

HUMAN RIGHTS COMMITTEE

Simpson v. Jamaica

Communication No 695/1996

31 October 2001

CCPR/C/73/D/695/1996

VIEWS

Submitted by: Mr. Devon Simpson (represented by counsel, Mr. J. E. Jamison and Mr. Jeremy Kosky of Clifford Chance, a law firm in London)

Alleged victim: The author

State Party: Jamaica

Date of communication: 19 March 1996 (initial submission)

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

Meeting on 31 October 2001,

Having concluded its consideration of communication No. 695/1996, submitted to the Human Rights Committee by Mr. Devon Simpson 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, and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1. The author of the communication (initial submission dated 19 March 1996) is Devon Simpson, a Jamaican citizen, born on 17 August 1952, at the time of submission awaiting execution in St. Catherine's District Prison, Jamaica. His death sentence was commuted to life imprisonment on 24 February 1998. The author claims to be a victim of violations of articles 7 and 10, paragraph 1, and

14, of the International Covenant on Civil and Political Rights. He is represented by counsel.

Facts as presented by the author

2.1 On 15 August 1991, the author was arrested on suspicion of murder. He was assaulted by the police and was refused medical treatment. He did not bring this matter to the attention of the authorities, as he was not aware that the beatings violated his rights. He was kept in a cell with 17 other inmates at the Half-Way-Tree Police Lock Up, where some of the inmates had already been convicted. Shortly afterwards, he was moved to the General Prison, where he shared a cell of 8 by 4 feet with five other inmates. There was no artificial light in the cell, no slop bucket, and he was only allowed to use the toilet once a day.

2.2 The author was provided with a lawyer by the Court Registrar as he did not have the means to hire one privately. He did not meet his lawyer before the preliminary hearing and his representation at the preliminary hearing was poor. The author's lawyer was not present for the hearing of two of the four prosecution witnesses as he claimed that he had to leave to be present in another court.

2.3 At trial the author was represented by three lawyers. The author only met one of the lawyers on one occasion for 15 minutes before the beginning of the trial. The lawyers did not sufficiently challenge the evidence against the author. In particular, the description given by one of the prosecution witnesses of the attacker, did not correspond with his physical characteristics, and this was not sufficiently pointed out by the author's lawyer. Consultations between the author and his lawyers during the trial were irregular.

2.4 At the beginning of the trial, the author was charged with two counts of non-capital murder. However, on the fifth day of the trial, the Judge allowed the amendment of the charges to capital murder. The author was re-arraigned, although, apparently by error, the charges put to the author were again charges of non-capital murder. Despite this, the judge appears to have assumed that he was hearing a capital murder trial. The author states that as a result of the amendment, he became nervous and consequently did not give a clear statement from the dock.

2.5 On 6 November 1992, the author was convicted of two offences of capital murder and sentenced to death by the Home Circuit Court in Kingston. (1)

2.6 Since his conviction, the author has been confined in a cell alone for periods of up to 22 hours each day, most of his waking time is spent in darkness making it impossible for him to keep occupied. Slop buckets are used, filled with human waste and stagnant water, and only emptied once per day. There is also no running water provided in the author's cell. Consequently, the author has to wait until he is released to get running water which he then stores in a bottle. It is also stated that the author slept on cardboard and newspapers on concrete until October 1994 when he was provided with an old mattress.

2.7 For several years the author has been experiencing an undiagnosed and untreated medical condition giving rise to symptoms of great pain and swelling in his testicle. He complains of a back problem, from which he has suffered since childhood, and which makes it difficult for him to sit upright for a long period of time. He has also developed eye problems because of the darkness in

his cell. Although he was visited by a doctor in prison, the tablets the author has been given do not provide any relief and he has been refused specialist treatment.

2.8 Leave to appeal against convictions was granted by the Court of Appeal and the appeal was heard from 13 to 15 April and on 9 May 1994. The Court of Appeal allowed the author's appeal against both convictions of capital murder. It substituted convictions of non-capital murder, and passed a sentence of death upon the author, pursuant to section 3 (1A) of the Offences Against the Person (Amendment) Act 1992, which provides that multiple convictions of non-capital murder carry the death sentence. The author then appealed to the Judicial Committee of the Privy Council; the author's counsel considered that there were no grounds in law to appeal against conviction and petitioned solely against sentence. Special leave to appeal as a poor person was granted and the appeal was heard on 12 February 1996; on 7 March 1996, the Privy Council refused the appeal and upheld the imposition of the death sentence.

