HUMAN RIGHTS COMMITTEE

Deidrick v. Jamaica

Communication No. 619/1995

9 April 1998

CCPR/C/62/D/619/1995*

VIEWS

Submitted by: Fray Deidrick (represented by Mr. Saul Lehrfreund)

Victim: The author

State party: Jamaica

Date of communication: 18 November 1994 (initial submission)

Date of decision on admissibility: 4 July 1996

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

Meeting on 9 April 1998,

Having concluded its consideration of communication No.619/1995 submitted to the Human Rights Committee by Mr. Fray Deidrick, 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 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, Mr. Saul Lehrfreund of the law firm Simons Muirhead & Burton. 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 appealed 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 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 to 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, stabbing Williams in the back. At the same time Diedrick's daughter stuck an object into William's eye. Mr. Williams'son 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 witnessed 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, the author, when charged with the murder argued that the deceased's family had attacked him, and that he had acted in self-defence. 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 had 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 and 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 on 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 on the merits of a petition for special leave to appeal to the Judicial Committee of the Privy Council in the 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 The Jamaica Council for Human Rights received a letter, dated 3 February 1993, from the Charlemont Citizen's Association and 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 claims 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 over eight years. 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 per se sufficient to constitute a violation of articles 7 and 10, paragraph 1.

3.2 Counsel also contends that conditions of incarceration 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 organisations, 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. 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; only 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. Counsel invokes a judgment of the U.K. Court of Appeal[4], and submits that, although it is not clear whether the DPP and the author's attorney had specifically requested that the statement 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 it as evidence in the author's defence. Counsel concludes that the police had an unequivocal duty to reveal the identity of the witnesses concerned, who did not belong to the family of the deceased, and who had given statements and 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.

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 on the merits of the case. It is noted that the jurisdiction of the Judicial Committee 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. The Judicial Committee 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, claims under article 14, paragraphs 1 and 2, could not be raised before the Judicial Committee.

<u>The State party's information and observations on admissibility and the author's comments thereon</u>:

4.1 By submission of 24 April 1995, the State party argues that the communication is inadmissible under article 5, paragraph 2 (b), of the Optional Protocol. It notes that the author may still apply for constitutional redress.

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 examined 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 comments 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 Privy Council's Pratt and Morgan judgment, 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.

The Committee's admissibility decision:

6.1 During its 57th session, the Committee considered the admissibility of the communication. With respect to the requirement of exhaustion of domestic remedies, the Committee noted the State party's contention that the author had failed to petition the Judicial Committee of the Privy Council for special leave to appeal. The author's failure to petition this body could not, however, be attributed to him, because so as to petition the Judicial Committee as a poor person, the petition must be accompanied by an affidavit in its support as well as the certificate of counsel that the petitioner has reasonable grounds of appeal. The author had not petitioned the Privy Council on the advice he was given in writing by leading Counsel. In this respect, the Committee recalled its constant jurisprudence [5] and found, in the particular circumstances, that the application to the Privy Council could not be considered an effective remedy and does not constitute a remedy which must be exhausted for the purposes of the Optional Protocol.

6.2 Concerning the author's claim that his prolonged detention on death row amounted to a violation of articles 7 and 10 paragraph (1), of the Covenant, the Committee noted that although some national courts of last resort had held that detention on death row for a period of five years or more violated their constitutions or laws, the jurisprudence of the Committee remained that detention on death row for any specific period of time would not constitute violation of article 7 and 10 paragraph 1, of the Covenant in the absence of some further compelling circumstances. Since the author had not adduced any specific circumstances that would raise an issue under articles 7 and 10 paragraph 1 of the Covenant, this part of the communication was deemed inadmissible under article 2 of the Optional Protocol.

6.3 As to the circumstances of Mr. Deidrick's detention the Committee considered that the author had sufficiently substantiated his claim under articles 7 and 10 paragraph 1, for purposes of admissibility.

6.4 The Committee considered 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, had been sufficiently substantiated for purposes of admissibility. The Committee regretted that the State party had failed to forward to it the findings of its investigations, fourteen months after having promised to do so. The Committee concluded that these claims should be examined on their merits.

State party's merits observations and counsel's comments:

7.1 By submission of 24 October 1996, the State party reiterates that the communication is inadmissible and denies any violation of the Covenant. In respect of the exhaustion of domestic remedies, it contends: that, the fact that one leading counsel advised that the petition would not succeed is not an adequate reason for failing to utilise this remedy; that it is a recognised fact that counsel may differ in their interpretation of the same factual situation; that unless the author can demonstrate that it was generally acknowledged by counsel that his petition would not succeed, then the Ministry contends that the failure to exhaust domestic remedies is attributable to the author. The State party rejects the idea that a petition to the Privy Council is not an effective remedy which must be exhausted for purposes of the Optional Protocol.

