

HUMAN RIGHTS COMMITTEE

Bennett v. Jamaica

Communication N° 590/1994*

25 March 1999

CCPR/C/65/D/590/1994*

VIEWS

Submitted by: Trevor Bennett (represented by the London law firm of Clifford Chance)

Alleged victim: The author

State party: Jamaica

Date of communication: 22 July 1994

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

Meeting on 25 March 1999

Having concluded its consideration of communication No. 590/1994 submitted to the Human Rights Committee by Mr. Trevor Bennett 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, and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1. The author of the communication is Trevor Bennett, a Jamaican citizen, at the time of submission of the communication awaiting execution at the St. Catherine District Prison, Jamaica. The author claims to be the victim of a violation by Jamaica of articles 6, 7, 9, 10 and 14 of the International Covenant on Civil and Political Rights. He is represented by the London law firm of Clifford Chance. The author's death sentence was commuted to life

imprisonment on 11 July 1995.

The facts as submitted by the author:

2.1 The author was arrested on 20 November 1987 in connection with the murder, on 14 November 1987, of Mr. Derrick Hugh, a former acting Registrar of the Supreme Court and Resident Magistrate. On 15 December 1987, an identification parade was held, during which the author was represented by a lawyer provided by his family. Following a positive identification, the author was formally charged with Mr. Hugh's murder. On 13 April 1989, the author was convicted and sentenced to death in the Home Circuit Court of Kingston, Jamaica. The Court of Appeal of Jamaica refused the author's application for leave to appeal on 15 July 1991. His application for special leave to appeal to the Judicial Committee of the Privy Council was dismissed on 1 April 1993. With this, it is submitted, all available domestic remedies have been exhausted.

2.2 At trial, the case for the prosecution was that the author was one of two men who had unlawfully entered the house of Mr. Hugh on 14 November 1987. The prosecution did not allege that the author had fired the fatal shot, but that he was there as part of a plan in which he was aware that a gun was going to be used.

2.3 One David Whilby, an occupant of Mr. Hugh's house, testified that, on 14 November 1987, at about 3 a.m., he was awakened by two masked gunmen, who forced him to go to Mr. Hugh's room. The witness stated that one of the men then brought Mr. Hugh to a room downstairs, while the author remained with him and Mr. Hugh's mother. The witness further claimed that the author's mask slipped from his face, thus giving him the opportunity to observe it. When the author heard the shots being fired downstairs, he reportedly fled in panic. Mr. Whilby subsequently pointed out the author at the identification parade on 15 December 1987.

2.4 A second prosecution witness, the deceased's sister, gave evidence that she had heard a noise coming from a room, which had caused her to open the door, and that she had seen a man with a gun holding her brother. She herself was shot in her knee and she heard two shots being fired at her brother.

2.5 Evidence was also given to the effect that fingerprints found on some glass matched with the author's fingerprints.

2.6 The prosecution further relied on a caution statement given by the author on 21 November 1987. In this statement, the author claimed that by chance he had met an acquaintance, one Lukie, on the night of Friday 13 November when he was returning from a party. He complained to Lukie that he did not have any money to buy food for his baby, because he had not been paid yet by his employer. Lukie told the author that he knew where he could get some money and the author decided to go with Lukie, despite the fact that Lukie told him he had a gun.

2.7 The author admitted in his caution statement that he assisted Lukie to break into the

house, where they found a sleeping man, Mr. Whilby. According to the author's statement, Lukie asked the man for money but was told that the money was in the next room. Lukie then took Mr. Whilby to the next room, the author following, where they found another man, Mr. Hugh. Lukie then reportedly pushed both men to the floor and asked Mr. Hugh: "Wey de book?". Mr. Hugh's mother came upstairs into the room. According to the author, Lukie then took Mr. Hugh downstairs, following which he heard shots, and saw Lukie running out of the house. The author also ran out, met Lukie at the back of the house and received from him some money stolen from the Registrar.

