

HUMAN RIGHTS COMMITTEE

Taylor v. Jamaica

Communication No. 705/1996

2 April 1998

CCPR/C/62/D/705/1996*

VIEWS

Submitted by: Desmond Taylor (represented by Clifford Chance, London)

Victim: The author

State party: Jamaica

Date of communication: 14 June 1996 (initial submission)

Date of decision on admissibility and Views: 2 April 1998

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

Meeting on 2nd April 1998,

Having concluded its consideration of communication No. 705/1996 submitted to the Human Rights Committee by Mr. Desmond 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 Desmond Taylor, a Jamaican citizen currently awaiting execution at St. Catherine District Prison, Jamaica. He claims to be a victim of violations by Jamaica of articles 6, 7, 9, paragraph 3, 10, paragraph 1, and 14, paragraphs

1 and 3(b), (c) and (d). He is represented by Steven Dale of the London law firm of Clifford Chance.

The facts as submitted by the author:

2.1 The author was convicted, with two co-defendants, his brother Patrick Taylor¹ and one Steve Shaw², of four counts of capital murder and sentenced to death in the St. James' Circuit Court, Montego Bay, on 25 July 1994. His appeal against conviction was dismissed by the Court of Appeal of Jamaica on 24 July 1995. A subsequent petition for special leave to appeal to the Judicial Committee of the Privy Council was dismissed on 6 June 1996.

2.2 On 27 March 1992, the decomposing bodies of Horrett Peddlar, his wife, Maria Wright, and their two small children, Matthew and Useph, were discovered on the grounds surrounding the Peddlar home. They had been 'chopped to death' with blows to head, body and limbs.

2.3 On the same day, the author, his brother, and several other members of the Taylor family were taken in for questioning; all except Patrick Taylor were allowed to leave on the same day. Patrick Taylor was detained for a period of 26 days and then released. He and the author were rearrested on or about 5 May 1992. Desmond and Patrick Taylor and Steve Shaw were then charged with the murders of the Peddlar family. It was a matter of local knowledge that there had been a longstanding animosity between the Peddlar and Taylor families: Desmond Taylor was a debtor of Mr. Peddlar, and the Taylor brothers had previously been charged with assault on the deceased; criminal proceedings were still pending in 1992 when the Peddlar family was murdered.

2.4 At trial, the author made an unsworn statement denying his presence at the crime scene. The prosecution's case was based on a statement allegedly made in police custody by Patrick Taylor on 4 May 1992. He had been confronted with Steve Shaw in the presence of a police officer, and Shaw had allegedly confided to Patrick Taylor that " me did down a June Lawn when me see Mark (Patrick Taylor's alias), Boxer (Desmond Taylor's Alias) and President . . . When me see Mark, President and Boxer, me and Mark go up to a de gate and watch Boxer and President go up a de yard and chop up the people dem." Patrick Taylor allegedly replied "Curly", a name by which Shaw was known and started to cry, saying "Boxer no tell you no if say nothing. Alright sir. Me go up day but me never know say dem serious dem go kill de people dem".

2.5 Thus, the evidence for the author's involvement in the murders was (a) by reason of Shaw's statement that the murders were not carried out by him or Patrick Taylor but by the author and another person; and (b) Patrick Taylor's response to Shaw's allegation when they were brought together during the period they spent in custody in Montego Bay.

2.6 Counsel argues that all available domestic remedies have been exhausted for the purposes of article 5, paragraph 2(b), of the Optional Protocol. While a constitutional motion might be available to Desmond Taylor in theory, it is not available in practice, since he is indigent and the State party does not make available legal aid for the purpose of

constitutional motions. Reference is made to the Committee's jurisprudence.

The complaint:

3.1 Counsel alleges a violation of articles 9, paragraph 3, and 14, paragraph 3(c), because of the State party's failure to bring Desmond Taylor to trial within a reasonable time. Thus, the author spent two years and three months in pre-trial detention before his trial and conviction on 25 July 1994. While counsel concedes that the complexity of a case is relevant in considering whether there have been violations of the above provisions, he contends that the issues involved in the case against Desmond Taylor were not complex, as the primary evidence against him was the statement made by the co-accused, Steve Shaw, and his alleged admissions. It is noted that at no stage did the author seek any adjournment of the proceedings.

