

HUMAN RIGHTS COMMITTEE

Howell v. Jamaica

Communication No. 798/1998

21 October 2003

CCPR/C/79/D/798/1998*

VIEWS

Submitted by: Floyd Howell (represented by Anthony Poulton, counsel)

Alleged victim: The author

State Party: Jamaica

Date of communication: 20 January 1998 (initial submission)

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

Meeting on 21 October 2003,

Having concluded its consideration of communication No. 798/1998, submitted to the Human Rights Committee on behalf of Mr. Floyd Howell 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

1.1 The author of the communication is Floyd Howell, a Jamaican citizen detained on death row at St. Catherine District Prison, Spanish Town, Jamaica - at the date of the submission - and subsequently released on 27 February 1998. He claims to be a victim of a violation by Jamaica of articles 6(1), 7, 10(1) and 19(2) of the International Covenant on Civil and Political Rights. He is

represented by counsel.

1.2 The Covenant and the Optional Protocol both entered into force for the State party on 23 March 1976. The State party withdrew from the Optional Protocol on 23 October 1997, with effect from 23 January 1998.

1.3 In accordance with rule 86 of the Committee's Rules of Procedure, the Committee - by note verbale of 22 January 1998 - requested the State party not to carry out the death sentence against Mr. Howell while his communication was under consideration by the Committee.

1.4 The author confines his communication to the conditions of his imprisonment and events that occurred during the period of his incarceration.

The facts as submitted by the author

2.1 The author was charged with 7 counts of capital murder and was convicted on all 7 counts and sentenced to death on 27 October 1993 by the Home Circuit Court in Kingston. The basis for the charge of capital murder was that the murders had been committed in the course of or in the furtherance of an act of terrorism.

2.2 The author appealed his sentence to the Court of Appeal of Jamaica. The judgment of the Court of Appeal was delivered on 20 November 1995, and the author had his conviction quashed in respect of 3 counts.

2.3 After his conviction, the author was confined to death row at St. Catherine's District Prison, Spanish Town, Jamaica. On 15 October 1996, the author petitioned the Privy Council in London for leave to Appeal against his conviction and sentence. The appeal was set for hearing on 26-27 January 1998, but it remains unclear whether the Privy Council heard the appeal or not.

2.4 In a letter dated 21 March 1997, the author complained to his counsel about the prison conditions at St. Catherine's District Prison, and particularly about an incident which occurred on 5 March 1997. On that day, as a reaction to an escape attempt initiated by four other inmates, some prisoners - including the author - were brutally beaten by two groups of 20 and 60 warders who punished whoever was directly or indirectly involved in the escape attempt. The author observes that "some warders started to beat me from every handle¹ while some were throwing away my personal belongings out of my cell" and that afterwards "the warders carried me into an empty bathroom where my ordeal started again".

2.5 As a result of the beatings, the author was brought to hospital where he informed the doctor that he was "feeling pain all over his body". The author was unable to contact counsel until some time later because he had suffered serious injury to one hand and was beaten to the point that "he could hardly walk". At the time of writing of his letter to the counsel - 16 days after the incident - he alleged that "various parts of [his] body is still swollen". Furthermore, his personal belongings as well as documents relating to his legal appeals were burned; in this connection, he reports that when he returned to his cell "it was almost empty and when I reach down stairs I saw a big fire on the compound with our personal belongings burning in the fire". The author adds that "as far as I

understand, the warders got order to beat us and burn up our things".

2.6 The author submits that the scale of the warders' action and the apparent coordination of the respective groups of 20 and 60 warders can only be explained as deliberate and premeditated. In this connection, he alleges that the presence at the prison hospital of the Commissioner of Corrections as well as the Superintendent shortly after the incidents, taken together with the failure properly to investigate and prosecute the perpetrators of these actions, demonstrate the level at which the actions of the prison authorities were known and endorsed. He also states that he knew the names of the warders who searched his cell and beat him, but adds that he felt too threatened to denounce them.

2.7 On 10 March 1997, the author's family, who had come to see him, was not allowed to visit him. The author was also denied access to the Superintendent for a discussion on the terms of family visits, which were not allowed to resume until 12 June 1997.

2.8 On 20 March 1997, the Superintendent issued a "standing order", reportedly prohibiting all inmates to keep either papers or writing implements in their cells. It is noted that, however, the author was able to correspond in writing with his counsel on 21 March and 17 April 1997 and on 15 August 1997 with a friend, Ms. Katherine Shewell.

