

HUMAN RIGHTS COMMITTEE

Colin Johnson v. Jamaica

Communication N° 653/1995*

20 October 1998

CCPR/C/64/D/653/1995*

VIEWS

Submitted by: Colin Johnson (represented by Saul Lehrfreund from the London Law firm of Simons Muirhead & Burton)

Victim: The author

State party: Jamaica

Date of communication: 13 September 1995 (initial submission)

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

Meeting on 20 October 1998

Having concluded its consideration of communication No.653/1995 submitted to the Human Rights Committee by Mr. Colin Johnson, 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 Colin Johnson, a Jamaican citizen currently imprisoned in the General Penitentiary, Kingston, Jamaica. The author claims to be a victim of violations by Jamaica of articles 7, 10 and 14 of the International Covenant on Civil and Political Rights. He is represented by Mr. Saul Lehrfreund, of the London Law firm, Simons

Muirhead & Burton.

Facts as submitted by the author

2.1 On 5 April 1984, the author was arrested and charged with the murder of one Winston Davidson on 23 March 1984. On 23 September 1985, the trial against the accused started in the Home Circuit Court. On 26 September 1985, the author was found guilty of murder and sentenced to death. The Court of Appeal of Jamaica refused the author's Application for Leave to Appeal on 20 May 1987. An application for Leave to Appeal to the Privy Council was filed in the Court of Appeal on 1 July 1987, but the matter was adjourned "sine die". Counsel reformulated the point of law with which the Court had been dissatisfied and relisted the notice of motion on 4 November 1987. Nevertheless, the matter remained "sine die" on the records of the Court of Appeal.

2.2 On 26 July 1988, the Committee declared an earlier communication submitted by the author inadmissible because of non-exhaustion of domestic remedies, since it appeared from the information before the Committee that the author had failed to petition the Judicial Committee of the Privy Council for special leave to appeal¹. The decision provided for the possibility of review of admissibility, pursuant to rule 92, paragraph 2, of the Committee's rules of procedure. On 26 July 1993, the author's petition for Special Leave to Appeal to the Judicial Committee of the Privy Council was dismissed. It is therefore submitted that all available domestic remedies have been exhausted.

2.3 On 18 December 1992, the author's offence was classified as non-capital murder under the Offences Against the Person (Amendment) Act 1992. The length of term to serve before becoming eligible for parole is 20 years.

2.4 The author submits that he has not filed a constitutional motion, since no legal aid is available in Jamaica for this purpose. In this connection, the author refers to the Committee's jurisprudence and submits that the application should therefore be admissible under the Optional Protocol.

2.5 The case for the prosecution was based on the evidence of one eye witness of events, the deceased's cousin, Kenneth Morrison. He gave evidence to the effect that he was working at his fish stall in the morning of 23 March 1984 when his cousin, Winston Davidson, passed by and had a brief conversation with him. At this point his cousin was uninjured. Winston Davidson then continued and went out of the witness's sight. About five minutes later, Kenneth Morrison heard three to four gunshots from the direction of where his cousin had gone. Three to five minutes later he saw the deceased running back. Three yards behind were the author, the author's brother and his sister who were pursuing Winston Davidson. Colin Johnson was carrying a gun pointing it at the deceased. Davidson was not carrying anything in his hand; he was wounded with blood coming out of his mouth and stomach. When Colin Johnson saw the witness he stopped and, after the witness had occasion to see him from a distance of about 15 to 20 yards for a moment, Colin Johnson, his brother and sister disappeared. Winston Davidson continued running; he was then put into a car and taken to hospital. At this point he was still alive. A pathologist gave evidence that Winston Davidson

was dead on examination at the hospital later on 23 March 1984.

2.6 Kenneth Morrison's evidence was that he had known the defendant for about seven years. He was a friend of the defendant and saw him almost every day. Kenneth Morrison first made a statement to the police on 5 April 1984. He stated that the reason he had not been to the police earlier was that he was frightened of making a statement until the suspect was in custody.

