

HUMAN RIGHTS COMMITTEE

Leslie v. Jamaica

Communication No 564/1993

31 July 1998

CCPR/C/63/D/564/1993*

VIEWS

Submitted by: Junior Leslie (represented by Mr. Simon Phippard from the London law firm of Barlow Lyde & Gilbert)

Victim: The author

State party: Jamaica

Date of communication: 5 October 1993 (initial submission)

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

Meeting on 31 July 1998,

Having concluded its consideration of communication No.564/1993 submitted to the Human Rights Committee by Junior Leslie, 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 Junior Leslie, 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 7; 10, paragraph 1; and 14, paragraphs 1 and 3(a) to (e), of the International Covenant on Civil and Political Rights. The author's death

sentence was commuted to life imprisonment in early 1995. He is represented by the London law firm of Barlow Lyde & Gilbert.

The facts as submitted by the author:

2.1 On 14 November 1987, the author was arrested by two policemen after a dispute concerning a bicycle. He was taken to the Hunts Bay Police Station and held in custody for five days. On 20 November 1987, he was taken to the Kingston Gun Court for a preliminary hearing; only then did he learn that he was charged, together with one Anthony Finn. The Committee's Views on Mr. Finn's Communication, No.617/1995, were adopted on 31 July 1998 at the 63rd session. and one L.T., with the murders, on 8 November 1987, of one Merceline Morris and her son, Dalton Brown. On 4 April 1990, the author and Anthony Finn were found guilty as charged and sentenced to death by the Home Circuit Court in Kingston; L.T. was acquitted on the direction of the trial judge at the close of the prosecution's case. The author's appeal to the Court of Appeal was dismissed on 15 July 1991; a further petition for special leave to appeal to the Judicial Committee of the Privy Council was dismissed on 6 October 1992. With this, it is submitted, all domestic remedies have been exhausted. On 17 December 1992, the author's case was classified as a capital case under the Offences against the Persons (Amendment) Act 1992.

2.2 The prosecution relied on the testimony of the daughter (respectively sister), Carol Brown, and grandson (respectively nephew), Orlando Campbell, of the deceased. Carol Brown testified that, on 8 November 1987 at about 8:00 p.m., her mother and Orlando Campbell were inside the house; she herself was sitting at the doorway and her brother, Dalton Brown, was in the yard with a friend, one C. The yard was lit up by a 100 watt light bulb on the exterior wall and by lights from within the house. Suddenly two armed men, whom she identified as Anthony Finn and the author, entered the yard. Immediately thereafter she heard explosions and she ran away. She stopped two houses further along, heard several more explosions, and saw C. running past her, followed by the author and Anthony Finn, who were still holding guns. Her mother, covered with blood, ran towards her, and told her that her brother had been shot. Her mother and brother died in hospital. Carol Brown testified that she had known Anthony Finn for about eight years. With respect to the author, she stated that she had first seen him one week prior to the incident, when he was pointed out to her as one of the persons involved in the beating and stabbing of her brother two weeks earlier. She only knew him by his nickname "Kentucky".

2.3 Orlando Campbell testified that, on the night of the incident, he was in bed when he saw his uncle, Dalton Brown, followed by Anthony Finn, running into the house. His uncle held on to his grandmother, who tried to block Anthony Finn. He then saw Anthony Finn shooting his grandmother. Having turned his face to the wall, he then heard Anthony Finn calling his uncle, followed by several explosions, and he heard his uncle begging for mercy. More shooting, from different directions, followed and he then heard Anthony Finn talking to another person. Orlando Campbell testified that he saw Anthony Finn, whom he knew, leaving through the gate, followed by a short stout person whose face he could not see, and by L.T., whom he also knew.

2.4 The medical evidence confirmed that the victims had been shot and died as a result of shotgun injuries.

2.5 No identification parade was held in the case; during the trial, i.e. 29 months after the murders, Carol Brown identified the author from the dock.

2.6 The author presented an alibi defence. He testified at the trial that he had spent the evening watching a video show at a community centre near his home. He stated that he only spoke with one person that evening, but that he could not remember that person's name. He further stated that two other men in the area where he lived were known by the nickname "Kentucky".

