

HUMAN RIGHTS COMMITTEE

Williams v. Jamaica

Communication No 609/1995

4 November 1997

CCPR/C/61/D/609/1995

VIEWS

Submitted by: Nathaniel Williams [represented by the London law firm of Nabarro Nathanson]

Victim: The author

State party: Jamaica

Date of communication: 30 November 1994 (initial submission)

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

Meeting on 4 November 1997,

Having concluded its consideration of communication No. 609/1995 submitted to the Human Rights Committee on behalf of Mr. Nathaniel Williams 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 Nathaniel Williams, a Jamaican citizen who at the time of submission of his communication was under sentence of death at St. Catherine District Prison, Jamaica. He claims to be a victim of violations by Jamaica of articles 6, 7 and 10 of the International Covenant on Civil and Political Rights. He is represented by George Brown of the London law firm of Nabarro Nathanson. On 22 November 1995, the Government of Jamaica advised that the author's

death sentence had been commuted to life imprisonment on the advice of the Jamaican Privy Council.

The facts as submitted

2.1 The author was convicted of murder and sentenced to death on 1 December 1988 in the Home Circuit Court of Kingston. The Court of Appeal of Jamaica dismissed his appeal on 4 December 1990. The author considered petitioning the Judicial Committee of the Privy Council for special leave to appeal, but senior counsel advised that an application to the Judicial Committee would have no prospect of success. Subsequent to the enactment of the Offenses against the Person (Amendment) Act in 1992, the author's crime was classified as capital murder. The author served notice of his intention to appeal the classification of his crime on 9 February 1993.

2.2 During the trial, the prosecution submitted that the author had been employed by an elderly couple, Mr. and Mrs. Silvela, over a period of several years. The working relationship soured, and Mrs. Silvela allegedly had told the author to leave the house by the morning of 29 June 1986. In the morning of 29 June 1986, Mr. and Mrs. Silvela and the latter's sister were discovered dead and brutally mutilated. On 15 July 1986 at approximately 2:00 a.m., a district constable went to the home of the author's sister, where Mr. Williams told him that he had killed Mr. and Mrs. Silvela as well as the latter's sister. He added that Mrs. Silvela had intended to reduce his weekly salary from fifty to forty dollars, and that she and her husband had entered his room, destroyed his radio and thrown stones and bottles at him.

2.3 Counsel indicates that at the time of the trial in December 1988, the author already displayed signs of mental disturbance. He refers in this context to the author's replies to the three charges levelled against him at the trial ("blood cloth, raas cloth", "bombo cloth, blood cloth, raas cloth", "bombo clath, raas clath. I don't know nothing about that"). The author was indeed examined by a psychiatrist either immediately prior to or during the trial, who diagnosed the author as merely suffering from a mild reactive depression. Counsel nonetheless suggests that the fact that the author appeared to have carried out the killings with little if any motivation and the gruesome and bizarre circumstances of the crime indicate that Mr. Williams was, at the time of committal of the murders, at least mentally unbalanced.

2.4 Counsel indicates that he has received correspondence from inmates on death row which states that the author has severe mental problems and is unable to write himself¹. He further refers to an initial report on a psychiatric examination of the author carried out by one Dr. A. Irons on 14 March 1992. This report observes that the author "had four sticks of wooden matches occluding his left external auditory conduct(ear) which he explained was to shut out the 'voices' which he constantly heard discussing him". The report continues that the author "was very distractible and admitted to auditory hallucinations which disturbed him constantly. He also admits to feelings of depression and tearfulness which led to him jumping into a deep sanitary pit in an attempt to end his own life". The doctor diagnosed the author as suffering from schizophrenia of a paranoid type, unspecified personality disorder and anxiety and depression, in keeping with the circumstances of his incarceration. He recommended that the author should benefit from regular psychotropic medication.

2.5 On 18 December 1992, counsel visited the author on death row. He concluded that Mr. Williams

did not understand the questions which he put to him, and that he did not have any recollection of either the trial or the appeal. A senior prison officer as well as other inmates on death row told counsel that the author was ill. This information notwithstanding, counsel has found it impossible to obtain further evidence about the author's mental state, despite repeated requests for authorization of a further medical examination, addressed directly to the prison authorities or through the Jamaica Council for Human Rights.

The complaint

3.1 Counsel contends that his client is a victim of a violation of article 6 of the Covenant. He refers in this context to the Committee's Views on communications Nos. 146/1983 and 148-154/1983 *Baboeram-Adhin et al. v. Suriname*, Views adopted on 4 April 1985., where it was held that the requirement that the right to life shall be protected by law and that no one shall be arbitrarily deprived of his life implies that the law must strictly control the circumstances in which a person is deprived of his life by State authorities. It is submitted that the circumstances in the present case strongly suggest that Mr. Williams is insane and thus should not be subject to the death penalty.

