

HUMAN RIGHTS COMMITTEE

Shaw v. Jamaica

Communication No. 704/1996**

2 April 1998

CCPR/C/62/D/704/1996*

VIEWS

Submitted by: Steve Shaw (represented by S. Lehrfreund from Simons Muirhead & Burton)

Victim: The author

State party: Jamaica

Date of communication: 6 June 1996 (initial submission)

Date of decision on admissibility and adoption of Views: 2 April 1998

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

Meeting on 2 April 1998,

Having concluded its consideration of communication No.704/1996 submitted to the Human Rights Committee by Mr. Steve Shaw, 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 Steve Shaw, a Jamaican citizen born in 1966, currently awaiting execution at St. Catherine District Prison , Spanish Town, Jamaica. He

claims to be a victim of violations by Jamaica of articles 6, 7, 9, paragraphs 2 and 3, 10, paragraph 1, and 14, paragraphs 1 and 3(b), (c) and (d) of the International Covenant on Civil and Political Rights. He is represented by Saul Lehrfreund of the law firm of Simons Muirhead and Burton (London).

Facts as submitted by the author:

2.1 The author was convicted with two co-defendants, Desmond and Patrick Taylor¹, 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 rejected by the Court of Appeal 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 found on the grounds surrounding the Peddlar house. They had been "chopped to death" with blows to their heads, bodies and limbs.

2.3 Between 17 and 22 April 1992 the author (also known as "Curly") was supplied with food stuffs by a local shop keeper, against security of a tape deck the author had brought in. On 27 April 1992, the tape deck was handed to the police and identified as belonging to the deceased on 28 April, in the author's presence. The author states that he was detained on 28 April 1992 and taken into custody at Sandy Bay Lock-Up. Evidence of his complicity in the murders was said to have been a number of oral statements made between Easter 1992 and 14 November 1992:

- at Easter 1992, the author told one Ms. Sutherland that he had been a party to the murders of Horrett Peddlar and his wife;

- In an interview preceding a caution statement made on 29 April 1992, the author allegedly said "you see what Boxer [Desmond Taylor] mek mi in a"; in the caution statement, the author described being present at the Peddlar house on the occasion of the murders with Boxer, a man called "President" and Mark [Patrick Taylor]. "Boxer" and "President" went into the yard; he saw Boxer chop Ms. Peddlar and President chase after one of the children. Thereafter he helped Boxer and President dispose of their clothes and was given a tape deck;

- an oral statement was made by the author at the police station in the presence of Patrick Taylor, to the effect that "mi and Mark group a de man gate go watch and Boxer and President go over the yard and chop up de people dem";

- An oral statement made on 5 May 1992 in the presence of Desmond Taylor that "Mi see when President run down the bog son and boxer chop up the woman";

- and a statement made on 14 November 1992 to fellow prisoners on remand overheard by officer Wright to the effect that "Mi chop de bwoy Peddlar in a him rass claut".

2.4 At trial, the author made an unsworn statement denying his presence at the murder and denied that he made any admissions to Ms. Sutherland and Officer Wright. No witnesses were called in his defense.

2.5 After his arrest on 28 April 1992, the author was transferred from Sandy Bay lock-up to Montego Bay lock-up. After his oral statement made in the interview preceding his caution statement at Montego Bay Police Station on 29 April 1992, he was taken back to Sandy Bay. On 7 May 1992, he was taken back to Montego Bay and charged with murder. According to his own account, he was thereafter detained for 8 months "incommunicado", that is unable to communicate with lawyers, friends or family. Counsel explains that he has sought to have this information corroborated on at least two separate occasions; the author's account on this point has been consistent. Mr. Shaw indicates that he spent about three months in custody before he was brought before a judge, and that he spent almost one year in the Montego Bay Police Lock-Up before being transferred to St. Catherine District Prison, where he was held on remand until conviction.

The complaint:

3.1 Counsel claims that the author's rights under article 9(2) and (3) of the Covenant were violated. It is argued that he was not charged until 19 days after his arrest and that he was not brought before a judge or other judicial officers for three months. During that period, the author claims that he was brutalized by the police, and in such circumstances it was critical that he be brought before a judicial officer without delay.

3.2 The author claims a violation of articles 9(3) and 14(3)(c) of the Covenant because of the State party's failure to bring him to trial within a reasonable period of time. Thus, he spent two years and three months confined at Sandy Bay and Montego Bay Lock-Ups as well as St. Catherine District Prison prior to his trial; a lawyer was only assigned to him in April 1994, some two years after the arrest. Counsel concedes that the complexity of a case is a relevant factor in considering whether there have been violations of the above provisions, but contends that the issues in the case against Mr. Shaw were not complex since the primary evidence against him were his alleged admissions. Nor did he at any stage request an adjournment of the proceedings.

