HUMAN RIGHTS COMMITTEE

McLawrence v. Jamaica

Communication No. 702/1996*

18 July 1997

CCPR/C/60/D/702/1996*

VIEWS

Submitted by: Clifford McLawrence

Victim: The author

State party: Jamaica

Date of communication: 26 April 1996 (initial submission)

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

Meeting on 18 July 1997,

Having concluded its consideration of communication No. 702/1996 submitted to the Human Rights Committee by Mr. Clifford McLawrence 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 is Clifford McLawrence, a Jamaican citizen currently awaiting execution at St. Catherine District Prison, Spanish Town, Jamaica. He claims to be a victim of violations by Jamaica of articles 6, 7, 9, paragraphs 1 to 4, 10, paragraphs 1 and 2, 14, paragraphs 1, 3 (a), (b), (c), (d) and (e), and 5, and 17, of the International Covenant on Civil and Political Rights. Initially, the author was represented by counsel. After

submitting his initial communication on 26 April 1996, the author discharged the London-based law firm which had initially agreed to represent him; another London-based law firm agreed to take over his representation, but the author subsequently also discharged that firm.

The facts as submitted

2.1 The author was charged with the murder of Hope Reid on 8 July 1991 in the Parish of St. Andrews. He was tried in the Home Circuit Court in Kingston, Jamaica, from 9 to 25 November 1992, found guilty as charged and sentenced to death on 25 November 1992. Under the Offenses against the Person (Amendment) Act of 1992, the author is classified as a capital offender. He applied for leave to appeal on 30 November 1992; the Court of Appeal of Jamaica heard his appeal from 14 to 17 March 1995 and dismissed it on 26 June 1995. The author then filed a petition for special leave to appeal with the Judicial Committee of the Privy Council; the Judicial Committee heard the petition on 28 March 1996 and dismissed it without giving reasons. With this, it is submitted, available domestic remedies are exhausted.

2.2 Ms. Reid, a 36-year old banker, was strangled by an electrical cord during the night of 7 to 8 July 1991; she was found by her maid shortly before 7 a.m. on 8 July. Her husband and children were abroad at the time. A television set and video had disappeared from the house; the family car had also been stolen when her body was found.

2.3 During the trial, the prosecution relied primarily on three sources of evidence: (a) the evidence of two individuals who had been found in possession of the stolen goods from the victim's house, and who claimed that they had received them from the author. The two were separately charged with receiving stolen goods, but charges were dropped in return for their testifying for the prosecution during the trial; (b) a confession statement which allegedly had been given and signed by Mr. McLawrence; and (c) fingerprint evidence which allegedly had been taken from a surge protector in the victim's home, and which allegedly matched the author's fingerprints. The case for the defence was that the author had made no confession statement, nor any statement whatsoever; rather, the defence argued, the confession statement was likely to have been made by another individual, one Horace Beckford, who had been arrested by the police on the day following the murder but had been released without charge.

2.4 The author complains that by failing to give his legal representative an opportunity to cross-examine Horace Beckford or to put the earlier statement Beckford made into evidence, a crucial part of the defence's case was removed. Furthermore, although he consistently denied having made a confession statement, it was clear from the jury's guilty verdict, reached after only seven minutes of deliberations, that they believed that the statement was his own. Since the author claims to have been subjected to police violence at the time the statement was supposed to have been made, he submits that the trial judge should have considered the voluntary nature of the confession and ruled on its admissibility. In addition, he argues that two potential alibi witnesses were not called to give evidence.

2.5 For the appeal, author's counsel filed numerous grounds of appeal. The most important

ones, invoked by the author himself in his written communications to the Committee, were that the trial judge had been wrong that the authenticity of the (alleged) signed confession statement was a question of fact for the jury. Counsel contended that since Mr. McLawrence claimed that he was subjected to police beatings at the time when the statement was made according to the prosecution, the question of voluntariness was a live issue to be determined by the judge. Furthermore, counsel claimed that the judge did not warn the jury of the dangers in making comparisons of fingerprint evidence, in the light of the incomplete nature of this evidence.

