



**International covenant
on civil and
political rights**

Distr.
RESTRICTED*

CCPR/C/57/D/600/1994
18 November 1996

ENGLISH
Original: ENGLISH/SPANISH

HUMAN RIGHTS COMMITTEE
Fifty-seventh session
8-26 July 1996

VIEWS

Communication No. 600/1994

Submitted by : Dwayne Hylton (represented by counsel)
Victim : The author
State party : Jamaica
Date of communication : 21 October 1994 (initial submission)
Date of adoption of Views : 16 July 1996

On 16 July 1996, the Human Rights Committee adopted its Views under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 600/1994. The text of the Views is appended to the present document.

[ANNEX]

* Made public by decision of the Human Rights Committee.

GE.96-19151 (E)

ANNEX

Views of the Human Rights Committee under article 5,
paragraph 4, of the Optional Protocol to the
International Covenant on Civil and Political Rights

Fifty-seventh session

concerning

Communication No. 600/1994 * **

Submitted by : Dwayne Hylton (represented by counsel)
Victim : The author
State party : Jamaica
Date of communication : 21 October 1994 (initial submission)

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

Meeting on 16 July 1996,

Having concluded its consideration of communication No. 600/1994 submitted to the Human Rights Committee on behalf of 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's counsel and by the State party,

Adopts the following:

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

1. The author of the communication is Dwayne Hylton, a Jamaican citizen currently under sentence of life imprisonment in Jamaica. A death sentence imposed on the author in May 1988 was commuted by the Governor-General of Jamaica in 1995. A prior communication submitted by Mr. Hylton was examined by the Human Rights Committee under case No. 407/1990; in respect of this previous communication, the Committee adopted Views on 8 July 1994 and found

* Pursuant to rule 85 of the rules of procedure, Committee member Laurel Francis did not participate in the adoption of the Views.

** The text of an individual opinion by Committee member Francisco José Aguilar Urbina is appended to the present document.

violations of articles 7 and 10 of the Covenant. In the present communication, Mr. Hylton once more complains about violations by Jamaica of articles 7 and 10 of the Covenant. He is represented by counsel. On 22 November 1995, the State party informed the Committee that the author's death sentence had been commuted to life imprisonment.

Facts as submitted by the author

2.1 Dwayne Hylton was convicted of murder and sentenced to death on 26 May 1988 by the Circuit Court in Manchester, Mandeville, Jamaica. His appeal was dismissed by the Court of Appeal of Jamaica on 16 May 1990. A further petition for special leave to appeal was dismissed by the Judicial Committee of the Privy Council on 29 October 1992.

2.2 Counsel notes that, in practice, constitutional remedies are not available to Mr. Hylton, since he is indigent and the State party does not make available legal aid for the pursuit of constitutional motions. By reference to the Committee's established jurisprudence, counsel submits that all available domestic remedies within the meaning of article 5, paragraph 2 (b), of the Optional Protocol, have been exhausted.

The complaint

3.1 It is submitted that Mr. Hylton is a victim of a violation of articles 7 and 10 of the Covenant, in view of the length of time spent on death row. Since his conviction in May 1988 and until the early summer of 1995, i.e., for seven years, the author was held in the death row section of St. Catherine District Prison. At the time of submission of the communication, counsel argued that this delay (approximately six years at that time) would bring Mr. Hylton's execution within the ambit of article 7 and constitute cruel, inhuman and degrading treatment. Reference is made to the judgement of the Judicial Committee of the Privy Council in Pratt and Morgan v. Attorney-General of Jamaica and Another, ^{1/} where it was held, *inter alia*, that delays exceeding five years in carrying out the execution of a capital sentence constitute cruel and inhuman treatment under the Jamaican Constitution. According to counsel, this delay is in itself sufficient to constitute a violation of articles 7 and 10, paragraph 1, of the Covenant.