2.7 At the trial, a detective corporal gave evidence that he arrested Colin Johnson on 5 April 1984. After telling the accused that he was wanted by the police in connection with a murder that had occurred in a certain area of Kingston, Colin Johnson replied:

"Mr Cassell, ah the bwoy first shoot at me sah."

Cassell's evidence was that he had written down this comment at the time on a scrap of paper. Colin Johnson did not sign this piece of paper. Cassell never wrote it down in an officer's notebook and since had been unable to find it. Cassell admitted in cross examination that the area in question was an area with a high crime rate and frequent gun violence. Sergeant Lloyd Hayley, an officer in the case who had taken Colin Johnson into custody, gave evidence that he had arranged a confrontation between Colin Johnson and the witness, Morrison.

2.8 The case for the defence was based on alibi; the author made an unsworn statement from the dock saying that he was not in the area in question on the day of the crime. He called no witnesses in support of his alibi. He denied that he had said

"Ah the bwoy first shoot at me sah."

on arrest. He alleged that Kenneth Morrison was lying when he said that he had seen him running after the deceased. He said that he had worked with Morrison in 1982 on a building site. Both Colin Johnson and Kenneth Morrison had been suspected of selling materials from the site. Morrison had been held responsible and dismissed. Kenneth Morrison had since held a grudge against him; hence his motivation for lying in Court.

2.9 Colin Johnson called one witness in his support, Wesley Suckoo. His evidence was that he had driven Winston Davidson to hospital on 23 March 1984 and that during the journey the dying man told him who it was who shot him and that this person was not Colin Johnson.

The complaint

3.1 The author claims that the trial against him was unfair and partial. He submits that the judge misdirected the jury in failing to give a general warning as to the dangers of relying on identification evidence. Such a warning would have been particularly important in the present case as the distance between the witness and the accused of 15 to 20 yards would have been sufficiently far for there to be at least the real possibility of mistake. It is stated that the judge also failed to remind the jury that it is possible for a honest witness to be a

mistaken witness.

3.2 Further, it is claimed that the judge, in his summing-up, cast serious doubts on the credibility of the defence witness and treated the evidence of the chief prosecution witness, Kenneth Morrison, in a favourable way. In this connection, it is submitted that, during the cross-examination of the driver of the car that brought Davidson to hospital, the judge intervened 58 times in a manner which allegedly violated his duty of impartiality. Counsel claims that this deprived the author of having his defence considered fairly, impartially and objectively by the jury.

3.3 It is also alleged that the judge deprived the applicant of a chance of acquittal when he directed the jury that it was an unreasonable inference on the basis of the evidence to conclude that someone else shot Mr. Davidson.

3.4 Finally, it is submitted that the judge expressly withdrew the issue of self defence from the jury, even though the issue was raised in the evidence of the prosecution. Counsel states that the trial judge has a duty to explain and to leave possible defences to the jury even when not raised by the defence. It is therefore submitted that for the above-mentioned reasons, the author is a victim of a violation of article 14, paragraph 1 of the Covenant.

3.5 The author further submits that he was beaten by five warders on 20 November 1986 whilst detained on death row in St. Catherine District Prison, Jamaica. He states that his hand was broken. Approximately three weeks after the incident he was admitted to hospital for treatment. Until this time he was denied medical attention. Upon receipt of a letter by Colin Johnson dated 3 December 1986, his Jamaican attorney telephoned the superintendent in charge of St. Catherine District Prison and informed him of the report received concerning Mr. Johnson and asked for a complete investigation of the matter. The Jamaican attorney never received a response, although one was promised. The author also contacted the prison superintendent himself, the Ombudsman of the Jamaican Parliament and the Jamaica Council for Human Rights. The Ombudsman answered that he had received a letter of the Department of Correctional Services, dated 4 December 1989, in which it is confirmed that three death row inmates, among whom was the author, had been party to an insurrection on 20 November 1986. As a result of that incident the authorities had used force to quell the uprising. The inmates were treated by the Institution's Doctor for the injuries documented on their medical record. The record for Colin Johnson, however, showed no evidence of him receiving any medical treatment on the day in question. It is submitted that this letter shows that the author was subjected to ill-treatment on 20 November 1986 and that he furthermore did not receive any medical treatment on that day.

