

## HUMAN RIGHTS COMMITTEE

**Chaplin v. Jamaica**

**Communication No. 596/1994**

**2 November 1995**

**CCPR/C/55/D/596/1994**

## VIEWS

Submitted by: *Dennie Chaplin (represented by counsel)*

Alleged victim: *The author*

State party: *Jamaica*

Date of communication: *12 August 1994 (initial submission)*

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

Meeting on 2 November 1995

Having concluded its consideration of communication No. 596/1994 submitted to the Human Rights Committee by Mr. Dennie Chaplin 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 Dennie Chaplin, a Jamaican citizen, currently detained at the South Camp Rehabilitation Centre, a prison in Kingston, Jamaica. At the time of submission he was awaiting execution at St. Catherine's District Prison. On 20 March 1995 his sentence was commuted to life imprisonment. He claims to be a victim of violations by Jamaica of articles 6, paragraph 2; 7; 10, paragraph 1; 14, paragraph 3(d) and (g), of the

International Covenant on Civil and Political Rights. He is represented by counsel.

The facts as submitted by the author

2.1 The author was convicted together with his co-defendants, Peter Grant and Howard Malcolm<sup>1</sup>, of the murder of one Vincent Myrie and sentenced to death on 15 December 1988, by the St. James Circuit Court, Montego Bay, Jamaica. Their appeal was refused by the Court of Appeal of Jamaica on 16 July 1990. On 22 November 1993, the author's Petition for Special Leave to Appeal to the Judicial Committee of the Privy Council was dismissed.

2.2 It is contended by counsel that constitutional remedies are not, in practice, available to the author, who lacks financial means. Counsel submits therefore that all domestic remedies have been exhausted for purposes of the Optional Protocol and refers to the Committee's jurisprudence in similar cases.<sup>2</sup>

2.3 The case for the prosecution was that, on 18 June 1987, at 11:00 am, Myrie was stabbed in the back, bludgeoned with an iron bar, and that petrol was poured over him and then set alight. The prosecution's case was based on statements made by the accused to the police as well as on circumstantial evidence.

2.4 During the trial, Peter Grant's uncle testified that, on 18 June 1987, the author and Peter Grant had come to his home at about 7:00 am to borrow a Red Morris Marina pick-up truck. Grant's uncle was unable to lend the pick-up as he had promised it to Mr. Myrie. Grant and the author left saying that they would arrange to borrow the car directly from Myrie. Another witness (SW) testified that at 8 am she was given a lift from Johnson Town to Hopewell and that there were 3 other men in the truck; one she identified as Howard Malcolm. She also testified to seeing an iron bar protruding from the box in the back of the pick-up. A third witness (SC) testified that at 11:00 am, while walking along the Lithe road, she saw first a burning plastic jug on the side of the road and then noticed a red pick-up truck which passed her twice going in different directions. Finally a petrol station attendant saw the pick-up at 1:00 pm, at the petrol station in Ramble.

2.5 The author's aunt testified that he and Peter Grant had come to her place, on 19 June 1987. The author told her that he was: "Mix up in a little trouble" and asked to leave the pick-up at her premises, she agreed and the author also left her the car keys and licence plates.

2.6 On 3 July 1987, the author was arrested. The author took the police to his aunt's home where the pick-up was recovered. Later that same day, at Montego Bay Police Station, the author gave a written statement to Sergeant Hart under caution, in the presence of a Justice of the Peace, Magistrate Allan Goodwill. In the statement the author admitted participating in the murder and implicated Peter Grant and Howard Malcolm. Later at the trial the author affirmed that the statement had not been voluntary, but rather that he had been tortured to procure the confession.

2.7 The author's co-accused Peter Grant and Howard Malcolm, were arrested on 13 July and

2 July 1987 respectively, and gave statements to the police, testifying to their presence at the scene of the murder and implicating the author.

2.8 Although identification parades were held, the author was not identified. He was, however, identified during the trial by Peter Grant's uncle and by the petrol station attendant.

2.9 The statement given by the author was the object of a trial within the trial. After hearing the author, the judge also heard Magistrate Goodwill, Sergeant Hart and Corporal Brown, who denied that there had been duress. The judge admitted the statement into evidence.

