

## HUMAN RIGHTS COMMITTEE

### Taylor v. Jamaica

Communication No. 707/1996\*\*

18 July 1997

CCPR/C/60/D/707/1996\*

### VIEWS

*Submitted by: Patrick Taylor [represented by Herbert Smith, a London law firm]*

*Victim: The author*

*State party: Jamaica*

*Date of communication: 14 June 1996 (initial submission)*

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

Meeting on 18 July 1997,

Having concluded its consideration of communication No. 707/1996 submitted to the Human Rights Committee on behalf of Mr. Patrick Taylor 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 Patrick Taylor, a Jamaican citizen, mechanic and taxi driver, currently awaiting execution at St. Catherine District Prison, Jamaica. He claims to be a victim of violations by Jamaica of articles 2, paragraph 3; 6; 7; 9, paragraphs 2 and 3; 10, paragraph 1; and 14, paragraph 3 (b), (c) and (d), of the International Covenant on Civil and Political Rights. He is represented by counsel, Ms. Paula Hodges of Herbert Smith, a

law firm in London.

The facts as presented by the author

2.1 The author was convicted, together with his two co-defendants, his brother Desmond Taylor and Steve Shaw,<sup>1</sup> for the murder of the Peddlar family, and sentenced to death, for four counts of non-capital murder,<sup>2</sup> on 25 July 1994 by St. James Circuit Court, Montego Bay, Jamaica. The judge ruled that as the murders were committed on the same occasion the author was guilty of capital murder. His appeal was dismissed by the Court of Appeal of Jamaica on 24 July 1995. On 6 June 1996, the author's petition for special leave to appeal to the Judicial Committee of the Privy Council was dismissed.

2.2 On 27 March 1992, the decomposing bodies of Horrett Peddlar, his wife, Maria Wright and their two sons, Matthew and Useph, were found. They had been "chopped to death" with blows to the head, body and limbs.

2.3 On the same day, the author, his brother, Desmond, and several other members of the Taylor family were taken in for questioning, all except the author being allowed to leave during the course of the day. The author, however, was kept in custody at the Barnet police station, in Montego Bay, until 21 April 1992. They were questioned because of the animosity between the Peddlar and the Taylor families. Desmond was a judgement debtor of Mr. Peddlar and both Taylors had been charged with having assaulted him; the criminal proceedings were still pending. The author was re-arrested on 4 May 1992.

2.4 As there were no eye-witnesses, the case for the prosecution was based on the statement allegedly made by the author while in police custody on 4 May. The author was confronted with his co-accused, Steve Shaw, in the presence of a police officer. Shaw had said to the author "Me did down a Junie Lawn when me see Mark (Patrick Taylor is also known as Mark), Boxer (Desmond) and President come dey. When me see Mark, President and Boxer. Me and Mark go up a de gate and watch Boxer and President go up a de yard and chop up the people dem". Patrick was then alleged to have said "Curly" (a name by which Shaw is known), and was said to have begun to cry, and said "Boxer no tell you no fi say nothing. Alright sir. Me go up dey but me never know say dem serious dem go kill de people dem".

2.5 The case for the defence was that apart from the confrontation between the author and the co-accused, Shaw, there was no evidence against the author, or that he had done anything other than be present near the land on which the murders had been committed. The author denied the police version. He made a statement from the dock denying any involvement in the killings, and denied having gone to the Peddlar home.

2.6 It is stated by counsel that, in practice, constitutional remedies are not available to the author because he is indigent and Jamaica does not make legal aid available for constitutional motions. Reference is made to the Human Rights Committee's jurisprudence.<sup>3</sup> Counsel submits therefore that all domestic remedies have been exhausted for purposes of article 5, paragraph 2 (b), of the Optional Protocol.

## The complaint

3.1 Counsel contends that the State party's failure to provide legal aid for constitutional motions constitutes a violation of article 2, paragraph 3, of the Covenant in connection with article 14, paragraph 1, because it has not ensured an effective domestic remedy in the determination of the author's rights. According to counsel the proceedings in the constitutional court must conform with the requirements of a fair hearing in accordance with the conditions spelled out in article 14, paragraph 1, encompassing the right to legal aid.

