

HUMAN RIGHTS COMMITTEE

Hylton v. Jamaica

Communication No. 407/1990

8 July 1994

CCPR/C/51/D/407/1990*

VIEWS

Submitted by: Dwayne Hylton [represented by counsel]

Victim: The author

State party: Jamaica

Date of communication: 24 June 1990

Date of decision on admissibility: 16 October 1992

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

Meeting on 8 July 1994,

Having concluded its consideration of communication No. 407/1990 submitted to the Human Rights Committee by Mr. Dwayne Hylton 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, his counsel and the State party,

Adopts its

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

1. The author of the communication is Dwayne Hylton, a Jamaican citizen awaiting execution at St. Catherine District Prison, Jamaica. He claims to be a victim of violations of his human rights by Jamaica. He is represented by counsel.

The facts as submitted by the author:

2.1 On 26 August 1986, the author was taken into custody at the Mandeville police station, Parish of Manchester. On 10 September 1986, he was charged, together with four other men, for the murder, on 7 July 1986, of one C.P. He was tried together with one I.C. and one D.W. in the Manchester Circuit Court in Mandeville. On 26 May 1988, the three men were found guilty as charged, convicted and sentenced to death. The Court of Appeal of Jamaica dismissed the author's appeal on 15 March 1990. When the Committee considered the question of the admissibility of the communication, the author was in the process of petitioning the Judicial Committee of the Privy Council for special leave to appeal; his petition to that body was dismissed on 29 October 1992.

2.2 The author submits that he was unrepresented from the time of his arrest to the time of the preliminary hearing, which took place in October 1986. He indicates that, when the hearing started, the examining magistrate asked him if he was represented. After replying in the negative, a lady sitting at the lawyers table told the judge that she had been assigned to represent the author. The author complains that, even during the preliminary enquiry, she did not make any effort to communicate with him.

2.3 As to his representation prior to and during the trial, the author contends that it was not until two days before the trial started that he was assigned a lawyer. Counsel allegedly ignored his request to discuss the case prior to the trial; during the trial, the author spoke with him only once, for about 20 minutes. On one occasion, he told counsel that one of the jurors had been seen talking to the investigating officer. Counsel did not react; nor did he call the author's mother to testify, in spite of the author's request to do so.

2.4 On 10 October 1987, an application for a change of venue was filed by the lawyer of I.C., as it was feared that the accused would not obtain a fair trial in Mandeville, the home town of the deceased. The judge, however, refused to change the venue. The author submits that the judge's refusal to grant a change of venue amounted to a miscarriage of justice. According to the author, it was clear that he would not receive a fair trial in Mandeville, because of "widespread publicity and the actual prejudice and hostility generated by persons attending the court and awaiting outside". Moreover, the author claims that the mayor of Mandeville, the uncle of the deceased, used his political influence to have them sentenced. At the end of the trial, one juror allegedly told the author and his co-defendants that most of the jurors had been intimidated by the mayor.

2.5 As to the appeal, the author states that, in early March 1990, only two weeks before the hearing, he was notified of the dates of the appeal, and that one Mr. J.H. had been assigned to represent him. He immediately wrote to J.H., explaining that he had never had the opportunity to discuss his case with previous counsel, and that he would like to meet him prior to the hearing; if not, he would assume that counsel could not, or would not, represent him on appeal. The author did not receive a reply to his enquiries and learned that his appeal was dismissed on 15 March 1990. He doubts whether J.H. represented him at all.

2.6 The author further states that, on 9 September 1989, warders of St. Catherine District

Prison beat one P.L. to death in his cell. Those responsible for his death were not prosecuted. Since the incident, the two codefendants of P.L. allegedly received death threats from warders¹. On 28 May 1990, after being subjected for two weeks to a special regime of detention (only one or two meals per day, some days without water or the possibility to empty slop pails, as well as detention incommunicado), the ordinary prisoners of the "New Hall" block of the prison forced open their cells and began to protest for food, water and better treatment. The inmates of death row joined the protest at around 10:30 to 11:00 a.m. The warders were then sent away from the death row section and the army was called in. At the soldiers' request, the death row inmates returned to their cells. The warders then returned and began to search all the cells. The author alleges that, during this search, many inmates of the "Gibraltar" death row section, including himself, were severely beaten by the warders.

