

HUMAN RIGHTS COMMITTEE

Reynolds v. Jamaica

Communication No. 587/1994

3 April 1997

CCPR/C/59/D/587/1994

VIEWS

Submitted by: Irvine Reynolds [represented by Mr. A. R. Poulton]

Victim: The author

State party: Jamaica

Date of communication: 26 April 1994 (initial submission)

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

Meeting on 3 April 1997,

Having concluded its consideration of communication No. 587/1994 submitted to the Human Rights Committee on behalf of Mr. Irvine Reynolds 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 the following:

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

1. The author of the communication is Irvine Reynolds¹, a Jamaican citizen at the time of submission of the communication awaiting execution at St. Catherine District Prison, Jamaica. The author's death sentence was commuted on 13 March 1995, after his offence had been reclassified as non-capital. Mr. Reynolds claims to be a victim of violations by Jamaica of articles 6, 7, 10, paragraph 1, and 14, paragraphs 1, 3 and 5, of the International Covenant

on Civil and Political Rights. He is represented by Mr. A. R. Poulton.

The facts as submitted by the author

2.1 Irvine Reynolds was - together with a co-defendant, Errol Johnson²-convicted of the murder of one Reginald Campbell and sentenced to death in the Clarendon Circuit Court on 15 December 1983. His appeal was dismissed by the Court of Appeal of Jamaica on 29 February 1988. The Judicial Committee of the Privy Council dismissed his petition for special leave to appeal on 9 July 1992.

2.2 At the trial, the case for the prosecution was that on 31 October 1982 between 6 and 9 a.m., Reginald Campbell was stabbed to death by Irvine Reynolds who had ransacked his shop. During the trial, two witnesses testified that they had seen Irvine Reynolds and Errol Johnson on the morning of 31 October 1982 near the shop of Mr. Campbell. Mr. Reynolds (but not Mr. Johnson) was identified on 12 November 1992 by one of the witnesses as the man standing outside the shop. The other witness identified both defendants as the men having walked past the shop. In a police search, cheques signed by Mr. Campbell were found in Mr. Reynolds' room. In a statement made under caution, Errol Johnson declared that he had seen Mr. Campbell lie bleeding on the ground, and Mr. Reynolds aside with a knife in his hands. Mr. Reynolds himself claimed in an unsworn statement from the dock that he had an alibi.

The complaint

3.1 Counsel argues that the delay between the trial and the appeal (51 months) amounts to a violation of article 14, paragraphs 1, 3 and 5, of the Covenant. In this connection, counsel refers to the Committee's Views in the author's earlier communication No. 229/1987, where the Committee considered the delay in the light of the admissibility of the communication, and concluded that such delays as occurred in the pursuit of domestic remedies were not attributable to the author or his counsel. In its Views, however, the Committee did not address the issue on the merits. Counsel argues that the delay between the author's conviction and the Court of Appeal hearing was wholly attributable to the State party. He refers to a letter from the Registrar of the Court of Appeal, dated 14 July 1986, in which the Registrar confirmed that the appeal was not ready for hearing as the Court of Appeal had not yet received the transcript. Counsel argues that the failure to give the author access to the trial transcript within a reasonable time effectively denied him his right to have his conviction and sentence reviewed by a higher tribunal according to law.

3.2 Counsel points out that the author has been on death row since 15 December 1983 and that this delay would render his execution cruel, inhuman and degrading treatment, within the meaning of article 7 of the Covenant. In support of this argument, counsel refers inter alia to jurisprudence of the Privy Council (Earl Pratt and Ivan Morgan v. Attorney General of Jamaica), judgment of 2 November 1993).

3.3 The author states that he has repeatedly been the victim of threats and beatings by warders at St. Catherine District Prison, in violation of articles 7 and 10, paragraph 1, of the

Covenant. On one occasion, on 9 July 1988, during a search of the prison by warders, soldiers and police, the author was allegedly beaten with guns and batons all over his body, stripped off his clothes, and stabbed with a knife. On another occasion, on 4 May 1993, the author was allegedly kicked on his testicles by soldiers. Although he suffered pain, he did not receive any medication. Reference is made to the Standard Minimum Rules of the Treatment of Prisoners and to a report by Amnesty International of December 1993 ("Jamaica - Proposal for an Inquiry into Death and Ill-Treatment of Prisoners").

3.4 It is finally argued that a death sentence imposed after a trial in which provisions of the Covenant have been violated constitutes a violation of article 6, paragraph 2, of the Covenant, if no further appeal against the sentence is possible.