3.2 The author alleges a violation of article 9, paragraphs 2 and 3, of the Covenant, on the ground that he was arrested on 27 March 1992 and held in custody for a period of 26 days, with no charges being brought against him in that time. The author was re-arrested on 4 May 1992 and it was not till 7 May 1992 that he was informed that he had been charged with murder and was cautioned. It is submitted that he was detained for 29 days before being formally cautioned or having access to a lawyer. Counsel adds that the author was neither promptly charged within the meaning of article 9, paragraph 2, nor brought promptly before a judicial officer within the meaning of article 9, paragraph 3. Reference is made to the Committee's jurisprudence<sup>4</sup> where it was held that detention must not exceed a few days.

3.3 The author submits that his rights under articles 9, paragraph 3, and 14, paragraph 3 (c), of the Covenant were violated in that he was not promptly brought to trial. In this respect, counsel alleges that two years and four months from the date of the initial arrest, 27 March 1992 until the trial, on 18 July 1994, is excessive as the issues involved were not complicated, notwithstanding that four murders were involved.

3.4 Counsel further submits that the author is the victim of a violation of article 14, paragraph 3 (b) and (d), as the author was not represented by a lawyer at all until after his first appearance before a judge. Subsequently, he was only able to consult with his lawyer for 8 to 10 minutes. In the period leading up to the trial, though the author saw his privately retained counsel (QC Hamilton) on several occasions, it was always for very short periods of time, and at no stage did the lawyer seek the author's comments on the prosecution's evidence. The author had requested that a witness be called, but the lawyer failed to do so. The author's lawyer was not in court on the day the author was convicted.<sup>5</sup>

3.5 Counsel further contends that the fairness of the proceedings was flawed by reason of the fact that the author and his brother received joint representation. The evidence of the case was totally different for both brothers as the evidence against the author was that he was merely present, whereas his brother was an active participant. There was an evident conflict of interest in the two defences. Counsel thus argues that the State party failed to provide adequate representation to the author within the meaning of article 14, paragraph 3 (b) and (d).

3.6 Counsel submits that an execution that might have been lawful if carried out immediately and without exposing the convicted man to the aggravated punishment of inhuman treatment during a long period can become unlawful if the proposed execution is to come at the end of a substantial period under intolerable conditions. In this respect, counsel refers to Pratt

and Morgan as an authority for the proposition that carrying out a sentence of death can be rendered unlawful where the subsequent conditions in which a condemned man is held, either in terms of time or in terms of physical discomfort, constitute inhuman and degrading treatment or punishment. Counsel contends that such an approach is consistent with the structure of the Covenant, which shows that detention may be unlawful if it is either unduly prolonged or the physical conditions fall below recognized minimum standards. The author was sentenced to death, not to death preceded by a substantial period of inhuman treatment. Counsel claims that the author's execution would be unconstitutional and in violation of articles 7 and 10, paragraph 1, of the Covenant.

3.7 Counsel submits that the conditions at St. Catherine District Prison amount to a violation of the author's rights under articles 7 and 10, paragraph 1. Reference is made to the findings of various reports by non-governmental organizations on the conditions of St. Catherine's Prison. The actual conditions which are said by counsel to apply to the author on death row include being confined in the cell for 23 hours each day, no provision of mattress or bedding for the concrete bunk, no integral sanitation, inadequate ventilation and no natural lighting. In addition, the general conditions of the prison are also claimed to affect the author. Counsel contends that the author's rights as an individual under the Covenant are being violated, notwithstanding the fact that he is a member of a class - those on death row - whose rights are also being violated through being detained in similar conditions. In this respect, counsel contends that a violation of the Covenant does not cease to be a violation merely because others suffer the same deprivation at the same time. The conditions under which the author is detained at St. Catherine District Prison are said to amount to cruel, inhuman and degrading treatment within the meaning of articles 7 and 10, paragraph 1, of the Covenant.

3.8 Furthermore, counsel submits that the cells and prison conditions do not meet the fundamental and basic requirements of the United Nations Standard Minimum Rules for the Treatment of Prisoners and amount to violations of articles 7 and 10, paragraph 1, of the Covenant. In this respect, reference is made to the Committee's jurisprudence.<sup>6</sup> Where it was held that, as to the conditions of detention in general, the Committee observes that certain minimum standards regarding the conditions of detention must be observed regardless of a State party's level of development (i.e., the Standard Minimum Rules for the Treatment of Prisoners). It should be noted that these are minimum requirements which the Committee considered should always be observed, even if economic or budgetary conditions may make compliance with these obligations difficult.