2.6 The Court of Appeal dismissed the appeal on the basis that the trial judge was not wrong in terminating a voir dire called to consider the voluntariness of the alleged confession statement, since the accused had clearly indicated that he had never made a statement and that, therefore, the question of voluntariness did not arise and the question of authenticity of the statement was an issue of fact for the jury to decide. It also considered that the judge gave correct directions to the jury on how they were to treat fingerprint evidence.

2.7 Finally, before the Judicial Committee of the Privy Council, the principal grounds of appeal were that the trial judge had been wrong to terminate the voir dire that had been called, and that he should have made a ruling on the admissibility of the author's alleged confession. Without giving reasons, the Privy Council dismissed the appeal.

The complaint

3.1 The author alleges a violation of article 7 of the Covenant, on account of the length of his detention on death row since 25 November 1992, adducing, inter alia, the "appalling conditions suffered by detainees in the death row section of St. Catherine District Prison". He invokes judgements of the Judicial Committee of the Privy Council [1] and of the Supreme Court of Zimbabwe [2], Supreme Court of Zimbabwe, judgment of 24 June 1993. in support of his argument.

3.2 The author claims a violation of article 9, paragraph 1, because, when he was arrested, the three principal sources of evidence relied upon by the prosecution during the trial were not yet available to it: accordingly, the arrest must be considered arbitrary. He further contends that article 9, paragraph 2, was breached, since he was given no reasons for his arrest and was not cautioned. He further contends that the first time he was apprised of the reasons for his arrest was approximately three weeks after the arrest, when being taken to the preliminary hearing. [3]

3.3 It is submitted that Clifford McLawrence is a victim of violations of article 9, paragraphs 3 and 4, because of the delays in bringing him before a judge or judicial officer. In this context, the author provides the following chronology:

- On Saturday, 13 July 1991, the day of his arrest, the author was taken immediately to Constance Spring Police Station, where he was held for 45-60 minutes;

- On the same day, he was taken to the remand centre at Rema: according to him, the police

took the decision to send him to Rema on its own, without consulting a judge;

- On Tuesday, 16 July 1991, he was taken from the remand centre to the Central Police Station in Kingston. He was held there for one day, during which he was questioned about a murder;

- Thereafter, the author was returned to the remand centre at Rema, where he was detained for several weeks. He first appeared before a judge on 20 July 1991; on the third court appearance (the author does not remember the exact date), the judge ordered him transferred to the General Penitentiary.

3.4 The author contends that he was not informed at any time after his arrest of his right to legal representation or to apply for a writ of habeas corpus.

3.5 The author alleges violations of articles 7 and 10, paragraph 1, since, after being brought to the Constance Spring Police Station, he was handcuffed to the side of an iron chair and subjected to blows to the head, body and soles of his feet with an iron bar, a sheet of aluminium metal and a large book. As a result, his feet swelled up and he could not walk properly or put on shoes. He claims that police officers applied electric shocks to his testicles and other parts of the body, and that he was subject to verbal abuse and harassment, with some officers threatening to shoot him.

3.6 According to the author, the proceedings before the Home Circuit Court were contrary to article 14, paragraph 1, in that despite repeated and continued attempts to locate Horace Beckford, considered to be a crucial witness, the latter was unavailable to attend trial. In his absence, author's counsel was prevented by the judge from submitting documentary evidence to prove that Mr. Beckford had himself been arrested shortly before the author himself. It is submitted that, given the absence of this crucial witness, Mr. McLawrence could not have a fair trial.