3.6 It is further stated that three death row inmates died as a result of injuries inflicted during a prison disturbance on 28 May 1990. In August 1991, during the investigation relating to this matter, several other inmates reported to have been injured by warders during the quelling of the disturbance. In this context, the author's mother, Mrs. Hazel Bowers stated in a sworn affidavit taken on 8 June 1990, that her son "appeared to be very frightened", that he had told her that the warders had reportedly threatened to kill as many inmates as possible, since they would not rely on the government to carry out the executions. They had

beaten the men with "iron pipes, big sticks, batons and whatever implements they could get hold on". Mrs. Bowers stated that since the killings, the death row inmates were "living in fear of losing their lives at the hands of the warders" and that her son had appealed to the Jamaica Council for Human Rights to intervene on the inmates' behalf. It is submitted that the suffering endured by Johnson, who was being forced to live in an atmosphere of violence, constantly feeling vulnerable or afraid, amounted to inhuman treatment, in breach of article 7 and 10, paragraph 1, of the Covenant.

3.7 Until his reclassification as a non-capital offender in December 1992, the author was on death row for a period of over 7 years. Counsel argues that the mere fact that the author will no longer be executed does not nullify the mental anguish for the 7 years facing the prospect of being hanged. It is submitted that the death row incarceration can constitute inhuman and degrading treatment, the so-called "death-row phenomenon", which is recognised by the jurisprudence of various courts².

3.8 It is stated that Mr. Johnson's cell on death row measured 6' x 9', and was poorly lit with long periods spent in almost total darkness; there was only a concrete slab for sleeping and no integral sanitation. It is submitted that these factors are sufficient in themselves to constitute breaches of articles 7 and 10, paragraph 1, of the Covenant.

3.9 The author states, referring to Amnesty International's report of December 1993 on a "Proposal for an Inquiry into Deaths and Ill-Treatment of Prisoners in St. Catherine District Prison", that serious complaints by prisoners have apparently not been acted upon and that the Ombudsman office does not have the powers of enforcement and that its recommendations are non-binding. It is therefore submitted that, with respect to his claims under articles 7 and 10 of the Covenant, Colin Johnson has satisfied the requirements of article 5, paragraph 2 (b), of the Optional Protocol, due to the inadequacy of the domestic complaints process.

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

4.1 In its submission, dated 3 May 1996, the State party with respect to the allegation of prolonged detention on death row contends that on the basis of the Committee jurisprudence in the decision of Pratt and Morgan v. Jamaica, it does not accept that a prolonged stay on death row per se constitutes cruel and inhuman treatment. Each case must be examined on its own facts. Consequently, it rejects a violation of the Covenant. With respect to the allegation of ill-treatment by warders in 1987 and the denial of medical treatment after the beatings the State party has promised to investigate the matter to date, 6 July 1998, no further information has been received by the Committee.

4.2 With respect to the allegations of unfair trial arising from the judge's directions to the jury on identification evidence and the judge's withdrawal of self-defence from the jury, in violation of article 14, paragraph 1, of the Covenant, the State party refers to the Committee's own jurisprudence, with regard to the evaluation of facts and evidence .

5. In his comments, dated 20 June 1996, counsel points out that the State party has not

addressed all the claims and has promised an investigation. In this respect, counsel states that the State party has not rebutted the allegations regarding the author's ill-treatment while on death row at St. Catherine District Prison, in particular the incident of 20 November 1996 where the author's hand was broken. Counsel also refers to an incident, on 28 May 1990, where the author saw three inmates being beaten to death this had led him to subsequently live in fear of losing his own life at hands of warders.