2.8 In his caution statement, the author stated that he went to sleep at his aunt's house and, the next morning, heard on the radio that the Registrar of the Supreme Court had been shot dead at his home. The author then heard that the police was looking for him and ran away. A week later, he gave himself up to the police.

2.9 Counsel for the author argued that the caution statement should not be admitted as evidence, because it had been made under coercion. A voir dire was held, during which several witnesses, among whom the investigating police officers and members of the author's family, testified. The author gave sworn evidence regarding the circumstances of his arrest. He claimed that, after having learned that members of his family had been taken into police custody on 19 November 1987, he had gone voluntarily to the Central Police Station in the company of a priest on the following day. On 21 November 1987, he made a statement under caution to the police, because he had been told that his family would not be released until he had made the statement. After the voir dire, the judge ruled the statement to be admissible.

2.10 At trial, the author made an unsworn statement from the dock, admitting that he had been at the scene of the crime, but claiming that he had been forced to attend. The author stated that he had previously told on Lukie concerning a robbery and that, when he met Lukie that night, Lukie had threatened to kill him for this. The author stated that Lukie and his gang then "decided that they were going for something and that I must participate in it". According to the author's unsworn statement, he asked who occupied the house but received no reply. Lukie broke into the house and "they told me to go in there too to follow Lukie".

2.11 The author admitted in his unsworn statement that, once he and Lukie were inside the house, what he saw "did not look like a robbery". The author stated that he heard Lukie ask the Registrar for his passport and tell the Registrar's mother that they were getting paid to kill her son.

The complaint:

3.1 Counsel claims that the author was kept in detention in violation of article 9 of the Covenant, since he was not charged until 16 December 1987, that is four weeks after his arrest, nor was he brought before a judge during that period.

3.2 Counsel submits that the author did not have sufficient time and facilities to prepare his defence, in violation of article 14, paragraph 3(b). In this context, counsel submits that the

author was represented by different lawyers at various stages of the proceedings. The author further claims that he met the lawyer who represented him at the preliminary hearing only once before the hearing and that he met the two legal aid lawyers who represented him at his trial only twice before.

3.3 Counsel submits that the trial judge's instructions with respect to the issues of duress and joint enterprise, as well as his comments on the decision of the author to give an unsworn statement, amounted to a denial of justice, since they gave the jury the impression that the judge thought that the author was guilty.

3.4 As regards his appeal, the author submits that he had asked a Mr. Phipps to represent him and, reportedly, on 8 May 1991, he received confirmation that this lawyer was willing to look into the case. However, on 21 June 1991, the author was visited by a different lawyer who had been assigned by the legal aid authorities. It was this counsel who represented the author at his appeal. It is submitted that the author's appeal counsel spent only about ten minutes with the author prior to the appeal, on 21 June 1991. The author states that counsel told him that he saw no merit in his case. At the appeal hearing, counsel argued the appeal on the ground that the burden and standard of proof had not been properly explained to the jury and that the directions concerning duress had been improper. When the Court enquired whether counsel had any submissions to make concerning the trial judge's instructions relating to common design, counsel declined, since he considered the Crown's case overwhelming in this respect. It is argued that the above indicates that the author was not properly represented on appeal by a counsel of his own choosing, in violation of article 14, paragraph 3(d).

3.5 Counsel also submits that the delay of four years between conviction and dismissal of petition for special leave to appeal, constitutes an undue delay in the judicial proceedings, in violation of article 14, paragraph 3(c), of the Covenant.

3.6 Counsel further submits that the author has been held on death row since 13 April 1989 and alleges that his lengthy stay on death row, as well as his possible execution after such delay, is contrary to article 7 of the Covenant. In this context, reference is made *inter alia* to the judgment of the Privy Council in Earl Pratt & Ivan Morgan v. the Attorney General for Jamaica, delivered on 2 November 1993.