3.7 As to alleged breach of article 14, paragraph 3 (a), the author indicates that he was never formally apprised of the charges against him: he first learned about the reasons for the arrest when he was taken to the first preliminary hearing. He also contends that he did not know that the men who apprehended him were policemen until he reached the police station. He contends that he did not have access to a lawyer at any of his preliminary appearances in court, that is, approximately 15 times before the start of his trial. The nature of these court visits was to set a trial date and to keep him on remand. It was only shortly prior to the commencement of the trial that he was given access to a lawyer, and therefore this lawyer had no time to prepare the defence. [4] Allegedly, the lawyer only visited him after the start of the trial, on the second-to-last day of the second week of the trial, after the author had already given evidence; moreover, the duration of the visit was only 10 minutes. This is said to be in violation of article 14, paragraph 3 (b). Similarly, the author claims that the fact that two alibi witnesses he relied on as evidence, namely his girlfriend and a friend, were not called to testify, amounts to a violation of article 14, paragraph 3 (e).

3.8 The author contends that he did not see a lawyer again after his conviction. He was not,

for example, able to consult with counsel about the appeal process and, although he had expressly stated on the appeal form that he wished to be present during the hearing of the appeal, was not informed of the date on which the appeal was heard. He allegedly learned of the appeal's dismissal from the press. This is said to constitute a violation of article 14, paragraphs 3 (d), and 5.

3.9 According to the author, the length of his pre-trial detention -16 months - and the delay of almost 31 months between his conviction and the dismissal of his appeal constitute a violation of his right to be tried without undue delay, article 14, paragraph 3 (c).

3.10 Finally, the author claims a violation of article 17, paragraph 1, of the Covenant, since his correspondence was repeatedly and unlawfully interfered with by prison guards, and letters sent to the prison office by him did not reach their addressees.

The State party's information and observations

4.1 In its submission of 15 July 1996, the State party does not object to the admissibility of the communication and offers comments on the merits of the author's allegations.

4.2 The State party rejects the contention that a period of detention of three and a half years on death row constitutes a violation of article 7 of the Covenant. It notes that the threshold set by the Judicial Committee of the Privy Council in the Pratt and Morgan judgement of 2 November 1993 and denies that there are any exceptional circumstances which would make the five-year limit inapplicable.

4.3 The State party denies that there has been a breach of article 9, paragraph 1, on the basis that Mr. McLawrence's arrest was without grounds or that he was arrested on grounds which were never disclosed to him. It submits that, in order to effect an arrest, "there needs to be enough evidence to reasonably show that the person may have committed the offence. The fact that other evidence later became available and could be relied upon by the prosecution at trial does not mean that the original arrest was baseless". Furthermore, the State party indicates that, as far as the alleged breach of article 9, paragraph 2, is concerned, the author should provide evidence that he had no idea of the reasons for his arrest.

4.4 As to the alleged breaches of articles 9, paragraphs 3 and 4, and 14, paragraph 3 (c), the State party rejects the assertion that the 16-month delay between arrest and trial constituted undue delay, as a preliminary hearing was held during that time. Furthermore, while the 31-month delay between conviction and the judgement of the Court of Appeal was "somewhat longer than is desirable", this did not result in substantial injustice to the author.

4.5 The State party emphatically rejects the allegation that article 10, paragraph 1, was breached because the author was beaten upon his arrest and forced to sign a confession statement. Firstly, there is no medical evidence or any other evidence to support this allegation. Secondly, this matter was extensively examined both during the trial and on appeal, where the author's assertions were rejected. Since this matter has been fully evaluated by the Jamaican courts, and given that there is no evidence in support of the

author's assertions, the State party contends that it is inappropriate for the Committee to reopen this issue.

4.6 As regards the alleged violation of article 14, paragraph 1, the State party notes that even the author's representative concedes that strenuous but unsuccessful efforts were made to locate Horace Beckford, a witness considered crucial. That this witness could not give evidence and that the defence could not challenge his credibility do not amount to circumstances which breached the author's right to a fair trial. Furthermore, "in the absence of detailed information", the State party rejects that there has been a violation of article 14, paragraph 3 (b).

