

HUMAN RIGHTS COMMITTEE

Jones v. Jamaica

Communication No. 585/1994

6 April 1998

CCPR/C/62/D/585/1994*

VIEWS

Submitted by: Tony Jones (represented by Ms. Victoria Roberts, from Mishcon de Reya Solicitors)

Victim: The author

State party: Jamaica

Date of communication: 12 January 1994 (initial submission)

Date of decision on admissibility: 13 October 1995

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

Meeting on 6 April 1998,

Having concluded its consideration of communication No.585/1994 submitted to the Human Rights Committee by Mr. Tony Jones, 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 Tony Jones, a Jamaican citizen who at the time of submission of his complaint was awaiting execution at St. Catherine District Prison,

Jamaica. He claims to be a victim of violations by Jamaica of articles 6, 7, 9, 10, 14, paragraphs 1, 2, and 3(a) to (e), and 17 of the International Covenant on Civil and Political Rights. He is represented by Victoria Roberts of the law firm of Mishcon de Reya in London. On 16 May 1995, the author's death sentence was commuted to life imprisonment.

Facts as submitted by the author:

2.1 Tony Jones was arrested on 1 September 1984. On 9 November 1984, he was charged with having murdered, on 6 March 1984, one Rudolph Foster. On 6 March 1985, the author and his co-accused, McCordie Morrison¹, were found guilty as charged and sentenced to death in the St. Elizabeth Circuit Court, Jamaica. The Court of Appeal dismissed the author's appeal on 6 July 1987. On 22 July 1991, the Judicial Committee of the Privy Council denied special leave to appeal.

2.2 At the trial, the case for the prosecution rested on the identification evidence given by one Canute Thompson. The latter testified that in the evening of 6 March 1984, he had witnessed the author and two men attack the deceased. Mr. Thompson testified that he had heard the author tell the deceased "Stand up, or else a kill you blood clot", and that he had seen the author fire three (out of a total of four) shots at the deceased, who was then running towards the witness. Mr. Thompson further testified that he had seen the author's face several times during the incident: he first saw him from the side and then full face for between 5 and 30 seconds; a bright street light had enabled him to see the author's face. In addition, he had recognised the author's voice. Thompson noted that he had known the author for 16 or 17 years, but admitted that he had not seen Mr. Jones for two years before the incident.

2.3 The defence challenged the credibility of Thompson's testimony, as he had held a grudge against the author. The reason for the dispute allegedly was a dispute of a political issue which had resulted in a fight between Mr. Thompson and the author and his co-accused. The author claimed that afterwards, Thompson had denounced him with the foreman of the construction site where they all worked, and that he and Morrison had subsequently been dismissed. Furthermore, after this incident, Mr. Thompson had allegedly threatened the author. During the trial, Mr. Jones made an unsworn statement from the dock, denying any knowledge of the murder.

Complaint:

3.1 Counsel claims a violation of article 9, paragraphs 2, 3 and 4, of the Covenant. The author was taken into custody on 1 September 1984 by Denham Town Police, then transferred to the Santa Cruz Police for about two weeks, and then once again transferred to Black River Police Station. Throughout this time, the author allegedly was unaware of the charges he faced, and every time he asked a police officer for information, he was ignored. It was only on or about 9 November 1984 that he was charged with murder and cautioned². Thus, the author was detained for two months before being charged. The author further claims that after his arrest, he was kept handcuffed day and night for at least 2 weeks, until he showed the handcuffs to a Police Superintendent, who removed them.

3.2 According to counsel, there were serious weaknesses in the identification evidence against the author, in that identification occurred at night with inadequate lighting conditions. Moreover, Mr. Thompson only had a few seconds to get a full front view of the assailant. The consecutive periods during which the witness could see the author's face were, respectively, 5, 3 and 30 seconds. It is further submitted that the author was not placed on an identification parade, although the prosecution must conduct an identification parade in cases in which it seeks to rely solely upon identification evidence.

3.3 Counsel argues that the trial judge failed to direct the jury properly on the dangers of convicting on identification evidence alone, especially where the witness only had limited opportunity to observe the assailant, and where no corroborative element for identification had been adduced. This issue was argued before the Judicial Committee of the Privy Council which refused to give leave to appeal on this issue.

