HUMAN RIGHTS COMMITTEE

Reece v. Jamaica

Communication No. 796/1998**

14 July 2003

CCPR/C/78/D/796/1998*

VIEWS

Submitted by: Lloyd Reece (represented by counsel, Ms. Penny Rogers)

Alleged victim: The author

State party: Jamaica

Date of communication: 16 January 1998 (initial submission)

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

Meeting on 14 July 2003,

Having concluded its consideration of communication No. 796/1998, submitted to the Human Rights Committee on behalf of Mr. Lloyd Reece 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

1.1 The author of the communication, dated 16 January 1998, is Lloyd Reece, a Jamaican citizen born on 17 October 1957, currently imprisoned at St. Catherine's District Prison. He claims to be a victim of violations by Jamaica of articles 7, 9, paragraph 1, 10, paragraph 1, and 14, paragraphs 1, 2, 3, subparagraphs (a) through (d), and 5, of the International Covenant on Civil and Political Rights. The author is represented by counsel.

1.2 Both the Covenant and the Optional Protocol entered into force for the State party on 23 March 1976. The State party denounced the Optional Protocol on 23 October 1997, with effect from 23

January 1998.

The facts as submitted by the author

2.1 The author was arrested on 13 January 1983, and charged with two counts of murder with respect to events that occurred on 11 January 1983. At the preliminary hearing, he was assigned a legal aid trial lawyer. At trial before the Clarendon Circuit Court, from 20 to 27 September 1983, the author pleaded not guilty to both counts but admitted to having been at the scene of the murders when they took place. He was convicted by jury on both counts and sentenced to death.

2.2 Immediately upon his conviction and sentence, the author filed a notice of appeal and requested that the Court of Appeal grant him legal aid. A legal aid lawyer was assigned to him, but the author was not informed of the date of the appeal hearing, nor was he permitted any access to his lawyer to provide him with any instructions. He was not present at the appeal hearing on 2 October 1986, and was not informed of what occurred at the hearing beyond refusal of the appeal. On 13 November 1986, the Court of Appeal dismissed his appeal.

2.3 On 4 May 1988, the author filed a notice of intention to petition the Judicial Committee of the Privy Council. On 21 November 1988, the Judicial Committee dismissed the author's petition without reasons and refused leave to appeal.

2.4 On death row, the area to which the author was confined was also used by prisoners who were mentally ill and who, on occasion, attacked fellow prisoners. The author also refers to reports of random beatings and brutal warders.[1] He complained of insanitary conditions, in particular of waste littering the area and the constant presence of unpleasant odours. He refers to further reports of the digging of pits for excrement and overwhelming stenches.[2] Slop buckets of human waste and stagnant water were emptied only once daily in the morning. Running water was polluted with insects and excrement, and inmates were required to share dirty plastic utensils. The daily time the author was allowed out of his cell was severely limited, sometimes to less than half an hour. These conditions caused serious detriment to his health, with skin disorders and eyesight problems developing. While he had been referred to an eye specialist by the prison doctor in 1994, he had not been allowed to see such a specialist by the time of the communication. Moreover, when he sustained a chipped bone injury to his finger in an accident, he was not taken to hospital until two days after the accident, making it impossible for the finger to heal properly and affecting his ability to write.

2.5 In April or May 1995 the author's sentence of death was commuted to life imprisonment by the Governor-General.[3] The commutation was accompanied by a determination that seven years from the date of commutation had to elapse before the length of any non-parole period could be considered. He was not informed of the decision to commute his sentence until after the event and never received any formal documentation in relation to the decision. The author had no opportunity to make any representation in relation to the decision to commute his sentence or to the decision concerning the non-parole period. He remains imprisoned at St.Catherine's District Prison.

The complaint

3.1 The author claims a violation of article 14, paragraph 3 (b), because he had inadequate time and facilities to prepare his defence at trial, and inadequate communication with counsel of his choice. He argues that his detention up until trial made it doubly important that he was able to give detailed instructions to counsel. However, prior to his preliminary hearing, he was only able to speak to his legal aid lawyer for half an hour. Moreover, he was unable to have another audience with his lawyer before or after the trial. During the time of pre-trial detention, the legal aid lawyer never visited the author and did not review the case with him at all in preparation for the trial. As a consequence, no witnesses were called on his behalf at trial. He was only able to speak to his lawyer directly from the dock, while the trial was actually in progress, and many of his instructions were simply ignored. He was further unable to go through the prosecution statements with his lawyer, who failed to point out significant discrepancies in the prosecution's evidence. The author contends that at one point at trial he informed the judge that he was unsatisfied with his legal representation, but was told that the only alternative would be for him to represent himself.