2.9 Two letters dated 6 January and 4 September 1997 from a friend of the author to counsel, describe the conditions of detention, such as the size of the cells, hygienic conditions, the poor diet and the lack of dental care. It is submitted that visitors under 18 were not allowed into the prison, and the author could not see his children (aged 9 and 6) since he had been imprisoned; the Death Row compound - where inmates can only leave cells for about 20 minutes per day - is small and dirty, with faeces everywhere. The author could touch the walls on either side when standing in the middle of the floor of his cells and had to paper the walls to cover the dirt. The entire compound smells of sewage. Hygienic and medical conditions are poor, and so is the food. Due to the poor diet and the lack of dental care, the author lost numerous teeth.

2.10 By letter of 2 March 1998, the Committee was informed by the author's counsel, without further explanation of the motives, that the author had been released from St. Catherine District Prison on 27 February 1998.

The complaint

3.1 The author claims to be a victim of a violation of articles 6 (1), 7, 10 (1) and 19 (2) of the Covenant, because of his treatment since conviction and during his imprisonment on death row, at the hands of the prison authorities.

3.2 He claims that he suffered a violation of articles 7 and 10(1), because of the violent treatment by the prison authorities and the general conditions of detention of the prison. Even if it is conceded that he had partially cut one of the bars of his cell, regardless of this apparently half hearted participation in the escape attempt, there can be no justification for the events which followed, that represent a breach of both articles 7 and 10(1) of the Covenant. The author also

submits that the prison conditions and the detention regime and regulations to which he was subjected are contrary to articles 7 and 10(1). He refers in this context to the United Nations "Standard Minimum Rules for the Treatment of Prisoners". He further alleges that the continued uncertainty as to whether or not he would be executed, caused him severe mental distress that may amount to a further violation of articles 7 and 10. In this connection, the author reports that executions in Jamaica were suspended in February 1988, and that in recent months² the Government had taken steps to resume executions.

3.3 The author claims to be a victim of article 6(1) of the Covenant, because of the possible arbitrary resumption of executions after such a long period of time.

3.4 The author further claims to be a victim of a violation of article 19(2), as the standing order issued by the Superintendent depriving him of writing implements was in violation of his right "to seek, receive and impart information....in writing".

3.5 The author considers that - as far as domestic remedies regarding abuses during his incarceration are concerned - no effective remedies are available. Furthermore, he claims that, even if it were considered that some remedies are in theory available to him, they are unavailable in practice because of his lack of funds and the unavailability of legal aid. In addition, the author refers to an Amnesty International report of December 1993 which refers to the role of the Parliamentary Ombudsman of Jamaica, who is competent to address problems of detainees in prisons, but which notes that the Ombudsman has no power to enforce his recommendations and lacks the necessary funds to discharge himself of his functions properly. Accordingly, he concludes that the complaint fulfills the requirement of article 5 (2) (b) of the Optional Protocol.

3.6 The author submits that his complaint as set out above has not been submitted to any other procedure of international investigation or settlement.

The State party's submission on the admissibility and merits of the communication

4.1 In spite of reminders addressed to the State party on 12 October 2001 and 1 October 2002, the State party has made no submission on the admissibility or the merits of the case.

Issues and proceedings before the Committee

Consideration of admissibility

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

5.2 The Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement for purposes of article 5, paragraph 2(a) of the Optional Protocol.

5.3 With regard to the author's allegations relating to the abuses he suffered while in prison and to the prison conditions, the Committee has noted his contention that for practical purposes there are no effective remedies available to him, and that, even if he had a remedy available in theory, it would not be available to him in practice because of his lack of funds and the unavailability of legal aid. The State party has not challenged the author's argument. Accordingly, the Committee considers the communication to be admissible as much as it appears to raise issues under articles 7, 10(1) and 19(2) of the Covenant.

5.4 As to the author's claim that an arbitrary resumption of executions after a long period of delay would amount to a violation of Article 6(1), the Committee notes that this claim has become moot after the author's release on 27 February 1998.

Consideration of the merits

6.1 The Human Rights Committee has considered the present communication in the light of all the information available to it, as provided in article 5, paragraph 1 of the Optional Protocol. In the light of the failure of the State party to provide to the Committee any observations on the matter before it, due weight must be given to the author's allegations, to the extent that they have been substantiated.