3.9 Finally, counsel submits that the imposition of a sentence of death upon the conclusion of a trial in which a provision of the Covenant has been breached, if no further appeal against the sentence is available, constitutes a violation of article 6, paragraph 2, of the Covenant. In this respect, counsel contends that: "the imposition of a death sentence where as here the State party knows that the convicted person will be subjected to the conditions which exist on death row (which are contrary to the Covenant) for a protracted period and where that convicted person is then actually subjected to such conditions (which in themselves amount to violations of the Covenant), such treatment amounts to a violation of a protection of the law to the individuals' inherent right to life. The Applicant's inherent right to life does not end with the imposition of the sentence of death. Rather, the sentence of death by a

competent Court gives legitimate authority to the State to take the life of a convicted person in a constitutional manner which is not then contrary to any international norm. However, up until the point and time when the sentence of death is carried out, the individuals' right to life continues. Such a right to life is then subject to all applicable international norms, including those covered by the Covenant for the protection of civil and political rights and the United Nations Standard Minimum Rules for the Treatment of Prisoners. Subjecting the Applicant to the conditions at Montego Bay Police Station, as well as the conditions on death row, amounts to a violation of articles 7 and 10 (1) of the Covenant in conjunction with violations of the provisions of the United Nations Standard Minimum Rules for the Treatment of Prisoners. In addition, the violations of articles 9 and 14 also amount to a violation of article 6".

3.10 It is submitted that the same matter has not been submitted to another procedure of international investigation or settlement.

#### The State party's information and observations and counsel's comments thereon

4.1 In its observations dated 19 September 1996, the State party does not formulate objections to the admissibility of the case but rather directly addresses the merits of the communication.

4.2 With regard to the allegation of violations of article 9, paragraphs 2 and 3, because the author spent 29 days in detention before being formally charged for murder, the State party contends that the period of detention can be broken down into two sections, the first being 26 days after which the author was released, and the second of three days' detention from 4 May 1992 after which the author was charged with murder. The State party concedes that a detention of 26 days is undesirable, but does not accept that a three-day period constitutes a violation of the Covenant.

4.3 With respect to the undue delay in hearing the author's case because of the two years and four months between the author's detention and his trial, the State party rejects that this delay constitutes a violation of articles 9, paragraph 3, and 14, paragraph 3 (c), particularly because during this period a preliminary inquiry took place.

4.4 In respect of the allegations of inadequate legal representation in violation of article 14, paragraph 3 (b) and (d), the State party contends that if the author was not represented during the preliminary inquiry it was not the State party's responsibility as it had been open to the author to request legal representation. With respect to the author's allegation that he only saw his counsel for short periods of time and the complaint regarding the way counsel conducted the trial the State party contends that it cannot be held responsible for these actions. In the same manner the State party contends that if there was a conflict of interest between the two brothers as the cases against them were different, then it was up to the author or his brother to have requested separate representation.

4.5 With regard to the allegations under articles 7 and 10, paragraph 1, the State party submits that the author has not been on death row for five years, after which point Pratt and

Morgan could be invoked, and with respect to the Committee the State party notes that the Committee itself has held that prolonged detention per se does not constitute inhuman and degrading treatment.

4.6 With respect to the allegation of a violation of article 14, paragraphs 1, 2 and 3, because the author has been unable to obtain legal aid for constitutional redress the State party does not interpret the Covenant as obliging the Government to provide legal aid for constitutional motions. The State party does, however, concede that indigence may limit access to the Supreme Court to obtain a constitutional remedy.

4.7 The State party submits that as there has been no breach of any of the provisions of the Covenant, there can be no breach of article 6.

5.1 In her comments on the State party's submission, counsel agrees to the joint examination of the admissibility and the merits of the case. She reaffirms that the delay of 29 days in charging the author constitutes a violation of article 9, paragraphs 2 and 3.

5.2 Counsel maintains her allegations that the author has been a victim of violations of article 14, paragraph 3 (b) and (d), owing to the inadequate legal representation he received: i.e., no counsel for his first appearance before a judge, the short time he was able to consult with his lawyer and prepare his defence and finally being represented by the same counsel as his brother where there was an evident conflict of interests.

5.3 In a further submission of 6 May 1997, counsel has forwarded a statement from one Glenroy Hodges, allegedly corroborating the author's contention that he was never confronted with his co-accused Steve Shaw, while in police detention.

#### Admissibility consideration and examination of merits

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 is admissible under the Optional Protocol to the Covenant.