3.7 Counsel finally claims that the author's conditions of detention are inhuman and degrading and constitute a violation of article 10 of the Covenant. In this context, he points out that some of the author's co-prisoners are mentally ill and have, on occasion, attacked fellow inmates. He also submits that the prison conditions are insanitary. The author further states that his physical condition has deteriorated since he was detained and that he has developed an ulcer. In this context, he claims that he has not seen a doctor since 1990. To support his claim, counsel refers to two reports on the conditions in St. Catherine District Prison: Amnesty International Report of December 1993 and report of the government appointed Task Force on Correctional Services (Ministry of Public Services) of March 1989, and to a statement from the Prison Chaplain which reads:

"The conditions in the prison are generally deplorable as is clearly stated in the recently published Wolfe report. A large pipe, carrying waste water from the story above, three yards from his cell, gives off a foul and pervasive odour... ..He states that he has not seen a doctor since 1990 and has been "treating" his ulcer on his own. In fact the prison does not have a doctor, even on call."

3.8 It is stated that the same matter has not been submitted to another instance of international investigation or settlement.

State party's observations and author's comments thereon:

4.1 By submission of 10 February 1995, the State party offered comments on the merits, in order to expedite the examination of the communication.

4.2 With respect to the alleged violations of article 14, paragraph 1, of the Covenant, the State party stated that these issues relate to the trial judge's directions to the jury and are therefore matters which, according to the Committee's own jurisprudence, ought to be left to appellate courts.

4.3 As to the author's claim that article 14, paragraph 3(d), was violated because of the decision of the author's counsel to abandon the appeal, the State party alleged that it cannot be held responsible for the manner in which counsel conducts a case, once it has appointed a competent legal aid counsel. The State party however submitted that inquiries would be made into the circumstances under which the author's request for a particular counsel was not met.

4.4 The State party contested that the author's detention on death row for more than five years automatically amounts to cruel, inhuman and degrading treatment, and argued that the individual circumstances of each case should be examined before such a determination can be made.

4.5 With respect to the allegation that the author's conditions of detention violate articles 7 and 10, paragraph 1, of the Covenant, the State party acknowledged that there are difficulties in the correctional system, but did not accept the assertion that the standards are so low as to constitute a violation of the Covenant. In this context, the State party referred to the most recent report on Jamaican prisons done by the Inter-American Commission on Human Rights following an on-site visit, which reportedly does not contain anything supporting the author's allegations.

5. In his comments on the State party's submission, counsel limited himself to the admissibility of the communication. He explained that the author has not applied to the Supreme (Constitutional) Court for redress, since this remedy would have been ineffective and, moreover, not available for the author, because of his lack of funds, the absence of legal aid for the purpose and because of the unwillingness of Jamaican lawyers to represent applicants on a pro bono basis. It was therefore submitted that all domestic remedies have been exhausted.

The Committee's admissibility decision

6.1 During its 56th session the Committee considered the admissibility of the communication.

6.2 The Committee ascertained, as required under article 5, paragraph 2(a), of the Optional Protocol, that the same matter was not being examined under another procedure of international investigation or settlement.

6.3 The Committee noted that the State party did not raise any objections to the admissibility of the communication. The Committee nonetheless examined whether all of the author's allegations satisfied the admissibility criteria of the Optional Protocol.

6.4 The author claimed that he did not have sufficient time to prepare his defence, in violation of article 14, paragraph 3(b), of the Covenant. The Committee noted, however, that the author met with his legal representative on several occasions before the beginning of the trial and that there was no indication that the author or his legal representative complained to the judge at the trial that they had not had sufficient time to prepare the defence. In these circumstances, the Committee considered that the allegation had not been substantiated, for purposes of admissibility. This part of the communication was therefore inadmissible under article 2 of the Optional Protocol.

6.5 The Committee noted that part of the author's allegations relate to the instructions given by the judge to the jury. The Committee referred to its prior jurisprudence and reiterated that it is generally not for the Committee, but for the appellate Courts of States parties, to review specific instructions to the jury by the trial judge, and that the Committee will not admit such claims, unless it can be ascertained that the instructions to the jury were clearly arbitrary or amounted to a denial of justice. The Committee took note of the author's claim that the instructions in the instant case amounted to a denial of justice. The Committee also noted the Court of Appeal's review of the judge's instructions, and concluded that in the instant case the trial judge's instructions did not show such defects as to render them arbitrary or a denial of justice. Accordingly, this part of the communication was inadmissible as incompatible with the provisions of the Covenant, pursuant to article 3 of the Optional Protocol.