7.2 As to the allegations concerning the author's conditions of detention at St. Catherine's District Prison, the State party rejects that these constitute a violation of the Covenant. The State party admits that the conditions at the prison are not ideal, this being a direct result of the unavailability of resources, a situation common in developing countries. Nevertheless, it considers that the situation is not so bad as to constitute per se a breach of the Covenant.

7.3 Concerning the allegations of unfair trial, in breach of article 14, paragraphs 1 and 2, the statements of two witnesses, the State party contends that the Ministry's investigations reveal that the statements of Mr. Grandison and Mr. Blackwood were requested and supplied by the prosecution to defence counsel Mr. B.E.F. and Mr. A.J.N. The witnesses were not called by the prosecution and the trial transcript does not disclose an application by the defence to call them. The State party dismisses the allegation that the statements were not supplied to the defence as incorrect.

8.1 In comments, counsel submits that the author's conditions of detention at St. Catherine's District Prison include being locked-up in his cell for a period of twenty-three hours per day; no mattress or other bedding is provided, sleeping on a concrete bunk; no integral sanitation, only a slop bucket; no artificial lighting, with natural light entering only through small air vents; the prison is in a deplorable state of disrepair with open sewers, broken plumbing and plies of refuse; woefully inadequate provisions of medical, dental and psychiatric services and the provision of food does not meet the author's nutritional needs.

8.2 On the claims under article 14, paragraphs 1 and 2, counsel reiterates his claim that statements made by reputable witnesses to the police were not submitted in court, denying the author the possibility of cross-examining witnesses on the same terms as the prosecution,

and thus denying him adequate facilities for the preparation of his defence. The State party has simply argued that it investigated the matter and that the statement were given by the prosecution to counsel for the author, B.E.F and A.J.N. However, they did not provide affidavits or statements from counsel confirming that they did indeed receive the statements supplied by the prosecution.

Examination of the merits:

9.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as provided for in article 5, paragraph 1, of the Optional Protocol.

9.2 The Committee notes the State party's allegation that the communication should be declared inadmissible for non exhaustion of domestic remedies, since the author did not request leave to appeal to the Judicial Committee of the Privy Council. It also notes counsel's allegation that the author did not appeal to the Privy Council on the advice of leading counsel. It remains the jurisprudence of this Committee that an author need only exhaust those domestic remedies which are effective and available. With respect to the author's requirement to petition the Privy Council, the Committee notes that, as already stated in paragraph 6.1 supra, Leading Counsel advised that he could see no grounds to attack the Court of Appeal judgment and accordingly could not issue the certificate necessary to support an Application for Leave to Appeal. Consequently, the Committee need not review its decision on admissibility.

9.3 With regard to the deplorable conditions of detention at St. Catherine's District Prison, the Committee notes that author's counsel has made precise allegations, related thereto, i.e that the author is locked-up in his cell 23 hours a day, no mattress or bedding are provided, that there is lack of artificial light and no integral sanitation, inadequate medical services, deplorable food and no recreational facilities etc. All of this has not been contested by the State party, except in a general manner saying that these conditions affect all prisoners. In the Committee's opinion, the conditions described above, which affect the author directly are such as to violate his right to be treated with humanity and with respect for the inherent dignity of the human person, and are therefore contrary to the Covenant. It finds that holding a prisoner in such conditions of detention constitutes inhuman treatment in violation of article 10, paragraph 1, and of article 7.

9.4 The author has alleged a violation of article 14, paragraphs 1 and 2, in that statements given by two witnesses to the police were not submitted in court or provided to the accused. This is said to have denied him the possibility of cross-examining other witnesses on the same terms as the prosecution, and thus denied him adequate facilities for the preparation of his defence. Without prior knowledge of the statements, counsel's cross examination of other witnesses was not as effective as it should have been, and the defence was unable to rebut the witness's allegations. The State party has investigated the matter and informed the Committee that the statements were in fact made available to counsel for the defence. The Committee notes, from the information before it, that counsel for the defence had access to the statements, consequently it considers that the State party cannot be held responsible for

counsel's actions. Accordingly the Committee finds that there has been no violation of article 14 of the Covenant.

10. 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.

11. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide Mr. Deidrick with an effective remedy, entailing compensation for the conditions of detention suffered while on death row. The State party is under an obligation to ensure that similar violations do not occur in the future.

12. 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 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 in connection with 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.]

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*/ Made public by decision of the Human Rights Committee.

*/ The following members of the Committee participated in the examination of the present communication: Mr. Nisuke Ando, Mr. Prafullachandra N. Bhagwati, Mr. Th. Buergenthal, Lord Colville, Ms. Elizabeth Evatt, Mr. Eckart Klein, Mr.Rajsoomer Lallah, Ms. Cecilia Medina Quiroga, Mr. Fausto Pocar, Mr. Julio Prado Vallejo, Mr. Martin Scheinin, Mr. Maxwell Yalden and Mr. Abdallah Zakhia.

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. 283/1988 (Aston Little v. Jamaica), Views adopted on 1 November 1991.