3.2 It is submitted that there was a breach of article 14, paragraph 3(b) and (d), because the author was assigned the same legal representative as his brother Patrick - one single lawyer represented their interests although the way the prosecution had presented the case against the author and his brother was quite different. Thus, the prosecution contended that the author had directly participated in the killings, whereas the charge against Patrick Taylor was that he was present at the scene and was willing to assist or to encourage. The potential for conflict of interest was therefore serious.

3.3 The above scenario is said to have caused the author real prejudice, because in respect of each of the co-accused, different rules applied. Patrick Taylor, charged with non-capital murder, would be guilty on a simple joint enterprise basis, whereas the author, charged with capital murder, was subject to the different test of the so-called "trigger man" rule in Section 2(2) of the Offences against the Person (Amendment) Act: i.e., that he had to commit an act of violence at his own hand. Counsel argues that the judge failed to direct the jury in the author's case of the requirements of Section 2(2), and that the danger of this occurring would have been substantially reduced if the author had been represented separately.

3.4 It is submitted that the conditions of the author's detention at St. Catherine District Prison amount to a violation of articles 7 and 10, paragraph 1. Reference is made in this context to the findings of various reports issued by non-governmental organizations on conditions of incarceration at St. Catherine District Prison. Conditions of detention applicable to Desmond Taylor include

- confinement to a small cell for 23 hours a day;
- no provision of a mattress or bedding for the concrete bunk used for sleeping;
- wholly deficient sanitation, inadequate ventilation and total absence of natural lighting;
- lack of provision of health care and medical facilities;
- absence of reeducation and work programs for condemned inmates on death row. Counsel

argues that Desmond Taylor's rights under the ICCPR as an individual are being violated, notwithstanding the fact that he is a member of a recognizable class of individuals - inmates on death row - who are detained in similar conditions and suffer similar violations of their rights: a violation of the Covenant does not cease to be a violation merely because others suffer the same deprivation at the same time.

3.5 Counsel argues that the conditions of incarceration and the cell to which the author is confined constitute a violation of the UN Standard Minimum Rules for the Treatment of Prisoners. Reference is made to the jurisprudence of the Committee³.

3.6 It is argued that an execution which might have been lawful if carried out immediately and without exposing the convicted prisoner to the aggravated punishment of inhuman treatment during a lengthy period of detention can become unlawful if the proposed execution comes at the end of a substantial period of detention in intolerable conditions. Counsel relies on the judgment of the Judicial Committee in Pratt and Morgan as an authority for the proposition that carrying out a sentence of death may become unlawful where the conditions in which a condemned prisoner is held, either in terms of time or physical discomfort, constitute inhuman and degrading treatment contrary to article 7. The author "was sentenced to death, not to death preceded by a substantial period of inhuman treatment. ... [t]he intervening inhuman treatment .. renders the carrying out of the sentence unlawful".

3.7 It is submitted that the State party violated article 14, paragraph 1, *juncto* 2, paragraph 3, by denying the author the right of access to court to seek (constitutional) redress for the violation of his fundamental rights which he has suffered. Counsel notes that the State party's failure to provide legal aid for the purpose of constitutional motions violates the Covenant because this denies the author an effective remedy in the process of the determination of his rights. To counsel, proceedings in the Supreme (Constitutional) Court must conform with the requirements of a fair hearing within the meaning of article 14, paragraph 1, encompassing the right to legal aid.

State party's observations and counsel's comments:

4.1 By submission of 10 October 1996, the State party does not challenge the admissibility of the complaint and directly offers comments on the merits. As to the allegations under articles 9(3) and 14(3)(c), it argues that during the 27 months of the author's pre-trial detention, a full preliminary inquiry into the case was held. It rejects the affirmation that 27 months of pre-trial detention constitutes "undue delay".

4.2 Concerning the claim of violation of article 14 paragraph 3 (b) and (d), because the author and his brother were represented by the same legal aid lawyer during their trial in the St. James' Circuit Court, the State party concedes "that it may have been prejudicial to the author, who was on a charge of capital murder, to be represented by counsel who was also representing his brother, who was charged with non-capital murder". However, the State party argues that Desmond Taylor was free to seek separate representation, but that he chose instead to accept joint representation with his brother: that he chose not to exercise his right

cannot be attributed to the State party. Given the family relationship, the State party suggests that the author had no difficulty with the arrangement.

4.3 Regarding the allegation that Desmond Taylor was prevented from seeking constitutional redress because of the absence of legal aid for constitutional motions, the State party denies that failure to provide legal aid for such motions amounts to a violation of the Covenant, as there is no requirement to grant legal aid for the purpose. It further notes that indigence is not an absolute barrier to the filing of constitutional motions, as major cases have been filed by indigent individuals, including in the case of Pratt and Morgan v. Attorney-General of Jamaica.