6.2 The Committee has ascertained, as required under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 With respect to the author's claim that the two years and eight months that the author has spent on death row, since his conviction, on 25 July 1994, constitutes a violation of articles 7 and 10, paragraph 1, the Committee notes that it remains its jurisprudence<sup>7</sup> that detention on death row for a specific time does not violate the Covenant, in the absence of further compelling circumstances. In the instant case, the Committee considers that neither the author nor his counsel have sufficiently substantiated, for purposes of admissibility, how the 28 months spent on death row, during which the author was availing himself of appeal possibilities against his conviction, entailed a violation of the author's Covenant rights. The Committee therefore finds that this part of the communication is inadmissible.

6.4 As regards the author's claims that he saw his lawyer, senior counsel (Mr. Hamilton QC) several times but only for 8 to 10 minutes each time, that he was not represented until after the preliminary hearing and that counsel took no instructions from him, and in particular did not call a witness whom the author felt should be called, the Committee notes that counsel was initially privately retained, and considers that the State party cannot be held accountable for alleged errors made by a defence lawyer, unless it was 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 judgement and this part of the communication is therefore inadmissible under article 2 of the Optional Protocol.

6.5 As regards the author's claim that his defence was tainted because he was represented by the same counsel as his brother and there was a conflict of interest between them, as the charges against both brothers were different, the Committee notes that the author was represented by senior counsel (Mr. Hamilton QC), that counsel had been privately retained by the brothers for the preliminary hearing, that, before the jury was empanelled, counsel requested first that the author be tried separately and then that he, counsel, be assigned on a legal aid basis to them both. From the trial transcript it is clear that the author was represented at the preliminary hearing by the same Queen's counsel that later represented him on trial. Furthermore, the Committee notes that during the trial, counsel kept his questions on behalf of both brothers separate. The Committee considers that there were no factors giving rise to a conflict of interest in the representation of both accused either when counsel was privately retained or when he was acting as legal aid; therefore these claims remain unsubstantiated, and accordingly this part of the communication is inadmissible.

6.6 As regards the new evidence submitted by counsel, on 6 May 1997, this is a matter which should have been raised before the national courts. Accordingly, the Committee considers that this part of the communication is inadmissible for non-exhaustion of domestic remedies, under article 5, paragraph 2 (b), of the Optional Protocol.

6.7 The Committee observes that with the dismissal of the author's petition for special leave to appeal to the Judicial Committee of the Privy Council in June 1996, the author has exhausted domestic remedies for purposes of the Optional Protocol. In the circumstances of the case, the Committee finds it expedient to proceed with the examination of the merits of the case. In this context, it notes that the State party has not raised objections to the admissibility of the complaint and has forwarded comments on the merits. The Committee recalls that article 4, paragraph 2, of the Optional Protocol stipulates that the receiving State shall submit its written observations on the merits of a communication within six months of the transmittal of the communication to it for comments on the merits. The Committee reiterates that this period may be shortened, in the interest of justice, if the State party so wishes.<sup>8</sup> The Committee further notes that counsel for the author has agreed to the examination on the merits of the case at this state.

7. The Committee accordingly, declares the remaining claims admissible and proceeds, without further delay, to an examination of the substance of these claims, in the light of all the information made available to it by the parties, as required by article 5, paragraph 1, of the Optional Protocol.

8.1 The author complains that he has been detained on death row in appalling and insalubrious conditions, complaints which are supported by the reports annexed to counsel's submission; neither these nor the author's claims have been refuted by the State party. Counsel's submission summarizes the main points made by these reports, and shows that these conditions affect the author himself, as a prisoner on death row. In the Committee's opinion, the conditions described therein and 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 article 10, paragraph 1.

8.2 The author has claimed that the absence of legal aid for the purpose of filing a constitutional motion in itself constitutes a violation of the Covenant. The determination of rights in proceedings in the Constitutional Court must conform with the requirements of a fair hearing in accordance with article 14, paragraph 1.<sup>9</sup> In this particular case, the Constitutional Court would be called on to determine whether the author's conviction in a criminal trial has violated the guarantees of a fair trial. In such cases, the application of the requirement of a fair hearing in the Constitutional Court should be consistent with the principles in paragraph 3 (d) of article 14. It follows that where a convicted person seeking constitutional review of irregularities in a criminal trial has insufficient means to meet the costs of legal assistance in order to pursue his constitutional remedy and where the interest of justice so requires, legal assistance should be provided by the State. In the present case, the absence of legal aid has denied the author the opportunity to test the irregularities of his criminal trial in the Constitutional Court in a fair hearing, and is thus a violation of article 14.

