

HUMAN RIGHTS COMMITTEE

Barrett and Sutcliffe v. Jamaica

Communications Nos. 270/1988 and 271/1988

30 March 1992

VIEWS

Submitted by: Randolph Barrett and Clyde Sutcliffe (represented by Counsel)

Alleged victims: The authors

State party: Jamaica

Date of communications: 4 and 7 January 1988, respectively

Date of decision on admissibility: 21 July 1989

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

Meeting on 30 March 1992,

Having concluded its consideration of communications Nos. 270/1988 and 271/1988, submitted to the Human Rights Committee by Messrs. Randolph Barrett and Clyde Sutcliffe 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 communications and by the State party,

Adopts it:

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

Facts as submitted by the authors

1. The authors of the communications are Randolph Barrett and Clyde Sutcliffe, two Jamaican citizens awaiting execution at St. Catherine District Prison, Jamaica. They claim to be victims of a violation of their human rights by Jamaica. They are represented by counsel. Although counsel

invokes only a violation of article 7 of the International Covenant on Civil and Political Rights, it transpires from some of the authors's submissions that they also allege violations of article 14.

2.1 The authors were arrested on 10 and 11 July 1977, respectively, on suspicion of having murdered two policemen at the Runaway Bay Police station in the parish of St. Ann. The prosecution contended that they belonged to a group of five men who had been stopped by the police in the context of the investigation of a robbery that had occurred at a nearby petrol station. One of the men (neither Mr. Barrett nor Mr. Sutcliffe) took a sub-machine-gun out of a bag and opened fire on the police officers, killing two of them. The authors were subsequently charged with murder on the basis of "common design"; they denied having participated in the robbery and having been in possession of stolen goods.

2.2 The authors' trial in the Home Circuit Court of Kingston began on 10 July 1978 and lasted until 27 July 1978. Both Mr. Barrett and Mr. Sutcliffe were represented by legal aid attorneys. In the course of the trial, an independent ballistics expert was to appear for the defence but did not arrive in court in time. The adjournment requested by Mr. Barrett's attorney was refused by the judge. On 27 July 1978 the authors were found guilty as charged and sentenced to death. They appealed to the Jamaican Court of Appeal, which heard their appeals between 9 and 12 March 1981, dismissing them on 12 March; it produced a written judgement on 10 April 1981.

2.3 On 24 and 26 November 1987, respectively, warrants for the execution of Mr. Barrett and Mr. Sutcliffe, on 1 December 1987, were issued by the Jamaican authorities. Mr. Barrett's former legal aid representative obtained a stay of execution on his client's and on Mr. Sutcliffe's behalf, with a view to filing a petition with the Judicial Committee of the Privy Council. In 1988, a London law firm agreed to represent the authors for purposes of filing a petition to the Judicial Committee of the Privy Council. On 22 July 1991, the petition was dismissed by the Judicial Committee, which, however, expressed concern about the judicial delays in the case.

Complaint

3.1 The authors claim to be innocent and allege that their trial was unfair. Both challenge their identification parade as irregular, since it allegedly was organized by police officers who sought to influence witnesses and conspired to ensure that the authors would be identified as those responsible for the death of the policemen. Mr. Sutcliffe adds, without giving further details, that he was denied contact with legal counsel until he was formally charged and denounces the "battered state" in which he was placed on the identification parade, which allegedly was the result of rough treatment he had been subjected to while in custody.

3.2 Mr. Barrett further submits that, following his arrest by the Browns Town police and a brief stay in the hospital (where fragments of a bullet were removed from his ankle), he was kept in solitary confinement at the Ocho Rios police station, without being able to see a relative or a lawyer. When he was told that he would be placed on an identification parade, he protested that he was without legal representation.

3.3 With respect to the conduct of the trial, Mr. Barrett claims, without further substantiating his claim, that the preparations for his defence were inadequate. He submits that he had no contact with

his lawyer between the date of his conviction in July 1978 and the date of the issue of the warrant for his execution in November 1987. Letters addressed to this lawyer went unanswered.

