HUMAN RIGHTS COMMITTEE

Deidrick v. Jamaica

Communication No. 619/1995

4 July 1996

CCPR/C/57/D/619/1995*

ADMISSIBILITY

Submitted by: Fray Deidrick (represented by counsel)

Alleged victim: The author

State party: Jamaica

Date of communication: 18 November 1994 (initial submission)

Documentation references: List - CCPR/C/CL/R.59; Prior decisions - Special Rapporteur's rule 86/91 decision transmitted to the State party on 21 February 1995 (not issued in document form)

Date of present decision: 4 July 1996

The Human Rights Committee, acting through its Working Group pursuant to rule 87, paragraph 2, of the Committee's rules of procedure, adopts the following decision on admissibility.

Decision of admissibility

1. The author of the communication is Fray Deidrick, a Jamaican citizen who, at the time of submission of his complaint, was awaiting execution at St. Catherine District Prison, Jamaica. He claims to be the victim of violations by Jamaica of articles 7; 10 and 14, paragraphs 1 and 2, of the International Covenant on Civil and Political Rights. He is represented by counsel. The author has been reclassified as Non-Capital and sentenced to 15 years imprisonment.

The facts as submitted by the author

2.1 In July 1988, the author and his daughter were arrested and charged with the murder, on 12 July 1988, of one Seymour Williams. The author was found guilty as charged and sentenced to death on 30 June 1989 by the Home Circuit Court, Kingston; his daughter was acquitted. The author applied

for leave to appeal against conviction and sentence; the Court of Appeal of Jamaica dismissed his appeal on 22 March 1991. On 7 January 1993, Leading Counsel in London advised that a petition for special leave to appeal to the Judicial Committee of the Privy Council would have no prospect of success.

2.2 The Case for the prosecution relied on the evidence given by the deceased's family; wife, brother and two sons, all were the author's neighbours. Mrs. Williams testified that, on 12 July 1988, at about 11:00 p.m., she and her husband had seen the author sitting among a group of men. There was an exchange of words between her husband and one of the men; shortly thereafter, the author hit her husband with a brick. She, her husband and her brother-in-law wanted to report the incident at Linstead Police station; not finding anyone there, they returned home. The author was waiting for them; he threw a bottle at Mrs. Williams and threatened to kill them. One of the deceased son's testified that the author had chased him with a "butcher's knife". The author had then gone back and attacked Mr. Williams, had stabbed him in the back. At the same time the daughter had stuck something into his father's eye. He had been unable to help since he was being restrained by a friend of the deceased. The son further testified that the incident had been seen by some fifteen people, and that one Mr. Blackwood had tried to intervene, but had himself been stabbed. Mr. Williams died of the stab wounds.

2.3 The investigating officer testified that, when charged with the murder, the author stated that the deceased's family had attacked him, and that he had acted in self-defence. He conceded that the author had bruises on his back. He further testified that he had taken a statement from one Mr. Blackwood and from one Mr. Grandison, that he had submitted these statements, and that he tried to obtain statements from other witnesses of the incident. The trial transcript reveals that Mr. Blackwood and Mr. Grandison were not subpoenaed but warned, told to attend the preliminary hearing in the case; Mr. Grandison attended court on several occasions, but Mr. Blackwood never did. It further appears that they were never called by the prosecution to testify in the case.

2.4 The author made an unsworn statement from the dock, repeating that the Williams family had attacked him and that he had defended himself with a pocket knife. 1/ No witnesses were called to testify on his behalf; it appears from the trial transcript that the author's attorney intended to call a witness but then decided not to do so.

2.5 On appeal, the author was represented by the same attorneys who had represented him and his daughter at the trial. The grounds of appeal were based on the trial judge's treatment of certain elements of evidence in the case, his directions to the jury on certain issues, and the fact that he withdrew the issue of manslaughter from consideration by the jury.

2.6 In his advice, dated 7 January 1993, on the merits of a petition for special leave to appeal to the Judicial Committee of the Privy Council in the author's case, Leading counsel stated that: "I cannot see any grounds for attacking either the summing-up or the decision of the jury or the judgment of the Court of Appeal. It seems to me that the directions on self defence were put in a way which were of distinct advantage to the appellant. The jury was told in no uncertain terms that if they accepted the appellant's version of events, they must acquit. I do not see any ground for attacking the decision of the judge not to leave provocation to the jury".

2.7 It is stated that the Jamaica Council for Human Rights received a letter, dated 3 February 1993, from representatives of the Charlemont Citizen's Association and the Charlemont Neighbourhood Watch, who requested the Council's intervention in the author's case. They stated that: "Our concern lies in the fact that two other members of our community who participated in parting both factions and who witnessed what transpired, gave relevant statements to the investigating police which to date have not been submitted in court. These persons are reputable citizens, who witnessed the incident and are still willing and waiting to assist the court in ensuring that justice is done. We find it strange that Deidrick has been sentenced to death based only on statements given by members of the Williams' family who were themselves involved in the fight".