6.2 In relation to the claim as to the violation of articles 7 and 10 (1), the Committee observes that the author has given a detailed account of the treatment he was subjected to and that the State party has not challenged his grievances. The Committee considers that the repeated beatings inflicted on the author by warders amount to a violation of article 7 of the Covenant³. Furthermore, taking into account the Committee's earlier views in which it has found the conditions on death row in St. Catherine's District Prison to violate article 10 (1)⁴, the Committee considers that the author's conditions of detention, taken together with the lack of medical and dental care and the incident of the burning of his personal belongings, violate the author's right to be treated with humanity and respect for the dignity of his person under article 10 (1) of the Covenant.

6.3 As to the claim that severe mental distress amounts to a further violation of Article 7 caused by the continued uncertainty of whether or not the author would be executed, the Committee recalls its constant jurisprudence that prolonged delays in the execution of a sentence of death do not per se constitute a violation of articles 7 in the absence of other "compelling circumstances"⁵. In the present case, the Committee is of the view that the author has not shown the existence of such compelling circumstances. Accordingly, there has been no violation of article 7 in this respect.

6.4 The Committee has noted the claim that the Superintendent's standing order allegedly deprived the author of writing implements and violated his right under article 19(2). It observes, however, that the author was able to communicate with counsel within one day of the issuance of this order, and thereafter with counsel and a friend. In the circumstances, the Committee is not in the position to conclude that the author's rights under article 19(2) were violated.

7. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol, is of the view that the facts before it disclose a violation of articles 7 and 10(1) of the Covenant.

8. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including compensation. The State party is also under an obligation to prevent similar violations in the future.

9. On becoming a party to the Optional Protocol, the State party recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not. This case was submitted for consideration before the State party's denunciation of the Optional Protocol became effective on 23 January 1998; in accordance with article 12, paragraph 2, of the Optional Protocol it continues to be subject to the application of the Optional Protocol. Pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or 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 State party is also requested to publish 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.]

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Franco Depasquale, Mr. Maurice Glèlè Ahanhazo, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Martin Scheinin, Mr. Ivan Shearer, Mr. Hipólito Solari Yrigoyen, Mr. Roman Wieruszewski and Mr. Maxwell Yalden.

Two individual opinions signed by Committee members Mr. Prafullachandra Bhagwati and Ms. Christine Chanet, respectively, are appended to the present document.

APPENDIX

Individual opinion of Committee Member, Mr. Prafullachandra Bhagwati

I agree with the views expressed by the majority of my colleagues in all respects except with regard to paragraph 6.3. I find myself unable to agree with the majority that there are no compelling circumstances in the present case which would lead to a finding of violation of article 7 in the context of prolonged delay on the death row. I am of the view that the facts set out in paragraphs 2.4, 2.5 and 2.6 which are not controverted, clearly amount to "compelling circumstances" warranting a conclusion of violation of article 7. But it is not necessary to find a violation of article 7 on this count, since the Committee has already found violation of article 7 in paragraph 6.2.

[Signed] Prafullachandra Natwarlal Bhagwati

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Individual opinion by Committee member, Ms. Christine Chanet

While I agree with the Committee's views on the violations established, I do not subscribe to the reasoning supported by the majority in paragraph 5.4.

From my viewpoint, the author's complaint based on article 6, paragraph 1, relating to the arbitrary resumption of executions in Jamaica after a long break cannot be set aside on the grounds that the author's release makes it moot.

It would have been more appropriate, in my view, to counter the author's reasoning by pointing out that, since he was citing a general situation without sufficient reference to his own particular case, he could not be regarded as a victim within the meaning of article 2 of the Optional Protocol.

[Signed] Christine Chanet

[Adopted in English, French and Spanish, the French 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.]

Notes

1. The author appears to refer to being made to run the gauntlet of a group of warders armed with sticks.
2. Secretariat note: at the time of submission of the complaint (January 1998).
3. See for example *McTaggart v. Jamaica*, N 749/1997, para. 8.7, in which the author was beaten and had his personal belongings burnt.
4. See particularly *McTaggart v. Jamaica*, Communication N 749/1997.
5. See e.g. *Johnson v. Jamaica*, N 588/1994, para. 8.5; *Francis v. Jamaica*, N 606/1994, para. 9.1.