

## HUMAN RIGHTS COMMITTEE

### A. W. v. Jamaica

Communication No. 290/1988

8 November 1989

### ADMISSIBILITY

*Submitted by:* A. W. [name deleted]

*Alleged victim:* The author

*State party:* Jamaica

*Date of communication:* 16 February 1988 (date of initial letter)

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

Meeting on 8 November 1989,

Adopts the following:

#### **Decision on admissibility\***

1. The author of the communication (initial submission dated 16 February 1988 and subsequent correspondence) is A. W., 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, who claims to be innocent, was arrested on 14 June 1983 and charged, together with one G. S., a/ with a murder, on 13 June 1983, of one R. H. He was tried in the Westmoreland Circuit Court, Jamaica, convicted and sentenced to death on June 1984. On 7 April 1986, the Court of Appeal of Jamaica dismissed his appeal.

2.2 The author states that on 13 June 1983 he was working in his cane field, when Mr. H. approached him and attacked him with a knife; in the course of ensuing struggle, the assailant suffered head injuries. Afterwards, the author stopped a passing police car and informed the police officer of the incident. This officer reportedly told the author and his co-defendant to place the

wounded man into the back of the police car and drove him to the hospital. Later that day, the same officer returned to the author's home, informed him that Mr. H. had died and proceeded to arrest him. He was charged with murder the following day.

2.3 It is alleged that the trial was conducted in a biased way. Although the author's lawyer allegedly cross-examined the two witnesses against him, the judge is said to have constantly interrupted the defence, objected to several relevant questions and even suggested answers to the witnesses. No witnesses are said to have testified on the author's behalf.

3. By decision of 8 July 1988, the Working Group of the Human Rights Committee transmitted the communication to the State party and requested it, under rule 91 of the rules of procedure, to provide information and observations relevant to the question of the admissibility of the communication. It further requested the State party, 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. The author was requested to provide several clarifications concerning his case.

4. In his reply, dated 10 October 1988, the author claims that the statements of the two prosecution witnesses were contradictory. In particular, one of the witnesses referred to a machete allegedly used by the author as the lethal weapon, the other one to an iron pipe and a stone. No iron pipe was, however, exhibited and no forensic tests were carried out on a stick and a stone which had been introduced in evidence. Moreover, the knife allegedly used by Mr. H. was not recovered by the police and, although the trial judge requested that this point be clarified, the police apparently did not comply with the request. The author contends, in particular, that he did not get a fair trial since the trial judge failed to direct the jury on the issue of self-defence.

5. In his submission under rule 91, dated 2 December 1988, the State party argues that the communication is inadmissible pursuant to article 5, paragraph 2(b), of the Optional Protocol because the author may still apply, under Section 110 of the Jamaican Constitution, for special leave to appeal to the Judicial Committee of the Privy Council.

6. By further letter dated 5 May 1989, counsel indicates that the author's petition for special leave to appeal was heard and dismissed by the Judicial Committee of the Privy Council on 4 May 1989.

7. In a further submission dated 12 July 1989, the State party contends that, in spite of the dismissal of the author's petition by the Judicial Committee of the Privy Council, the communication remains inadmissible for failure to exhaust domestic remedies, since the author has failed to pursue remedies available to him under the Jamaican Constitution. In this context, the State party submits that the provision of the Covenant invoked by the author (art. 14) is coterminous with the right guaranteed by Section 20 of the Jamaican Constitution, which provides for due process. Under Section 25 of the Constitution, if anyone alleges that any one of the rights guaranteed by Section 25 has been, is being, or is to be contravened in relation to him, he may, without prejudice to any other action with respect to the same matter which is lawfully available, apply to the Supreme Constitutional Court for redress. The State party thus reiterates that the communication is inadmissible.

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 considered the material submitted by the author's counsel, including the author's petition for special leave to appeal to the Judicial Committee of the Privy Council. From this information, it appears that the author claims bias of the court, in particular in respect of the adequacy or otherwise of the judge's instructions to the jury, in the light of the evidence that was put before the jury and which it was for the jury to accept or reject. While article 14 of the Covenant guarantees the right to a fair trial, it is for the appellate courts of the States parties of the Covenant to evaluate facts and evidence in a particular case. b/ Thus the review, by the Committee, of specific instructions to the jury by the judge in a trial by jury or of generalized claims of bias is beyond the scope of application of article 14. In the circumstances, the Committee concludes that the communication is inadmissible as incompatible with the provisions of the Covenant, pursuant to article 3 of the Optional Protocol.

9. The Human Rights therefore decides:

- (a) The communication is inadmissible;
- (b) This decision shall be transmitted to the State party, to the author and to his counsel.

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\*/ The text of an individual opinion by Ms. Christine Chanet is reproduced in the appendix.

a/ Mr. G. S.'s communication No. 369/1989 was declared inadmissible by the Committee on 8 November 1989.

b/ For an application of this principle, see communication No. 201/1985 (Hendriks v. Netherlands), final views adopted on 27 July 1988, para. 10.4.

### **Appendix**

Individual opinion: submitted by Ms. Christine Chanet pursuant to rule 92, paragraph 3, of the Committee's rules of procedure, concerning the admissibility of communication No. 290/1988 (A. W. v. Jamaica)

As emphasized by the Committee in the case of communication No. 290/1988, it is within the competence of national courts, particularly appeal courts, to assess the fairness of the conditions in which a trial takes place.

However, this competence cannot exclude that of the Committee in implementation of International Covenant on Civil and Political Rights. When a communication is submitted to it, the Committee assesses whether the trial was conducted in accordance with the provisions of article 14 of the Covenant.

At the admissibility stage, the Committee proceeds to a prima facie review of the applicant's grievances. The author of this communication challenges the regularity of the judge's conduct of the hearing. In particular, A. W. referred to an examination of the witnesses which might be contrary to article 14, paragraph 3 (e), of the Covenant.

It is therefore my view that, while the facts adduced by the applicant could be regarded as insufficiently substantiated, they could not be declared incompatible with the provisions of the Covenant on the basis of article 3 of the Optional Protocol.