3.4 With respect to the conditions of detention on death row, Mr. Sutcliffe submits that he was attacked by warders on several occasions. The most serious incident allegedly occurred on 20 November 1986, when warders took him from his cell and beat him with batons and iron pipes until he lost consciousness. He was then locked in his cell for over 12 hours without either medical attention or food, despite the fact that he had sustained the fracture of an arm and other injuries to legs and ribs. It was only on the following day that he was taken to the hospital. He claims that he had to wait until his arm had healed before he could write to the Parliamentary Ombudsman about the incident. The Ombudsman promised to take up the matter, but the author states that he did not receive any further communication from him. Moreover, warders have allegedly threatened him so as to induce him not to pursue the matter further.

3.5 Counsel further submits that the time spent on death row, over 13 years, amounts to cruel, inhuman and degrading treatment within the meaning of article 7 of the Covenant. In this context, it is argued that the execution of a sentence of death after a long period of time is widely recognized as cruel, inhuman and degrading, on account of the prolonged and extreme anguish caused to the condemned man by the delay. a/ this anguish is said to have been compounded by the issue of death warrants to the authors in November 1987.

3.6 As to the delays encountered in the judicial proceedings in the case, counsel notes that in spite of repeated requests for legal aid, it was only in 1988 that the authors succeeded in obtaining the pro bono services of a London law firm, for purposes of petitioning the Judicial Committee of the Privy Council. Several court documents deemed necessary for the preparation of the petition for special leave to appeal could not be obtained until March 1991; accordingly, such delays as did occur cannot be attributed to the authors.

State party's observations on admissibility

4. The State party contended, in submissions dated 20 July 1988 and 10 January 1990, that the communications were inadmissible on the ground of non-exhaustion of domestic remedies, since the authors retained the right to petition the Judicial Committee of the Privy Council for special leave to appeal. It enclosed a copy of the written judgement of the Court of Appeal in the case, adding that it would have been available, upon request, to authors' counsel after its delivery on 10 April 1981.

Committee's admissibility decision and request for further information

5.1 On 21 July 1989, the Committee declared the communications admissible, noting that the authors' appeal had been dismissed in 1981 and that, in the circumstances, the pursuit of domestic remedies had been unreasonably prolonged.

5.2 During its forty-second session, the Committee further considered the communications; it decided to request additional information and clarifications from the State party in respect of the authors' allegations under articles 7 and 10 of the Covenant.

Review of admissibility

6.1 By submissions of 23 and 30 January 1992, the State party challenges the decision on admissibility and reiterates that the complaints remain inadmissible on the ground of non-exhaustion of domestic remedies. In respect of the alleged violations of article 7 (ill-treatment on death row and anguish caused by prolonged detention on death row), it submits that the authors may file for constitutional redress under section 25 of the Jamaican Constitution, for violations of their rights protected by section 17. A decision of the Constitutional Court may be appealed to the Court of Appeal of Jamaica and to the Judicial Committee of the Privy Council.

6.2 The State party affirms that such delays as occurred in the judicial proceedings are attributable to the authors, who failed to avail themselves of their right to appeal against conviction and sentence in an expeditious manner. As there is no indication that the State party was responsible for any of these delays by either act or omission, the State party cannot be deemed to be in breach of article 7.

6.3 The State party adds that notwithstanding the inadmissibility of the claims under article 7, “it will, prompted by humanitarian considerations, take steps to have investigated the allegations concerning the conditions [of detention] on death row and brutal acts [in] the prison”.

7.1 The Committee has taken due note of the State party’s submissions, dated 23 and 30 January 1992, that the communications remain inadmissible on account of the authors’ failure to resort to constitutional remedies.

7.2 The same issues concerning admissibility have already been examined by the Committee in its views on communications Nos. 230/1987 (Henry v. Jamaica) and 283/1988 (Little v. Jamaica). b/ In the circumstances of those cases, the Committee concluded that a constitutional motion was not an available and effective remedy within the meaning of article 5, paragraph 2 (b), of the Optional Protocol, and that, accordingly, the Committee was not precluded from examining the merits.