3.2 The author further alleges a violation of article 14, paragraph 3 (e), in that he had insufficient opportunity to examine, or have examined, the witnesses against him at trial, and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him. His lawyer made no attempt to accede to his request to call certain witnesses on his behalf, in particular, a serving Jamaican police officer, who had testified at the preliminary hearing that other police officers investigating the murders had planted evidence on the author.[4] The author submits that the primary reason why witnesses were not traced and called was that legal aid rates available to counsel were so inadequate that they are unable to make such enquiries.

3.3 The author claims a violation of article 14, paragraph 1, in that the trial judge's directions to the jury were inadequate. While the author acknowledges that it is generally for domestic tribunals to evaluate the facts and evidence in a particular case, he alleges that in the circumstances of his own case the judge's instructions were so "wholly inadequate" so as to amount to a denial of justice. Firstly, the author contends that the judge made remarks as to the possible guilt of another party, without at the same time warning the jury as to possible dangers of evidence against the author given by such a person. Secondly, in his summing up the judge made comments allegedly partial to the prosecution, including inviting the jury to draw inferences from counsel's failure to address certain issues. In addition, concerning the author's contention at trial that not all pages of his confession were a true record of his confession, the judge invited the jury to disbelieve the author on the basis that all pages were the same colour, a theory advanced by neither side. Nor did the judge adequately direct the jury on the inferences to be drawn from any statements made by the author which the jury found to be untrue. The judge also invited the jury to compare samples of the author's handwriting without securing expert assistance.

3.4 The author claims a violation of article 14, paragraphs 3 (b) and 5, in that he was not informed of his appeal hearing, that his legal representation was not of his choosing, and that he had no opportunity to instruct the lawyer assigned to represent him on appeal. He wrote several letters to

the lawyer assigned to his appeal but received no reply. As a result, he had no opportunity to correct inaccuracies which arose during the course of the hearing.

3.5 Further, the author claims a violation of article 14, paragraph 3 (c), in the form of delays in various stages of the judicial proceedings. He points to the lapse of over three years between the filing of his appeal, immediately following his conviction on 27 September 1983, and the dismissal of the appeal on 13 November 1986. He does not know when the trial transcript was prepared, but contends that his counsel was provided a copy some time prior to the hearing of the appeal.

3.6 The author moreover claims a violation of article 14, paragraph 2, in that violations of article 14, paragraphs 1 and 3, which deprive an accused of the safeguards of a fair trial, also amount to a violation of the presumption of innocence. He relies for this proposition on the Committee's Views in *Perdomo et al. v. Uruguay*.[5]

3.7 In addition, the author claims a violation of article 14, paragraphs 1 and 3, subparagraphs (a), (b) and (d), in that he was not given any notice of where or how the decision to commute his sentence was taken, and that neither he nor counsel were given any opportunity to make oral or written representations as to his non-parole period. He was not informed of the material or questions considered or principles applied by the Governor-General, and the proceedings were not held in public. Moreover, the alleged failure to take into account the time the author served in custody prior to commutation of sentence (more than 12 years) when considering his non-parole period, is said to be a violation of his rights under article 9, paragraph 1 of the Covenant, in that he was subjected to arbitrary detention. He contends that the decision to commute his death sentence was effectively an extension of the original sentencing process, and that a non-parole period should have been set at the time the sentence was commuted. The guarantees of article 14 of the Covenant extend beyond conviction to the sentencing process in accordance with a general principle that the "due process requirements" applying at the conviction stage extend to the sentencing process as well.[6] The author contends that he enjoyed none of these guarantees at the point of commutation.

3.8 The author claims a violation of articles 7 and 10, paragraph 1, in the conditions of his imprisonment at St. Catherine District Prison, described in paragraph 2.4 above. The author refers to the Committee's jurisprudence to the effect that imprisonment "in conditions seriously detrimental to a prisoner's health" violate these provisions.[7]

3.9 The author further contends that the mental anguish and anxiety relating to death row incarceration violated articles 7 and 10, paragraph 1. The prolonged isolation over 12 years and enforced idleness exacerbated his mental suffering to the extent that this "death row phenomenon" constituted cruel, inhuman and degrading treatment. The author relies to this end on the jurisprudence of the European Court of Human Rights in *Soering v. United Kingdom*.[8]

3.10 On exhaustion of domestic remedies, the author contends he was unable to pursue a domestic constitutional challenge because of an inability to raise the requisite funds paired with the unwillingness of the State party to provide State funds for such a purpose.

