

HUMAN RIGHTS COMMITTEE

O. W. v. Jamaica

Communication No. 227/1987

26 July 1988

ADMISSIBILITY

Submitted by: O. W. [name deleted]

Alleged victims: The author

State party concerned: Jamaica

Date of communication: 2 March 1987 (date of initial letter)

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

Meeting on 26 July 1988,

Adopts the following:

Decision on admissibility

1. The author of the communication (initial letter dated 2 March 1987 and a subsequent letter dated 1 May 1987) is O. W., a Jamaican citizen, awaiting execution at St. Catherine District Prison in Jamaica. He claims to be innocent of the crimes imputed to him and alleges irregularities in the various judicial proceedings leading to his death sentence.

2.1 O. W. states that in June 1974 he was questioned by the police in connection with a robbery, in the course of which two suspects had allegedly killed a female employee of an unnamed institution. Although the author explained to the police officers that he did not know the men in question or anything about the incident under investigation, he was taken to the scene of the crime, where two witnesses allegedly stated that he was not one of the men they had seen. Nevertheless O. W. was detained and taken to the police station for further investigation. When he was told to stand in line for purposes of identification, he requested the presence of a lawyer or of a member of his family, as allegedly provided in Jamaican law, but his request was not granted. On 14 August 1974, he was allegedly tried,

found guilty and sentenced to "indefinite detention" for possession of a firearm. The author claims that no firearm was found in his possession and none was produced in court.

2.2 On 25 November 1975, a second trial took place before the Home Circuit Court. O. W. does not specify the charges against him in the second trial, but, from the overall context of his letter, they appear to have been murder charges stemming from the robbery in June 1974 during which a woman was killed. As the jury could not arrive at a unanimous verdict, the judge ordered a new trial which took place on 13 July 1976. After being convicted and sentenced to death, the author appealed to the Court of Appeal, which, on 17 April 1977, ordered a new trial on the grounds of "unfair identification". The new trial took place in July 1978 and O. W. was again convicted and sentenced to death. His second appeal to the Court of Appeal was dismissed in December 1980. He maintains his innocence and claims that the sole witness against him was instructed by the police to identify him as one of the suspects and that defence exhibits from previous proceedings, which were to be used to impeach the witness and which were supposed to be in the possession of the court, could not be found for his trial in 1978. O. W. did not mention in his initial letter whether he had filed a petition for leave to appeal to the Judicial Committee of the Privy Council.

3. By decision of 8 April 1987, the Human Rights Committee requested O. W., under rule 91 of the Committee's provisional rules of procedure, to furnish clarifications on a number of issues relating to his communication and transmitted the communication for information to the State party, requesting it, under rule 86 of the provisional rules of procedure, not to carry out the death sentence against the author before the Committee had had an opportunity to consider further the question of the admissibility of the communication. By letter dated 1 May 1987, the author provided a number of clarifications and stated that the Jamaica Council for Human Rights had filed a petition on his behalf for leave to appeal to the Judicial Committee of the Privy Council, indicating that this appeal, to the best of his knowledge, was still pending.

4. By a telegram dated 23 July 1987 addressed to the Deputy Prime Minister and Minister for Foreign Affairs, the Chairman of the Human Rights Committee informed the State party that the consideration of the question of admissibility of the communication would be further delayed and reiterated the Committee's request that the death sentence against O. W. should not be carried out before the Committee had had an opportunity to consider further the question of the admissibility of the communication. By a letter dated 11 October 1987, the author's counsel informed the Committee that the Judicial Committee of the Privy Council had granted the author's petition for special leave to appeal on 8 October 1987 and would conduct a hearing on the merits of the case at a date to be determined. He requested the Committee to postpone consideration of the case pending the outcome of the author's appeal to the Judicial Committee of the Privy Council.

5.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its provisional rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

5.2 The Committee has ascertained as it is required to do under article 5, paragraph 2 (a), of

the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

5.3 With respect to the requirement of exhaustion of domestic remedies under article 5, paragraph 2 (b), of the Optional Protocol, the Committee has noted the letter from the author's counsel, dated 11 October 1987, indicating that the Judicial Committee of the Privy Council granted the author's petition for special leave to appeal and would conduct a hearing on the merits of the case at a date to be determined. It thus concludes that one available remedy has not been exhausted by the author. Article 5, paragraph 2 (b), however, precludes the Committee from considering a communication prior to the exhaustion of all available domestic remedies.

6. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 5, paragraph 2 (b), of the Optional Protocol;

(b) That, since this decision may be reviewed under rule 92, paragraph 2, of the Committee's provisional rules of procedure upon receipt of a written request by or on behalf of the author containing information to the effect that the reasons for inadmissibility no longer apply, the State party shall be requested, taking into account the spirit and purpose of rule 86 of the Committee's provisional rules of procedure, not to carry out the death sentence against the author before he has had a reasonable time, after completing the effective domestic remedies available to him, to request the Committee to review the present decision;

(c) That this decision shall be transmitted to the State party and to the author.