The Complaint

3.1 The author is said to be a victim of a violation of articles 7 and 10 of the Covenant, in view of the length of his detention on death row. Counsel notes that, since his conviction on 30 June 1989, the author has been held at St. Catherine District Prison, which means that he has now been on death row for almost seven years. It is submitted that the "agony of suspense" resulting from such detention amounts to cruel, inhuman and degrading treatment. Reference is made to the judgment of the Judicial Committee of the Privy Council in the case of Earl Pratt and Ivan Morgan v. Attorney General for Jamaica 2/, where it was held inter alia, that the delay in the carrying out of the execution constitutes cruel, inhuman and degrading treatment. Counsel submits that the delay is on its own sufficient to constitute a violation of articles 7 and 10, paragraph 1.

3.2 Counsel further submits that the conditions at St. Catherine District Prison amount to a violation of the author's rights under articles 7 and 10, paragraph 1. Conditions at the prison have been examined by non-governmental organizations, including Amnesty International, which observed in November 1993 that the prison was holding more than twice the capacity for which it was built in the 19th Century. Reportedly, the facilities provided by the State party are poor: no mattresses, other bedding or furniture in the cells; no integral sanitation; broken plumbing, piles of refuse and open sewers; no artificial lighting in the cells and only small air vents, through which natural light can enter; no employment opportunities available to inmates: no doctor attached to the prison, so that medical problems are generally treated by warders who receive very limited training. The particular impact of these conditions on the author are the following: he is confined to his cell for twenty-two hours every day; he spends most of his waking hours isolated from other men, with nothing whatsoever to keep him occupied; much of his time is spent in enforced darkness. Counsel concludes that fundamental and basic requirements of the UN Standard Minimum Rules for the Treatment of Prisoners have not been met during the author's detention at St. Catherine District Prison, and refers to the Committee's findings in the case of Albert W. Mukong v. Cameroon. 3/

3.3 With reference to the letter from the representatives of the Citizens' Association of the Charlemont Community in Linstead, it is submitted that the failure by the investigating authorities to tender the witness statements as evidence amounts to a violation of article 14, paragraphs 1 and 2, of the Covenant. Counsel points to a decision of the United Kingdom Court of Appeal 4/, and submits that, although it is not clear whether the DPP and the author's attorney had specifically requested that these statements be produced, the Jamaican police did not investigate the matter properly. He further points out that, had the statements been brought to the attention of counsel, he would have used them as evidence in the author's defence. Counsel concludes that the police had

an unequivocal duty to reveal the identity of those witnesses, who did not belong to the family of the deceased, who had given statements and who were willing to testify on the author's behalf during his trial.

3.4 The author concedes that he has not applied to the Supreme (Constitutional) Court of Jamaica for redress. It is argued that a constitutional motion in the Supreme Court would inevitably fail, in light of the precedent set by the Judicial Committee's decisions in DPP v. Nasralla [(1967) 2 ALL ER 161] and Riley et al. v. Attorney General of Jamaica [(1982) 2 ALL ER 469], where it was held that the Jamaican Constitution was intended to prevent the enactment of unjust laws and not merely unjust treatment under the law. Since the author claims unfair treatment under the law, and not that post-constitutional laws are unconstitutional, a constitutional motion would not be an effective remedy in his case. It is further argued that, even if it were accepted that a constitutional motion is an effective remedy, it would not be available in practice to the author because of his lack of funds, the absence of legal aid for this purpose, and the unwillingness of Jamaican lawyers to represent applicants on a pro bono basis. Reference is made to the Human Rights Committee's jurisprudence on this issue 5/.

3.5 Regarding the author's failure to petition the Judicial Committee of the Privy Council for special leave to appeal, reference is made to Leading counsel's advice in the case. It is stated that the jurisdiction of the Judicial Committee of the Privy Council is confined to ascertaining whether there was an error of law in the proceedings of the first instance or on appeal, and that leave will only be granted if the case is one of general or public importance. Counsel further explains that the Judicial Committee of the Privy Council does not entertain points that were not raised either at the trial nor at the appeal, in accordance with a view that its jurisdiction does not extend to re-trying a criminal case. Therefore, it is submitted, the claims under article 14, paragraphs 1 and 2, could not be raised before the Judicial Committee of the Privy Council.

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

4.1 In a submission, dated 24 April 1995, the State party argues that the communication is inadmissible under article 5, paragraph 2 (b), of the Optional Protocol, because the author has failed to exhaust domestic remedies. It notes that he author may still apply for constitutional redress; in this context, it contends that while the issues in the author's case do not fall under the scope of Section 110 (2) of the Jamaican Constitution, they could, be considered under Section 110 (3). Therefore a Petition to the Privy Council would still be available to the author.

4.2 On the "death row phenomenon" claim, the State party contends that the Privy Council's judgment in Pratt Morgan is not an authority for the proposition that incarceration on death row for a specific period of time constitutes cruel and inhuman treatment. Each case must be on its own facts, in accordance with applicable legal principles. The State party refers to the Committee's own Views in Pratt and Morgan, where it was held that delays in judicial proceedings did not per se constitute cruel, inhuman or degrading treatment.