3.2 Counsel further contends that the conditions of detention at St. Catherine District Prison [, where the author was detained from May 1988 to the summer of 1995,] violate his rights under articles 7 and 10, paragraph 1. Reference is made in this context to a report released by an American non-governmental organization in 1990, which was highly critical of conditions of detention at St. Catherine District Prison. ^{2/}

3.3 Counsel requests that the Committee recommend the commutation of the author's death sentence to one of life imprisonment.

The State party's information and observations on the admissibility of the case and counsel's comments thereon

4.1 In its submission under rule 91 of the rules of procedure, dated 19 January 1995, the State party argues that the communication is inadmissible as an abuse of the right of submission, pursuant to article 3 of the Optional Protocol. It recalls that the author's initial complaint was transmitted to the Jamaican authorities on 28 August 1990, two years and two months before the dismissal of his appeal by the Judicial Committee. The author's initial complaint under article 14 of the Covenant was declared inadmissible for non-exhaustion of domestic remedies. Mr. Hylton had more than 12 months' time after the dismissal of his petition by the Privy Council to lodge supplemental claims, while his initial complaint was still being considered by the Committee. Instead, he only submitted a new complaint more than three months after the adoption of Views on his earlier communication. The State party considers this "to be a tactic designed to unnecessarily prolong the process in a manner which amounts to abuse of the right of submission".

4.2 The State party adds that it is established under domestic law that the judicial process must be used bona fide and must not be abused. Courts will prevent the judicial machinery "from being used as a means of vexation and oppression in the process of litigation". The State party considers it to be an abuse of process to raise in subsequent proceedings matters which could and should have been litigated in earlier proceedings; in its opinion, this approach should also govern the Committee's procedure: "[t]o allow the author to bring a new communication on these issues at this stage would be to allow him to prolong proceedings before the Committee, and increase the burden on the State party in terms of dealing with issues and having the relevant investigations done at least in this late stage".

4.3 Notwithstanding the above, and in "the interest of expediting" consideration of the case, the State party offers the following observations on the merits of the author's complaint. With respect to the alleged violation of articles 7 and 10 (1) because of the length of time spent on death row, it refutes the view that the Judicial Committee's judgement of 2 November 1993 in the case of Pratt and Morgan v. Attorney-General of Jamaica and Another is the authority for the proposition that a person has been subjected to cruel and inhuman treatment if he has been on death row for more than five years. Rather, the State party claims, each case must be examined on its own merits in order to determine whether or not there has been a violation of constitutional rights.

4.4 The State party contends that the argument in the above paragraph is supported by the Committee's own jurisprudence, notably in its Views on the case of Pratt and Morgan, where it was argued that "in principle prolonged judicial proceedings do not per se constitute cruel, inhuman or degrading treatment even if they can be a source of strain for convicted prisoners. However, ... an assessment of the circumstances of each case would be necessary" (emphasis added by State party).

5.1 In her comments, dated 3 March 1995, counsel refutes the State party's contention that the communication is an abuse of the right of submission. She denies that the doctrine of res judicata, either in its narrow or in its wide application, would apply to the present communication.

5.2 Counsel concedes that the doctrine of res judicata may apply to the procedure under the Optional Protocol, and that the legal basis for such an interpretation may be found in article 3 of the Protocol. However, she denies that Mr. Hylton's communication raises issues of res judicata, or that it falls within the ambit of article 3 of the Protocol for any other reason. Unlike the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Optional Protocol does not contain a res judicata clause; counsel concedes that if the author of a communication were to resubmit, without alteration, a submission previously declared inadmissible or already considered by the Committee, this would amount to an abuse of the right of submission. Inadmissibility for abuse of the right of submission might also extend to instances in which false declarations are made to mislead the Committee, or where the author of a complaint fails to supply the necessary information or substantiate assertions after repeated requests.