3.4 It is submitted that the trial judge violated his obligation of impartiality through the way in which he dealt with the evidence of a possible grudge held by prosecution witness Thompson. Counsel alleges that the judge misdirected the jury, in that he stated that it had not been suggested to Thompson in cross-examination that he bore malice towards the author. Still according to counsel, the judge should have discharged the initial jury, as one juror was seen talking to a member of the deceased's family during the trial. The judge questioned this jury member in the presence of the full jury, but the juror denied that the conversation had taken place.

3.5 Counsel contends that the author did not receive adequate legal representation. Thus, the author only had one brief interview lasting 15 to 20 minutes with his legal aid counsel, approximately ten weeks after arrest. Further, the author allegedly was threatened by police officers to the effect that if any witnesses came forward to testify on his behalf, they would also be imprisoned. Allegedly, as a result, no witnesses were traced or called to testify by the author's representative.

3.6 According to counsel, the author did not have adequate time for the preparation of his defence. He points in this context to the fact that Mr. Thompson, on trial, made reference to a potential witness for the defence. This potential witness might have been prepared to give evidence that Thompson and the author had been involved in a fight.

3.7 With respect to the preparation of the appeal, counsel argues that her client was denied adequate time and facilities, as he never met with his representative for the appeal at any time before the application for leave to appeal was made. It is submitted that the author was not given a fair and public hearing by the Court of Appeal because, as noted in a letter from counsel for the appeal to the author, his case, notably on the ground of insufficient identification evidence, was not fully argued in the Court of Appeal on 6 July 1987.

3.8 Counsel alleges a violation of article 14, paragraphs 3(c) and 5, in that the author's case was not reviewed without undue delay by the Court of Appeal. Thus, over 26 months elapsed between the author's conviction (6 March 1985) and the filing of the grounds of appeal (11 March 1987) and the date on which the Court of Appeal heard and dismissed the appeal (6

July 1987).

3.9 As to the conditions of the author's detention, counsel notes that after the arrest, Mr. Jones was not allowed to speak to members of his family for approximately five weeks, and that he was beaten badly by police officers while in custody. During pre-trial detention (lasting over six months), the author allegedly was not segregated from convicted prisoners, nor was he given treatment appropriate to his status as an unconvicted person. In addition, violence allegedly was used against the author after his conviction, and he was frequently threatened with physical violence and death by warders. Counsel notes that although the author developed arthritis in prison, no medical treatment has been offered.

3.10 The author claims a violation of article 17, paragraph 1, on the ground that his correspondence was repeatedly and unlawfully interfered with by prison guards, and that letters sent by him to and through the prison office have not reached the addressee.

3.11 Counsel finally claims a violation of article 7, as Mr. Jones was detained on death row for over ten years; by reference to the judgment of the Judicial Committee of the Privy Council in the case of *Pratt and Morgan v. Attorney-General of Jamaica*, it is submitted that the time spent on death row constitutes cruel, inhuman and degrading treatment.

State party's submission and author's comments:

4.1 By submission of 22 February 1995, the State party offers both comments on admissibility and merits. It argues that the claims under article 9, paragraphs 2 to 4, are inadmissible for failure to exhaust available domestic remedies: there are remedies for the alleged violation by way of action for unlawful imprisonment. Until and unless the author has sought redress for these violations, the claims cannot be entertained by the Committee.

4.2 The State party contends that the alleged violations of article 14, paragraph 1, in as far as they concern the conduct of the trial by the judge, relate to matters of facts and evidence in the case, the review of which is outside the competence of the Committee.

4.3 As to the claim of inadequate legal aid representation of the author, the State party points out that it cannot be held responsible for the actions of legal aid counsel once it appointed a competent legal representative and did not obstruct him in the performance of his duties. Otherwise, the State party would incur a greater responsibility with respect to legal aid counsel than exists for privately retained counsel. Similarly, the State party argues that it cannot be held responsible for the alleged failure of author's counsel for the appeal to prepare the appeal diligently, provided there has been no obstruction on the part of the authorities.

4.4 The State party denies that there is any evidence whatsoever that police officers threatened potential defense witnesses. It emphasizes that the fact that potential defence witnesses were not called to testify is not a matter that could be attributed to the State.

4.5 The State party notes that it will investigate the allegation that the author's case was not fully argued before the Court of Appeal; it does however point out that the Judicial

Committee of the Privy Council did examine the issue of identification evidence and thus rejects that there was a breach of article 14, paragraph 5. In the same vein, it denies that a period of 26 months between the filing and the hearing of the author's appeal constitutes undue delay.