7.3 The Committee has taken note of the fact that subsequent to its decision on admissibility the Supreme (Constitutional) Court of Jamaica has had an opportunity to determine whether an appeal to the Court of Appeal of Jamaica and the Judicial Committee of the Privy Council constitute “adequate means of redress” within the meaning of section 25 (2) of the Jamaican Constitution. The Supreme Court has answered this question in the negative by taking jurisdiction over and examining the constitutional motions filed on behalf of Ivan Morgan and Earl Pratt (judgement entered on 14 June 1991). The Committee reiterates that whereas the issue is settled for purposes of Jamaican law, the application of article 5, paragraph 2 (b), of the Optional Protocol is determined by different considerations, such as the length of judicial proceedings and the availability of legal aid.

7.4. In the absence of legal aid for constitutional motions and bearing in mind that the authors were arrested in July 1977, convicted in July 1978, and that their appeals were dismissed in March 1981 by the Court of Appeal of Jamaica and in July 1991 by the Judicial Committee of the Privy Council, the Committee finds the recourse to the Supreme (Constitutional) Court is not required under article 5, paragraph 2 (b), of the Optional Protocol. There is, accordingly, no reason to reverse the Committee’s decision on admissibility of 21 July 1989.

Examination of merits

8.1 The Committee notes that, several requests for clarifications notwithstanding, the State party has essentially confined itself to issues of admissibility. Article 4, paragraph 2, of the Optional Protocol enjoins a State party to investigate in good faith and within the imparted deadlines all the allegations of violations of the Covenant made against it and its judicial authorities, and to make available to the Committee all the information at its disposal. In the circumstances, due weight must be given to the authors' allegations, to the extent that they have been sufficiently substantiated.

8.2 With respect to the alleged violations of the Covenant, three issues are before the Committee: (a) whether the authors' legal representation and the course of the judicial proceedings amounted to a violation of their rights under article 14; (b) whether the fact of having spent over 13 years on death row constitutes in itself cruel, inhuman and degrading treatment within the meaning of article 7; and (c) whether the authors' alleged ill-treatment during detention and on death row violates article 7.

8.3 With regard to the claims relating to article 14, the Committee considers that the authors have not corroborated their allegations that their identification parade was unfair. Similar considerations apply to Mr. Barret's claim that the preparations for his defence and his legal representation were inadequate, and to Mr. Sutcliffe's claim that he was denied access to counsel prior to his formal indictment. The Committee notes, in this context, that authors' counsel has not put forward any claims under article 14.

8.4 The authors have claimed a violation of article 7 on account of their prolonged detention on death row. The Committee starts by noting that this question was not placed before the Jamaican courts, nor before the Judicial Committee of the Privy Council. It further reiterates that prolonged judicial proceedings do not per se constitute cruel, inhuman and degrading treatment, even if they may be a source of mental strain and tension for detained persons. This also applies to appeal and review proceedings in cases involving capital punishment, although an assessment of the particular circumstances of each case would be called for. In States whose judicial system provides for review of criminal convictions and sentences, an element of delay between the lawful imposition of a sentence of death and the exhaustion of available remedies is inherent in the review of the sentence; thus, even prolonged periods of detention under a severe custodial regime on death row cannot generally be considered to constitute cruel, inhuman or degrading treatment if the convicted person is merely availing himself of appellate remedies. A delay of 10 years between the judgement of the Court of Appeal and that of the Judicial Committee of the Privy Council is disturbingly long. However, the evidence before the Committee indicates that the Court of Appeal rapidly produce dits written judgement and that the ensuing delay in petitioning the Judicial Committee is largely attributable to the authors.

8.5 Concerning the allegations of ill-treatment during detention and on death row, the Committee deems it appropriate to distinguish between the individual claims put forth by the authors. While Mr. Barrett has made claims that might raise issues under articles 7 and 10, paragraph 1, of the Covenant, in particular concerning alleged solitary confinement at the Ocho Rios police station, the Committee considers that these have not been further substantiated and finds no violation of article 7 or article 10, paragraph 1.

