HUMAN RIGHTS COMMITTEE

Morrisson v. Jamaica

Communication No 611/1995*

31 July 1998

CCPR/C/63/D/611/1995*

ADMISSIBILITY

Submitted by: Hixford Morrisson

Victim: The author

State party: Jamaica

Date of communication: 1 December 1994

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

Meeting on 31 July 1998

Adopts the following:

Decision on admissibility

1. The author of the communication is Hixford Morrison, a Jamaican citizen, who at the time of submission of his communication was awaiting execution at St. Catherine District Prison, Jamaica. He claims to be a victim of a violation by Jamaica of articles 7, 10 and 14 of the Covenant. He is represented by Mr. George Brown of the London law firm of Nabarro Nathanson. On 15 June 1998, counsel confirmed that the author's death sentence had been commuted.

The facts as submitted by the author

2.1 On 25 April 1990, the author and three co-defendants Among the co-defendants were Samuel Thomas and Byron Young, whose cases have been submitted to the Human Rights Committee, and have been registered as communication No. 614/1995 and communication No. 615/1995, respectively. Views were adopted on 4 November 1997 in Byron Young's case. were convicted for the murder of one Elijah McLean, on 24 January 1989, and sentenced to death. On 12 May 1990,

the author gave notice of application for leave to appeal. On 16 March 1992, the Court of Appeal dismissed the appeals of all four defendants, which had been based on discrepancies in the evidence and improper instructions by the judge to the jury. Following the enactment of the Offences Against the Persons (Amendment) Act 1992, the offence for which the author was convicted was classified as a capital offence.

2.2 The author has not petitioned the Judicial Committee of the Privy Council for special leave to appeal; counsel states that he has been advised that there is no likelihood of an appeal being successful The Judicial Committee of the Privy Council dismissed Samuel Thomas' petition for special leave to appeal to on 6 July 1994, and that of Byron Young on 11 January 1995., he refers to the dismissal of such a petition in co-defendant Byron Young's case. He states that Leading Counsel's advice in Mr. Morrison's case was not put in writing, but that he advised in conference that on the information available there were no grounds upon which to base an appeal to the Privy Council which would be successful.

2.3 The case for the prosecution was that the four accused were among seven men who entered the house of the deceased in the early morning of 24 January 1989, dragged him out of his bed, took him outside into the yard, and chopped him several times with their machetes, thereby killing him.

2.4 The prosecution mainly relied upon the evidence of three relatives of the deceased, aged eleven, fourteen and seventeen, who lived at the deceased's house. They testified that they were awakened by sound emanating from the room where the deceased and his common law wife were sleeping. They went to the doorway and saw one of the author's co-accused (Byron Young, whom they knew) with a flashlight in one hand and a gun in the other, pointed at the deceased. Six other men (including the author whom they also knew), all carrying machetes, were standing by the bed of the deceased, and one of the men chopped him on his forehead. All seven men then pulled the deceased off the bed and carried him outside. The deceased held onto the door and was chopped on his hand by one of the men. The witnesses further testified that, in the yard, he was chopped several times by six of the men, including the author, while the seventh man (i.e. Byron Young) stood in their midst with his gun still in his hand. All seven men then left.

2.5 The author made an unsworn statement from the dock, simply relating the circumstances of his arrest. The issue for the defence was one of identification and the "no case to answer" submissions made by the defence in all four cases were solely directed at the witnesses' credibility and their ability, given the lighting in the room and yard at the time of the incident, to correctly identify the accused. The author was represented by a legal aid attorney, who also represented co-defendant Samuel Thomas. No witnesses were called to testify on the author's behalf. Furthermore, no prior identification parade had been held and in the author's case also no preliminary hearing had been held prior to the trial.

2.6 Counsel contends that, while in theory it can be argued that Mr. Morrison has a constitutional remedy, it is clear that in practice such a remedy is not available to him because of his lack of funds and because legal aid is not made available for the purpose of a constitutional motion. With reference to the Committee's jurisprudence Communication No. 445/1991 (Champagnie et al. v. Jamaica), decision on admissibility adopted on 18 March 1993; para. 5.4., it is submitted that it is the State party's inability or unwillingness to provide legal aid for such motions which absolves the

author from pursuing constitutional remedies.