2.10 At the trial, all three defendants gave statements from the dock denying their own participation but implicating the other two.

2.11 It is stated that the case has not been submitted to another procedure of international investigation or settlement.

The complaint:

3.1 The author claims that the ill-treatment he was submitted to by the investigating officer, in order that he sign a confession, constitutes a violation of articles 7, 10(1) and 14(3)(g) of the Covenant. The author claims, through letters to counsel, that he was severely beaten with a steel cable and a club, nails driven through his fingers and that he was subjected to electric shock.

3.2 Counsel points out that the author was held on death row for six years awaiting execution. It is claimed that the "agony and suspense" derived from such a long period on death row constitutes cruel, inhuman and degrading treatment. Reference is made to the decision of the Judicial Committee of the Privy Council in the case of **Pratt and Morgan**<sup>3</sup>, where it was held, *inter alia*, that the delay in the carrying out of the execution constitutes cruel, inhuman and degrading treatment. It is further submitted that the delay in this case is on its own sufficient to constitute a violation of articles 7 and 10, paragraph 1. It is further submitted that the conditions at St Catherine's District Prison amount to a violation of the author's rights under articles 7 and 10(1). In this context, the author refers to an incident on 6 September 1992 during which he was allegedly beaten by a warder<sup>4</sup>.

3.3 It is further submitted that the author is the victim of a violation of article 14(3)(d), since the author was not represented at his appeal by a lawyer of his choice and since that lawyer did not advance all the grounds for appeal which the author would have seen argued.

3.4 Counsel claims that the trial judge in his summing-up misdirected the jury as to the admissibility of the statement given by the author to the police. In this connection, counsel submits that once a statement has been admitted into evidence it is still for the jury to decide if they are satisfied that it was properly obtained. Counsel claims that any comment from the learned judge regarding the admissibility of the statement carries the risk of influencing the jury. It is submitted that the correct practice would have been for the judge to say nothing about having admitted the statement in evidence, simply to tell the jury that they were to

consider the statement themselves and decide if it could be relied upon. Moreover, it is argued that although the trial judge properly directed the jury in that a statement under caution of one defendant is not evidence against the other defendants, it was improper for him to compare and contrast the statements of the three defendants. Counsel claims that the judge's directions constitute a denial of justice in violation of article 14(1) of the International Covenant on Civil and Political Rights.

#### State party's observations

4.1 In its submission of 10 February 1995, the State party does not raise objections to the admissibility of the communication and addresses the merits, in order to expedite the disposition of the case.

4.2 The State party contests the author's allegations and denies, in particular, that he was subjected to any form of physical ill-treatment. In this context reference is made to the trial within the trial which was conducted to determine whether the author's statement had been procured under duress. The State party contends that the examination of the matter by the Jamaican courts is determinative, since it is an issue of fact and evidence upon which the Committee has emphasized that is not competent to adjudicate.

4.3 It is contended that the fact that the author was on death row for a period of five years prior to the commutation of his sentence does not constitute cruel and inhuman treatment. "This is not the principle stated in *Pratt and Morgan v. Attorney General of Jamaica*. Instead it is the Ministry's view that the circumstances of each case must be examined in accordance with the applicable legal principles in order to arrive at the appropriate decision. This opinion is also found in the Committee's jurisprudence, particularly in the *Pratt and Morgan v. Jamaica* decision, para. 13.6 'In principle prolonged judicial proceedings do not **per se** constitute cruel, inhuman or degrading treatment even if they can be a source of mental strain for the convicted prisoners.'"

4.4 As regards the allegation that the author was denied adequate time to prepare his defence and to communicate with counsel as provided for in Article 14, the Ministry contends that the Government of Jamaica did nothing to prevent communication between the author and his attorneys. "It is clear that the obligations under the Covenant relate to actions or omission by the State which deprive an applicant of the rights set out therein. The breaches of those rights alleged by the author in respect of Article 14 cannot be attributed to the State as they relate to the conduct of his defence by his attorneys. The State cannot accept responsibility for the conduct of a case by an attorney."