6.6 With regard to the author's claim that he was not represented on appeal by a counsel of his choice, the Committee recalled that article 14, paragraph 3(d), does not entitle the accused to choose counsel provided to him free of charge. This part of the communication was therefore inadmissible, as incompatible with the provisions of the Covenant, under article 3 of the Optional Protocol. With regard to the author's claim that he was not properly represented by his legal aid counsel on appeal, the Committee noted from the information before it that counsel did in fact consult with the author prior to the hearing of the appeal, and that at the hearing counsel did argue grounds for appeal. The Committee considered that it is not for the Committee to question counsel's professional judgment as to how to argue the appeal, unless it is manifest that his behaviour was incompatible with the interests of justice. The Committee found therefore that, in this respect, the author had no claim under

article 2 of the Optional Protocol.

6.7 As to the author's claim that his prolonged detention on death row amounts to a violation of article 7 of the Covenant, the Committee referred to its prior jurisprudence¹, and in particular to its Views in respect of communication No. 588/1994 Errol Johnson v. Jamaica, adopted on 22 March 1996.. The jurisprudence of this Committee remains that the length of detention on death row alone does not entail a violation of article 7 of the Covenant in the absence of some further compelling circumstances. In the instant case, neither the author nor his counsel had substantiated any such circumstances. This part of the communication was therefore inadmissible under article 2 of the Optional Protocol.

6.8 The Committee considered that the author's remaining claims, regarding the period of detention without having been brought before a judge, the period between conviction at first instance and the dismissal of his application for special leave to appeal to the Judicial Committee of the Privy Council, and the circumstances of detention to be sufficiently substantiated for purposes of admissibility, and that they should be examined on the merits.

State party's observations on the merits, counsel's comments thereon and further comments from the State party

7.1 By submission of 14 February 1997, the State party, with regard to article 9, paragraph 3, accepts that to detain the author for four weeks before charging him or taking him before a magistrate was longer than desirable.

7.2 With regard to the alleged violation of article 14, paragraph 3(c), on the ground of a delay of four years between the conviction and the dismissal of special leave to petition the Privy Council, the State party notes that "when broken down there was a delay of two years and three months between conviction and appeal and a delay of one year and nine months between the dismissal of the appeal and the dismissal of the application for special leave to appeal to the Privy Council". The State argues that although the period between the conviction and the hearing of the appeal was longer than desirable, it does not constitute a breach of the Covenant.

7.3 With regard to the alleged violation of article 10, the State party states that it has investigated the author's claim that he has not seen a doctor since 1990 despite having an ulcer, but that it has not found any evidence to support these allegations. Therefore, the State party denies that there was a breach of the Covenant in this regard.

8. In his submission of 1 September 1998, counsel states that he has no observations in relation to the alleged violations of articles 10 and 14, paragraph 3(c), and that his understanding of the reply to the alleged violation of article 9, paragraph 3, is that the State admits breach of the Covenant in this regard.

9. In its submission of 16 February 1999, the State party clarifies that its position with regard to the application of article 9, paragraph 3, in this case is that "detention of the applicant for four weeks was longer than desirable for either charging or carrying the applicant before a

Magistrate, however, it does not constitute a breach of article 9(3)."

Issues and proceedings before the Committee

10.1 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.

10.2 Article 9, paragraph 2, of the Covenant gives the right to anyone arrested to know the reasons for his arrest and to be promptly informed of any charges against him. Article 9, paragraph 3, gives anyone arrested or detained on a criminal charge the right to be brought promptly before a competent judicial authority. The author alleges to be a victim of violations of both provisions as he contends that he was neither charged nor brought before a magistrate until four weeks after his arrest.