4.3 Concerning the claim that the author was denied a fair and public hearing before an independent and impartial tribunal and the right to be presumed innocent until proven guilty, because of the failure of the investigating authorities to tender the statements of two eyewitness in evidence at the

trial, the State party argues that it will investigate this allegation and report to the Committee at a later stage.

5.1 In his comments, dated 22 May 1995, counsel refutes the State party's affirmations that an appeal to the Privy Council is still open to the author. He points out that the author has not petitioned the Privy Council in accordance with the advice he was given in writing by Leading counsel, because any petition for special leave to appeal, by a poor person must be accompanied by an affidavit in support of the petition, as well as the certificate of Leading Counsel to the effect that the petitioner has reasonable grounds of appeal.

5.2 Counsel refutes the State party's contention that Pratt and Morgan -v- Attorney General [1993] ALL ER 769, is not an authority for the principle that the delay in carrying out the death penalty after five years automatically constitutes cruel and inhuman treatment and is therefore unconstitutional.

Issues and proceedings before the Committee

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

6.2 With respect to the requirement of exhaustion of domestic remedies, the Committee has noted the State party's contention that the author has failed to petition the Judicial Committee of the Privy Council for special leave to appeal. The author's failure to petition this body cannot, however, be attributed to him, as in order to petition the Judicial Committee, as a poor person, the petition must be accompanied by an affidavit in support of the petition as well as the certificate of counsel that the petitioner has reasonable grounds of appeal. The author has not petitioned the Privy Council on the advice he was given in writing by Leading counsel. In this respect, the Committee wishes to recall its constant jurisprudence 6/ and finds, in the particular circumstances, that the application to the Privy Council cannot be considered an effective remedy and does not constitute a remedy which must be exhausted for the purposes of the Optional Protocol. The Committee therefore considers that it is not precluded by article 5, paragraph 2 (b), from considering the communication.

[6.3 The Committee next turns to the author's claim that his prolonged detention on death row amounts toa violation of articles 7 and 10 paragraph (1), of the Covenant. Although some national courts of last resort have held that prolonged detention on death row for a period of five years or more violated their constitutions or laws, the jurisprudence of this Committee remains that detention on death row for any specific period of time will not constitute violation of articles 7 and 10 paragraph 1, of the Covenant in the absence of some further compelling circumstances. As no such further compelling circumstances have been argued, this part of the communication is therefore inadmissible for lack of substantiation, pursuant to article 2 of the Optional Protocol.]

6.4 As to the claim that the circumstances of Mr. Deidrick's detention are inhuman and degrading, in violation of articles 7 and 10, paragraph 1 of the Covenant, the Committee considers that the author has sufficiently substantiated his claim for purposes of admissibility, therefore that this part of the communication is admissible.

6.5 The Committee considers that the author's claim that the failure of the investigating authorities to make available, the statements of two witnesses, denied him the right to a fair trial and violated his right to be presumed innocent in violation of article 14, paragraphs 1 and 2 and consequently article 6, of the Covenant, have been sufficiently substantiated for purposes of admissibility. The Committee regrets that the State party has failed to forward to it the findings of its investigations, fourteen months after having promised to do so. The Committee concludes that these claims may raise issues which should be examined on the merits.

7. The Human Rights Committee therefore decides:

(a) that the communication is admissible in as much as it appears to raise issues under articles 7; 10, paragraph 1 and 14, paragraphs 1 and 2, and consequently article 6 of the Covenant;

(b) that, in accordance with article 4, paragraph 2, of the Optional Protocol, the State party shall be requested to submit to the Committee, within six months of the date of transmittal to it of this decision, written explanations of statements clarifying the mater and the measures, if any, that may have been taken by it, the Committee also wishes to remind the State party that it has not complied with its obligation under article 40 of the Covenant;

(c) that any explanations or statements received from the State party shall be communicated by the Secretary-General under rule 93, paragraph 3, of the rules of procedure to the author, with the request that any comments which he may wish to make should reach the Human Rights Committee, in care of the Centre for Human Rights, United Nations Office in Geneva, within six weeks of the date of the transmittal;

(d) that this decision shall be communicated to the State party and to the author and to his counsel.

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*/ All persons handling this document are requested to respect and observe its confidential nature.

1/ The doctor who performed the post mortem examination described the deceased's wounds as "slashing type injuries".

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

3/ Communication No. 458/1991, Views adopted on 21 July 1994; para. 9.3.

4/ In Ivan Fergus (1994) 98 CR App R, the Court of Appeal held that had the police carried out their duty to follow the instructions of the Crown Prosecution Service to take the statements from alibi witnesses, it was unlikely that the appellant would have been convicted.

5/ Communication No. 445/1991 (Lynden Champagnie, Delroy Palmer and Oswald Chisholm -v- Jamaica), Views adopted on 18 July 1994.

6/ Communication No. 283/1988 (Aston Little v. Jamaica), Views adopted on 1 November 1991.