3.3 Mr. Shaw contends that the conditions of his confinement at Sandy Bay and Montego Bay prior to conviction amounted to a violation of articles 7 and 10, paragraph 1 of the Covenant. The author notes that he shared a small cell with as many as 21 other detainees, which meant that most detainees had to stand up or sit down for the whole night. Gross overcrowding of the cell, the necessity of having to sleep on a wet floor, poor ventilation and the inability to see family, relatives or a legal representative are said to constitute a violation of article 7 of the Covenant.

3.4 The author claims a violation of article 14, paragraph 3(b) and (d) of the Covenant, because of absence of adequate facilities to prepare his defense. He notes that the first occasion he met with a lawyer was when he was approached by the lawyer for the Taylor brothers, Mr. Hamilton QC. The latter helped him to obtain the services of a legal aid

representative who then was appointed to a post of resident magistrate and had to abandon his representation. Thereafter, it took the author another ten months to obtain legal assistance. Counsel observes that Mr. Shaw instructed the new legal aid representative to call his father as a defense witness; the legal aid lawyer ignored the instruction. Counsel further contends that the same lawyer failed to investigate the author's alibi and did not act on any of his instructions. Counsel's failure to represent the author properly on trial meant that the author was deprived of an opportunity to put any defense to the jury and allowed the trial judge to direct the jury, in accordance with domestic case law, that they could ignore his unsworn statement (in which he had said he was not at the crime scene) if they saw fit. Had evidence in support been called, no such direction could have been given.

3.5 It is submitted that the conditions of detention at St. Catherine District Prison constitute a violation of articles 7 and 10, paragraph 1, of the Covenant. Reference is made to the findings of several reports issued by non-governmental organizations on the conditions of incarceration at St. Catherine District Prison. Conditions of detention applicable to Steve Shaw include:

- No bedding or mattresses are provided;
- Cells have wholly deficient sanitation, no electric light, inadequate ventilation, and the only natural light is admitted through small air vents; for sanitation, only a slop bucket is provided;
- Prisoners spend most of the time confined to their cells in almost total darkness. The author is locked in for a minimum of 23 hours a day;
- Lack of provision for health care and medical facilities;
- Absence of reeducation and work programs for condemned inmates on death row.

The author contends that his rights under the ICCPR as an individual are being violated, notwithstanding the fact that he is a member of a recognizable class of people - inmates on death row - who are detained in similar conditions and suffer similar violations of their rights. But a violation of the Covenant does not cease to be a violation merely because others suffer the same deprivations at the same time.

3.6 Counsel argues that the conditions of incarceration and the cell to which the author remains confined also represent a violation of the UN Standard Minimum Rules for the Treatment of Prisoners. Reference is made to the jurisprudence of the Human Rights Committee.²

3.7 Counsel argues 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 on death row can become unlawful if the execution comes at the end of a substantial period of detention in intolerable conditions. Counsel invokes the judgment of the Judicial Committee of the Privy Council

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, constitutes inhuman and degrading treatment contrary to article 7 of the Covenant. Mr. Shaw "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".

3.8 It is submitted that the State party violated articles 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 Mr. Shaw 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 case and offers comments on the merits.

4.2 The State party refutes that there was a breach of article 9, paragraph 2, of the Covenant: "It may have been 19 days before the author was formally charged, but obviously he was aware of the reasons for his arrest before this day. The author was moved between police stations and made several statements (although he now disputes this) on the offences. In these circumstances, it cannot be validly argued that he was unaware of the reasons for his arrest."

4.3 On the issue of the three month delay in bringing the author before a magistrate, the State party concedes that this period is longer than would be desirable, but "it cannot necessarily be argued that this amounted to a breach of the Covenant".

4.4 Concerning the alleged violation of articles 9(3) and 14(3)(c) of the Covenant, on account of the duration of the author's pre-trial detention (2 years and 3 months), the State party notes that during this period, a preliminary inquiry was held and does not accept that this period constituted undue delay.

4.5 The State party indicates that it will investigate the author's claim that he was held "incommunicado" for eight months after his detention. However, the State party observes that "it is significant that these allegations were apparently not raised by author's counsel at the trial where this information, if accepted, may have had a major impact on the case against the author". No information on the result of the State party's investigation had been received by 31 December 1997.