10.3 With regard to the alleged violation of article 9, paragraph 2, the Committee notes that the author in his sworn statement at the trial explained both that he had turned himself in to the police and that he on the same night had been told by a named police officer that he was being questioned about "involvement in the slaying of Mr. Derrick Hugh". The Committee therefore finds that the facts do not disclose a violation of article 9, paragraph 2.

10.4 The Committee finds, however, that to detain the author for a period of four weeks before bringing him before a competent judicial authority constitutes a violation of article 9, paragraph 3, of the Covenant.

10.5 The author has claimed that the period of four years which lapsed from his conviction to the dismissal of his petition for special leave to appeal to the Judicial Committee of the Privy Council constitutes a breach of article 14, paragraph 3(c). The Committee reiterates that all guarantees under article 14 of the Covenant should be strictly observed in any criminal procedure, particularly in capital cases, and notes, with regard to the period of two years and three months which lapsed from the conviction of the author to the dismissal of his appeal in the Court of Appeal, that the State party has acknowledged that such a delay is undesirable, but that it has not offered any further explanation. In the absence of any circumstances justifying the delay, the Committee finds that with regard to this period there has been a violation of article 14, paragraph 3(c), in conjunction with paragraph 5.

10.6 However, with regard to the period of one year and nine months which lapsed from the judgment of the Court of Appeal to the dismissal of the author's petition for special leave to appeal to the Judicial Committee of the Privy Council in April 1993, the Committee notes that the author's petition was not lodged until December 1992, and consequently finds that there was no breach of the Covenant with regard to this period.

10.7 The author has claimed a violation of article 10, paragraph 1, both on the ground of the conditions of detention to which he is subjected at St. Catherine's District Prison and on the ground of lack of medical attention for an ulcer he allegedly sustained in 1990. To substantiate his claims, the author has invoked a report of March 1989 from the government

appointed Task Force on Correctional Services, Amnesty International's report of December 1993, and a statement from the Prison Chaplain, based on his visit to the author on 25 May 1994. The State party has contested the allegations as to the general conditions of detention at St. Catherine's District Prison merely by invoking an unpublished report made by the Inter-American Commission on Human Rights after an on site visit which, allegedly, contains nothing to support the "terrible picture painted by the author's allegations". The State party has also disputed the author's allegation that he has an ulcer for which he has received no medical attention, as it states that it has investigated the matter without finding any evidence to support the allegations.

10.8 The Committee notes that the author refers not only to the inhuman and degrading prison conditions in general, but also makes specific allegations such as sharing a cell with mentally ill inmates, not having seen a doctor since 1990 and having close to his cell a large pipe carrying waste water with foul odour. The Committee notes that with regard to these specific allegations, the State party has merely disputed that the author was denied adequate medical attention. In the circumstances, the Committee finds that article 10, paragraph 1, has been violated.

11. 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 article 9, paragraph 3, article 10, paragraph 1 and article 14, paragraph 3(c) in conjunction with paragraph 5, of the International Covenant on Civil and Political Rights.

12. In accordance with article 2, paragraph 3(a), of the Covenant, the State party is under an obligation to provide Mr. Bennett with an effective remedy, including compensation. The State party is under an obligation to ensure that similar violations do not occur in the future.

13. 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 State party is also requested to publish the Committee's Views.

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra N. Bhagwati, Mr. Thomas Buergenthal, Lord Colville, Ms. Elizabeth Evatt, Mr. Eckart Klein, Mr. David Kretzmer, Mr. Rajsoomer Lallah, Mr. Fausto Pocar, Mr. Martin Scheinin, Mr. Hipólito Solari Yrigoyen, Mr. Roman Wieruszewski, Mr. Maxwell Yalden and Mr. Abdallah Zakhia.

1/ See the Committee's Views on communications Nos. 210/1986 and 225/1987 (Earl Pratt and Ivan Morgan v. Jamaica), adopted on 6 April 1989, paragraph 12.6. See also, *inter alia*, the Committee's Views on communications Nos. 270/1988 and 271/1988 (Randolph Barrett and Clyde Sutcliffe v. Jamaica), adopted on 30 March 1992, and No. 470/1991, (Kindler v. Canada), adopted on 30 July 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.]