4.6 The State party rejects the assertion that Mr. Jones was not permitted to speak to family members for five weeks after his arrest, or that he was not segregated from convicted prisoners prior to his trial. It does however promise that the allegations of use of violence against the author will be investigated, and that inquiries will be made as to whether the author received medical treatment for arthritis.

4.7 Finally, the State party denies that the length of the author's detention on death row amounts to a violation of article 7, and asserts that there is no evidence of any breach of article 17, paragraph 1.

5.1 In her comments, counsel requests that the question of the admissibility and the merits be dealt with separately. On the claims under article 9, she notes that the author was never informed by his Jamaican lawyer or the authorities that a remedy for unlawful imprisonment or detention was available. Counsel notes that it is unclear whether any action would now be statute-barred and, if not, whether legal aid would be made available to the author to pursue such a remedy. For counsel, if an action for unlawful imprisonment were not now available to Mr. Jones and if legal aid were not made available, the claim under article 9 should be declared admissible.

5.2 Counsel reiterates the allegation pertaining to inadequate legal representation of his client for the trial, as well as the claim related to the alleged attempt of police officers to prevent witnesses from testifying on the author's behalf. It is alleged that it is common practice in Jamaica to pay witnesses to give evidence and that Mr. Jones was unable to provide the necessary funds. In this respect, it is submitted that Jamaica is responsible for a judicial system which condones the payment of defence witnesses by defendants prior to them being prepared to testify.

5.3 As to Mr. Jones' representation on appeal, counsel argues that the author met the lawyer only once, that he was not informed of the grounds of appeal until after it was dismissed, and that he had thus no opportunity to help prepare the appeal. The only contact the author had with counsel after the appeal was an undated letter informing him that there was "nothing further (that) can reasonably (be done)".

5.4 As to the claim of undue delay in the hearing of the appeal, counsel once again refers to the judgment of the Privy Council in *Pratt and Morgan*, where it was held that a capital appeal should be heard within (at most) 12 months of conviction.

5.5 Counsel reasserts that Mr. Jones had no contact with any member of his family for five weeks after his arrest - since he was moved twice during the first 2 months of his incarceration, his family was uncertain of his whereabouts and did not visit him.

5.6 According to counsel, the State party is well aware of incidents of physical violence against the author during his incarceration on death row. He refers to a letter from the Parliamentary Ombudsman dated 9 November 1989, in response to a complaint about an assault the author had suffered and which had not been investigated and punished. As to the lack of medical treatment for the author's arthritis, counsel notes that by letter of 16 October 1994, the Parliamentary Ombudsman directed the Superintendent of St. Catherine District Prison to ensure that Mr. Jones would get appropriate treatment.

5.7 Counsel reaffirms that the Privy Council's judgment in *Pratt and Morgan* is a strong authority for the contention that Mr. Jones' detention on death row for over ten years constituted cruel and inhuman treatment.

The Committee's admissibility decision:

6.1 During its 55th session, the Committee considered the admissibility of the communication.

6.2 As to the claims related to interference with correspondence (article 17, paragraph 1) and failure to segregate the author from convicted prisoners (art. 10, para. 2(a)), the Committee noted that the author had not shown what steps, if any, he had taken to bring these matters to the attention of the judicial authorities. In this respect, the requirements of article 5, paragraph 2(b), of the Protocol had not been met.

6.3 Concerning the allegations pertaining to the conduct of the trial and the judge's instructions to the jury, the Committee reiterated that it is generally for the appellate courts of States parties to the Covenant to evaluate the facts and the evidence in any given case. Similarly, it was not for the Committee to review specific instructions to the jury by the trial judge, unless it could be ascertained that the instructions to the jury were clearly arbitrary or amounted to a denial of justice. The material before the Committee did not show that the trial suffered from such defects. This part of the complaint was thus inadmissible as incompatible with the provisions of the Covenant, under article 3 of the Protocol.

6.4 The Committee concluded that Mr. Jones had failed to substantiate, for purposes of admissibility, the claim that he was denied a fair hearing because the judge failed to discharge the initial jury after one juror was seen talking with a member of the family of the deceased. The judge did in fact examine this matter, and the trial transcript does not contain any information which would have corroborated the author's claim. The claim was thus inadmissible under article 2 of the Protocol.

6.5 Equally, the Committee considered that the author had failed to substantiate his claim that he could not obtain the attendance of witnesses on his behalf and that he was threatened by police officers that potential defence witnesses would also be detained. As to his allegation that one potential witness was prepared to give evidence on his behalf, the Committee noted that the defence had in fact expressly renounced to call this witness. This claim, therefore, was also inadmissible under article 2 of the Protocol.