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 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 observes that with the dismissal of the author's petition for special leave to appeal by the Judicial Committee of the Privy Council on 26 July 1993, the author has exhausted domestic remedies for purposes of the Optional Protocol. In the circumstances of the case, the Committee is not aware of any obstacle to the admissibility and finds it expedient to proceed with the examination of the merits of the case. In this context, it notes that the State party has not contested the admissibility of the communication and has proceeded to comment on the merits.

6.4 With respect to the author's claims about irregularities in the court proceedings, improper instructions from the judge to the jury on the issue of identification, the Committee reiterates that, while article 14 guarantees the right to a fair trial, it is not for the Committee to review specific instructions to the jury by the judge in a trial by jury, unless it can be ascertained that the instructions to the jury were clearly arbitrary or amounted to a denial of justice, or that the judge manifestly violated his obligation of impartiality. The material before the Committee does not show that the judge's instructions 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.

7. The Committee declares the remaining claims admissible and proceeds, without further delay, to an examination of the substance of these 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 the author's detention on death row, over seven years, under allegedly deplorable circumstances, at St. Catherine district Prison, violated article 7 of the covenant. It remains the jurisprudence of this Committee that detention for a specific period of time does not amount to a violation of articles 7 and 10, paragraph 1, of the Covenant in the absence of some further compelling circumstances. The author has related two incidents which occurred on 20 November 1986 and 28 May 1990,

where he was beaten by warders and lack of medical treatment as well as threats to his life, which he documented in complaints to his counsel in Jamaica, the prison superintendent, the Parliamentary Ombudsman of Jamaica and to the Jamaica Council for Human Rights. The State party has promised to investigate these claims, but has failed to forward to the Committee its findings, almost two years after promising to do so. In these circumstances, in the absence of any information from the State party, the Committee finds a violation of article 7 of the Covenant.

8.2 The author has also made specific allegations, about the deplorable conditions of his detention. He claims that he is kept in a poorly lit cell of 6 by 9 feet, with only a concrete slab to sleep on, and no integral sanitation. The Committee considers that the treatment described by the author is in violation of the State party's 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.

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 violations of articles 7 and 10, paragraph 1, of the Covenant.

10. Pursuant to article 2, paragraph 3 (a), of the Covenant, the State party is under the obligation to provide the author with an effective remedy including compensation. The Committee urges the State party to take effective measures to carry out an official investigation into the beating by wardens with a view to identify the perpetrators and punish them accordingly, and to ensure that similar violations do not occur in the future.

11. On becoming a State party to the Optional Protocol, Jamaica 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 Jamaica's denunciation of the Optional Protocol became effective on 23 January 1998; in accordance with article 12(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 with 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 ninety 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.

* The following members of the Committee participated in the examination of the present communication: Mr. Prafullachandra N. Bhagwati, Mr. Thomas Buergenthal, Lord Colville, Mr. Omar El Shafei, Ms. Elizabeth Evatt, Ms. Pilar Gaitan de Pombo, Mr. Eckart Klein, Mr. David Kretzmer, Mr. Rajsoomer Lallah, Ms. Cecilia Medina Quiroga, Mr. Julio Prado Vallejo, Mr. Martin Scheinin, Mr. Roman Wieruszewski, Mr. Maxwell Yalden, and Mr. Abdallah Zakhia.

1/ Communication No. 252/1987, declared inadmissible on 26 July 1988, during the Committee's 33rd session.

2/ Reference is made to the European Court of Human Rights in the Soering case [judgment of 7 July 1989, Series A, Volume 161], to the Indian Supreme Court [Rajendra Prasad -v- State of Uttar Pradesh, 1979 3 SCR 329], to the Zimbabwe Supreme Court [Catholic Commissioners for Peace and Justice in Zimbabwe -v- Attorney General, 14 HRLJ (1993), p.231] and to the Judicial Committee of the Privy Council [Pratt & Morgan -v- Attorney General of Jamaica (1993) 4 All ER 769].

[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.]