2.7 As a result, three inmates died, among others the author's codefendant, D.W.; other inmates were seriously injured (injuries reportedly included fractured jaws and skulls). Since the death of D.W., the author and his other codefendant, I.C., have allegedly repeatedly been threatened with death by warders. The author adds that the warders allegedly told death row inmates that "since the State party was not prepared to hang them" they would devise "other ways of decreasing the death row population".

2.8 On 30 May 1990, the author complained to the Parliamentary Ombudsman about repeated violence in the prison, and requested an investigation into the killing of the four inmates, as well as into the continued threats and illtreatment by the prison warders. By letter of 27 June 1990, the Ombudsman acknowledged the receipt of the complaint, promising that it would receive prompt attention. The author has not received any subsequent reply on the substance of his complaint.

The complaint:

3. Although the author does not invoke any of the provisions of the International Covenant on Civil and Political Rights, it appears from his submissions that he claims to be a victim of violations by Jamaica of articles 7, 10 and 14 of the Covenant.

The State party's admissibility observations and author's comments:

4.1 The State party argued that the communication was inadmissible because of nonexhaustion of domestic remedies. It noted that, with respect to his criminal case, the author could still petition the Judicial Committee of the Privy Council for special leave to appeal, and that legal aid would be available for this purpose under Section 3 of the Poor Prisoners' Defence Act.

4.2 As to the author's allegations that he was subjected to illtreatment, that he received threats to his life and that he was denied a fair hearing, the State party argued that the provisions of the Covenant protecting these rights are coterminous with the rights protected by Sections 17 and 20 of the Jamaican Constitution. Under Section 25 of the Constitution, any person who alleges that his fundamental rights have been, are being, or are likely to be infringed may apply to the Supreme Court for constitutional redress. A right of appeal lies

from the Supreme Court to the Court of Appeal and thereafter to the Judicial Committee of the Privy Council. Since the author failed to take action to pursue his constitutional motion in the Supreme Court, the communication should be declared inadmissible.

5.1 In his comments, the author reiterated that he was still receiving threats from warders. In this context, he stated that he had written twice to the Jamaica Council for Human Rights, but that he had not received a reply.

5.2 In a further letter, the author submitted that since those responsible for the death of the three inmates were about to be tried, he had been subjected to "a massive amount of threats" by other warders, and that he feared for his life.

The Committee's admissibility decision:

6.1 During its 46th session, the Committee considered the admissibility of the communication. With regard to the author's allegations under article 14 of the Covenant, the Committee noted that the author was in the process of petitioning the Judicial Committee of the Privy Council. Accordingly, the Committee found that domestic remedies had not been exhausted in this respect.

6.2 As to the author's claims under article 7 and 10 of the Covenant, the Committee noted the State party's contention that the communication was inadmissible because of the author's failure to pursue constitutional remedies available to him. In this connection, the Committee considered that, in the absence of legal aid, a constitutional motion did not constitute an available remedy within the meaning of article 5, paragraph 2(b), of the Optional Protocol, which the author should still exhaust. The Committee further was satisfied that the author had exercised reasonable diligence in seeking redress for the alleged ill-treatment and threats to which he was, and allegedly remained, subjected. It also noted that the State party had failed to inform the Committee whether it did investigate the events complained of by the author. Accordingly, the Committee found that, in this respect, the requirements of article 5, paragraph 2(b), of the Optional Protocol had been met. 6.3 On 16 October 1992, the Committee declared the communication admissible in so far as it might raise issues under articles 7 and 10 of the Covenant.

The State party's objections to the admissibility decision and the author's further comments:

7.1 In a submission dated 15 April 1993, the State party contends that the communication remains inadmissible because the author has failed to seek constitutional redress of the alleged breaches of his rights.

7.2 Concerning the Committee's request to the State party (as set out in the decision on admissibility) to provide information about the result of such investigations as may have taken place into the author's allegations under articles 7 and 10 of the Covenant, the State party affirms that its Ministry of National Security and Justice had started an investigation into the prison disturbances which occurred on 9 September 1989 at St. Catherine District Prison; it further states that the author was interviewed by investigating officers, and that he

gave a written statement on 12 February 1992. The State party concludes that it will inform the Committee as soon as a final report is available on the matter. As of May 1994, no further information on the matter had been received.