4.5 As to the author's allegations concerning the summing up of the judge and the directions to the jury, the State party points out that those issues are matters which may properly be argued as grounds of appeal. Since the author failed to avail himself of the opportunity to have those issues dealt with on appeal, he cannot now argue that the judge's directions constitute a breach of article 14.

#### Counsel's comments

5.1 In his submission of 7 March 1995 counsel agrees to the examination of the merits at this stage.

5.2 With regard to the author's claim that he was subjected to torture and ill-treatment in order to force him to confess, author's counsel submits that the State party's blanket denial is no substitute for a proper investigation. The reference to an alleged absence of proof of any severe injury or permanent disability of the author is not supported by any medical evidence from the State Party. Counsel stresses that the author has maintained his allegations of ill-treatment since he denounced them at trial, that he has given specific details of the forms of ill-treatment endured, including in correspondence to counsel ("all the marks can be seen on my body", letter of 10 June 1989), which was appended to the communication and submitted to the State party for its observations. No observations were forthcoming.

5.3 As to the "death row phenomenon", author's counsel refers to the judgment of the Judicial Committee of the Privy Council in *Pratt and Morgan v. Attorney General of Jamaica*, holding that "in any case in which execution is to take place more than 5 years after sentence, there will be strong grounds for believing that the delay is such as to constitute inhuman and degrading punishment". The Judicial Committee further held that a State "must accept the responsibility for ensuring that execution follows as swiftly as practical after sentence, allowing a reasonable time for appeal and consideration of reprieve."

5.4 Counsel further refers to the Committee's General Comment on article 7, which states that "...when the death penalty is applied by the State party for the most serious crimes ... it must be carried out in such a way as to cause the least possible physical pain and suffering." Counsel submits that any execution that would take place more than five years after conviction would result in such pain and suffering in violation of article 7.

5.5 With regard to the State party's accountability for the conduct of legal aid counsel, the author refers to the Committee's Views in *Little v. Jamaica* (Communication No. 283/1988), in which the Committee held that "In cases on which capital sentence may be pronounced, it is axiomatic that sufficient time be granted to the accused and his counsel to prepare the defence for the trial." Once assigned, legal aid counsel must provide "effective representation."

Decision on admissibility and examination of the merits:

6.1 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.

6.2 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.

6.3 The Committee notes that the State party does not raise objections to the admissibility of the communication and has submitted its observations on the merits in order to expedite

the procedure. The Committee further notes that counsel for the author agrees to the examination of the merits of the communication at this stage.

6.4 While prepared to declare the communication admissible, the Committee has nonetheless examined whether all of the author's allegations satisfy the Committee's well established admissibility criteria.

6.5 With regard to the author's allegations that he was tortured in order to induce him to confess, the Committee notes that this was the subject of a trial within the trial to determine whether the author's statement was admissible evidence. In this connection the Committee refers to its prior jurisprudence and reiterates that it is generally for the courts of States parties to the Covenant to evaluate facts and evidence in a particular case and notes that the Jamaican courts examined the author's allegations and found that the statement had not been procured through duress. In the absence of a clear showing of bias or misconduct by the judge, the Committee cannot reevaluate the facts and evidence underlying the judge's finding. Accordingly, this part of the communication is inadmissible as incompatible with the provisions of the Covenant, pursuant to article 3 of the Optional Protocol.

6.6 With regard to the judge's instructions to the jury, the Committee reaffirms its jurisprudence that it is not within its competence to review specific instructions to the jury by a trial judge, unless it can be ascertained that the instructions to the jury were clearly arbitrary or amounted to a denial of justice. The material before the Committee, including the written judgment of the Court of Appeals, does not show that the trial judge's instructions or the conduct of the trial suffered from such defects. Accordingly, this part of the communication is inadmissible as incompatible with the provisions of the Covenant, pursuant to article 3 of the Optional Protocol.<sup>5</sup>

7. As to the author's other allegations, the Committee declares them admissible and proceeds, without further delay, to the examination of the substance of the claims, in the light of all the information made available to it by the parties, as required under article 5, paragraph 1, of the Optional Protocol.