4.4 Given the above, the State party argues that the imposition of the death sentence does not constitute a violation of article 6. It adds that the claim that the trial judge misdirected the jury on the 'trigger man' rule in Section 2(2) of the Offences against the Person (Amendment) Act was examined in detail by the Court of Appeal; moreover, this issue concerned the evaluation of facts and evidence in the case, the examination of which generally falls outside the scope of the Committee's competence.

5.1 In his comments, counsel reaffirms his claim relating to articles 9(3) and 14(3)(c) - the State party's justification that a preliminary inquiry took place during the 27 months of the author's pre-trial detention is dismissed as fallacious, since preliminary inquiries are conducted in all murder cases in Jamaica and do not generally result in pre-trial detention of 27 months. In any event, the preliminary inquiry in the author's case was only held 9 months after the arrest, and the State party fails to explain its course and scope.

5.2 As to article 14, paragraph 3 (b) and (d), counsel argues that his client never volunteered to be represented by the same lawyer as his brother. None of the lawyers who represented him nor the judge at the preliminary inquiry or the trial advised him that not only could he have been represented separately but should have been. The author believed that because he lacked the money to arrange for separate representation, he was obliged to accept the arrangement that he and his brother be represented by the same lawyer. Counsel dismisses as absurd the State party's argument that since the author chose not to exercise his right to be represented separately, any shortcomings in the defense cannot be attributed to it. To argue that the family relationship between Desmond and Patrick suggested acceptance of the representation arrangement is equally fallacious: rather, the close relationship between the brothers, in the context of the significant differences in the nature of the cases against them, made separate representation more important, not less important.

5.3 Counsel adds that representation by the same lawyer caused his client real prejudice. Thus, the author's only meeting with counsel prior to the trial was for some minutes before the preliminary inquiry. Thereafter, the author did not meet with counsel until the trial, and during the trial, he only spoke with him for a few minutes at a time. At no stage did counsel take detailed instructions from the author, nor did he go through the prosecution evidence with the author. Finally, counsel did not call an important witness Desmond Taylor wanted called, and who could have testified that the deceased had been threatened by persons other than the accused. In these circumstances, where counsel was "always in a hurry", the author

had wholly insufficient time and facilities for the preparation of his defense. Representation by separate lawyers for the author and his brother would have minimized the chance of such failures and enhanced attention to the preparation of the author's defence.

5.4 It is reaffirmed that failure to provide legal aid for constitutional motions constitutes a violation of articles 14, paragraph 1, juncto 2, paragraph 3, because it deprived the author of a potentially effective remedy. Counsel adds that the author's brother wrote to the Jamaica Council for Human Rights about the possibility of filing a constitutional motion but was informed that the process was expensive, and that no lawyer in Jamaica would agree to representation on a pro bono basis for this purpose.

5.5 Finally, counsel notes that the State party has not reacted to the author's allegations concerning appalling conditions of detention on death row, said to be in violation of articles 7 and 10, paragraph 1; he notes that, apart from being contrary to the UN Standard Minimum Rules for the Treatment of Prisoners, these conditions are contrary to the terms of Resolution 1996/15 of the U.N. Economic and Social Council on "Safeguards Guaranteeing Protection of the Rights of those facing the Death Penalty".

5.6 Counsel emphasizes that Desmond Taylor does not agree to a joinder of the examination of the admissibility and the merits of the communication.

Admissibility considerations and examination of the 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 Regarding the claim that the author had insufficient opportunity to prepare his defence and that his representative made little effort to consult with him, take his instructions or trace and call witnesses, the Committee recalls that counsel was initially privately retained. It is of the opinion that the State party cannot be held accountable for any alleged deficiencies in the defence of the accused or alleged errors committed by the defense lawyer, unless it was manifest to the trial judge that the lawyer's behavior was incompatible with the interests of justice. In the present case, there is no indication that author's counsel, a Queen's Counsel, was not acting other than in the exercise of his professional judgment by deciding to ignore certain of the author's instructions and not to call a witness. This claim is accordingly inadmissible under article 2 of the Optional Protocol.