5.3 In counsel's opinion, none of the above criteria apply to her client's case. She explains that in the initial communication filed by Mr. Hylton, the alleged violations of articles 7 and 10 (1) were based on continued threats to, and ill-treatment of, the author by prison warders. It was in this respect that the initial complaint was declared admissible in October 1992, and Views with a finding of violation of articles 7 and 10, paragraph 1, were adopted in July 1994. At no point in the course of examination of the initial communication did Mr. Hylton raise the issue of violations of articles 7 and 10, paragraph 1, because of the length of time he had spent on death row. In short, the "death row phenomenon" issue was never considered by the parties and by the Committee in the initial case: thus, a narrow application of the "res judicata" doctrine cannot apply to the present complaint.

5.4 Counsel recalls that in this case her client complains only that detention on death row for close to seven years ^{3/} violates his rights under articles 7 and 10, paragraph 1: the length of detention on death row could not have been raised with any prospect of success in the earlier communication, which was filed at a time when Mr. Hylton had been detained on death row for just over two years. Therefore, it is clearly facts subsequent to the initial communication - i.e., prolongation of his detention on death row - which are at the basis of the present communication. As they could not have been raised in the earlier proceedings, counsel argues that the present case cannot be considered an abuse of process even under a broadly interpreted doctrine of res judicata.

5.5 Counsel rejects as without foundation the State party's contention that the present communication is designed to prolong proceedings in the case, as no other procedures which the present complaint could prolong are currently pending.

5.6 In a letter dated 30 May 1995, the author considers that his death sentence should have been commuted on the basis of the Judicial Committee of

the Privy Council's Guidelines in the Pratt and Morgan judgement. He claims that, as execution warrants have recently been delivered to some fellow inmates, he continues to "live in constant fear of the hangman".

Decision on admissibility and examination on 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 notes that the author had submitted an earlier communication to the Committee, in respect of which Views were adopted on 8 July 1994. The State party argues that the claims which are at the basis of the present communication could and should have been raised in Mr. Hylton's initial communication, and that the fact that they were used to formulate a new complaint before the Committee makes the communication inadmissible as an abuse of the right of submission, pursuant to article 3 of the Optional Protocol.

6.3 The Committee does not share the State party's assessment. While it is correct that the author of a communication is required to display due diligence in the presentation of his/her claims, and that it is conceivable that the sequential introduction, in the course of consideration of a case, of claims which could have been formulated at the time of the initial submission may constitute an abuse of process, this does not apply if the author of a case whose examination is concluded subsequently raises new claims which he could not have raised in the context of the previous complaint. In the Committee's opinion, issues of res judicata do not arise in the latter hypothesis.

6.4 In the instant case, Mr. Hylton formulates a claim related to the so-called "death row phenomenon". This claim was not at issue in his earlier case, in respect of which Views were adopted in July 1994. Given that he had been detained on death row for slightly over two years when he submitted his initial complaint, he could not have argued with any reasonable prospect of success that the length of his detention on death row was, at that time, contrary to articles 7 and 10, paragraph 1. When submitting his second case on 21 October 1994, the factual situation had changed, by virtue of the prolongation of his detention on death row. In these circumstances, the present complaint does not amount to an abuse of process; nor does the Committee consider that it "unnecessarily prolongs" the judicial process, as the claim at issue in the present communication has never been adjudicated.

6.5 The Committee must further consider whether domestic remedies remain available to the author. By note verbale dated 22 November 1995, the State party informed the Committee that the author's death sentence had been commuted to life imprisonment by the Governor General of Jamaica, upon advice of the Jamaican Privy Council. The State party has not informed the Committee of any further remedy available to the author in respect of his claim under articles 7 and 10, paragraph 1; the Committee notes that a constitutional motion is not available to the author in practice, as no legal aid is made available for the purpose.

6.6 Accordingly, the Committee considers the present communication admissible, in so far as the author's claim relating to the length of detention on death row is concerned.

6.7 In respect of the claims under articles 7 and 10, paragraph 1, related to the author's conditions of detention at St. Catherine District Prison, the Committee notes that they have not been substantiated other than by a general reference to a report prepared by a non-governmental organization in 1990. No further details on the author's specific condition have been adduced. In this respect, the Committee concludes that counsel has failed to advance a claim within the meaning of article 2 of the Optional Protocol.