The complaint

3.1 With regard to articles 7 and 10, paragraph 1, of the Covenant, counsel forwards a statement taken from the author at St. Catherine District Prison on 28 January 1993. This states that, on 15 November 1987, while held at the Hunts Bay Police Station, the author was hit on the chest by the investigating officer (name given). Furthermore, the author claims that, throughout his detention at Hunts Bay Police Station (from 14 to 20 November 1987), he was held in a cell measuring 2 by 4 metres together with five to six other persons. He was not allowed to wash himself and was only permitted to leave the cell in order to fetch drinking water. He was further denied recreational facilities.

3.2 On 20 November 1987, the author was transferred to the General Penitentiary, Kingston; upon arrival, he was allegedly hit on his left arm, near the wrist, by one of the warders. It is submitted that because he had previously broken his left wrist, this blow caused him great pain. He remained at the General Penitentiary until 4 April 1990; throughout this period he had to share a cell of approximately 1.50 by 3 metres with four to five other prisoners. Furthermore, on an unspecified day, the author was stabbed in the face by an inmate which caused a deep cut about 10 cm long and 1 cm wide, stretching from his left ear down to his left cheek. He immediately requested medical care, but had to wait two hours before he was taken to a doctor. He received twenty stitches, but was denied follow-up medical treatment. He submits that he suffered much pain the following three days, but that he was denied pain killers.

3.3 After his conviction on 4 April 1990 the author was transferred to the death row section at St. Catherine District Prison, where he has been detained since. He claims to have suffered several assaults while in prison:

- On 1 December 1991, for example, the prisoners were not allowed out of their cells in the morning. Shortly after 1:00 p.m., inmates were given a brief opportunity to slop up their cells. The two warders on duty were Sergeant G. and a young man. The author states that, as the two warders opened the cells adjacent to his but not his own, he started to protest. They entered his cell and the young warder allegedly punched him in the left side of the head. Both warders then proceeded to kick and hit him with their batons on his back, chest, arms, legs and knees for approximately two minutes. The author submits that he experienced extreme pain during this assault and that all his cries were disregarded. After the beating he was left without food or water, nor did he receive medical treatment.

- On 2 December 1991 at about 10:00 a.m., the author was given ten minutes to slop up. Sometime after 2:00 p.m. Sergeant G. came to his cell with six or seven other warders, and he was told to slop up once again. However, before he could do so, he was told to return to his cell. On his way back

to the cell, Sergeant G. and another warder started to beat him. He fell to the floor and both warders hit him repeatedly with their batons on his arms, feet and back for about ninety seconds, while other warders watched. He was then thrown into his cell and left without food or water until the following morning. The author submits that he was denied access to a doctor or any sort of medical treatment.

3.4 The author reported these assaults to the Prison Authorities and repeatedly requested medical attention, to no avail. He then wrote to the Prison Ombudsman; as a result, he was finally taken to hospital in early 1992. The doctor who treated him prescribed pain killers. On the sequels of the beatings, the author notes that: "There is a specific pain in the left part of my back which has never completely disappeared. It feels as if there is a broken bone or that a bone is cracked. I experience the pain particularly badly in the morning when I wake up. All my requests to see a doctor again have been in vain and the warders simply give me pain tablets [...]"

3.5 The author further states that on several occasions warders told him that there was no point in providing him with medical treatment, because he was about to be executed. He submits that this caused him "great embarrassment and depression". Furthermore, on three occasions he was not allowed out of his cell for an entire day, and was given no food or water. Thus, he remained confined to his cell from around 4:00 p.m. until 10:00 a.m. two days later. The author characterizes the situation as "extremely discomfoting and humiliating".

3.6 By letter of 9 June 1993, the author submits that, on 5 June 1993 at 12:28 p.m., he was harassed by a warder, one M., reportedly because he had complained to the Ombudsman and to "the Human Rights Office" about the treatment by warders. M. allegedly hit the author on his knee with a baton, and when the author held on to the baton, M. drew a knife. He alleges that M. was about to use the knife but that it fell from his hand. The author then reported the incident to the officer-in-charge of the Section, who referred him to the Prison Superintendent; the latter allegedly refused to see him. The author further alleges that, on 4 May 1993, a warder stuck a finger in his eye and that he was kicked several times as he lay on the floor. The same warder subjected him to further physical and verbal abuse on 23, 24, 29 and 30 September 1993. On 30 September the author's room was searched and 200 dollars removed, which have not been returned.