3.2 Counsel argues that the author is a victim of a violation of articles 7 and 10, in the light of the circumstances set out in paragraphs 2.3 to 2.5 above: the execution of an insane person makes it inhuman. It is further claimed that Mr. Williams is not receiving proper medical treatment for his severe mental disorder, which is said to constitute an additional breach of articles 7 and 10(1).

3.3 From his conviction in December 1988 to the commutation of his sentence in 1995, the author was detained in the death row section of St. Catherine District Prison, i.e. for close to seven years. Counsel observes that the agony and mental strain resulting from such prolonged detention on death row, during which the inmate must constantly face the prospect of his imminent execution, amounts to cruel, inhuman and degrading treatment within the meaning of article 7 of the Covenant.

3.4 It is finally submitted that to keep an individual in the author's state of mental health on death row constitutes a violation of articles 7 and 10 and of article 6. Counsel further invokes articles 22 to 26 of the UN Standard Minimum Rules for the Treatment of Prisoners: to attempt to execute an insane or mentally disturbed individual is said to amount to a breach of customary international law. Counsel concedes that he has been unable to obtain a detailed medical report in his client's case on account of the difficulties in securing the services of a psychiatrist in Jamaica and the inadequacies of medical facilities at St. Catherine District Prison. He submits however that it is abundantly clear from the information available that the author is severely mentally disturbed.

State party's observations and counsel's comments

4.1 By submission of 25 April 1995, the State party offers comments both on the admissibility and merits of the communication. On admissibility, it notes that Section 110 of the Jamaican Constitution grants a right of appeal to the Judicial Committee of the Privy Council, and the Poor Prisoners Defense Act provides for legal aid for the purpose. As the author failed to avail himself of his right of appeal to the Judicial Committee, the State party argues that the requirements of article 5, paragraph 2(b), of the Optional Protocol have not been met. Furthermore, as to the alleged breach of article 6 of the Covenant, the author's failure to appeal against the classification of his

conviction as capital murder is equally said not to meet the requirements of article 5, paragraph 2(b).

4.2 On the merits, the State party denies that there has been a breach of article 6. The right to life is fully protected under Jamaican law (Section 14 of the Constitution) and the execution of a death sentence on an individual convicted of murder after the completion of the due process of law clearly satisfies the requirements of article 6. The State party submits that Mr. Williams' alleged insanity is not a relevant consideration for the purpose of determining whether there has been a breach of article 6 in the instant case or as a matter of principle.

4.3 As to the allegation that the author's execution would constitute a violation of article 6, because of his mental condition, the State party notes that it will carry out investigations to ascertain the mental health of the author, and that further information will be transmitted upon completion of the investigations. As of mid-September 1997, no such information had been received by the Committee.

4.4 As to the allegation that the prolonged detention of the author on death row (six years and six months by the time of the State party's submission), the State party points out that the judgment of the Judicial Committee of the Privy Council of 2 November 1993 in the case of Pratt and Morgan v. Attorney-General of Jamaica, which is adduced in support of the allegation, should not be seen as prejudging all other cases in which an individual has been detained on death row for more than five years. Rather, each case must be examined on its own merits. The State party recalls that the Committee's jurisprudence on the death row phenomenon, as formulated in the Committee's Views on the case of Pratt and Morgan Communications Nos. 210/1986 and 225/1987 (Pratt and Morgan v. Jamaica); Views adopted 5 April 1989, paragraph 13.6., holds that prolonged judicial proceedings do not per se constitute a violation of article 7 even if they can be a source of mental strain for the convicted prisoner, and that a case by case assessment would be necessary in capital punishment cases. The State party concludes that there is no automatic violation of articles 7 and 10(1) as a result of the fact that an inmate was confined to death row for more than five years.

5.1 In his comments, counsel refutes that Section 110 of the Jamaican Constitution grants a right of appeal in the circumstances of his client's case. He argues that the amount of legal aid provided under the Poor Prisoners Defense Act for purposes of petitioning the Judicial Committee is wholly inadequate. Finally, counsel notes that an experienced Leading Counsel advised that in the author's case, a petition for special leave to appeal to the Judicial Committee would have no prospect of success. It is thus contended that available domestic remedies have been exhausted for the purposes of article 5, paragraph 2(b), of the Optional Protocol.

5.2 Counsel refutes the State party's argument that Mr. Williams did not appeal against classification of his sentence as capital murder and points out that Mr. Williams' appeal against classification was in fact heard on 22 March 1995 and dismissed.

5.3 On issues relating to article 6, counsel concedes that there has been no formal diagnosis of insanity in the author's case but argues that this is due to lack of medical care provided by St. Catherine District Prison. Thus, the Department of Correctional Services confirmed that the author had been listed for medical examination by a psychiatrist since 29 September 1994; counsel has been unable to establish whether any treatment has been given to the author since that time². He claims

that it is established jurisprudence in the common law of Jamaica not to execute those who are insane. The State party's inability to confirm that the author is not insane is said to prove the inadequacy of the correctional services.