8.6 Mr. Sutcliffe has alleged that he was subjected to beatings in the course of the preliminary investigation, and that he suffered serious injuries at the hand of prison officers. He submits that he unsuccessfully tried to seize the prison authorities and the Parliamentary Ombudsman of his complaint in respect of ill-treatment on death row, and that, far from investigating the matter, prison officers have urged him not to pursue the matter further. Concerning the first allegation, the author's contention that he was placed on the identification parade in "a battered state" has not been further substantiated; moreover, it transpires from the judgement of the Court of Appeal that the author's allegation was before the jury during the trial in July 1978. In that respect, therefore, the Committee cannot conclude that a violation of articles 7 or 10 has occurred. As to alleged ill-treatment in November 1986, however, the author's claim is better substantiated and has not been refuted by the State party. The Committee considers that the fact of having first been beaten unconscious and then left without medical attention for almost one day, in spite of a fractured arm and other injuries, amounts to cruel and inhuman treatment within the meaning of article 7 and, therefore, also entails a violation of article 10, paragraph 1. In the Committee's view, it is an aggravating factor that the author was later warned against further pursuing his complaint about the matter to the judicial authorities. The State party's offer, made in January 1992, that is over five years after the event, to investigate the claim "out of humanitarian considerations" does not change anything in this respect.

9. The Human Rights Committee, acting under article 5, paragraph 4, of the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose a violation of articles 7 and 10, paragraph 1, of the International Covenant on Civil and Political Rights in respect of Mr. Sutcliffe.

10.1 In accordance with the provisions of article 2 of the Covenant, the State party is under an obligation to take effective measures to remedy the violations suffered by Mr. Sutcliffe, including the award of appropriate compensation, and to ensure that similar violations do not occur in the future.

10.2. The Committee would wish to receive information, within 90 days, on any relevant measures adopted by the State party in respect of the Committee's views.

[Done in English, French, Russian and Spanish, the English text being the original version.]

*/ An individual opinion by Ms. Christine Chanet is appended

a/ Reference is made to the judgement of the United States Supreme Court in Furman v. Georgia (1972) 408 US 238, quoted in the dissenting opinion in Riley & others v. Att. General of Jamaica (1982) 2 All ER 469, at 479a.

b/ See sect. B above, communication No. 230/1987, views adopted on 1 November 1991, paras. 7.2-7.4; and sect. J below, communication No. 283/1988, views adopted on 1 November 1991, paras. 7.2-7.5.

Appendix

Individual opinion submitted by Ms. Christine Chanet pursuant to rule 94, paragraph 3, of the rules of procedure in respect of communications Nos. 270/1988 and 271/1988 (Barrett and Sutcliffe v. Jamaica)

I cannot accept the content of the last sentence of paragraph 8.4 of the decision taken by the Human Rights Committee on communications Nos. 270/1988 and 271/1988 in that it holds the authors to be largely responsible for the length of their detention on death row because, during this period, they allegedly waited until the last moment before appealing to the Privy Council. On the basis of this argument, the Committee finds that there was no violation of article 7 of the Covenant in that respect.

In my view it is difficult for the criteria formulated by the Committee to assess the reasonableness of the duration of proceedings to be applied without qualification to the execution of a death sentence. The conduct of the person concerned with regard to the exercise of remedies ought to be measured against the stakes involved. Without being at all cynical, I consider that the author cannot be expected to hurry up in making appeals so that he can be executed more rapidly.

On this point, I share, the position taken by the European Court of Human Rights in its judgement of 7 July 1989 on the Soering case: “Nevertheless, just as some lapse of time between sentence and execution is inevitable if appeal safeguards are to be provided to the condemned person, so it is equally part of human nature that the person will cling to life by exploiting those safeguards to the full. However, well-intentioned and even potentially beneficial is the provision of the complex of post-sentence procedures in Virginia, the consequence is that the condemned prisoner has to endure for many years the conditions on death row and the anguish and mounting tension of living in the ever-present shadow of death”.

Consequently, my opinion is that, in this type of case, the elements involved in determining the time factor cannot be assessed in the same way if they are attributable to the State party as if they can be ascribed to the condemned person. A very long period on death row, even if partially due to the failure of the condemned prisoner to exercise a remedy, cannot exonerate the State party from its obligations under article 7 of the Covenant.

Christine CHANET