3.7 Counsel refers to the records of a meeting held on 25 January 1993 with the author's local lawyer. This lawyer observed that Mr. Leslie displayed a number of new cuts and bruises on his face which the lawyer did not recall from their first meeting in 1989. The lawyer suspected that this was the result of treatment in prison, which is not uncommon in Jamaica. Counsel submits that this lawyer's observations corroborate all the allegations made by the author in his statement and letters. Counsel, on behalf of Mr. Leslie, has lodged formal complaints with the Prison Superintendent on 30 November 1993, and with the Jamaican Commissioner of Prisons on 14 March 1994.

3.8 Counsel adduces documentary evidence of the inhuman conditions of detention at the General Penitentiary and St. Catherine District Prison. It is submitted that the lack of recreation, rehabilitation and other facilities in these prisons clearly indicates that they fall far short of the U.N. Standard Minimum Rules for the Treatment of Prisoners, and that the lack of provision for the basic needs for Junior Leslie amounts to a violation of both articles 7 and 10, paragraph 1. He concludes that the lack of washing facilities in custody, the crowded conditions under which Mr. Leslie was detained, the long periods of confinement, the lack of medical treatment, the reasons given for the

denial of such treatment, and the unprovoked assaults by the police officer and prison warders to which Mr. Leslie was subjected, amount to violations of articles 7 and 10, paragraph 1.

3.9 It is further alleged that the author did not have a fair trial. He complains that his legal aid counsel failed to adequately prepare the case. In this respect he claims that he met his lawyer for the first time on one of the twelve occasions on which his trial was adjourned. Although the attorney visited him several times in prison, a policeman was always present, which afforded no privacy. Only the adjournment and new dates for the trial were discussed, never the defence arguments. This is said to violate article 14, paragraph 3 (b).

3.10 In respect of the alleged violation of article 14, paragraphs 1 and 3 (e), it is submitted that due to lack of time and facilities for the preparation of the defence, a number of witnesses were not called to testify on the author's behalf. The author's defence was further prejudiced by the fact that junior counsel, who had been assigned to the author's attorney to assist him with the case and on whom the attorney relied for all the groundwork, fell ill shortly before the start of the trial, and could therefore not attend. Furthermore, the trial judge's alleged "obstructive behaviour" prevented the defence from adequately cross-examining the prosecution witnesses on the "short and stout" issue. Counsel concedes that, in principle, it is not for the Committee to review specific instructions given by the judge to the jury, unless it can be ascertained that these instructions were clearly arbitrary or amounted to a denial of justice. In this context, he refers to the summing-up and submits numerous examples of the judge's instructions which are said to amount to a denial of justice. All of the grounds of appeal relied on by counsel were dismissed by the Court of Appeal.

3.11 As to the adequacy of the author's representation during the trial, it is submitted that prosecution witnesses were not adequately cross-examined, or at all. Counsel points out that the author's attorney arrived late at the afternoon session of the hearing on 3 April 1990, when the pathologist gave evidence in connection with the wounds suffered by the deceased. The attorney did not cross-examine this witness, whose evidence, according to counsel, could have undermined Carol Brown's evidence that her brother had been beaten and stabbed two weeks prior to his death. The lawyer's failure to question the pathologist is said to be particularly serious in light of the fact that a friend of the family of the deceased, who identified the bodies, testified in court that he was not aware that Dalton Brown had been beaten and stabbed.

3.12 Furthermore, counsel argues that Carol Brown's identification evidence, given to the police on the night of the incident, was uncorroborated, as Orlando Campbell did not identify Mr Leslie, and the third eye-witness, C., did not testify. This witness could not be located by the police. Counsel notes that the author was never placed on an identification parade, and that it was only 29 months later that he was identified in court by Carol Brown. It is submitted that the delay of 29 months from arrest to trial amounts to a violation of article 14, paragraph 3(c), and that the judge, by allowing a dock identification and by failing to warn the jury about the effects the delay might have on the credibility and reliability of the prosecution witnesses, violated the author's right to a fair trial.

3.13 The author alleges that since he was assigned the same attorney for the appeal, his right to legal assistance of his own choosing was violated. He did not meet with the attorney prior to the hearing of the appeal, and was given no opportunity to discuss the grounds of appeal to be argued on his behalf. Furthermore, he claims that he was not asked whether he wished to attend the hearing and

that he only learned from the prison authorities that his appeal had been dismissed. The State party's information and observations on admissibility and the author's comments thereon:

4. In its submission under rule 91, the State party argued that the communication was inadmissible under article 5, paragraph 2 (b), of the Optional Protocol, because the author had failed to exhaust domestic remedies. It noted that the author could still apply for constitutional redress; in this context, it noted that the rights invoked by the author and protected by article 14, paragraphs 1, 3 (b) and (e) are coterminous with Sections 20 (1), 20(6)(b) and 20(6)(d) of the Jamaican Constitution. Pursuant to Section 25 of the Constitution, it was open to the author to seek redress for the alleged violations of his rights by way of a constitutional motion to the Supreme Court.