4.6 With respect to the claims under article 14(3) (b) and (d) of the Covenant that the author was unable to see a lawyer of his own choosing and was forced to consult the lawyer of his

co-defendants, the State party recalls that the author's own statements show that he was represented by a lawyer who acted only on his behalf. This lawyer subsequently was appointed Resident Magistrate and thus could not represent Mr. Shaw any more. At the trial, the author was represented by counsel, who did consult with him prior to the start of the trial. On this basis, the State party denies that article 14(3)(b) and (d) of the Covenant was violated: as the author was assigned legal aid both for the preliminary inquiry and the trial, the State party has complied with its obligations under the above provisions.

4.7 With regard to the claim that legal aid for a constitutional motion should have been made available to the author, the State party concedes that legal aid is unavailable for the purpose but denies that this constitutes a violation of the Covenant: "[i]n respect of article 14(1), there is no requirement ... that legal aid be made available for constitutional motions".

5.1 In comments, counsel reiterates his allegations under article 9, paragraphs 2 and 3 of the Covenant. He notes that the State party has made no attempt to establish *why* the author was not brought before a court for three months and why such conduct does not breach the Covenant. If Mr. Shaw was only charged 19 days after being detained, this means that he could not have been brought "promptly" before a judicial officer within the meaning of article 9(3). Counsel invokes the Committee's General Comment 8[16], which states that delays under article 9(3) must not exceed a few days, as well as the Committee's jurisprudence that the term "promptly" does not permit a delay of more than 2 to 3 days.

5.2 Counsel reaffirms that the State party is exclusively responsible for the delay in bringing the author to trial: Mr. Shaw was only assigned a legal aid lawyer for the trial on 21 April 1994, two years after arrest, which indicates that the judicial authorities were not ready to proceed before this date. Furthermore, the conduct of a preliminary inquiry does not invalidate the claim of undue delay under articles 9(3) and 14(3)(c) of the Covenant: under Jamaican law, preliminary inquiries are conducted in all murder cases and do not usually result in pre-trial detention exceeding two years.

5.3 Counsel asserts that the author's conditions of detention at the Sandy Bay and Montego Bay police lock-ups violated articles 7 and 10 (1) of the Covenant. The conditions of the author's pre-trial confinement, including gross over-crowding of the lock-up cell, necessity of sleeping on a wet floor, poor ventilation and no opportunity to see relatives, family or a legal representative, violated article 7 of the Covenant.

5.4 As to article 14, paragraphs 3(b) and (d), counsel observes that the State party's obligation under the Covenant is not merely to assign legal aid to the author for the preliminary inquiry and the trial, but to ensure, especially in a capital case, that he is given adequate time and facilities to prepare the defense: "the right to defend means that the accused or his lawyer must have the right to act diligently in pursuing all available defenses and the right to challenge the conduct of the case if they believe it to be unfair". The failure of Mr. Shaw's lawyer to investigate his alibi and act on his instructions made his representation ineffective.

5.5 Counsel notes that the State party has failed to react to the author's allegations

concerning appalling conditions of detention on death row, said to be in violation of articles 7 and 10(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".

Admissibility considerations and examination of the merits:

6.1 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. The Committee notes that the State party has not raised any objections to the admissibility of the claims. In these circumstances, the Committee deems it expedient to proceed with the examination of the merits of the claims which it considers to be admissible under the Optional Protocol to the Covenant.

6.2 The Committee, accordingly, declares Mr Shaw's claims under articles 7, 9, 10 and 14, paragraphs 1 and 3(b),(c) and (d) of the Covenant, 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 The author alleges a violation of articles 7 and 10(1) of the Covenant because he was detained in unacceptable conditions for several months following his arrest. The State party has not refuted this claim and promised to investigate it, but failed to forward to the Committee the findings, if any, of its investigation. In the circumstances, due weight must be given to the author's allegations. The Committee notes that during his pre-trial detention, much of which was spent at Montego Bay Police Lock-Up, the author was confined to a cell which was grossly overcrowded, that he had to sleep on a wet (concrete) floor, and that he was unable to see family, relatives or a legal representative until late in 1992. It concludes that these conditions amount to a violation of articles 7 and 10, paragraph 1, of the Covenant, constituting inhuman and degrading treatment and a failure, on the State party's part, to respect the inherent dignity of the author as a person.

7.2 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. Shaw 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 Steve Shaw 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. Shaw 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, of the Covenant.