2.9 On 19 March 1996 the author, through his lawyers, petitioned the Human Rights Committee that a stay of execution be requested under rule 86 of its rules of procedure. On 4 April 1996, the author was placed in the "condemned cell" where a warrant for his execution on 18 April 1996 was read to him. On 11 April 1996, the Human Rights Committee, through its Special Rapporteur for New Communications, requested the State party not to carry out the death sentence against Simpson while his communication was under examination by the Committee. On 12 April 1996, the State party granted the author a stay of execution.

The complaint

3.1 Counsel claims that the author is a victim of violations of articles 7 and 10, paragraph 1, of the Covenant. The author was held in St. Catherine's District Prison on death row for over five years, which is said to constitute inhuman and degrading treatment. Counsel submits that, according to the Privy Council's judgement in Earl Pratt & Ivan Morgan v. the Attorney General of Jamaica [1994] 2 AC 1, "... in any case in which an execution is to take place more than 5 years after sentence there will be strong grounds for believing the delay is such as to constitute inhuman or degrading punishment or other treatment".

3.2 Additionally, counsel claims that: (a) the conditions, described above in paragraphs 2.1 and 2.6, in which the author has been detained since his arrest, as well as his lack of medical treatment described above in paragraphs 2.1 and 2.7, amount themselves to cruel, inhuman and degrading treatment and punishment, in breach of articles 7 and 10, paragraph 1, of the Covenant; and (b) the period of delay, when addressed in the context of the conditions of detention and lack of medical treatment, constitutes a breach of articles 7 and 10, paragraph 1, of the Covenant. In this respect, counsel submits that numerous non-governmental organizations (2) have reported on the appalling conditions of the prison regime at St. Catherine's District Prison, observing that the facilities are poor: no mattresses, bedding or furniture in the cells; no sanitation in the cells; broken plumbing, piles of refuse and open sewers; until 1994 there was no artificial lighting in the cells; there are only small air vents through which natural light can enter; no employment opportunities available to inmates; no proper facilities to wash and infrequent permission to wash; no doctor attached to the prison, so that medical problems are generally treated by warders who receive very limited training; and inmates on death row occupy single cells where they are generally confined more than 18 hours

per day. (3)

3.3 Counsel cites the Committee's Views on communication No. 458/1991 (A. Mukong v. Cameroon), in which the Committee stated that "certain minimum standards regarding the conditions of detention must be observed regardless of the State party's level of development. (...) It should be noted that these are minimum requirements which the Committee considers should always be observed, even if economic or budgetary considerations may make compliance with these obligations difficult".

3.4 Counsel also claims that the author is a victim of article 14, paragraph 3 (g), because he was assaulted in the police station after his arrest.

3.5 In addition, counsel complains about the mental anguish, caused to the author by his placement in the "condemned cell". It is argued that the author's state of mind at the time rested so much on the belief that a stay of execution would be put in place, that the failure of the Human Rights Committee to issue a rule 86 request, seeking a stay of execution on behalf of the author, within a reasonable time was inhuman and degrading.

3.6 Counsel refers to the irregularity in amending the charges against the author during the trial, and claims that the irregularity was such that the Court of Appeal should have ordered a retrial, rather than correcting it on paper by substituting convictions of non-capital murder. It is alleged that the Court of Appeal's failure to do so amounts to a violation of article 14, paragraph 1, in that the author was denied a fair trial.

3.7 It is also argued that, because of the amendment to the charges on the fifth day of the trial, article 14, paragraph 3 (a) and (b), were violated, since the author did not have time to communicate with his attorney about the true nature of the charge against him, and did not appreciate the consequence of the charges being upheld. It is argued that the defence may well have been conducted differently, if the author had been informed at the outset that he would be charged with capital murder. In this context, it is pointed out that the author's case was one of the first to be tried under the Offences against the Person (Amendment) Act 1992, and that Jamaican practitioners at the time were still grappling with the meaning and implications of the amended Act.