5. In his comments, dated 21 April 1995, counsel stated that, since legal aid was not made available for constitutional motions, a constitutional motion did not constitute an effective remedy in the case.

The Committee's admissibility decision

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

6.2 The Committee noted the State party's argument that the pursuit of a constitutional remedy was still open to the author. It observed that the Supreme Court of Jamaica had, in some cases, allowed applications for constitutional redress in respect of breaches of fundamental rights, after the criminal appeals in these cases had been dismissed. However, it also recalled that the State party had indicated on several occasions¹ that no legal aid was made available for constitutional motions. The Committee considered that in the absence of legal aid, on which the author, who is indigent, must rely, a constitutional motion did not constitute a remedy which needed be exhausted for the purposes of the Optional Protocol. The Committee therefore considered that it was not precluded by article 5, paragraph 2 (b), from considering the communication.

6.3 As to the claims under articles 7 and 10, paragraph 1, the Committee noted that the author brought the repeated instances of ill-treatment to the attention of the prison authorities and the Commissioner of Prisons. As no reply or follow-up was given to his complaints, the Committee considered that, in this respect, the author had met the requirements of article 5, paragraph (2) (b), of the Optional Protocol. It found that the author's claims about ill-treatment in prison and on death row had been sufficiently substantiated, for purposes of admissibility, and should be examined on the merits.

6.4 The Committee further considered that the author had sufficiently substantiated for purposes of admissibility his claim under article 14, paragraph 3 (c), that he was not tried without undue delay. This related in particular to the State party's failure to place the author on an identification parade at the time of his arrest, combined with a lapse of time of two and a half years before a dock identification was made during the trial, by a single witness who was a close relative (daughter and sister respectively) of the two deceased. This allegation should, accordingly, be examined on the merits.

6.5 As to the author's allegations which concerned claims about irregularities in the court proceedings, improper instructions from the judge to the jury on the issue of identification, the late

arrival in Court of the attorney and the lack of cross examination of the prosecution witnesses, the Committee reiterated that, while article 14 guarantees the right to a fair trial, it was not for the Committee to review specific instructions to the jury by the judge in a trial by jury, unless it could be ascertained that the instructions to the jury were clearly arbitrary or amounted to a denial of justice, or that the judge manifestly violated his obligation of impartiality. The material before the Committee did not show that the judge's instructions suffered from such defects. Accordingly, this part of the communication was deemed inadmissible as incompatible with the provisions of the Covenant, pursuant to article 3 of the Optional Protocol.

6.6 On 12 October 1995, the Human Rights Committee declared the communication admissible in as much as it appeared to raise issues under articles 7, 10, paragraph 1, and 14, paragraph 3, of the Covenant.

States party's merits observations and counsel's comments:

7.1 In a submission dated 23 January 1997, the State party informed the Committee that in respect of the alleged violations of articles 7 and 10, paragraph 1, it "has sought to have the matter investigated, but has not yet received a response. Efforts will be made to expedite the investigation. Until this information is received the Ministry cannot offer constructive comments on the allegations". The State party notes that the above comment cannot be construed as acceptance that any of the incidents took place in a manner which breached the Covenant.

7.2 With regard to the claim that the author and his counsel did not have adequate time and facilities to prepare his defence in violation of article 14, paragraph 3 (b), the State party notes that counsel visited the author on several occasions in prison although in presence of a policeman. The State party contends that it was open to the author's counsel to object to the policeman's presence and consequently denies any violation of the Covenant.

7.3 With regard to the alleged breach of article 14, paragraph 3 (c), the State party concedes that a delay of 29 months between arrest and trial is longer than desirable. However, it rejects that these delays constitute a violation of the Covenant, particularly as during that period a preliminary enquiry was held.

7.4 As to the alleged violation of article 14, paragraph 3 (d), because legal aid defence counsel arrived late one of the days of the trial and his failure to adequately cross examine witnesses, the State party categorically denies any breach of the Covenant. It states that the State's obligation is to designate competent counsel and once appointed not to interfere in how the case is conducted. It contends that issues such as professional conduct of attorneys are not the State party's responsibility.