7.1 Having determined that the communication is admissible in so far as the author's claim relating to prolonged detention on death row is concerned, the Committee considers it appropriate in this case to proceed to an examination of the merits. In this context, the Committee notes that the State party has offered, in the interest of expediting the matter, comments on the merits of the communication. The Committee recalls that article 4, paragraph 2, of the Optional Protocol stipulates that the receiving State shall submit its written explanations on the merits of a case within six months of the transmittal of the communication to it for comments on the merits. The Committee finds that this period may be shortened, in the interests of justice, if the State party so agrees. It further notes that author's counsel, in her submission of 3 March 1995, acquiesces to the examination on the merits, without offering further comments.

7.2 Accordingly, the Committee proceeds, without further delay, to the examination of the substance of the author's claim concerning the length of his detention on death row, in the light of all information made available by the parties, as required under article 5, paragraph 1, of the Optional Protocol.

8. The Committee must determine whether the length of time the author spent on death row - seven years - 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. Hylton 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, 4/ 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 seven years 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.

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 the Committee do not reveal a violation by Jamaica of any of the provisions of the Covenant.

[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.]

Individual opinion by Committee member
Francisco José Aquilar Urbina

The way in which the majority opinion on the communication submitted by Mr. Dwayne Hylton against Jamaica (No. 600/1994) has been expressed obliges me to express my individual opinion. The majority opinion simply reiterates previous jurisprudence which has established that the death row phenomenon does not, per se, constitute a violation of article 7 of the International Covenant on Civil and Political Rights. The Committee has repeatedly maintained that the mere fact of being sentenced to death does not constitute cruel, inhuman or degrading treatment or punishment. In my opinion, the Committee is wrong to seek inflexibly to maintain its jurisprudence without clarifying, analysing and appraising the facts before it on a case-by-case basis. In the case of the present communication, the Human Rights Committee's wish to be consistent with its previous jurisprudence has led it to rule that the length of detention on death row is in no circumstances contrary to article 7 of the Covenant.

The majority opinion seems to be based on the supposition that only a total reversal of the Committee jurisprudence would allow it to decide that an excessively long stay on death row could entail a violation of that provision. In this respect I would refer to my opinion and analysis in connection with communication No. 588/1994 (Errol Johnson v. Jamaica). In particular, I would also draw attention to my observations on the lack of cooperation by the State party.

The Human Rights Committee is responsible for ensuring that the provisions of the International Covenant on Civil and Political Rights are not violated as a consequence of the execution of a sentence. I therefore emphasize that the Committee must examine the circumstances on a case-by-case basis. The Committee must establish the physical and psychological conditions to which the condemned person has been subjected in order to determine whether the behaviour of the government authorities is in accordance with the provisions of articles 7 and 10 of the Covenant.

The Committee must therefore establish whether the laws and actions of the State, and the behaviour and conditions of the condemned person, make it possible to determine whether the time elapsed between sentencing and execution is reasonable and, on that basis, that it does not constitute a violation of the Covenant. These are the limits of the Human Rights Committee's competence to determine whether there has been compliance with, or violation of, the provisions of the International Covenant on Civil and Political Rights.

Nevertheless, in the present case the State cannot be held responsible for the amount of time which has elapsed (six years at the time of submission of the communication), since much of that time has been devoted to exercising the remedies which Jamaican law grants to the condemned person for challenging the sentence. Accordingly, I also find that there has been no violation of articles 7 and 10 of the Covenant.

(Signed): Francisco José Aguilar Urbina

[Original: Spanish]

Notes

1/ Privy Council Appeal No. 10 of 1993, judgement delivered on 2 November 1993.

2/ Human Rights Watch, Prison Conditions in Jamaica, 1990.

3/ As of 3 March 1995.

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