8.1 The Committee has noted counsel's argument that the six years Mr. Chaplin spent on death row amounted to inhuman and degrading treatment within the meaning of article 7. The Committee is fully aware of the **ratio decidendi** of the judgement of the Judicial Committee of the Privy Council of 2 November 1993 in the case of **Pratt and Morgan**, which has been adduced by counsel, and has taken note of the State party's reply in this respect. In the absence of special circumstances, such as procedural delays imputable to the State party, the Committee reaffirms its jurisprudence that prolonged judicial proceedings do not **per se** constitute cruel, inhuman and degrading treatment, and that, in capital cases, even prolonged periods of detention on death row cannot generally be considered to constitute cruel, inhuman or degrading treatment<sup>6</sup>. In the instant case the Committee does not consider that the length of the author's detention on death row constituted a violation of article 7 of the Covenant.

8.2 With regard to the author's allegation to have been subjected to ill-treatment on 6

September 1992 by prison warders, the Committee notes that the author has made very precise allegations, including to the Parliamentary Ombudsman and to the Jamaica Council for Human Rights. The State party has not submitted any medical evidence or information concerning any official investigation of the alleged events. In these circumstances, the Committee must rely on the author's submissions and finds that article 10, paragraph 1 of the Covenant, has been violated.

8.3 As to the author's representation on appeal, in particular the fact that counsel assigned to him for this purpose was not of his own choosing, the Committee recalls that, while article 14, paragraph 3 (d), does not entitle the accused to choose counsel provided to him free of charge, the Court must ensure that counsel, once assigned, provides effective representation in the interests of justice. The written judgment of the Court of Appeal shows that author's counsel argued the appeal, even if he did not advance all the grounds that the author would have wanted argued. In the circumstances, the Committee finds that the author's right under article 14, paragraph 3 (d) was not violated.

9. 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 article 10, paragraph 1, of the Covenant.

10. Pursuant to article 2, paragraph 3 (a), of the Covenant, the author is entitled to an effective remedy, including compensation.

11. 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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1/ Peter Grant and Howard Malcolm have also submitted their cases to the Human Rights Committee; their cases have been registered respectively as communications Nos. 597/1994 and 595/1994. Following the commutation of his sentence, Howard Malcolm withdrew his case, which was accordingly discontinued by the Committee in July 1995.

2/ Communication No. 445/1991 (**Lynden Champagnie, Delroy Palmer and Oswald Chisholm v. Jamaica**), Views adopted on 18 July 1994.

3/ **Earl Pratt and Ivan Morgan v. Attorney-General of Jamaica**; PC Appeal No. 10 of 1993, judgment delivered on 2 November 1993.

4/ The author made a complaint to the Parliamentary Ombudsman on 22 September 1992,

and consequently the warder was dismissed from his job.

5/ See Committee's Views on communication No.541/1993 (**Errol Simms. Jamaica**), adopted on **3 April 1995** paragraph 6.2.

6/ See Views on communications Nos. 270/1988 and 271/1988. (**Barrett and Sutcliffe v. Jamaica**), adopted on 30 March 1992, paragraph 8.4. Views on Communication No. 373/1989 (**Stephens v. Jamaica**), adopted on 18 October 1995, paragraphs 9.3 and 9.4.

[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.]

### **Appendix**

#### **Individual opinion appended to the Committee's Views by Messrs Nisuke Ando and Eckart Klein**

We concur with the Committee's view on the present case. However, with respect to the violation of art. 10, paragraph 1, we would like to point out the following:

It is a well established rule of general public international law that individuals who claim to be victims of a violation of their rights by a State may resort to international remedies only after having exhausted all available domestic remedies. This is also expressly required by article 5, paragraph 2 (b), of the Optional Protocol to the Covenant. However, it is also well established that the State bears no international responsibility if the domestic remedies granted to the victims have led to an adequate reparation, thus satisfying the requirements of public international law.

In the present case, on the basis of the information made available to the Committee, it seems clear that beatings of the author by a prison warder did take place and that, through the author's complaint to the Parliamentary Ombudsman, the warder was dismissed from his job. However, in the absence of further information, for which the State party must be held responsible, we have to conclude that the dismissal of the warder through the complaint to the Ombudsman was the only remedy granted to the author. In our opinion this procedure does not constitute an effective remedy that meets the requirements of the Covenant.

Nisuke Ando

Eckart Klein