<u>The State party's submissions on the admissibility and merits of the communication</u>

4.1 By Note of 2 October 1998, the State party made its submissions on the admissibility and merits of the communication.

4.2 As to the alleged violation of article 14, paragraph 3 (b) and (e), regarding the manner in which the author's legal aid lawyer conducted his trial, the State party recalls that it has consistently maintained that it is not responsible for the manner in which counsel conducts a case. It argues that the State's duty is to appoint competent counsel, and not to interfere with the conduct of the case, whether by act or omission. After appointment, the State party is no more responsible for the performance of legal aid counsel than it would be for the performance of privately retained counsel. The State party applies the same principles to the alleged violations of article 14, paragraphs 3 and 5, in relation to the manner in which counsel conducted the appeal.

4.3 As to the alleged violation of article 14, paragraph 1, in the form of the judge's instructions to the jury, the State party notes the author's acknowledgment that it is generally for the courts of the State to evaluate the judge's instructions to the jury, unless it can be shown that the instructions were clearly arbitrary or amounted to a denial of justice. The State party points out that in the present case the judge's instructions were evaluated by the Court of Appeal in detail and thereafter the Privy Council, both of which found no impropriety. The State party denies that the judge's instructions were such that the Committee should disregard the decision of the appellate courts.

4.4 As to the alleged violation of article 14, paragraph 3 (c), in the form of the three-year period between the lodging of the notice of appeal and the Court of Appeal's judgement, the State party argues that while the delay was longer than desirable, it did not unduly prejudice the author and therefore did not amount to a breach of the Covenant.

4.5 As to the alleged violations of the Covenant arising from the imposition of a non-parole period after the commutation of the author's sentence, the State party denies any incompatibility of the process with the Covenant. It points out that the non-parole period was guided by the Offences Against Persons (Amendment) Act and that all the relevant factors, including any evidence of the author's physical and mental health and so forth, were laid before the Governor-General when the trial judge's report was considered. The State party maintains that the fact that neither the author nor his counsel had the opportunity to make representations did not make the process inherently unfair.

Subsequent submissions of the parties

5.1 The author made a subsequent submission by letter of 18 December 1998, and the State party made further comments in a Note dated 25 May 1999. Both submissions reiterated their earlier arguments described above.

Issues and proceedings before the Committee

Consideration of admissibility

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

6.2 The Committee notes that at the time of submission of the communication, Jamaica was a party to the Optional Protocol. Accordingly, the withdrawal by the State party from the Optional Protocol on 23 October 1997, with effect as of 23 January 1998, does not affect the competence of the Committee to consider this communication.

6.3 The Committee has ascertained, as required under article 5, paragraph 2 (a), of the Optional Protocol, that the matter is not being examined under another procedure of international investigation or settlement. With respect to the exhaustion of domestic remedies, the Committee observes that the State party has not contended that there are any domestic remedies yet to be exhausted by the author. In the absence of any further objection by the State party to the admissibility of the communication, the Committee is of the view that the communication is admissible and proceeds to a consideration of the merits.

Consideration of the merits

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

7.2 As to the claim of a violation of article 14, paragraph 3 (b) and (e), in that the author had inadequate time and facilities to prepare his trial defence at trial and that counsel conducted his defence poorly, the Committee reiterates its jurisprudence that in such a situation, it would have been incumbent on the author or his counsel to request an adjournment at the beginning of the trial, if it was felt that they had not had sufficient opportunity to properly prepare a defence. The trial transcript does not disclose any such application.[9] As to the issues raised by the author's objections to counsel's conduct of the trial, the Committee recalls 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.[10] The Committee is of the view that, in the present case, there is no indication that counsel's conduct of the trial was manifestly incompatible with his professional responsibilities. Accordingly, the Committee does not find a violation of the Covenant in respect of these issues.

7.3 On the alleged violation of article 14, paragraph 1, in that the trial judge's directions on the evidence to the jury were inadequate, the Committee refers to its previous jurisprudence that it is not for the Committee to review specific instructions to the jury by the trial judge unless it could be ascertained that the instructions to the jury were clearly arbitrary or amounted to a denial of justice. In the present case, the Committee observes that the evidence in the case as well as the judge's directions to the jury were extensively examined upon appeal, and it does not discern clear arbitrariness or a denial of justice thereby.[11] The Committee thus does not find a violation of the Covenant in this respect.

