

HUMAN RIGHTS COMMITTEE

Sterling v. Jamaica

Communication No. 598/1994*

22 July 1996

CCPR/C/57/D/598/1994

VIEWS

Submitted by: Carl Sterling (represented by counsel)

Victim: The author

State party: Jamaica

Date of communication: 18 October 1994 (initial submission)

Date of decision on admissibility and of adoption of Views: 22 July 1996

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

Meeting on 22 July 1996,

Having concluded its consideration of communication No. 598/1994 submitted to the Human Rights Committee by Mr. Carl Sterling 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 Carl Sterling, a Jamaican citizen who, at the time of submission of his complaint, was awaiting execution at St. Catherine District Prison, Jamaica. He claims to be a victim of violations by Jamaica of articles 2, paragraph 3; 6; 7;

10; 14, paragraph 3 (b), and (d), of the International Covenant on Civil and Political Rights, and article 2 of the Optional Protocol. He is represented by counsel. The author's death sentence has been commuted.

The facts as submitted by the author:

2.1 On 28 September 1989, the author was convicted, of the murder of one Bertram Kelly and sentenced to death in the St. James Circuit Court, Montego Bay, Jamaica. His appeal was dismissed by the Court of Appeal of Jamaica on 7 December 1990. On 5 May 1992, the author's petition for special leave to appeal to the Judicial Committee of the Privy Council was also dismissed.

2.2 On 4 May 1993, the author was the victim of beatings at the hand of prison warders and police officers, while a search was carried out in his cell. As a result of the beatings the author was in severe pain, which included passing blood into his urine. He informed the acting superintendent that he wished to see a doctor. The swelling of his testicles was such that he was unable to sleep during the night of 4 May 1993. He was finally taken to hospital, where medication was prescribed. However, the author did not receive any medication from the prison authorities; he purchased pain-killing tablets himself.

2.3 The author informed the prison authorities that he had been beaten, and was told to write to the Parliamentary Ombudsman. He did not do so, for fear of reprisals. On 8 December 1993, author's counsel wrote to the Parliamentary Ombudsman, informing him of the author's beating and requested that the matter be investigated. A reminder was sent on 17 August 1994, but no reply has been received.

2.4 From correspondence between the author and counsel representing him before the Committee, it appears that the author was unaware that a petition for Special Leave to Appeal to the Privy Council had been lodged on his behalf by a law firm in London, other than that of his current legal representatives.

2.5 Author's counsel has requested, on eight different occasions, that the State party supply her with the trial transcript and the judgement of the Court of Appeal in the case. Additional requests addressed to the same instances were made by the author and by the Jamaica Council for Human Rights.

2.6 Counsel contends that, in practice, constitutional remedies are not available to the author, because he is indigent and Jamaica does not make legal aid available for the purpose of constitutional motions. Reference is made to the Human Rights Committee's jurisprudence¹. Accordingly, all domestic remedies are said to have been exhausted for purposes of article 5, paragraph 2 (b) of the Optional Protocol.

The Complaint:

3.1 The author claims that he is a victim of a violation of articles 7 and 10 of the Covenant, in view of the length of his detention on death row. The author has been held at St. Catherine

District Prison, since his conviction on 28 September 1989, and has been on death row for over five years. Counsel alleges that the execution of the author after the period of time he spent on death row would render his execution cruel, inhuman and degrading treatment. Reference is made to the judgment of the Judicial Committee of the Privy Council in the case of Pratt and Morgan.²

3.2 Counsel submits that the conditions at St. Catherine District Prison amount to a violation of the author's rights under articles 7 and 10 paragraph 1. In respect of this claim the author reports an incident which took place on 3 and 4 May 1993, when, during a prison search, he was severely beaten by prison warders, as described in paragraphs 2.2 and 2.3 above.

3.3 Counsel further submits that the author is a victim of a violation of article 14, paragraphs 3(b) and (d), as the author was not even aware that a petition for Special Leave to Appeal had been filed on his behalf, he was therefore not represented by a lawyer of his choice and was unable to communicate with his lawyer and hence unable to prepare his defence. Reference is made to the Committee's jurisprudence in this respect.³

3.4 Counsel further submits that the author is a victim of a violation of article 2, paragraph 3 of the Covenant in connection with article 2 of the Optional Protocol because Jamaica failed to provide a trial transcript despite the numerous requests made by the author and his counsel. Counsel contends that Jamaica effectively deprived Mr Sterling author of the possibility of submitting a communication to the Human Rights Committee in accordance with article 2 of the Optional Protocol, as without access to the trial transcript it is virtually impossible for the author's legal representatives to ascertain whether the criminal proceedings concerning the author were carried out in accordance with article 14 and other provisions of the Covenant.

3.5 Counsel further submits that the imposition of a sentence of death upon the conclusion of a trial in which a provision of the Covenant has been breached, if no further appeal against the sentence is available, constitutes a violation of article 6, paragraph 2.

The State party's information and observations on admissibility and the author's comments thereon :

4.1 In a submission, dated 14 February 1995, the State party does not object to the admissibility of the complaint and offers observations on the merits of the case.

4.2 With respect to the allegation that the author was ill-treated while on death row, at St Catherine District Prison, on 4 May 1993, the State party notes that it will investigate the matter and inform the Committee as soon as the results of the investigation are available. No further information had been received on the findings of the State party's investigation by 20 June 1996, in spite of a reminder sent on 24 April 1996.

4.3 On the "death row phenomenon" claim, the State party contends that the Privy Council's decision in Pratt and Morgan is no authority for the proposition that incarceration on death row for a specific period of time constitutes cruel and inhuman treatment. Each case must

be on its own facts, in accordance with applicable legal principles. The State party refers to the Committee's own Views in Pratt and Morgan, where it was held that delays in judicial proceedings did not per se constitute cruel, inhuman or degrading treatment.