The complaint

3.1 The author claims that his detention on death row for over six years amounts to cruel, inhuman and degrading treatment, in violation of articles 7 and 10, paragraph 1, of the Covenant. In this context, he refers to the decision taken by the Privy Council in the case of Earl Pratt and Ivan Morgan v. the Attorney-General of Jamaica [1]. The author recalls that it took the Court of Appeal 22 months to decide on his appeal, and that his prolonged detention on death row is therefore attributable to the State party. Reference is made to the report by Amnesty International of November 1993, which shows that the prison conditions in St. Catherine District Prison are appalling.

3.2 The author further claims that he has not received a fair trial. He states that no preliminary hearing was held in his case, since he was indicted on a Voluntary Bill of Indictment. At the beginning of the trial, the author's counsel requested copies of the police statements in order to prepare the defence. Copies, however, were not made available which is said to have seriously hindered the author's defence. It is argued that this amounts to a violation of article 14, paragraphs 1, 3(b) and (e), of the Covenant.

3.3 In respect of the author's claims under article 14, counsel points out that it is an overriding concept of criminal law that any accused person should know the case that he or she will have to meet at trial. The normal procedure prior to a criminal trial is that there is a preliminary hearing or committal hearing, at which witnesses for the prosecution are called to give evidence on oath, so enabling the accused to know the case he or she has to answer to. Counsel explains that there exists a procedure which allows for a trial to be held without a prior committal or preliminary hearing, which is known as a "Voluntary Bill of Indictment". In such a case, the indictment or charge plus supporting documentation is placed before a judge who, once he has ensured that there is sufficient evidence to support the issuing of the indictment, signs the Bill of Indictment. Counsel further points out that the Voluntary Bill of Indictment should only be used in exceptional circumstances which should be explained to the judge who is requested to sign the indictment.

3.4 It is submitted that for the procedure of indictment by voluntary bill to work in a just and fair manner, the supporting statements which have been shown to the judge must be made available to the accused's legal representative. Counsel refers to the trial transcript from which it appears that this did not happen in Mr. Morrison's case. At the beginning of the trial, the author's attorney indicated to the trial judge that he had asked counsel for the prosecution to make the police statements available to him. The judge replied that: "[...] I don't know of any powers that I have to order the learned Director of Public Prosecution to give you any statement [...] I think [you] are entitled to a copy of the depositions, and if you have not gotten one, then I will ask the Registrar to give you one". The attorney then again explained to the judge that his client was indicted on voluntary bill, that there were therefore no depositions of the prosecution witnesses, and that the only statements in the case relating to his client were the police statements. The judge then told the attorney that: "I am not aware of any authority which says I must order that you be given the statements; if you can cite the authority, I will take a look and give a ruling". The attorney then said that he would make further researches into the matter.

3.5 Counsel points out that, although the attorney stated that he would make further inquiries in relation to his application, these, if they were done, were not transmitted to the judge. It is submitted that, in any event, since the judge allowed the trial to continue without the statements being made available, the author suffered prejudice because a trial cannot be fair if a defendant in a criminal case is not provided with sufficient information to allow him to establish the case that he has to answer to. In this context, counsel adds that the law in England, upon which the Jamaican common law is based, requires that any document or other matter "that has, or might have, some bearing on the offences charged" should be made available to the defence (R. v. Saunders & Ors (unreported) 29 September 1990 CCC Transcript no. T881620). Reference is made to another judgment, in which it was ruled that "the duty of disclosure rests upon prosecuting counsel [...], the police [...] and other professionals (such as scientific and forensic experts), who are involved in the particular case".

3.6 As to the issue of domestic remedies in respect of the above, counsel concedes that the failure of the prosecuting authority to provide the police statement should have been pursued at the trial and should have been a ground of appeal before the Court of Appeal. He points out that the attorney who represented both Mr. Morrison and Mr. Thomas at the trial, also represented the latter on appeal, but that Mr. Morrison was represented by another legal aid lawyer; this lawyer did not raise the issue of the non-disclosure of the statements before the Court of Appeal. According to counsel, the low legal aid rates paid to lawyers who represent poor persons in Jamaica are the cause of the limited preparation of the defence at trial and on appeal.

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

4.1 In a submission of 29 April 1996, the State party contends that the communication should be declared inadmissible for non exhaustion of domestic remedies, nevertheless and in order to expedite the consideration of the case it addresses the author's claims.

