HUMAN RIGHTS COMMITTEE

M.F. v. Jamaica

Communication No. 335/1988

17 July 1992

CCPR/C/45/D/335/1988**

ADMISSIBILITY

Submitted by: M.F. [name deleted]

Alleged victim: The author

State party: Jamaica

Date of communication: 28 June 1988 (initial submission)

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

Meeting on 17 July 1992,

Adopts the following:

Decision on admissibility

1. The author of the communication (initial submission dated 28 June 1988, and subsequent submissions) is M.F., a Jamaican citizen currently awaiting execution at St. Catherine District Prison, Jamaica. He claims to be a victim of violations of his human rights by Jamaica.

The facts as submitted by the author:

2.1 The author, a construction worker, was arrested on 1 September 1985, following a shoot-out at a local cinema during which a woman was killed; later in the month, he was charged with murder. At his trial in the Home Circuit Court, during 1986, the jury failed to return a unanimous verdict. A re-trial was ordered, and the author was found guilty as charged and sentenced to death on 19 January 1987.

2.2 The author claims to be innocent; he submits that, at the time of the murder, he was together with some friends at a construction site, some eight kilometres away from the place of the murder. He claims that he was convicted for political reasons, as he had a longstanding political argument with the investigating officer in the case. He also surmises that the murder was the result of political fighting between two youth gangs, one adhering to the People's National Party (P.N.P.) and the other to the Jamaican Labour Party (J.L.P.). The author himself states that he is a supporter of the J.L.P.

2.3 The author contends that during his re-trial, his legal aid counsel refused to have him crossexamined, and failed to call witnesses for the defence. The witnesses for the prosecution allegedly committed perjury; according to the author, they told him in prison that they did not know who had fired the shots, but that they decided to testify against him for political reasons. The witnesses, who were awaiting trial for other, apparently unrelated charges, allegedly were released on bail on the condition that they would testify against the author. The author further alleges that the jury was biased against him, and that the judge misdirected the jury about the witnesses.

2.4 The author's appeal was dismissed on 4 December 1987. According to him, his counsel did not consult him about the grounds for the appeal. Although the author had informed counsel about what the witnesses had told him, counsel failed to take statements from these witnesses.

2.5 According to the author, one of the main witnesses for the prosecution, A.K., later gave a statement to the Director of Public Prosecution, expressing regret at having implicated the author. This statement was sent to the Governor General, who would review the matter in order to reopen the case.

2.6 The author states that, on 27 January 1989, he authorized a lawyer to appeal to the Judicial Committee of the Privy Council. No petition for special leave to appeal, however, appears to have been filed.

The complaint:

3.1 Although the author does not invoke any article of the International Covenant on Civil and Political Rights, it appears from his submissions that he claims to be a victim of a violation by Jamaica of article 14 of the Covenant.

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

4.1 By submission of 4 July 1989, the State party argues that the communication is inadmissible on the ground of failure to exhaust domestic remedies, since the author can still petition the Judicial Committee of the Privy Council for leave to appeal.

4.2 By further submission of 21 July 1989, the State party informs the Committee that an investigation was conducted into the author's allegation that one of the main witnesses had given a written confession to the Director of Public Prosecution, and that the Governor

General of Jamaica would be requested to review his case under section 29(1) of the Judicature (Appellate Division) Act. The State party forwards the text of said section, from which it transpires that the Governor General's power to refer a case to the Court of Appeal is discretionary.

5. In his reply to the State party's observations, the author states that he was informed that the Privy Council would consider his application early in 1990. He further reiterates that he is innocent of the murder for which he was convicted.

Issues and proceedings before the Committee:

6.1 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.

6.2 Article 5, paragraph 2(b), of the Optional Protocol precludes the Committee from considering a communication if the author has not exhausted all available domestic remedies. The Committee notes that, in spite of the author's statement that he believed that his case would be heard by the Judicial Committee in 1990, no petition for special leave to appeal to the Judicial Committee of the Privy Council appears to have been filed. In the circumstances, the Committee concludes that the requirements of article 5, paragraph 2(b), of the Optional Protocol have not been met.

7. 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 pursuant to 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, under 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 communicated to the State party and the author.

[Done in English, French, Russian and Spanish, the English text being the original version.]

Footnotes

*/ All persons handling this document are requested to respect and observe its confidential nature.

**/ Made public by decision of the Human Rights Committee.