5.4 As to allegations concerning the death row phenomenon, counsel submits that to have remained on death row for well over six years constitutes a violation of articles 7 and 10, paragraph 1, of the Covenant. He argues that in Pratt and Morgan, the Judicial Committee did not want to establish a rigid timetable as to the length of detention on death row which could not be regarded as inhuman and degrading treatment. He also points out that it is "well known" and documented in reports prepared by several non-governmental organizations that the conditions of detention at St. Catherine District Prison fall far below acceptable standards. In counsel's opinion, if five years and more on death row give "strong grounds" for believing that the delay is such as to constitute inhuman and degrading punishment, it definitely becomes inhuman and degrading if combined with the deplorable conditions of detention inside St. Catherine District Prison.

Decision on admissibility and examination on the merits

6.1 The Committee has considered the present communication in the light of all the information provided by the parties, as required by article 5, paragraph 1, of the Optional Protocol. It notes that the State party has argued that the communication is inadmissible on the ground of non-exhaustion of domestic remedies, as Mr. Williams failed to petition the Judicial Committee of the Privy Council for special leave to appeal, and because he failed to appeal against classification of his sentence as capital murder. The Committee notes first that it is uncontested that leading counsel in the case had advised that a petition to the Judicial Committee would have no prospect of success; in the circumstances, such a petition would not constitute a remedy which is both available and effective. Moreover, it has remained uncontested that the author's appeal against the classification of his sentence was in fact heard and dismissed on 22 March 1995³. Finally, the Committee considers that after the commutation of the author's death sentence by the Governor-General of Jamaica, a petition for special leave to appeal to the Judicial Committee of the Privy Council would serve little purpose.

6.2 As to counsel's claim that the execution of a mentally disturbed individual like Mr. Williams would constitute a violation of articles 6 and 7 of the Covenant, the Committee considers that this has become moot with the commutation of the death sentence.

6.3 The Committee considers that the other claims relating to the death row phenomenon and the lack of treatment of the author's mental disorder are admissible and proceeds without further delay to the examination of their substance.

6.4 Counsel has claimed a violation of articles 7 and 10, paragraph 1, because of the length of the author's detention on death row, which, at the time of submission of the communication was six years and by the time of commutation of the sentence nearly seven years. The Committee reiterates its jurisprudence that prolonged detention on death row does not per se amount to a violation of articles 7 and 10, paragraph 1, of the Covenant in the absence of further compelling circumstances. On the other hand, each case must be considered on its own merits, bearing in mind the psychological impact of detention on death row on the convicted prisoner⁴.

6.5 In the instant case, the material before the Committee indicates that the author's mental condition seriously deteriorated during his incarceration on death row. This conclusion is buttressed by the correspondence addressed to the Committee on the author's behalf by other inmates on death row, and by the report prepared by Dr. Irons on his examination of the author on 14 March 1992 (see paragraph 2.4 above). On the other hand, the State party, which had promised to investigate the author's state of mental health and to forward its findings to the Committee, has failed to do so, more than two years after its submission. Finally, it is not apparent that the psychiatric examination which had been scheduled for the author in September 1994 by the State party's Department of Correctional Services has been carried out since that date. All these factors justify the conclusion that the author did not receive any or received inadequate medical treatment for his mental condition while detained on death row. This situation constitutes a violation of articles 7 and 10, paragraph 1, of the Covenant, since the author was subjected to inhuman treatment and was not treated with respect for the inherent dignity of his person.

7. 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.

8. Pursuant to article 2, paragraph 3(a), of the Covenant, the author is entitled to an effective remedy, including in particular to appropriate medical treatment.

9. 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 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: Mr. Nisuke Ando, Mr. Prafullachandra N. Bhagwati, Mr. Thomas Buergenthal, Lord Colville, Mr. Omran El Shafei, Ms. Elizabeth Evatt, Mr. Eckart Klein, Mr. David Kretzmer, Mr. Rajsoomer Lallah, Ms. Cecilia Medina Quiroga, Mr. Fausto Pocar, Mr. Julio Prado Vallejo, Mr. Martin Scheinin, Mr. Danilo Türk, Mr. Maxwell Yalden and Mr. Abdallah Zakhia.

1/ There are several letters in the case file written on Mr. Williams' behalf by another inmate, Everton Bailey.

2/ Counsel's comments are dated 14 June 1995.

3/ i.e. shortly before the transmittal of the State party's submission.

4/ See Committee's Views on communication No. 606/1994 (Clement Francis v. Jamaica), adopted on 25 July 1995, paragraph 9.1.

[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]