

HUMAN RIGHTS COMMITTEE

Edwards v. Jamaica

Communication No 529/1993

28 July 1997

CCPR/C/60/D/529/1993

VIEWS

Submitted by: Hervin Edwards (represented by Mr. Saul Lehrfreund)

Victim: The author

State party: Jamaica

Date of communication: 19 January 1993 (initial submission)

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

Meeting on 28 July 1997,

Having concluded its consideration of communication No.529/1993 submitted to the Human Rights Committee by Mr. Hervin Edwards, 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 Hervin Edwards, a Jamaican citizen, who at the time of submission of the communication was awaiting execution at St. Catherine District Prison and is currently serving a life sentence at the General Penitentiary in Kingston, Jamaica. He claims to be a victim of violations by Jamaica of articles 7 and 14, paragraph 3(b), juncto article 6, paragraph 2, of the International Covenant on Civil and Political Rights. He is

represented by counsel, Mr. Saul Lehrfreund, of the law firm of Simons Muirhead & Burton in London.

The facts as submitted by the author:

2.1 The author was arrested on 31 December 1983 and charged with the murder, on 29 December 1983, of his wife. On 12 June 1984, he was found guilty as charged and sentenced to death by the Manchester Circuit Court. The Court of Appeal dismissed his appeal on 22 January 1986. The murder for which the author stands convicted was initially classified as a capital murder under the Offences Against the Person (Amendment) Act of 1992. On review, the Court of Appeal reclassified the author's offence as non-capital on 28 March 1995.

2.2 The first prosecution witness, a trainee policeman, testified that on 29 December 1983, at around 1:15 p.m., he saw the author walking with his son and wife, from whom he was separated at that time. He saw the author push his wife to the ground, take out a machete, and strike her four or five times in the region of the chest and neck, as a result of which she died. On the issue of identification, he testified that he had known the author for seven years, that during the attack he had shouted at the author who then looked up, and that, after having struck his wife, the author ran towards him before disappearing into a side road. The author's son followed the author, but was stopped by the policeman.

2.3 The second prosecution witness, a police officer who had known the author for fifteen years, stated that in the morning of 29 December 1983, he had gone to the author's home, following a report that the author had taken his child from his wife's custody. He saw the author, his wife and their child leave together, but later saw the wife without the child. He then told the author to return the child to his wife. Another witness for the prosecution, the arresting officer, testified that after being cautioned, the author said: "She a tell me a hot word and me got vex and me chop her".

2.4 In an unsworn statement from the dock, the author contended that on 29 December 1983, he had been working all day on his allotment. No evidence was given in support of his alibi. He further stated that he was wearing clothes different from those worn by the attacker, and that he had instructed the police to find the clothes he had been wearing on the day of the crime.

2.5 The author was represented by a privately retained lawyer during the preliminary hearing and on trial, and by another privately retained lawyer on appeal. The application for leave to appeal against conviction and sentence was based on the grounds that there was insufficient evidence to warrant a conviction, but at the hearing of the appeal, the author's lawyer conceded to the Court that he was unable to find any grounds on which to argue the appeal.

2.6 As to the requirement of exhaustion of domestic remedies, leading counsel in London advised on 7 November 1990 that there were no reasonable prospects of success for a petition for special leave to appeal to the Judicial Committee of the Privy Council. Leading

counsel referred in particular to the strong identification evidence of the first prosecution witness, to the fact that the judge's summing up to the jury was in accordance with the relevant rules, and that the author's alibi was seriously undermined by the evidence of the second prosecution witness. It is submitted that a petition for special leave to appeal to the Judicial Committee of the Privy Council would not constitute an available and effective remedy within the meaning of article 5, paragraph 2(b), of the Optional Protocol.