4.7 The State party categorically denies that the author was not informed of his right to legal representation during his first and second court appearances. As to his presence at the hearing of the appeal, the State party notes that the convicted person is generally not present during the appeal hearing. Furthermore, the Registrar of the Court of Appeal regularly dispatches notices about the date of the hearing of an appeal to all appellants: the State party contends that the author did receive this notice and thus was aware of the date of his appeal.

4.8 Concerning the violation of article 14, paragraph 3 (e), because two potential alibi witnesses for the author were not called during the trial, the State party notes that this breach cannot be attributed to it, without clear evidence that the State party somehow obstructed the attendance of these witnesses at a trial.

4.9 The State party denies a breach of article 14, paragraph 5, since several grounds of appeal were filed on Mr. McLawrence's behalf and the appeal was in fact heard over a full three-day period by the Court of Appeal.

4.10 Finally, the State party notes that the author's blanket assertion that his mail was interfered with by prison guards is not enough to support a finding of a violation of article 17. Indeed, that letters mailed from the prison may not have reached their intended destination could well be attributed to factors other than deliberate interference with correspondence.

Examination of the merits

5.1 The Committee notes that the State party, in its submission of 15 July 1996, does not contest the admissibility of the communication. It has examined whether the communication meets all the admissibility requirements under the Optional Protocol. In respect of the author's complaint that the prison authorities arbitrarily interfered with his correspondence, in violation of article 17 of the Covenant, the Committee considers that the author has failed to substantiate his claim, for purposes of admissibility. This aspect of the communication is accordingly inadmissible under article 2 of the Optional Protocol.

5.2 As to the other claims of the author, the Committee concludes that they are admissible and therefore proceeds directly with the examination of the merits of these claims. It has examined the present communication in the light of all the information made available by

the author, his former counsel and the State party, as provided for under article 5, paragraph 1, of the Optional Protocol.

5.3 The author has alleged a violation of article 7, on account of his prolonged detention on death row, which at the time of submission of the communication was three years and five months. The Committee reiterates that prolonged detention on death row does not per se amount to a violation of article 7 of the Covenant in the absence of further compelling circumstances. No such further circumstances, over and above the length of detention, are discernible in the instant case; accordingly, there has been no violation of article 7 on this count.

5.4 The author complains about beatings and treatment in violation of articles 7 and 10, paragraph 1, at the hand of police officers following his arrest; the State party has rejected this allegation. The Committee notes that the incidents invoked by the author were considered in detail by the court of first instance and the Court of Appeal. No material has been produced to show that the evaluation of the evidence by these instances was arbitrary or amounted to a denial of justice. The Committee therefore finds no violation of articles 7 and 10, paragraph 1.

5.5 As to the claim that article 9, paragraph 1, was breached because the author's arrest warrant did not feature the three principal sources of evidence later relied upon by the prosecution, the Committee recalls that the principle of legality is violated if an individual is arrested or detained on grounds which are not clearly established in domestic legislation. There is no indication, in the instant case, that Mr. McLawrence was arrested on grounds not established by law. He has argued, however, that he was not promptly informed of the reasons for his arrest, in violation of article 9, paragraph 2. The State party has refuted this claim in general terms, in that the author must show that he did not know the reasons for his arrest; it is, however, not sufficient for the State party simply to reject the author's allegations as unsubstantiated or untrue. In the absence of any State party information to the effect that the author was promptly informed of the reasons for his arrest, the Committee must rely on Mr. McLawrence's statement that he was only apprised of the charges for his arrest when he was first taken to the preliminary hearing, which was almost three weeks after the arrest. This delay is incompatible with article 9, paragraph 2.