3.5 With regard to the exhaustion of domestic remedies, counsel affirms that the author has not applied to the Supreme Court of Jamaica for constitutional redress, as a constitutional motion would inevitably fail in light of the precedent set by the Judicial Committee of the Privy Council in the case of D.D.P. v. Nasralla and Riley v. Attorney General of Jamaica - where it was held that the Jamaican constitution was intended to prevent the enactment of unjust laws and not merely, as claimed by the victim, unfair treatment under the law. In any case, it is argued, constitutional remedies are not available to the author in practice, as he lacks the necessary funds to secure legal representation. In this context, reference is made to the established jurisprudence of the Human Rights Committee.

3.6 As regards the author's claim of ill-treatment, it is stated that, on 9 July 1988 and on 16 November 1993, the author and his legal representative asked the Ombudsman to look into various allegations of beatings at the prison. Although the Ombudsman replied that the incidents were being investigated, no further reply has been received. In this context, it is argued that the Office of the Ombudsman does not function efficiently and therefore is not an effective remedy. Counsel submits that all available domestic remedies have been exhausted.

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

4.1 By submission of 15 December 1994, the State party argues that the communication is inadmissible for non-exhaustion of domestic remedies. It refers to the case of Albert Huntley v. the Attorney General of Jamaica before the Judicial Committee of the Privy Council, which is a constitutional challenge to the classification procedure under the Offences Against the Persons (Amendment) Act. The State party argues that the outcome of that case is relevant to the author's communication since it may affect the classification of the author's offence as capital or non-capital murder.

4.2 The State party submits that it will investigate the author's allegations of ill-treatment in prison and that it will forward the results of the investigation as soon as they are available.

4.3 The State party rejects the argument that the delay between trial and appeal constitutes a breach of article 14 of the Covenant. In this connection, the State party argues that the fact that the author had his case reviewed by the highest court in Jamaica, the Privy Council,

shows that it cannot be asserted that the author's right to have his trial and conviction reviewed by a higher tribunal has been violated.

5.1 In his comments on the State party's submission, dated 21 March 1995, the author states that the Privy Council judgment in Albert Huntley v. the Attorney General of Jamaica³ has now been given and that it does not affect the author's communication before the Committee. The author argues that, since his offence has been classified as capital, he is therefore entitled to allege violations of article 6.

5.2 As regards the delay between trial and appeal, the author explains that it is the delay of 51 months itself which is in violation of article 14, and that the fact that he had his case reviewed by the Privy Council is irrelevant to his claim.

5.3 By further submission of 6 April 1995, the author informs the Committee that following a Classification Review on 13 March 1995, his offence has been reclassified as non-capital, with the recommendation that he serve 15 years before being eligible for parole. According to counsel, the author would be eligible for parole in December 1998.

5.4 The author confirms that he wishes to pursue his communication.

The Committee's admissibility decision

6.1 At its 54th session, the Committee considered the admissibility of the communication. As regards the author's claim that the period of 51 months between trial and appeal hearing constitutes a violation of article 14, the Committee noted that the author's claims of unfair trial were already brought before the Committee in his earlier communication⁴, upon which the Committee had decided that the facts did not disclose a violation of any of the provisions of the Covenant. The Committee considered therefore that this claim was now inadmissible.

6.2 Consequently, the author's claim that the imposition of the death sentence after an unfair trial constituted a violation of article 6, paragraph 2, of the Covenant, was also inadmissible.

6.3 As regards the author's claim that his prolonged detention on death row amounted to a violation of article 7 of the Covenant, the Committee recalled that although some national courts of last resort had held that prolonged detention on death row for a period of five years or more violated their constitutions or laws,⁵ the jurisprudence of this Committee remained that detention for any specific period would not be a violation of article 7 of the Covenant in the absence of some further compelling circumstances.⁶ The Committee observed that the author had not substantiated, for purposes of admissibility, any specific circumstances of his case that would raise an issue under article 7 of the Covenant. This part of the communication was therefore inadmissible under article 2 of the Optional Protocol.

6.4 The Committee considered that the author had sufficiently substantiated, for purposes of admissibility, his claim that he had been ill-treated in prison. It noted that the State party had raised no objection to admissibility of the claim and that it had stated that it would investigate the allegations.

7. Accordingly, on 6 July 1995, the Human Rights Committee decided that the communication was admissible in so far as it might raise issues under articles 7 and 10, paragraph 1, of the Covenant, in respect of the alleged ill-treatment in detention.