3.8 It is further claimed that, prior to the preliminary hearing, the author had inadequate time and facilities to prepare his defence and communicate with his attorney, in violation of article 14, paragraph 3 (b), and an inadequate opportunity to examine or procure witnesses, in violation of article 14, paragraph 3 (e). In this context, counsel claims that the fact that the author did not meet with his lawyer prior to the preliminary hearing violates paragraph 3 (b), and his lawyer's failure to be present for the examination of two of the witnesses violates paragraph 3 (e). Counsel claims that as there was insufficient preparation for his preliminary hearing, this culminated in poor quality representation at the trial hearing (4). Counsel also claims a violation of article 14, paragraph 3 (b) because of the lack of consultation he had with his lawyer prior to the hearing itself. He claims that the author was only allowed 15 minutes with his lawyer when the prison warden asked her to leave. In addition, counsel claims a violation of article 14, paragraph 3 (e) because of counsel's behaviour during the trial as described in paragraph 2.3 above.

3.9 Counsel notes that with the Privy Council's decision, all available domestic remedies have been exhausted. He adds that a constitutional motion to the Supreme (Constitutional) Court of Jamaica is not a remedy available to the author. (5) Counsel further claims that constitutional remedies are in practice not available to indigents such as his client, since the State party does not provide legal aid for constitutional motions. He also claims that administrative remedies available to the author do not give a reasonable prospect of success. (6)

State party's submission on admissibility and counsel's comments thereon

4.1 In its submission of 10 October 1996, the State party denies that the length of the author's stay on death row constitutes a breach of the Covenant and refers to the Committee's jurisprudence. The State party also denies that the conditions of the author's detention on death row constitute a violation of article 10 of the Covenant.

4.2 In a further submission, dated 12 March 1997, the State party addresses the author's complaint concerning the amendment of the charges against him. The State party notes that this complaint was addressed by the Court of Appeal which chose to substitute convictions of non-capital murder. However, this decision did not affect the death sentence, because the Court of Appeal held that under the applicable statute the sentence for capital murder and for the instant case of multiple non-capital murder was the same. Thus, the State party is of the opinion that the matter was adequately dealt with by the Court of Appeal.

4.3 As to the manner in which counsel conducted the defence at trial, the State party does not accept that there was a breach of the Covenant for which the State can be held responsible. The State party explains that a thorough reading of the Act would show that where a person is convicted of more than one offence of non-capital murder, the outcome will be a death sentence.

4.4 With regard to the author's claim that he was assaulted by the police upon arrest, the State party notes that he did not bring this matter to the attention of the authorities, allegedly because he did not know that the beatings violated his rights. The State party finds this very difficult to believe and states that in the absence of any evidence to support the author's allegation, it does not accept that the alleged beating occurred.

4.5 With regard to the author's representation at the preliminary hearing, the State party submits that it is its responsibility to appoint competent counsel, but denies any responsibility for the way counsel conducts the defence.

4.6 The State party indicates that, with respect to the alleged violations of articles 7 and 10 (1), it will investigate the allegations concerning the alleged lack of medical treatment as well as the circumstances under which the author was placed in the condemned cell.

5.1 In a letter, the author states that on 5 March 1997, during a search, the warders destroyed his bed, some of his clothes, and some documents he had in his cell. They also removed his light bulb.

5.2 In his comments on the State party's submission on 12 March 1997, counsel argues that it is not enough for the State party to say that the result of the trial was fair, even though the conduct of the

trial was irregular. Counsel underlines that the effect of the last minute amendment to the charges was not confined to the sentence, but had an impact on the author's mental state, which in turn affected the way and the extent to which he was able to participate in the conduct of his own defence. According to counsel, this may have affected the nature of the evidence adduced in Court. The Court of Appeal should thus have ordered a retrial and not simply substituted the sentence.

5.3 With regard to the representation at the preliminary hearing, counsel argues that any lawyer who fails to listen to the evidence of two out of four of the prosecution witnesses and who fails to discuss the case with his client before the hearing cannot be described as "competent".