5.6 Concerning the alleged violation of article 9, paragraph 3, it is apparent that the author was first brought before a judge or other officer authorized to exercise judicial power on 20 July 1991, i.e. one week after being taken into custody. The State party has not addressed the allegations under article 9, paragraphs 3 and 4, but rather situated them in the context of delays in the trial process. While the meaning of the term "promptly" in article 9, paragraph 3, must be determined on a case-by-case basis, the Committee recalls its General Comment on article 9 [5] and its jurisprudence under the Optional Protocol, pursuant to which delays should not exceed a few days. [6] A delay of one week in a capital case cannot be deemed compatible with article 9, paragraph 3. In the same context, the Committee considers that pre-trial detention of over 16 months in the author's case constitutes, in the absence of satisfactory explanations from the State party or other justification discernible from the file, a violation of his right, under article 9, paragraph 3, to be tried "within reasonable time" or

to be released.

5.7 With respect to the alleged violation of article 9, paragraph 4, it is uncontested that the author did not himself apply for habeas corpus. He further claims that he was never informed of this entitlement, and that he had no access to legal representation during the preliminary enquiry. The State party categorically maintains that he was informed of his right to legal representation on the occasion of his first court appearances. On the basis of the material before it, the Committee considers that the author could have requested a review of the lawfulness of his detention when he was taken to the preliminary hearing in his case, where he was informed of the reasons for his arrest. It cannot, therefore, be concluded that Mr. McLawrence was denied the opportunity to have the lawfulness of his detention reviewed in court without delay.

5.8 The author has claimed a violation of article 14, paragraph 1, since a witness deemed to be crucial, Horace Beckford, was unavailable at trial, and because the judge failed to make a ruling on the voluntariness of the alleged confession statement and gave inadequate directions on the admissibility of fingerprint evidence. The right to a fair trial before an independent and impartial tribunal does not encompass an absolute right to have a certain witness testify in court on trial; it may not necessarily amount to a violation of due process if all possible steps are taken, unsuccessfully, to secure the presence of a witness in court, though this may depend on the nature of the evidence. In the instant case, counsel concedes that "repeated efforts" were made to secure the attendance of Horace Beckford. As to the issue of the voluntariness of the alleged confession statement and the admissibility of fingerprint evidence, the Committee recalls that it is generally for the appellate courts of States parties to the Covenant to evaluate all the facts and evidence in a given case. It is not for the Committee to question the evaluation of such evidence by the courts unless it can be ascertained that the evaluation was arbitrary or otherwise amounted to a denial of justice; neither is discernible in the present case. The Committee does not consider that the author has established a violation of article 14, paragraph 1.

5.9 Article 14, paragraph 3 (a), of the Covenant gives the right to everyone charged with a criminal offence to be informed "promptly and in detail ... of the charge against him". Mr. McLawrence contends that he was never formally informed of the charges against him, and that he first knew of the reasons for his arrest when he was taken to the preliminary hearing. The Committee notes that the duty to inform the accused under article 14, paragraph 3 (a), is more precise than that for arrested persons under article 9, paragraph 2. So long as article 9, paragraph 3, is complied with, the details of the nature and cause of the charge need not necessarily be provided to an accused person immediately upon arrest. On the basis of the information before it, the Committee concludes that there has been no violation of article 14, paragraph 3 (a).

5.10 The right of an accused person to have adequate time and facilities for the preparation of his defence is an important aspect of the guarantee of a fair trial and an important aspect of the principle of equality of arms. Where a capital sentence may be pronounced on the accused, sufficient time must be granted to the accused and his counsel to prepare the trial defence. The determination of what constitutes adequate time requires an assessment of the

individual circumstances of each case. The author also contends that he was unable to obtain the attendance of two potential alibi witnesses. The Committee notes, however, that the material before it does not reveal that either counsel or the author complained to the trial judge that the time for the preparation of the defence had been inadequate. If counsel or the author felt that they were inadequately prepared, it was incumbent upon them to request an adjournment. Furthermore, there are inconsistencies in the author's own version of this issue: whereas, in communications to his representative before the Committee, he claims that his trial lawyer had no time to prepare the defence, he argues, in a letter to the Committee dated 1 October 1996, that his representation on trial had been "excellent". Finally, there is no indication that counsel's decision not to call two potential alibi witnesses was not based on the exercise of his professional judgement or that, if a request to call the two witnesses to testify had been made, the judge would have disallowed it. Accordingly, there is no basis for finding a violation of article 14, paragraph 3 (b) and (e).