7.5 Concerning the violation of article 14, paragraph 3 (e), because some defence witnesses were not called, the State party notes that this breach cannot be attributed to it, without clear evidence that agents of the State prevented defence counsel from calling these witnesses.

8.1 In his comments on the State party's submission, counsel notes that the State party has not supplied any information with regard to the complaints under articles 7 and 10, paragraph 1.

8.2 As regards the 29 months delay between arrest and trial, counsel notes that the State party has conceded that it is longer than desirable, but asserts that a preliminary enquiry began the trial process. If true, this can only be described as a technical defence. The contentious question remains, which is that the author was only identified in Court 29 months after arrest. The preliminary enquiry had no bearing on the passage of time before the author's identification took place in Court. Counsel reiterates that article 14 3 (c) was violated.

8.3 Counsel reiterates the claims regarding inadequate representation by defence counsel in Jamaica and rejects the State party's contention that its only responsibility is to designate competent legal aid counsel. In this respect counsel states that it is precisely the very low remuneration (which is a State responsibility) of legal aid counsel that makes it impossible for indigent persons such as the author to have competent counsel assigned to their cases.

Examination of the merits:

9.1 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.

9.2 With regard to the author's various complaints of ill-treatment while both at the General Penitentiary and then at St. Catherine's District Prison, the Committee notes that the author has made very precise allegations, related to the various instances where he was beaten and to the deplorable conditions of detention, as set out in paragraphs 3.1 to 3.8 supra. None of this has been contested by the State party, except to say some 14 months later that it would investigate. In the Committee's opinion, the conditions described in para 3.1 to 3.8, are such as to violate the author's right to be treated with humanity and with respect for the inherent dignity of the human person, and are therefore contrary to articles 7 and 10, paragraph 1.

9.3 The author has claimed a violation of article 14, paragraph 3 (c), on account of the undue delay in bringing him to trial 29 months after arrest. The Committee notes that the State party itself admits that a delay of 29 months between arrest and trial "is longer than desirable", but contends that there has been no violation of the Covenant, because a preliminary enquiry took place in that time. The Committee is of the view that the mere affirmation that a delay does not constitute a violation is not sufficient explanation. Therefore, the Committee finds that 29 months to bring an accused to trial does not comply with the minimum guarantees required by article 14. Accordingly, it finds that there has been a violation of article 14 paragraph 3 (c).

9.4 As regards the author's argument that he was not effectively represented on appeal since he was represented by the same counsel as on trial, who failed to consult him, the Committee notes that counsel consulted with the author before the appeal and that he argued grounds of appeal on his behalf. The Committee recalls its jurisprudence that under article 14, paragraph 3 (d), the Court should ensure that the conduct of a case by the lawyer is not incompatible with the interests of justice. In the instant case, nothing in the conduct of the appeal by the author's lawyer shows that he was exercising other than his professional judgement, in the interest of his client. The Committee concludes, therefore, that the information before it does not show that article 14 paragraph 3 (d) has been violated.

9.5 The author has alleged a violation of article 14, paragraph 3 (b) and (e) since the lack of time and facilities for the preparation of the defence meant that a number of defence witnesses were not called to testify on the author's behalf. From the information before it the Committee finds that there is no indication that counsel's decision not to call witnesses was not based on the exercise of his professional judgment. If counsel or the author felt they were unprepared it was incumbent upon them to request an adjournment. Accordingly, there is no basis for finding a violation of article 14, paragraph 3 (b) and (e).

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 a violation of articles 7, 10, paragraph 1, and 14 paragraph 3 (c), of the Covenant.

11. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide Mr. Leslie with an effective remedy, including compensation. 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 the communication is subject to the continued 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 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 ninety days, information about the measures taken to give effect to the Committee's Views.

*/ The following members of the Committee participated in the examination of the present communication: Mr. Nisuke Ando, Mr. Prafullachandra N. Bhagwati, Mr. Th. Buergenthal, Ms. Christine Chanet, 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. Julio Prado Vallejo, Mr. Martin Scheinin, and Mr. Maxwell Yalden.

1/ See e.g. communications No. 283/1988 (Austin Little v. Jamaica), Views adopted on 1 November 1991; No. 321/1988 (Maurice Thomas v. Jamaica), Views adopted on 19 October 1993; No. 352/1989 (Douglas, Gentles and Kerr v. Jamaica), Views adopted on 19 October 1993.

[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.]