4.2 With respect to the allegation of violation of articles 7 and 10, paragraph 1, of the Covenant and the "death row phenomenon" claim, the State party rejects that prolonged detention per se constitutes a violation and refers to the Committee's own Views in Pratt and Morgan. However, it informs that in the light of the Privy Council's judgment in Pratt and Morgan v. the Attorney General of Jamaica, the author's death sentence will be commuted.

4.3 With respect to the allegation that the author was denied a fair trial, in violation of article 14, paragraph 1, of the Covenant, due the fact that the police statements were not made available to the author's attorney at the beginning of the trial in which the author had been indicted on a voluntary bill of indictment, the State party notes that "the failure to provide defence counsel with police statements when the accused has been indicted constitutes a serious breach of practice. The records of the trial indicate that the trial judge had some doubt about ordering the Crown to produce the statements and asked that defence counsel support his application by citing some authority. Defence counsel promised to do so, but apparently did not". The State party submits that it cannot be held accountable for failure of defence counsel to follow through on his application.

4.4 With respect to the alleged violation of article 14, paragraph 3 (e), based on the same set of facts as above, the State party relies on the same reasoning as above to reject any breach of the Covenant.

5. Counsel reiterates the claims submitted in the original communication regarding unfair trial since the State party has failed to provide counsel with the statements on which the voluntary bill of indictment was based at the beginning of the trial.

Issues and proceedings before the Committee:

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 its admissible under the Optional Protocol to the Covenant.

6.2 The Committee observes that the author has not filed a petition for special leave to appeal to the Judicial Committee of the Privy Council since the case of his co-defendant was dismissed. The Committee considers that, in the instant case, as expressed by counsel, there would be no merit in the author doing so, and therefore considers that this is not a recourse he needs pursue. The Committee considers that the author has exhausted domestic remedies for purposes of the Optional Protocol.

6.3 With regard to the allegation that the author did not have a fair trial, in violation of article 14, paragraph 1, the Committee notes that the author was tried for murder by a judge and jury under regular procedures of the Jamaican legal system. He was found guilty by the jury who heard and assessed the evidence against him, and the case was reviewed by the Court of Appeal. The fact that he was joined by "a voluntary bill of indictment", after the preliminary enquiry had already taken place for the rest of the co-accused, following an established procedure, would not necessarily invalidate the fairness of the trial [2]. Furthermore, this matter was never raised before the Courts, either on trial or on appeal. The Committee finds that in this respect, the author has no claim under article 2 of the Optional Protocol.

6.4 With respect to the author's claim that he was not properly represented by his legal aid counsel on trial, in violation of article 14, paragraph 3 (b) and (e), the Committee recalls its prior jurisprudence where it has held that it is not for the Committee to question counsel's professional judgment, unless it was clear or should have been manifest to the judge that the lawyer's behaviour was incompatible with the interests of justice. In the instant case, there is no reason to believe that counsel was not using other than his best judgment. Furthermore, counsel at trial was also representing the author's co-accused Thomas, and had all the relevant documents, since the indictment was of murder by way of joint enterprise between the four co-accused. Consequently, the Committee finds that the author has no claim under article 2 of the Optional Protocol in this respect.

6.5 Concerning the author's claim that his prolonged detention on death row amounts to a violation of articles 7 and 10, paragraph 1, of the Covenant, the Committee notes that although some national courts of last resort have held that detention on death row for a period of five years or more violates their constitutions or laws, the jurisprudence of the Committee remains that detention on death row for any specific period of time does not constitute a violation of articles 7 and 10, paragraph 1, of the Covenant in the absence of further compelling circumstances. Since the author has not adduced any specific circumstances, which would raise an issue under articles 7 and 10, paragraph 1, of the Covenant, this part of the communication is inadmissible under article 2 of the Optional Protocol.

7. The Committee therefore decides:

(a) that the communication is inadmissible;

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

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*/ The following members of the Committee participated in the examination of the communication: Mr. Nisuke Ando, Mr. Prafullachandra N. Bhagwati, Mr. Th. Buergenthal, Mrs. C. Chanet, Lord Colville, Mr. Omran El Shafei, Ms. Elizabeth Evatt, Mr. Eckart Klein, Mr. David Kretzmer, Ms. Cecilia Medina Quiroga, Mr. J. Prado Vallejo, Mr. Martin Scheinin, and Mr. Maxwell Yalden.

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

2/ See Communication No 749/1997, McTaggart v. Jamaica, Views adopted on 31 March 1998.

[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 Committeee's annual report to the General Assembly.]