8.1 The author states, by submission of 10 February 1993, that on 27 January 1993 the offence for which he has been convicted was classified as a capital offence under the Offences against the Person (Amendment) Act 1992. He submits that: "From the moment that I received the notification, [...] the warders [...] are taunting me with death threats and some of them keep on telling me that they are the ones who will be taking me to the gallows and what size rope will fit my neck and how much weight it will take to take my head off my body [...]". He states that as a result of this psychological torture, he has sustained ulcers.

8.2 The author reiterates that he has exhausted all available domestic remedies; he argues that while he retains a theoretical right to file a constitutional motion, in practice this right remains illusory, given the absence of legal aid for the purpose.

8.3 With regard to the State party's information about the investigation, it is submitted that an investigation into riots, in which several inmates lost their lives and in which many others were seriously wounded, cannot amount to redress for the ill-treatment suffered, if it is initiated over two years after the material events, and if no final report has been prepared almost five years later. Moreover, the State party has failed to investigate the numerous other occasions on which the author was subjected to ill-treatment and death threats from prison warders.

Examination of the merits:

9.1 The Committee has taken note of the State party's argument on admissibility, in respect of the availability of constitutional remedies which the author may still pursue. It reiterates that domestic remedies within the meaning of the Optional Protocol must be both available and effective, and that, in the absence of effective legal aid made available by the State party for the purpose, a constitutional motion is not a remedy available to Mr. Hylton. There is, therefore, no reason to revise the Committee's decision on admissibility of 16 October 1992.

9.2 With regard to the author's claims under articles 7 and 10 of the Covenant, the Committee notes that the State party has confined itself to indicating that the riots which occurred at St. Catherine District Prison on 9 September 1989 are being investigated, that the author was interviewed by investigating officers and that he gave a statement on 12 February 1992. It has not addressed the author's claims in respect of the events at St. Catherine District Prison that occurred on 28 May 1990, nor has it addressed the author's claims concerning death threats received from prison warders. Article 4, paragraph 2, of the Optional Protocol, however, enjoins the State party to investigate thoroughly, in good faith and within the imparted deadlines, all the allegations of violations of the Covenant made against it, and to make available to the Committee all the information at its disposal.

9.3 The author alleges that he was severely beaten by prison warders during a search of the cells of the death row section at St. Catherine District Prison on 28 May 1990. He claims that

since the death of one of his co-defendants, who died as a result of the violence, he has repeatedly been threatened with death by warders, and that the amount of threats increased after those responsible for the death of three inmates were indicted. He further claims that he continues to suffer from psychological torture by the warders, in particular after his case was classified as a capital case in January 1993. These claims have not been refuted by the State party. Furthermore, since the State party has confined itself to the general observation that an investigation was initiated by the Ministry of National Security and Justice into the prison disturbances which occurred at St. Catherine District Prison on 9 September 1989, the Committee remains uninformed whether the threats and ill-treatment to which the author himself allegedly was, and remains, subjected, are also under investigation. In the absence of further information on such investigations, and taking into account that such investigations as have been undertaken do not appear to have been concluded four and a half years after the events, due weight must be given to the author's allegations to the extent that they have been substantiated. Taking into account the detailed description of the events by the author and in view of the lack of information from the State party, the Committee considers that the threats and the ill-treatment to which Mr. Dwayne Hylton has been subjected by the prison warders amount to cruel and inhuman treatment within the meaning of article 7, and also entail a violation of article 10, paragraph 1, of the Covenant.

10. 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 7 and 10, paragraph 1, of the Covenant.

11.1 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. Hylton, including the award of appropriate compensation, and to ensure that similar violations do not occur in the future. In particular, the State party is requested to complete the investigations into the threats and the ill-treatment to which Mr. Hylton has been subjected, and to punish those held to be responsible for his treatment.

11.2 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.

[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/ [One of P.L.'s co-defendants, N.P., submitted a communication to the Human Rights Committee; communication No. 404/1990, declared inadmissible on 5 April 1993, during the Committee's 47th session.]