8.3 The author has claimed that he was not charged for 29 days, nor was he promptly brought before a judge. In the instant case, the author was kept in detention for 26 days, was released and later arrested and held in detention for three days before being charged and brought before a judicial authority; the Committee notes that the State party itself concedes that there was a delay of 26 days and that this delay is undesirable, though denying that either this period or a further three days might constitute a violation of the Covenant. In the circumstances, the Committee, and notwithstanding the State party's arguments, finds that to detain the author for a period of 26 days without charge was a violation of article 9, paragraph 2, of the Covenant. The failure of the State party to bring the author before the Court during the 26 days of detention and not until three days after his re-arrest was a violation of article 9, paragraph 3.

8.4 As regards the author's claim that he was not tried without undue delay because of the unreasonably long period, 28 months, between arrest and trial, the Committee is of the opinion that a delay of two years and four months between arrest and trial, during which time the author was held in detention was a violation of his right to be tried within a reasonable time or to be released. The period in question is also such as to amount to a violation of the author's right to be tried without undue delay. The Committee therefore finds that there has been a violation of articles 9, paragraph 3, and 14, paragraph 3 (c).

8.5 The Committee is of the opinion that the imposition of a sentence of death upon conclusion of a trial in which the provisions of the Covenant have not been respected



constitutes, if no further appeal against the sentence is possible, a violation of article 6 of the Covenant. In the present case, since the final sentence of death was passed without having observed the requirement for a fair trial set out in article 14, it must be concluded that the right protected by article 6 of the Covenant has been violated.

9. 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 violations of articles 9, paragraphs 2 and 3; 10, paragraph 1; 14, paragraphs 1 and 3 (c), and consequently of article 6 of the Covenant.

10. Pursuant to article 2, paragraph 3 (a), of the Covenant, the author is entitled to an effective remedy entailing commutation.

11. 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 or subjected 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 ninety days, information about the measures taken to give effect to the Committee's Views.

---

\*/ The following members of the Committee participated in the examination of the present communication: Mr. Nisuke Ando, Mr. Prafullachandra N. Bhagwati, Mr. Thomas Buergenthal, Ms. Christine Chanet, Lord Colville, Ms. Elizabeth Evatt, Ms. Pilar Gaitan de Pombo, Mr. Eckart Klein, Mr. David Kretzmer, Ms. Cecilia Medina Quiroga, Mr. Fausto Pocar, Mr. Martin Scheinin, Mr. Danilo Türk and Mr. Maxwell Yalden.

\*\*/ Individual opinion appended to the present document.

1/ Steve Shaw's and Desmond Taylor's communications to the Human Rights Committee have been registered as communications Nos. 704/1996 and 705/1996, respectively.

2/ The judge, when sentencing the author, stated: "Mr. Taylor, you have been convicted of non-capital murder, but because of the fact that several murders were committed on the same occasion, it means that you are sentenced to suffer death in the manner authorized by law".

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

4/ See communication No. 336/1988 (Filastre v. Bolivia), Views adopted 5 November 1991, paragraph 6.4, and General Comment No. 8.

5/ This allegation is not corroborated by the trial transcript.

6/ Communication No. 458/1991 (Albert Womah Mukong v. Cameroon), Views adopted on 21 July 1994, paragraph 9.3.

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

8/ See Views on communication No. 606/1994 (Clement Francis v. Jamaica), adopted 25 July 1995, paragraph 7.4.

9/ See communication No. 377/1989 (Currie v. Jamaica), Views adopted on 29 March 1994, paragraph 13.4.

[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.]

### Appendix

#### Individual opinion by Committee member Nisuke Ando\*\*

I am not dissenting from the Committee's Views, but I would like to point to the following similarities of this communication to communication No. 708/1996, Neville Lewis v. Jamaica (see the two individual opinions appended to the latter):

- (1) the author in both the cases has co-accused and there was a confrontation between the author and the co-accused, each asserting different versions of facts;
- (2) the delay between the author's arrest and trial was 26-28 months in the instant case and 23 months in case No. 708/1996; and
- (3) in both the cases, the State party argues that a preliminary enquiry took place during the respective period.

Taking these similarities into account and maintaining consistency of evaluation of relevant facts in both the cases, I am unable to persuade myself to conclude that the delay of 26-28 months between the author's arrest and trial in this case is entirely attributable to the State party and constitutes a violation of article 9, paragraph 3 (see paragraph 8.4).

Nisuke Ando [signed]

[Original: English]