6.6 In respect of the claim under article 14, paragraphs 3 (c) and 5, the Committee concluded that Mr. Jones had failed to substantiate, for purposes of admissibility, any circumstances which would have made the lapse of time between the filing of grounds of appeal and the actual hearing of the appeal unduly long, within the meaning of article 14, paragraph 3 (c). This claim was deemed inadmissible under article 2 of the Protocol.

6.7 Concerning the claim of interference with the author's mail, the Committee observed that counsel had failed to demonstrate what steps, if any, had been taken to bring this matter to the attention of the prison authorities or the judicial authorities. In this respect, accordingly, the requirements of article 5(2)(b) of the Protocol had not been met.

6.8 Regarding the claim under article 7, on account of prolonged detention on death row, the Committee reaffirmed its jurisprudence according to which detention on death row for prolonged periods of time would not constitute a violation of article 7 of the Covenant in the absence of some further compelling circumstances. The author had not substantiated any further specific circumstances, over and above the length of confinement to death row, which would raise an issue under article 7. This claim, accordingly, was inadmissible under article 2 of the Protocol.

6.9 Concerning the claims under article 9, the Committee took note of the State party's claim that remedies remained open to the author, but observed that the author was not charged or brought before a judge for (at least) two months after his arrest. It considered that the State party had failed to provide details of how this remedy would have been available to Mr. Jones in the circumstances of his case, and concluded that article 5(2)(b) of the Optional Protocol did not preclude it from considering the claim.

6.10 The Committee considered that two further allegations had been sufficiently substantiated and thus warranted consideration on the merits:

(a) the claim that the author's representation on appeal had been inadequate appeared to raise issues under article 14, paragraph 3(b);

(b) the claim of ill-treatment during detention and the alleged denial of medical treatment in respect of which the State party had promised an investigation might raise issues under article 10.

6.11 On 13 October 1995, the Committee declared the case admissible under articles 9 (as to the claim that Mr. Jones was not promptly informed of the reasons for his arrest and of charges against him nor brought before a judge), 10, paragraph 1, (as to ill-treatment after conviction and denial of medical treatment) and 14, paragraph 3(b) (as to the representation on appeal), of the Covenant.

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

7.1 By submission of 13 January 1997, the State party denies any violation of the Covenant. In respect of article 9, it contends that, at the time of his arrest, Mr. Jones was informed in

general terms of the charge against him. Furthermore, as he was tried six months after his arrest, this implies that a preliminary inquiry "must have been held before this in several sessions. In these circumstances, the Ministry denies that the author was not brought promptly before a magistrate."

7.2 As to the allegations under article 10(1), the State party asserts that its investigations show that "within the resources available, the author was treated for his arthritis". Concerning the alleged ill-treatment of the author, it is submitted that "[d]ates, names and other specific details are needed in order for the Ministry to effectively investigate the author's allegations of ill-treatment".

7.3 Concerning the alleged inadequate representation of the author on appeal, the State party contends that without a copy of counsel's letter to the author, from which it is said to transpire that the issue of identification was not fully argued on 6 July 1987, it cannot properly investigate the allegation. The State party reaffirms that it cannot be held responsible for the way in which a competent legal aid counsel conducts the defence of his client.

8.1 In comments, counsel asserts that Mr. Jones was, prior to 9 November 1984, unaware of even the general nature of the charge against him; after that date, he had a short (15-20 minutes) meeting with his legal aid attorney, Mr. Clarke. Mr. Clarke represented the author during the preliminary inquiry, which took place on 30 January 1985 before The Hon. D.A. Hugh, Resident Magistrate for the Parish of Manchester. Mr. Clarke represented the author during the trial.

8.2 On the claims under article 10, counsel observes that the State party's authorities were informed of the author's arthritic condition in September 1994 and 1995 and August 1996. In spite of visits by the Inspector (of Prisons) in April and September 1996, Mr. Jones has still not received any medication for his arthritic condition.