7.3 The author has alleged a violation of article 9 of the Covenant, because 19 days passed between his arrest and his being formally charged. However, it appears from the file that the author was arrested on 28 April 1992 and not on 18 April 1992, as indicated in counsel's submission. Mr. Shaw signed a caution statement on 29 April 1992 in front of a Justice of the Peace. The State party does not contest that the author was kept in custody for at least 9 days before he was formally charged and that there was a further delay of three months before he was brought before a judge or judicial officer. This, in the Committee's opinion constituted a violation of article 9, paragraph 3.

7.4 As to Mr. Shaw's claim that he was not tried without undue delay because of a lapse of 27 months between arrest in April 1992 and trial in July 1994, the Committee has taken note of the State party's argument that the delay is not unduly long primarily because a preliminary inquiry was held during the period. The Committee considers, however, that a delay of 27 months between arrest and trial, during which the author was detained, constituted a violation of his right to be tried within a reasonable time or to be released. The delay is also such as to amount to a violation of the author's right to be tried without undue delay. The State party has failed to provide any justification related, for example, to particular complexities of the case, which would help explain the delay. The Committee accordingly concludes that there has been a violation of articles 9, paragraph 3, and 14, paragraph 3(c), of the Covenant, in the case.

7.5 The author has claimed that he had insufficient opportunity to prepare his defense, and that initially, he had to consult the lawyer of his co-defendants for advice. The State party notes that the author was assigned legal aid for the preliminary inquiry and for his trial, and that with this, its obligations under article 14, paragraph 3(b) and (d), have been met. The Committee notes that it is axiomatic in capital cases that the accused be represented for the preliminary inquiry and for his trial. In the instant case, it is a matter of concern that because author's counsel for the preliminary inquiry had to abandon the defense of Mr. Shaw following a judicial appointment, the author was left without legal representation for a considerable period. However, it appears that there were no proceedings during this period and counsel was assigned to the author some months prior to the start of the trial. This does not in and of itself amount to a breach of article 14, paragraph 3(b) and (d), of the Covenant. The author further claims that his legal aid counsel for the trial failed to call his father as an alibi witness and did not act on his instructions - but it is not apparent from the trial transcript and the material before the Committee that counsel's failure to act on Mr. Shaw's instructions was a function of anything else but her professional judgment. There is no evidence that counsel's behavior was arbitrary or incompatible with the interests of justice. In the circumstances, there has been no violation of article 14, paragraph 3(b) and (d), of the Covenant.

7.6 The author 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 1.³ In Mr. Shaw's case, the Constitutional Court would be called upon to determine whether his conviction in a criminal case violated guarantees for 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 alleged 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 interests of justice so require, legal aid should be made available by the State party. In the present case, the absence of legal aid deprived Mr. Shaw of any opportunity to test the irregularity of his criminal trial in a fair hearing in the Constitutional Court; this constitutes a violation of article 14 of the Covenant.

7.7 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, if no further appeal against the sentence is possible, a violation of article 6 of the Covenant. In this case, the final sentence of death in Mr. Shaw's case 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 7, 9, paragraph 3, 10, paragraph 1, 14 paragraphs 1 and 3(c), and consequently of article 6, of the Covenant.

9. In all these circumstances, the author is, under article 2, paragraph 3(a), of the Covenant, entitled to an effective remedy entailing 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 ninety 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, 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, and Mr. Maxwell Yalden.

**/ The text of an individual opinion by Committee members N. Ando, P. N. Bhagwati, Th. Buergenthal and D. Kretzmer is appended to the present document.

1/ See communications Nos. 705/1996 (Desmond Taylor v. Jamaica), Views adopted on 2 April 1998 and 707/1996 (Patrick Taylor v. Jamaica), Views adopted on 18 July 1997.

2/ See Views on case 458/1991 (A.W. Mukong v. Cameroon), adopted 21 July 1994, paragraph 9.3.

3/ See communication No. 377/1989 (Anthony 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 by Mr. N. Ando, P. Bhagwati, Th. Buergenthal and D. Kretzmer

The author of this communication was tried along with Desmond Taylor whose communication we have just disposed of. We agree with the views expressed by the majority in paragraphs 7.1 to 7.5 but we are unable to agree with the views expressed in paragraph 7.6. 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. The same argument based on Article 14 (3) (d) was advanced on behalf of the author in Desmond Taylor's case, but, disagreeing with the majority, we rejected that argument and held that article 14 (3) (d) had no application to the case of Desmond Taylor and there was no obligation on the State Party to grant him free legal assistance for proceeding before the Constitutional Court. The same reasoning must apply in the present case and we must accordingly hold that, so far as the author is concerned, there was no violation of article 14 (3) (d) and on that account, of article 14 (1).