6.3 With the dismissal of the author's petition for special leave to appeal by the Judicial Committee of the Privy Council in June 1996, the author has exhausted all available domestic remedies. In the circumstances, the Committee deems it expedient to proceed with the examination of the merits of the case; it notes that the State party has not raised any objections to admissibility, while the author wishes to see admissibility and merits to be dealt with separately. The Committee notes that while reiterating this request, counsel has also commented on the State party's arguments relating to the merits. As both parties have had the full opportunity to comment on each other's merits submissions, the Committee

considers that it should proceed with the examination of the merits of the communication.

6.4 The Committee, accordingly, declares the author's remaining claims admissible and proceeds with the examination of their substance, in the light of the information made available to it by the parties, as required by article 5, paragraph 1, of the Optional Protocol.

7.1 Concerning the author's contention that he was not tried without undue delay because of a lapse of nearly 27 months between arrest in May 1992 and trial in July 1994, the Committee has noted the State party's contention that this delay is not unduly long mainly because a preliminary inquiry was held during the period. The Committee considers however, that a delay of two years and nearly three months between arrest and trial, during which Desmond Taylor was detained, constitutes a violation of his right to be tried within a reasonable time or to be released. The delay of 27 months between arrest and trial is also such as to amount to a violation of the author's right to be tried without undue delay. The State party has not provided any arguments related for example to particular complexities of the case, which could have justified such delay. The Committee accordingly concludes that there has been a violation of articles 9, paragraph 3, and article 14, paragraph 3(c), in the case.

7.2 Mr. Taylor contends that his defence was flawed because he was represented by the same lawyer as his brother, although there was a conflict of interest between them, since the charges against the brothers differed. The Committee recalls that Desmond and Patrick Taylor were represented by senior counsel, that counsel was privately retained by the brothers for the preliminary enquiry and that at the start of the trial counsel requested that he be assigned on a legal aid basis to both the author and his brother. The Committee observes that both defendants denied their presence at the scene of the crime, or any knowledge of it and that they denied the statements attributed to them. There was in these circumstances no potential for conflict of interests in their defence. Neither was putting forward any evidence or submissions which reflected on the other. The Committee concludes that the facts before it do not disclose a violation of article 14, paragraph 3 (b) and (d), of the Covenant.

7.3 Mr. Taylor argues that the State party's failure to provide him with legal aid for the purpose of filing a constitutional motion constitutes a violation of his Covenant rights. The determination of rights in proceedings in the Supreme (Constitutional) Court of Jamaica must conform with the requirements of a fair hearing in accordance with article 14, paragraph 1.⁴ In the author's case, the Constitutional Court would be called upon to determine whether the author's conviction in a criminal case violated the guarantees of a fair trial. In these cases, the application of the requirement of a fair hearing in the Constitutional Court should comply with the principles set out in article 14, paragraph 3(d). It follows that where a condemned prisoner seeking constitutional review of irregularities in his criminal trial has no means to meet the costs of legal representation in order to pursue his constitutional remedy and where the interest of justice so requires, legal aid should be made available by the State party. In the instant case, the absence of legal aid deprived the author of an opportunity to test the irregularity of his criminal trial in the Constitutional Court in a fair hearing; this constitutes a violation of article 14.

7.4 The author claims that his execution after a lengthy period on death row in conditions which amount to inhuman and degrading treatment would be contrary to article 7 of the Covenant. The Committee reaffirms its constant jurisprudence that detention on death row for a specific period - in this case three and a half years - does not violate the Covenant in the absence of further compelling circumstances. The conditions of detention may, however, constitute a violation of articles 7 or 10 of the Covenant. Mr. Taylor alleges that he is detained in particularly bad and insalubrious conditions on death row; the claim is supported by reports which are annexed to counsel's submission. There is a lack of sanitation, light, ventilation and bedding; confinement for 23 hours a day and inadequate health care. Counsel's submission takes up the main arguments of these reports and shows that the prison conditions affect Desmond Taylor himself, as a condemned prisoner on death row. The author's claims have not been refuted by the State party, which remains silent on the issue. The Committee considers that the conditions of detention described by counsel and which affect Mr. Taylor directly are such as to violate his right to be treated with humanity and respect for the inherent dignity of his person, and are thus contrary to article 10, paragraph 1.

7.5 The Committee considers 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, a violation of article 6 of the Covenant if no further appeal against the sentence is possible. In Mr. Taylor's case, the final sentence of death was passed without having met the requirements for a fair trial set out in article 14 of the Covenant. It must therefore be concluded that the right protected under article 6 has also been violated.