Concerning the instances of Mr. Jones' ill-treatment, counsel recalls that the State party authorities were always notified promptly and fully about the incidents which took place in May 1990, October 1993 and May 1995:

* On 28 May 1990, the author was twice hit in the face by a prison officer during disturbances at St. Catherine District Prison;

* On 31 October 1994, the author was assaulted by a soldier and a warder known as "Paddy foot" and was subjected to constant threats by "Paddy foot", as Mr. Jones had said that he would testify about an incident involving a prison warder known to "Paddy foot" in which 4 inmates were killed;

* On 30 May 1995, the author was hit in the mouth by warder Page, after "Paddy foot's" transfer to another prison, as a result of the author's complaint against him. On the same day, Mr. Jones was denied food and not allowed to visit the surgery.

8.3 Counsel's allegations were transmitted to the State party on 25 June 1997. The State party has not provided any observations with regard to these allegations.

Examination of the merits:

9.1 The Human Rights Committee has considered the present communication in the light of all the information which has been made available to it, as required under article 5, paragraph 1, of the Optional Protocol.

9.2 The Committee has noted the State party's assertion that the author was informed in general terms of the charge against him upon arrest. This contrasts with the author's claim that he was unaware of even the general nature of the charge against him for ten weeks after his arrest. The Committee considers that the material before it does not justify the finding of a violation of article 9, paragraph 2.

9.3 As to article 9, paragraph 3, the State states the author was promptly brought before a magistrate and refers in this context to the fact that a preliminary hearing was conducted prior to the trial. This does not invalidate the author's claim (corroborated by evidence given by a police officer at the trial) that he was not brought before a judge until ten weeks after arrest. The Committee finds that this delay is not compatible with the requirements of article 9, paragraph 3, of the Covenant.

9.4 In respect of the claims under article 10, the Committee notes that, again, the State party observes that its investigations show that the author did receive treatment for his arthritic condition, while the author denies that any treatment was provided. In the circumstances, the Committee considers that a violation of article 10 in this respect has not been established. As to the beatings to which the author allegedly was subjected, the State party merely notes that it would need details and names for the matter to be investigated, while the author gives both dates and details of the incidents during which he sustained beatings. The Committee observes that it was incumbent upon the State party to investigate the author's allegations, which were sufficiently precise, in good faith. Moreover, it has not been contested that the author did notify the prison authorities after these incidents. The Committee therefore concludes that the beatings Mr. Jones sustained in May 1990, October 1993 and May 1995 violated his right, under article 10, paragraph 1, to be treated with humanity and respect for the inherent dignity of his person.

9.5 With regard to counsel's claim that the author was not effectively represented on appeal, the Committee notes that the author's legal representative on appeal conceded that there was no merit in the appeal. The Committee recalls its jurisprudence that under article 14, paragraph 3 (d), the court should ensure that the conduct of a case by a lawyer is not incompatible with the interests of justice. While it is not for the Committee to question counsel's professional judgement, the Committee considers that in a capital case, when counsel for the accused concedes that there is no merit in the appeal, the Court should ascertain whether counsel has consulted with the accused and informed him accordingly. If not, the Court must ensure that the accused is so informed and given an opportunity to engage other counsel. The Committee is of the opinion that in the instant case, Mr. Jones

should have been informed that his legal aid counsel was not going to argue any grounds in support of the appeal, so that he could have considered any remaining options open to him.³ The Committee concludes that there has been a violation of article 14, paragraph 3 (d).

10. 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 by Jamaica of articles 9, paragraph 3, 10, paragraph 1, and 14, paragraph 3 (d), of the Covenant.

11. Under article 2, paragraph 3(a), of the Covenant, Mr. Tony Jones is entitled to an effective remedy, which should include release and compensation for the treatment to which he was subjected. The State party is under an obligation to ensure that similar violations do not occur in the future.

12. 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 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 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. Thomas Buergenthal, Lord Colville, Ms. Elizabeth Evatt, Mr. Eckart Klein, Mr. David Kretzmer, Mr. Rajsoomer Lallah, Ms. Cecilia Medina Quiroga, Mr. Fausto Pocar, Mr. Julio Prado Vallejo, Mr. Martin Scheinin, Mr. Maxwell Yalden and Mr. Abdallah Zakhia.

1/ Communication No. 663/1995.

2/ In correspondence with his London lawyers, the author states that he doesn't remember the exact date on which he was charged with murder, but estimates the date at about 9 November 1984. At the trial, a police officer testified that he cautioned the author and executed the warrant for his arrest on 14 November 1984.

3/ See Views on communication No. 461/1991 (Morrison and Graham v. Jamaica), adopted on 25 March 1996, paragraph 10.5, and communication No. 537/1993 (Kelly v. Jamaica), adopted on 17 July 1996, paragraph 9.5.