4.4 Concerning the alleged breach of article 14, paragraph 3, the State party contends that the fact that the author was not aware that another attorney had petitioned the Judicial Committee of the Privy Council on his behalf, cannot be attributed to the State party, since the Government of Jamaica has in no way interfered, by action or omission, with the author's access to counsel of his own choice. The State party contends that the matter is one of attorney/client relationship in which the Government has no reason to intervene.

4.5 Concerning the claim that the trial transcript and the appeal judgment were not transmitted to the author in breach of article 2 paragraph 3 of the Covenant in connection with article 2 of the Optional Protocol, the State party notes that an investigation into the matter has been ordered. On 13 June 1996, the State party informed the Committee that the author's counsel had received the transcripts, without giving a specific date.

5.1 In her comments, dated 16 March 1995, counsel reaffirms that her client is a victim of violations of article 14, paragraphs 3 (b) and (d), not because the State party can be held responsible for the client/attorney relationship, but because the Jamaican courts proceeded with the examination of the author's petition even though, as should have been apparent to the court, the author had not been aware that someone had been instructed to represent him. It is in this respect that the requisite " minimum guarantees" to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing; or to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing, were not respected. Counsel states that though situated in London, the Judicial Committee of the Privy Council is a Commonwealth Court and for this reason the relevant Commonwealth State should be held responsible for any irregularities in the conduct of the proceedings before the Judicial Committee.(sic !). of the Privy Council.

5.2 Counsel notes that the State party does not deny the ill-treatment the author was subjected to on 4 May 1993 at St. Catherine District Prison, and reiterates her initial allegations.

5.3 With respect to the non-transmittal of the trial transcript, counsel acknowledges receipt of a copy of the requested documents.

Admissibility consideration and examination of merits:

6.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 The Committee observes that with the dismissal of the author's petition for special leave to appeal by the Judicial Committee of the Privy Council on 5 May 1992, the author exhausted domestic remedies for purposes of the Optional Protocol. In this context, it notes

that the State party has not raised objections to the admissibility of the complaint and has forwarded comments on the merits so as to expedite the procedure. The Committee recalls that article 4, paragraph 2, of the Optional Protocol stipulates that the receiving State shall submit its written observations on the merits of a communication within six months of the transmittal of the communication to it for comments on the merits. The Committee reiterates that this period may be shortened, in the interest of justice, if the State party so wishes.⁴ The Committee further notes that counsel for the author has agreed to the examination of the case on the merits at this stage.

6.3 The author has alleged a violation of article 14, paragraphs 3 (b) and (d), in that he was not represented by counsel of his own choosing and was unable to consult with him, because he was unaware that he was in fact already represented before the Judicial Committee of the Privy Council in London by a firm other than his current legal representatives. The Committee considers that neither the author nor his counsel before the Committee have sufficiently substantiated, for purposes of admissibility, how his representation before the Privy Council entailed a violation of his Covenant rights. The Committee therefore finds that this part of the communication is inadmissible.

7. The Committee, accordingly, decides that the case is admissible and proceeds, without further delay, to an examination of the substance of the author claims, in the light of all the information made available to it by the parties, as required by article 5, paragraph 1 of the Optional Protocol.

8.1 The Committee must determine whether the length of time the author spent on death row -six years and nine months- amounts to a violation of articles 7 and 10, paragraph 1, of the Covenant. Counsel has claimed a violation of these provisions merely by reference to the length of time Mr. Sterling was confined to death row. It remains the Committee's jurisprudence that detention on death row for a specific time does not violate articles 7 and 10, paragraph 1, of the Covenant in the absence of further compelling circumstances. The Committee refers in this context to its Views on communication No. 588/1994,⁵ in which it explained and clarified its jurisprudence on the issue of the death row phenomenon. In the Committee's opinion, neither the author nor his counsel have shown the existence of further compelling circumstances beyond the length of detention on death row. While a period of detention on death row of six years and nine months is a matter of concern, the Committee concludes that this delay does not per se constitute a violation of articles 7 and 10, paragraph 1.

8.2 With regard to the author's alleged ill-treatment and lack of medical attention at St. Catherine District Prison, the Committee notes that the author has made very precise allegations, which he documented in complaints to the prison authorities and to the Parliamentary Ombudsman of Jamaica. The State party has promised to investigate these claims, but has failed to forward to the Committee its findings, a year and four months after promising to do so, in spite of a reminder sent on 22 April 1996. In the circumstances, the Committee finds the author's submissions on the treatment he was subjected to on death row credible and concludes that articles 7 and 10, paragraph 1, of the Covenant have been 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 articles 7 and 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 for the violations suffered. The Committee considers that this should entail adequate compensation for the ill-treatment and lack of medical attention he suffered. The State party is under an obligation to ensure that similar violations do not occur in the future.

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 ninety days, information about the measures taken to give effect to 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/ See e.g. communication No. 445/1991 (Lynden Champagnie, Delroy Palmer and Oswald Chisholm v. Jamaica), Views adopted on 18 July 1994.

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

3/ Communication No. 63/1979 (Raul Sendic Antonaccio v. Uruguay), Views adopted on 28 October 1981 and communication No. 16/1977 (Mbenge v. Zaire), Views adopted on 25 March 1983.

4/ See Views on communication No. 606/1994 (Clement Francis v. Jamaica), adopted 25 July 1995, paragraph 7.4.

5/ Communication No. 588/1994 (Errol Johnson v. Jamaica), adopted on 22 March 1996, paragraphs 8.2 to 8.5.