Admissibility considerations

6.1 During its sixty-fourth session, the Committee considered the admissibility of the communication.

6.2 With regard to counsel's claim that there was insufficient time to prepare the author's defence, since his lawyers came to see him only once before the trial, the Committee noted that it would have been for the author's representatives or the author himself to request an adjournment at the beginning of the trial, if they felt that they did not have enough time to prepare the defence. It appears from the trial transcript that no adjournment was sought at the beginning of the trial, and that on a further occasion, an adjournment was granted by the judge to the defence counsel to study new evidence. The Committee considered therefore that this claim was inadmissible under article 2 of the Optional Protocol, as being unsubstantiated. (para. 3.8)

6.3 With respect to the complaint that the author's representative did not properly cross examine the witnesses against him, the Committee recalled its jurisprudence that a State party cannot be held responsible for the conduct of a defence lawyer, unless it was or should have been manifest to the judge that the lawyer's behaviour was incompatible with the interests of justice. (7) The Committee were of the view that, in this instant case, there was no reason to believe that counsel at trial was not using her professional judgement in the interests of her client, and this part of the communication was thus considered inadmissible under article 2 of the Optional Protocol. (para. 3.8)

6.4 With regard to the claim under article 14, paragraph 3 (a) and (b), in respect of the amended charges against the author, the Committee noted that any irregularity caused by the amendment of the charges in this respect was redressed by the Court of Appeal's decision to quash the convictions of capital murder. This part of the communication was thus considered inadmissible under article 2 of the Optional Protocol. (para. 3.7)

6.5 With regard to the claim that the Court of Appeal's decision to change the author's convictions of capital murder to convictions of non-capital murder amounted to a denial of justice, and that the Court should have ordered a retrial instead, the Committee noted that this matter was not raised at the hearing of the author's appeal to the Judicial Committee of the Privy Council, where the only issue argued was the sentence, not the convictions. This part of the communication was thus considered inadmissible for non-exhaustion of domestic remedies. (para. 3.6)

6.6 With regard to the claim that the author was beaten upon arrest and that he was not given any

medical treatment in August 1991, the Committee noted that this claim was not brought to the attention of the authorities on any occasion before the author's complaint to the Committee. This part of the communication was thus considered inadmissible for non-exhaustion of domestic remedies. (para. 2.1)

6.7 On the issue of a violation of articles 7 and 10, paragraph 1, of the Covenant because of the time the author spent on death row, the Committee referred to its jurisprudence (8) that detention on death row for a specific period of time does not violate the Covenant, in the absence of further compelling circumstances. In the instant case, the Committee considered that, as the author had not invoked any ground, other than the period of time, in substantiation of his claim, this part of the communication was inadmissible under article 2 of the Optional Protocol. (para. 3.1)

6.8 With regard to the claim that the author suffered mental anguish because he was read a warrant of execution although his lawyer had presented a communication to the Human Rights Committee, the Committee considered that the fact that it had not requested a stay of execution before the warrant of execution was read to the author, cannot amount to a violation of the Covenant attributable to the State party. This part of the communication was thus considered inadmissible under article 1 of the Optional Protocol. (para. 3.5)

6.9 The Committee noted that the State party had indicated that it would investigate the author's complaints concerning the conditions of the author's detention and the lack of medical treatment. The Committee considered that these claims, as well as the author's claims concerning the conditions of his pretrial detention, are admissible and should be examined on the merits.

6.10 The Committee also considered that the claim that the author's representative at the preliminary hearing was absent for the hearing of two out of four prosecution witnesses may raise issues under article 14, paragraph 1 and 3 (d), which should be examined on the merits.

Issues and proceedings before the Committee

7.1 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. The Committee notes with concern that the State party has not provided any further information clarifying the matters raised by this communication since the decision on the admissibility of the communication. The Committee recalls that it is implicit in article 4, paragraph 2, of the Optional Protocol, that a State party examine in good faith all the allegations brought against it, and that it provide the Committee with all the information at its disposal. In the light of the failure of the State party to cooperate with the Committee on the matter before it, due weight must be given to the authors' allegations, to the extent that they have been substantiated.

