1.2 On 16 July 2001, the Committee decided to join the consideration of these communications.

The facts as submitted by the authors

2.1 The authors of the communications (submitted 12 and 13 October 1998), at the time of submission, were awaiting execution at one of the prisons in Freetown. The following 12 of the 18 authors were executed by firing squad on 19 October 1998: Gilbert Samuth Kandu-Bo; Khemalai Idrissa Keita; Tamba Gborie; Alfred Abu Sankoh (alias Zagalo); Hassan Karim Conteh; Daniel Kobina Anderson; John Amadu Sonica Conteh; Abu Bakarr Kamara; Abdul Karim Sesay; Kula Samba; Victor L. King; and Jim Kelly Jalloh.

2.2 The authors are all members or former members of the armed forces of the Republic of Sierra Leone. The authors were charged with, *inter alia*, treason and failure to suppress a mutiny, were convicted before a court martial in Freetown, and were sentenced to death on 12 October 1998. (1)

There was no right of appeal

2.3 On 13 and 14 October 1998, the Committee's Special Rapporteur for New Communications requested the Government of Sierra Leone, under rule 86 of the Rules of Procedure, to stay the execution of all the authors while the communications were under consideration by the Committee.

2.4 On 4 November 1998, the Committee examined the State party's refusal to respect the rule 86 request by executing 12 of the authors. The Committee deplored the State party's failure to comply with the Committee's request and decided to continue the consideration of the communications in question under the Optional Protocol. (2)

The Complaint

3.1 Counsel submits that as there is no right of appeal from a conviction by a court martial the State party has violated article 14, paragraph 5, of the Covenant.

3.2 Counsel states that a right of appeal did originally exist under Part IV of the Royal Sierra Leone Military Forces Ordinance 1961, but was revoked in 1971.

The State party's submission

4. The State party has not provided any information in relation to these communications notwithstanding the Committee's repeated invitation to do so.

Issues and proceedings before the Committee

5.1 By adhering to the Optional Protocol, a State party to the Covenant recognizes the competence of the Human Rights Committee to receive and consider communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant (Preamble and article 1). Implicit in a State's adherence to the Protocol is an undertaking to cooperate with the Committee in good faith so as to permit and enable it to consider such communications, and after examination to forward its Views to the State party and to the individual (article 5 (1), (4)). It is incompatible with these obligations for a State party to take any action that would prevent or frustrate the Committee in its consideration and examination of the communication, and in the expression of its Views.

5.2 Quite apart from any violation of the rights under the Covenant charged against a State party in a communication, the State party would be committing a serious breach of its obligations under the Optional Protocol if it engages in any acts which have the effect of preventing or frustrating consideration by the Committee of a communication alleging any violation of the Covenant, or to render examination by the Committee moot and the expression of its Views nugatory and futile. In respect of the present communication, counsel submits that the authors were denied their right under article 14, paragraph 5 of the Covenant. Having been notified of the communication, the State party breached its obligations under the Protocol, by proceeding to execute the following alleged victims, Gilbert Samuth Kandu-Bo, Khemalai Idrissa Keita, Tamba Gborie, Alfred Abu Sankoh (alias Zagalo), Hassan Karim Conteh, Daniel Kobina Anderson, John Amadu Sonica Conteh, Abu Bakarr Kamara, Abdul Karim Sesay, Kula Samba, Victor L. King, and Jim Kelly Jalloh, before the Committee could conclude its examination of the communication, and the formulation of its Views. It was particularly inexcusable for the State to do so after the Committee had acted under its Rule 86 requesting the State party to refrain from doing so.

5.3 Interim measures pursuant to Rule 86 of the Committee's Rules adopted in conformity with article 39 of the Covenant, are essential to the Committee's role under the Optional Protocol. Flouting of the Rule, especially by irreversible measures such as the execution of the alleged victim or his/her deportation from the country, undermines the protection of Covenant rights through the Optional Protocol.

5.4 The Human Rights Committee has considered the present communications in the light of all the information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol. The Committee notes with concern that the State party has not provided any information clarifying the matters raised by these communications. The Committee recalls that it is implicit in article 4, paragraph 2, of the Optional Protocol, that a State party examine in good faith all the allegations brought against it, and that it provide the Committee with all the information at its disposal. In the light of the failure of the State party to cooperate with the Committee on the matter before it, due weight must be given to the authors' allegations, to the extent that they have been substantiated.

5.5 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. The Committee notes that the State party has not claimed that there are any domestic remedies yet to be exhausted by the authors and has not raised any other objection to the admissibility of the claim. On the information before it, the Committee is of the view that the communication is admissible and proceeds immediately to a consideration of the merits.

5.6 The Committee notes the authors' contention that the State party has breached article 14, paragraph 5, of the Covenant in not providing for a right of appeal from a conviction by a court martial a fortiori in a capital case. The Committee notes that the State party has neither refuted nor confirmed the authors' allegation but observes that 12 of the authors were executed only several days after their conviction. The Committee considers, therefore, that the State party has violated article 14, paragraph 5, of the Covenant, and consequently also article 6, which protects the right to life, with respect to all 18 authors of the communication. The Committee's prior jurisprudence is clear that under article 6, paragraph 2, of the Covenant the death penalty can be imposed *inter alia* only, when all guarantees of a fair trial including the right to appeal have been observed.

6.1 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 as found by the Committee reveal a violation by Sierra Leone of articles 6 and 14, paragraph 5 of the Covenant.

6.2 The Committee reiterates its conclusion that the State committed a grave breach of its obligations under the Optional Protocol by putting 12 of the authors to death before the Committee had concluded its consideration of the communication. (3)

6.3 In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide, Anthony Mansaraj, Alpha Saba Kamara, Nelson Williams, Beresford R. Harleston, Bashiru Conteh and Arnold H. Bangura, with an effective remedy. These authors were sentenced on the basis of a trial that failed to provide the basic guarantees of a fair trial. The Committee considers, therefore, that they should be released unless Sierra Leonian law provides for the possibility of fresh trials that do offer all the guarantees required by article 14 of the Covenant. The Committee also considers that the next of kin of Gilbert Samuth Kandu-Bo, Khemalai Idrissa Keita, Tamba Gborie, Alfred Abu Sankoh (alias Zagalo), Hassan Karim Conteh, Daniel Kobina Anderson, John Amadu Sonica Conteh, Abu Bakarr Kamara, Abdul Karim Sesay, Kula Samba, Victor L. King, and Jim Kelly Jalloh should be afforded an appropriate remedy which should entail compensation.

6.4 Bearing in mind that, by becoming a party to the Optional Protocol, the State party has 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 90 days, information about the measures taken to give effect to the Committee's Views.

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

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

Notes

1. This is the only information provided by counsel on the convictions.
2. Vol. 1, A/54/40, chap. 6, para. 420, annex X.
3. Piandiong, Morillos and Bulan v. The Philippines (869/1999).