

HUMAN RIGHTS COMMITTEE

A. A. v. Jamaica

Communication No. 251/1987

30 October 1989

ADMISSIBILITY

Submitted by: A. A. [name deleted]

Alleged victim: The author

State party: Jamaica

Date of communication: 24 August 1987 (date of initial letter)

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

Meeting on 30 October 1989,

Adopts the following:

Decision on admissibility

1. The author of the communication (initial submission dated 24 August 1987 and subsequent correspondence) is A. A., a Jamaican citizen currently awaiting execution at St. Catherine District Prison, Jamaica. He claims to be the victim of a violation of his human rights by Jamaica. He is represented by counsel.

2.1 The author claims that on 15 July 1979, a/ on his way home from work in the Parish of St. Ann, he was attacked by an armed person who allegedly wounded him on the hands, back and chest. In an attempt to defend himself, the author fatally wounded the assailant. The author received treatment for his injuries, including, as he claims, several stitches "above the heart". He was subsequently arrested and charged with the murder.

2.2 On 27 May 1981, the author was convicted and sentenced to death in the St. Ann Circuit court. With respect to the circumstances of the trial, the author claims that he had insufficient opportunity to consult with his court-appointed lawyer. Furthermore, two of the prosecution witnesses are said

to have committed perjury, allegedly because they had “bribed” the deceased to attack the author. Some of the evidence presented by the police (apparently the arresting officers), the author submits, was equally “fabricated”. Several witnesses sought to testify on his behalf; one of them, one J. B., was allegedly subjected to police intimidation after his testimony and did not return to court. Thus, the author claims, the police “sabotaged” his witnesses.

2.3 On 22 September 1982, the author’s appeal was dismissed by the Jamaican Court of Appeal. From the “note of oral judgment” delivered by the Court of Appeal and transmitted to the author under cover of a letter from the Jamaican Ministry of Justice dated 2 November 1988, it transpires that the lawyer assigned to the author failed to appear in court, and that the appeal was dismissed with the author unrepresented. The text of the oral judgment continues as follows:

“The Court examined the Records which indicated that two grounds of appeal were filed by applicant in person viz:

(i) Unfair Trial,

(ii) Evidence is insufficient to warrant a conviction,

and then he added:

‘Further grounds of appeal will be filed by my Attorney-at-Law, Mr. E. S., Brown’s Town P. O., St. Ann.’

No such grounds were filed.

No further grounds of appeal were in fact filed.

The President of the Court observed that on the evidence for the prosecution it was a clear case of murder. The defence consisted of a Statement by the Accused from the dock in which he raised the issue of self-defence. The Court said that the trial judge identified the issues of fact and gave adequate directions on the law. The application was dismissed as being without merit.”

2.4 The author claims that he has been the victim of a miscarriage of justice both during his trial and the hearing of the appeal, and that he should have been acquitted because he had acted in self-defence. In this context, he quotes from a decision of the Judicial Committee of the Privy Council that he alleges should, if applied to his situation, lead to his acquittal. The author does not provide any details about this decision but alleges that some of the guidelines laid down in it were not followed in his case.

3. By decision of 12 November 1987, the Human Rights Committee transmitted the communication, for information, to the State party, requesting it, under rule 86 of the Committee’s rules of procedure, not to carry out the death sentence against the author before it had had a chance to consider further the question of the admissibility of the communication. The author was requested, under rule 91 of the rules of procedure, to provide several clarifications concerning the conduct of his trial and his appeal, and to provide the Committee with the text of the written judgments in his

case. In a letter dated 21 March 1988, the author provided some of the clarifications sought by the Committee and indicated that he had the services of a London-based lawyer for the purpose of filing a petition for special leave to appeal the Judicial Committee of the Privy Council.

4. By further decision of 22 March 1988, the Working Group of the Human Rights Committee transmitted the communication to the State party, requesting it, under rule 91 of the Committee's rules of procedure, to provide information and observations relevant to the question of the admissibility of the communication. The State party was further requested, in particular, to provide the Committee with the texts of the written judgements in the case and to specify whether the author retained the right to petition the Judicial Committee of the Privy Council for special leave to appeal. The State party was further requested, under rule 86 of the rules of procedure, not to carry out the death sentence against the author while his communication was under consideration by the Committee.

5.1 In submissions dated 10 July and 21 August 1988, the author indicates that he has been unable to obtain a copy of the written judgment of the Court of Appeal in the case, claiming that the Registrar of the Court of Appeal had informed him that there was no such judgment. In the author's opinion, this constitutes inhuman and degrading treatment, since he has been on death row since May 1981, and a written judgment of the Court of Appeal must be submitted for a petition for special leave to appeal to be entertained by the Judicial Committee of the Privy Council. It is submitted that his counsel in London has been unable to file a petition because of the absence of this written judgment.

5.2 In a further submission, the author reiterates that his legal representation throughout the proceedings was wholly inadequate, and that his legal aid attorney failed even to file further grounds of appeal, as he had requested. He submits that generally, because of the insufficiency of fees paid to attorneys working on legal aid assignments, few lawyers ever take their client's interest seriously in capital cases and that, as a result, many inmates have lost confidence in the system which, on paper, provides them with the possibility to petition the Judicial Committee of the Privy Council for leave to appeal.

6. In its submission under rule 91, dated 7 December 1988, the State party argues that the communication is inadmissible on the ground of non-exhaustion of domestic remedies and that the author retains the right, under Section 110 of the Jamaican Constitution, to petition the Judicial Committee of the Privy Council for special leave to appeal. It adds that legal aid would be available to the author for this purpose pursuant to Section 3, paragraph 1, of the Poor Prisoners' Defence Act. The author did not comment on the State party's submission.

7. On 21 December 1988, the law firm representing the author informed the Secretariat that senior counsel instructed to prepare a submission on the merits of a petition for special leave to appeal to the Judicial Committee of the Privy Council had argued against the merits of such a petition in mid-1988. Subsequently, the firm had received a copy of the "note of oral judgment" of the Jamaican Court of Appeal, dated 22 September 1982, from an unrelated third party in the United States; on the basis of this document, counsel had been instructed to prepare another opinion on the merits of a petition. On 5 September 1989, counsel confirmed that her firm continues its efforts to bring the author's case before the Judicial Committee of the Privy Council and informed the Committee that

a petition for special leave to appeal could be expected to be based on two grounds: the issue of the absence of a reasoned judgment of the Court of Appeal and the question of the author's age at the time of the murder.

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

8.2 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.

8.3 With regard to the requirement of exhaustion of domestic remedies, the Committee has noted the State party's contention that the communication is inadmissible because of the author's failure to petition the Judicial Committee of the Privy Council for special leave to appeal. It observes that the author has obtained representation by London solicitors for this purpose, after submitting his communication to the Human Rights Committee, and that his representatives continue to prepare a petition for special leave to appeal on his behalf. While expressing grave concern about the delay in making available to the author a copy of the "note of oral judgment" of the Jamaican Court of Appeal in November 1988, the Committee cannot conclude that a petition for special leave to appeal to the Judicial Committee of the Privy Council must be considered a priori futile. It therefore finds that the requirements of article 5, paragraph 2(b), of the Optional Protocol have not been met.

9. 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 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 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, to the author and to his counsel.

a/ The Notes of Evidence give the date of 15 July 1980.