7.2 As to the allegation of a violation of articles 7 and 10 of the Covenant, the Committee notes that counsel has provided specific and detailed allegations concerning inappropriate conditions of detention prior to his trial and since his conviction, and lack of medical treatment. The State party has not responded to these allegations with specific responses but in its initial submission merely denies that the conditions constitute a violation of the Covenant and then goes on to say that it would investigate these allegations, including the allegation of the failure to provide medical treatment

(para. 4.6). The Committee notes that the State party has not informed the Committee of the outcome of its investigations. In the absence of any explanation from the State party, the Committee considers that the author's conditions of detention and his lack of medical treatment as described violate his right to be treated with humanity and with respect for the inherent dignity of the human person and are therefore contrary to article 10, paragraph 1. In light of this finding in respect of article 10, a provision which deals with the situation of persons deprived of their liberty and encompasses the elements set out generally in article 7, it is not necessary to consider separately the claims arising under that article. (para. 3.2)

7.3 With respect to counsel's allegation that the author's lawyer was absent for the hearing of two of the four witnesses during the preliminary hearing, the Committee decided in its admissibility decision that this allegation may raise issues under article 14, paragraph 1 and paragraph 3 (d). The Committee recalls its prior jurisprudence that it is axiomatic that legal assistance be available at all stages of criminal proceedings, particularly in capital cases (9). It also recalls its decision in communication No. 775/1997 (Brown v. Jamaica), adopted on 23 March 1999, in which it decided that a magistrate should not proceed with the deposition of witnesses during a preliminary hearing without allowing the author an opportunity to ensure the presence of his lawyer. In the present case, the Committee notes that it is not disputed that the author's lawyer was absent during the hearing of two of the witnesses nor does it appear that the magistrate adjourned the proceedings until her return. Accordingly, the Committee finds that the facts before it disclose a violation of article 14, paragraph 3 (d), of the Covenant. (para. 3.8)

8. 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 as found by the Committee reveal a violation by Jamaica of articles 10, and 14, paragraph 3 (d) of the Covenant.

9. Pursuant to article 2, paragraph 3 (a), of the Covenant, the Committee considers that the author is entitled to an appropriate remedy, including adequate compensation, an improvement in the present conditions of detention and due consideration of early release.

10. 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 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 its Views.

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Louis Henkin, Mr. Ahmed Tawfik Khalil, Mr. Eckart Klein, Mr. David Kretzmer, Mr. Rajsoomer Lallah, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Martin Scheinin, Mr. Ivan Shearer, Mr. Hipólito Solari Yrigoyen and Mr. Maxwell

Yalden.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be translated also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

Notes

(1) At the trial, the case rested on the eyewitness evidence of three witnesses. They alleged that they saw Simpson coming to George S. Cockett's grocery, where Cecil Cockett (George S. Cockett's father) and his brother Donovan were working at 7.30 p.m. on 8 August 1991. They testified that Simpson drew a gun and fired several shots, outside the shop and in the shop through the window, at Donovan, Cecil and Simon Cockett, which led to the death of Donovan and Cecil Cockett. One of the witnesses testified that a week before the incident, Simpson and Donovan Cockett had an argument in the course of which Simpson threatened to kill the whole family. The author made an unsworn statement in which he denied being present and stated that the accusations against him were being made falsely because one of the witnesses believed that Simpson had informed on him in relation to drug dealing, which had resulted in a police raid a few weeks before the incident.

(2) Counsel specifically refers to the Jamaican Council For Human Rights, America Watch and Amnesty International.

(3) This specific information is provided by counsel from a report compiled by Amnesty International following its mission to St. Catherine's Prison in November 1993.

(4) No further elaboration is provided by counsel or the author in relation to this issue.

(5) Counsel states that the law authorizes the imposition of the death penalty and the holding of an inmate in prison until the sentence of death is executed, and article 17 of the Jamaican Constitution provides that "nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorizes the infliction of any description of punishment which was lawful in Jamaica immediately before".

(6) Counsel states that as reported by the Jamaican Council for Human Rights and Amnesty International, "prisoners do not receive adequate redress from the prisoners' internal complaints procedure" and "serious complaints apparently (have) not been acted upon, (and) prisoners are alleged to have suffered reprisals from warders after complaining about ill-treatment".

(7) See *inter alia*, the Committee's decision in communication No. 536/1993, Perera v. Australia, declared inadmissible on 28 March 1995.

(8) See communication No. 558/1994, Errol Johnson v. Jamaica, Views adopted on 22 March 1996.

(9) See *inter alia*, the Committee's Views in respect of communication No. 730/1996 Clarence Marshall v. Jamaica, adopted on 3 November 1998, communication No. 459/991, Osbourne Wright and Eric Harvey v. Jamaica, adopted on 27 October 1995, and communication No. 223/1987, Frank Robinson v. Jamaica, adopted on 30 March 1989.