5.11 The author has claimed violations of article 14, paragraphs 3 (c) and 5, on account of "undue delays" of the criminal proceedings in his case. The Committee notes that the State party itself admits that a delay of 31 months between trial and dismissal of the appeal is "longer than is desirable", but does not otherwise justify this delay. In the circumstances, the Committee concludes that a delay of 31 months between conviction and appeal constitutes a violation of the author's right, under article 14, paragraph 3 (c), to have his proceedings conducted without undue delay. The Committee observes that in the absence of any State party justification, this finding would be made in similar circumstances in other cases.

5.12 Concerning the adequacy of the author's legal representation, on trial and on appeal, the Committee recalls that legal representation must be made available to individuals facing a capital sentence. In the present case, it is uncontested that Mr. McLawrence was unrepresented during his initial court appearances, although the State party maintains that he was informed of his right to legal assistance on those occasions. On the other hand, he did secure legal representation thereafter, and on his own admission was represented satisfactorily during the trial. Concerning the appeal, the Committee notes that the appeal form dated 30 November 1992 indicates that the author did not wish the Court of Appeal assign him legal aid, that he had the means of securing legal representation for himself and that he gave the names of the two lawyers who had represented him on trial. The author did initially indicate the desire to be present during the hearing of the appeal. However, he was represented at the appeal hearing, and it is not clear from the material before the Committee whether the author continued to insist, in March 1995, to be present during the hearing of the appeal. In the circumstances of the case, the Committee is not in a position to make any finding on article 14, paragraph 3 (d).

5.13 The Committee considers that the imposition of a sentence of death upon conclusion of a trial in which the provisions of the Covenant have not been respected constitutes, if no further appeal against the sentence is possible, a violation of article 6 of the Covenant. As the Committee noted in its General Comment 6 [16], the provision that a sentence of death may be imposed only in accordance with the law and not contrary to the provisions of the Covenant implies that "the procedural guarantees therein prescribed must be observed, including the right to a fair hearing by an independent tribunal, the presumption of

innocence, the minimum guarantees for the defence, and the right to review of conviction and sentence by a higher tribunal". In this case, since the final sentence of death was passed without due respect for the requirements of article 14, the Committee must hold that there has also been a violation of article 6 of the Covenant.

6. 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, paragraphs 2 and 3, and 14, paragraph 3 (c), and consequently of article 6, of the Covenant.

7. The Committee is of the view that Mr. McLawrence is entitled, under article 2, paragraph 3 (a), of the Covenant, to an effective remedy, entailing commutation of the death sentence.

8. Bearing in mind that, by becoming a State 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.

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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. Thomas Buergenthal, Mrs. Christine Chanet, Lord Colville, Mrs. Elizabeth Evatt, Mrs. Pilar Gaitan de Pombo, Mr. Eckart Klein, Mr. David Kretzmer, Mr. Rajsoomer Lallah, Mrs. Cecilia Medina Quiroga, Mr. Fausto Pocar, Mr. Julio Prado Vallejo, Mr. Martin Scheinin, Mr. Danilo Türk and Mr. Maxwell Yalden.

1/ Earl Pratt and Ivan Morgan v. Attorney General of Jamaica and Another, judgment of 2 November 1993.

2/ Catholic Commission for Justice and Peace in Zimbabwe v. Attorney General for Zimbabwe et al.

3/ The latter argument was filed in a supplementary submission of 25 September 1996.

4/ This claim submitted by author's counsel does not tally with one of the author's handwritten letters to the Committee, in which he concedes that his lawyer, a Queen's Counsel, represented him well on trial.

5/ General Comment 8 [16] of 27 July 1982, para. 2.

6/ See Views on communication No. 373/1989 (Lennon Stephens v. Jamaica), adopted 18

October 1995, para. 9.6.

[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 annual report to the General Assembly.]