7.4 As to the claim of a violation of article 14, paragraphs 3 (b) and 5, concerning the preparation and conduct of the appeal, the Committee notes that the author signed the application for leave to appeal which detailed the grounds of appeal and is therefore not in a position to claim he was unable to instruct his appellate lawyer. Moreover, the Committee recalls its jurisprudence (referred to in paragraph 7.2 above) that a State party cannot generally be held responsible for the conduct of a lawyer in court. In this case, the Committee does not discern any exceptional matter in the manner the appeal was conducted that would warrant departure from this approach. Accordingly, the Committee does not find a violation of the Covenant in respect of these issues.

7.5 As to the claim of a violation of article 14, paragraph 3 (c), in the form of the delay of three years and one month between the filing of his notice of appeal and its eventual disposition, the Committee notes the particular circumstance of this case that the author lodged his appeal immediately at the close of trial on the day that he was convicted. Noting also that the State party has not provided any explanation for the delay or presented any factors by which the delay could be attributed to the author, the Committee considers that the facts disclose a violation of article 14, paragraph 3 (c).

7.6 As to the claim of a violation of article 14, paragraph 2, deriving from violations of fair trial guarantees in article 14, paragraphs 1 and 3, the Committee observes that, in the light of its findings on the above in respect of the latter provisions, no separate issue arises under article 14, paragraph 2.

7.7 As to the author's claims of a violation of articles 9, paragraph 1, and 14, paragraphs 1 and 3, subparagraphs (a), (b) and (d), arising from the commutation of his sentence and the setting of a seven-year period before parole issues might arise, the Committee refers to its previous jurisprudence that the commutation process is not one attracting the guarantees of article 14.[12] Nor does the Committee share the view that a substitution of the death penalty with life imprisonment, with a prospect of parole in the future, is a "re-sentencing" tainted with arbitrariness. It follows from this conclusion that the author continued to be legitimately detained pursuant to the original sentence, as modified by the decision of commutation, and that no issue of detention contrary to article 9 arises. Accordingly, the Committee does not find a violation of the Covenant with respect to these matters.

7.8 As to the author's claims under articles 7 and 10, paragraph 1, concerning the specific conditions and length of his detention on death row, the Committee must, in the absence of any responses by the State party, give due credence to the author's allegations as not having been properly refuted. The Committee considers, as it has repeatedly found in respect of similar substantiated allegations,[13] that the author's conditions of detention 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 the light of this finding in respect of article 10, a provision of the Covenant dealing specifically with the situation of persons deprived of their liberty and encompassing for such persons the elements set out generally in article 7, it is not necessary to separately consider the claims arising under article 7.

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 before it disclose a violation of articles 10, paragraph 1, and 14, paragraph 3 (c), of the Covenant.

9. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy. The State party is also under an obligation to improve the present conditions of detention of the author, or to release him.

10. 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 with respect to this case. Pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or 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.

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

* Made public by decision of the Human Rights Committee.

** The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Maurice Glèlè Ahanhanzo, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Rafael Rivas Posada, Mr. Nigel Rodley, Mr. Martin Scheinin, Mr. Ivan Shearer, Mr. Hipólito Solari Yrigoyen, Ms. Ruth Wedgwood, Mr. Roman Wieruszewski and Mr. Maxwell Yalden.

Notes

[1] *Prison Conditions in Jamaica: An Americas Watch Report* (Human Rights Watch, New York, May 1990).

[2] *Ibid.* at 13 and, further, *Report of the Task Force on Correctional Services* (Ministry of Public Services, Jamaica, March 1989).

[3] The sentence of death penalty was commuted to life imprisonment pursuant to the judgement of the Privy Council in *Pratt and Morgan v. Jamaica*. It is unclear on exactly what date the decision of commutation was taken by the Governor-General.

[4] In *Bell v. Director of Public Prosecutions* [1986] LRC 392, the Privy Council accepted that in Jamaica there exists a real difficulty in securing the attendance of witnesses at court.

[5] Case No. 8/1977, Views adopted on 3 April 1980.

[6] The author refers to judicial authority for this proposition: *R. v. Newton* (1973) 1 WLR 233 and *Gardner v. State of Florida* 430 US 439, 358 (1977).

[7] *Valentini de Bazzano et al. v. Uruguay* Case No. 5/1977, Views adopted on 18 August 1979.

[8] [1989] 11 EHRR 439.

[9] See, for example, *Simpson v. Jamaica* Case No. 695/1996, Views adopted on 31 October 2001.

[10] *Ibid.*

[11] *Henry & Douglas v. Jamaica* Case No. 571/1994, Views adopted on 25 July 1996.

[12] *Kennedy v. Trinidad and Tobago* Case No. 845/1998, Views adopted on 26 March 2002.

[13] See, for example, *Sextus v. Trinidad and Tobago* Case No. 818/1998, Views adopted on 16 July 2001.