The complaint:

3.1 The author submits that he was not adequately represented on trial. He submits that he saw his lawyer only fifteen minutes prior to the preliminary hearing, and that he did not see her again until the day of the trial. He complains that she did not ask him for instructions and that she should have requested an adjournment in order to properly prepare the defence. Furthermore, she did not contact any witnesses to testify on his behalf and failed to cross-examine the prosecution witnesses on essential issues, such as the clothes worn by the attacker and the confession statement he allegedly made to the arresting officer. The inadequate conduct of the author's defence counsel is said to amount to a violation of article 14, paragraph 3(b), of the Covenant. It is further submitted that, as a result, article 6, paragraph 2, has also been violated, since a sentence of death was passed upon the author after a trial in which the provisions of the Covenant have not been respected.

3.2 The author points out he was sentenced to death on 12 June 1984 and argues that the execution of a sentence of death after such a long period would, because of the extreme anguish caused by the delay, amount to cruel, inhuman and degrading treatment, within the meaning of article 7 of the Covenant.

3.3 The author submits that he has been subjected to the deplorable conditions of detention at St. Catherine District Prison. In this context, he submits that he has spent the past 10 years alone in a cell measuring 6 feet by 14 feet, being let out for three and a half hours a day. He has no recreational facilities and receives no books.

3.4 Counsel concedes that the author has not applied to the Supreme (Constitutional) Court of Jamaica for redress. He argues that a constitutional motion in the Supreme Court would inevitably fail, in light of the precedent set by the Judicial Committee of the Privy Council in the cases of DPP v. Nasralla and Riley & others v. Attorney General of Jamaica, where it was held that the Jamaican constitution was intended to prevent the enactment of unjust laws and not unjust treatment under the law. Since the author claims unjust treatment under the law, and not that post constitutional laws are unconstitutional, a constitutional motion would not be an effective remedy in his case. Counsel further argues that, if it were accepted that a constitutional motion is a final remedy to be exhausted, it would not be available to the author because of his lack of funds, the absence of legal aid for the purpose and because of the unwillingness of Jamaican lawyers to represent applicants on a pro bono basis. In support of his contention, counsel states that the author informed him that, although he had a privately retained lawyer on trial and appeal, it was his family who paid counsel's fees and that he is thus not in a position to privately retain a lawyer for the purpose of filing a constitutional motion.

State party's observations:

4. The State party notes that on 28 March 1995, the Court of Appeal reviewed the author's case and reclassified the offence as non-capital murder. His death sentence was changed by law to one of life imprisonment. The author is to serve seven more years of detention, counted from the date of reclassification, before he becomes eligible for parole.

The Committee's admissibility decision:

5.1 During its 55th session, the Committee considered the admissibility of the communication. It noted that in respect of the author's conviction, leading counsel in London had advised that a petition for special leave to appeal to the Judicial Committee of the Privy Council would have no prospect of success. Given leading counsel's uncontested opinion, the Committee considered that a petition for special leave to appeal to the Judicial Committee of the Privy Council was not an effective remedy which the author had to exhaust for purposes of the Optional Protocol.

5.2 With regard to the author's claim about inadequate legal representation, the Committee observed that the author's lawyer had been privately retained. It considered that the State party could not be held accountable for alleged errors made by a privately retained lawyer, unless it should have been manifest to the judge or the judicial authorities that the lawyer's behaviour was incompatible with the interests of justice. The Committee considered that, in the instant case, there had been no indication that the author's defence suffered from such defect. This part of the communication was incompatible with the provisions of the Covenant and was declared inadmissible under article 3 of the Optional Protocol.

5.3 With regard to the author's claim that the execution of a sentence of death after more than ten years on death row would amount to cruel, inhuman and degrading punishment, the Committee observed that following the reclassification of his offence as non-capital the author was no longer under the threat of execution. With regard to the question whether his lengthy stay on death row could amount to a violation of article 7 of the Covenant, the Committee referred to its jurisprudence "that prolonged judicial proceedings do not *per se* constitute cruel, inhuman and degrading treatment, and that, in capital cases, even prolonged periods of detention on death row cannot generally be considered to constitute cruel, inhuman or degrading treatment".¹ In the instant case, the Committee wished to examine on the merits whether the length of Mr. Edward's detention on death row was the result of delays imputable to the State party and whether there were other compelling circumstances particular to the author, including the conditions of his imprisonment, which would amount to a violation of articles 7 and 10, paragraph 1, of the Covenant.