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

9. Under article 2, paragraph 3(a), of the Covenant, Desmond Taylor is entitled to an effective remedy entailing the commutation of his death sentence.

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. 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 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 also 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. Nisuke Ando, Mr. Prafullachandra N. Bhagwati, Mr. Th. Buergenthal, Lord Colville, Ms. Christine Chanet, Mr. Omran el Shafei, Ms. Elizabeth Evatt, Mr. Eckart Klein, Mr. David Kretzmer, Mr. Rajsoomer Lallah, Ms. Cecilia Medina Quiroga, Mr. Fausto Pocar, Mr. Martin Scheinin, Mr. Maxwell Yalden and Mr. Abdallah Zakhia.

**/ An individual opinion signed by Committee Members Ando, Bhagwati, Buergenthal and Kretzmer is appended to the present document.

1/ Views in the case of Patrick Taylor (communication No.707/1996) were adopted on 18 July 1997.

2/ The case of Steve Shaw is before the Committee as communication No.704/1996.

3/ Views on communication No.458/1991 (Albert W. Mukong v. Cameroon), adopted 21 July 1994, para. 9.3.

4/ See communication No.377/1989 (A. Currie v. Jamaica), Views adopted 29 March 1994, paragraph 13.4; communication No.707/1996 (Patrick Taylor v. Jamaica), Views adopted 18 July 1997, paragraph 8.2.

Appendix

Individual opinion signed by Mr.Nisuke Ando, Mr. Prafullachandra Bhagwati, Mr. Th. Buergenthal and Mr. D. Kretzmer

The facts relating to this communication sent by the author are set out in the views expressed by the majority members of the Committee and it is therefore not necessary to reiterate them. We may straight away proceed to consider the questions arising in the communication.

The conclusions reached by the majority members are contained in paragraphs 7.1 to 7.5 of the views expressed by them. We agree with the conclusions set out in paragraphs 7.1, 7.2 and 7.4 and we do not therefore see any reason to repeat what is already stated in those paragraphs beyond stating that we are wholly in agreement with the conclusions set out in those paragraphs: we are however unable to agree with the reasoning contained in paragraph 7.3 and the conclusion reached in that paragraph. We are of the view that in the present case, the State Party was not obliged to grant legal aid to the author for proceeding before the Constitutional Court. Our reasons for saying so are the following.

It is undoubtedly true that in Patrick Taylor's case, the Committee took the view that legal

aid to an indigent accused for proceeding before the Constitutional Court is a requirement of Article 14 (3) (d) of the Covenant. But on a further consideration of the question, we are of the view that our decision on this question in Patrick Taylor's case requires reconsideration. Article 14 (3) (d) sets out the guarantees of legal assistance to a poor accused which must be observed "in the determination of any criminal charge against" an accused person. The determination of the criminal charge is carried out by the Trial Court and on appeal, by the appellate Court. The Constitutional Court does not determine the criminal charge against the accused. It merely decides a constitutional issue -whether the decision of the Trial Court or the Appellate Court suffers from any constitutional infirmity. The Constitutional Court does not determine the guilt of the accused and the proceeding before the Constitutional Court can therefore not be regarded as an integral step in the criminal process leading to the determination of the criminal charge. The conclusion is therefore inevitable that article 14 (3) (d) has no application in relation to a remedy before the Constitutional Court.

Moreover, the same constitutional questions which, it is alleged, the author could have raised by filing a petition before the Constitutional court, were all raised and in any event, could have been raised before the Court of Appeal and the Judicial Committee of the Privy Council. The Court of Appeal as well as the Judicial Committee of Privy Council had jurisdiction to decide constitutional issues relating to compliance of executive action or judicial proceeding with the constitution and the law and these issues were or could have been raised before the Court of Appeal and the Judicial Committee of the Privy Council. The Judicial Committee of the Privy Council however rejected the application of the author for special leave to appeal. Thereafter there could be no scope for going to the Constitutional Court.

Furthermore, even if article 14 (3) (d) were applicable in relation to the Constitutional Court, what it requires is that legal assistance be assigned to an accused without any payment by him/her, "in any cases where the interests of justice so require". The author has not provided any ground on the basis of which the Committee can hold that the interests of justice required that free legal assistance should have been provided to him. It is therefore not possible to hold that article 14 (3) (d) was violated by the State party.

On this view of the case, we cannot hold that there was any violation of article 14 (3) (d) and on that account, of article 14 paragraph 1.