State party's submission on the merits and counsel's comments thereon

8. By submission of 19 February 1996, the State party comments that its undertaking that it will investigate the matter does not constitute an admission as to the merits of the allegation. The State party confirms that disturbances occurred on 8 July 1988⁷ and 4 May 1993 at the prison, but adds that it is unable to address the particular allegations of ill-treatment made by the author, but that it would pursue the matter and inform the Committee as to the results of its further inquiries.

9. In his comments on the State party's submission, counsel for the author notes that the State party has not provided the results of its investigations into the author's allegations nor copies of his medical record. Counsel argues that the acknowledgement of the disturbances on 8 July 1988⁸ and 4 May 1993 is a prima facie admission of the truth of the matters alleged by the author.

Issues and proceedings before the Committee

10.1 The Committee has considered the communication in the light of all the information provided by the parties. It notes with regret that, more than two years after the allegations of ill-treatment were brought to the attention of the State party, the State party has not furnished the results of its investigations, but merely states that it was unable to address the particular allegations of ill-treatment made by the author. In the circumstances, due weight must be given to the author's allegations, to the extent that they are substantiated.

10.2 The author has claimed that on 9 July 1988, he was in his cell when soldiers and warders were conducting a search. His cell was opened, and he was beaten up by three men with guns and batons. Later, in the corridor he was stripped off his clothes, beaten, stabbed and hit with a metal detector. A warder, whom the author has mentioned by name, allegedly told the soldiers to kill the author. The items the author had in his cell were destroyed, and his clothes and sleeping mat were drenched with water. The author was then locked away without receiving any medical treatment. He then complained to the Parliamentary Ombudsman by letter of 9 July 1988, to which he received no reply.

10.3 The author has alleged further incidents of ill-treatment, and named the warders responsible. In particular, he has claimed that on 4 May 1993, during a search, he was taken out of his cell and kicked twice, once on his testicles, and that he was denied painkillers or other medical treatment afterwards.

10.4 The Committee considers that, in absence of any concrete information from the State party, the treatment as described by the author constitutes treatment prohibited by article 7 of the Covenant, and is likewise in violation with the obligation under article 10, paragraph 1, of the Covenant, to treat prisoners with humanity and with respect for the inherent dignity

of the human person.

11. 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.

12. Under article 2, paragraph 3(a), of the Covenant, the State party is under an obligation to provide an effective remedy to the author, entailing compensation. The State party must take measures to ensure that similar violations do not occur in the future. In this context, the Committee wishes to emphasize that investigations into allegations of ill-treatment should be carried out expeditiously and without delay.

13. 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 that 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.

*/ The following members of the Committee participated in the examination of the present communication: Messrs. Nisuke Ando and Prafullachandra N. Bhagwati, Mrs. Christine Chanet, Lord Colville, Mr. Omran El Shafei, Mrs. Elizabeth Evatt, Messrs. Eckart Klein, David Kretzmer and Rajsoomer Lallah, Mrs. Cecilia Medina Quiroga, Mrs. Laure Moghaizel, Messrs. Julio Prado Vallejo, Martin Scheinin, Danilo Türk and Maxwell Yalden.

1/ An earlier communication by Mr. Reynolds, No. 229/1987, alleged several irregularities during the trial against him. The Committee adopted its Views with regard to communication No. 229/1987 on 8 April 1991, finding no violation (CCPR/C/41/D/229/1987).

2/ Mr. Johnson's communication was registered before the Committee as communication No. 588/1994. Views were adopted by the Committee on 22 March 1996.

3/ Judgment of 12 December 1994.

4/ Communication No. 229/1987, Views adopted by the Committee on 8 April 1991.

5/ See, *inter alia*, the judgment of the Judicial Committee of the Privy Council, dated 2 November 1993 (Pratt and Morgan v. Jamaica).

6/ See the Committee's Views on communications Nos. 210/1986 and 225/1987 (Earl Pratt and Ivan Morgan v. Jamaica), adopted on 6 April 1989, paragraph 12.6. See also, *inter alia*, the Committee's Views on communications Nos. 270/1988 and 271/1988 (Randolph Barrett

and Clyde Sutcliffe v. Jamaica), adopted on 30 March 1992, and No. 470/1991 (Kindler v. Canada), adopted on 30 July 1993.

7/ In their submissions on the merits, both State party and counsel refer to an incident on 8 July 1988, whereas the allegations made by the author refer to an incident on 9 July 1988.

[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.]