5.4 Accordingly, on 31 October 1995, the Human Rights Committee declared the communication admissible in as much as it appeared to raise issues under articles 7 and 10, paragraph 1, of the Covenant.

State party's submission on the merits and counsel's comments:

6.1 By submission of 4 November 1996, the State party points out that the allegations relating to articles 7 and 10, paragraph 1, relate to the fact that the author spent ten years on death row before his offence was reclassified as non-capital and a further two years until he was actually taken off death row after commutation of sentence.

6.2 The State party states that the author was arrested on 31 December 1983 and tried and convicted on 12 June 1984, a period of seven months. The author's appeal was dismissed on 22 January 1986, 18 months after conviction. It was not until four years later, 7 November 1990, that an opinion was obtained from leading counsel in London as to whether there were or not reasonable prospects of success for a petition to the Privy Council. The author's crime was reclassified as non-capital by the Offences Against the Person (Amendment) Act of 1992. The State party categorically rejects that the time the author has spent on death row can be imputed to it.

7.1 In his comments, counsel contends that the issues arising under articles 7 and 10, paragraph 1, involve the responsibility of the State party, since it was the State party that kept the author on death row for over eleven years between 12 June 1984 and 10 July 1995. Counsel contends that this delay in carrying out the death sentence is attributable to the State party. In support of his claim, counsel refers the Privy Council judgment in Pratt [1994]2 AC 1, where their Lordships held that:

"a State that wishes to retain capital punishment must accept the responsibility of ensuring that execution follows as swiftly as practicable after sentence, allowing a reasonable time for appeal and consideration of reprieve";

as well as to the individual opinions appended to the Committee's Views on communication No 588/1994 (Errol Johnson v. Jamaica), where it was held that:

"the physical and psychological treatment of the prisoner, his age and his health must be taken into consideration in order to evaluate the State's behaviour in relation of articles 7 and 10, paragraph 1".

Examination of the merits:

8.1 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.

8.2 The Committee must determine whether the length of time the author spent on death row - 11 years and 1 month - amounts to a violation of articles 7 and 10 paragraph 1, of the Covenant. Counsel has claimed a violation of these provisions by reference to the length of time Mr. Edwards was confined to death row. It remains the Committee's jurisprudence that detention on death row for a specific time does not violate articles 7 and 10, paragraph 1, in the absence of some further compelling circumstances. The Committee refers in this context, to its Views on communication No. 588/1994 Communication No 588/1994 (Errol Johnson v. Jamaica), Views adopted on 22 March 1996, paras. 8.2 to 8.5. in which it explained and

clarified its jurisprudence on this issue. In the Committee's opinion, neither the author nor his counsel have shown the existence of further compelling circumstances beyond the length of detention on death row. While a period of detention on death row² of over eleven years is a matter of serious concern, the Committee concludes that length of time does not per se constitute a violation of articles 7 and 10, paragraph 1.

8.3 With regard to the conditions of detention at St. Catherine's District Prison, the Committee notes that in his original communication the author made specific allegations, in respect of the deplorable conditions of detention. He alleged that he was held for the period of 10 years alone in a cell measuring 6 feet by 14 feet, let out only for three and half hours a day, was provided with no recreational facilities and received no books. The State party made no attempt to refute these specific allegations. In these circumstances, the Committee takes the allegations as proven. It finds that holding a prisoner in such conditions of detention constitutes not only a violation article 10, paragraph 1, but, because of the length of time in which the author was kept in these conditions, also a violation of article 7.

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 a violation of articles 7 and 10, paragraph 1, of the Covenant.

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

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 and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within 90 days, information about the measures taken in connection with the Committee's Views.

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

1/ See Views on communication No. 373/1989 (Lennon Stephens v. Jamaica), adopted on 18 October 1995, paragraph 9.4. See also Views on communication Nos. 270/1988 and 271/1988, Barret and Sutcliffe v. Jamaica, adopted on 30 March 1992, paragraph 8.4.

2/ During the period the author remained on death row (1984-1992) until the Offences Against the Persons (Amendment) Act, was enacted, the State party observed various moratoriums on executions.

[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.]