

HUMAN RIGHTS COMMITTEE

Ellis v. Jamaica

Communication No. 276/1988

28 July 1992

CCPR/C/45/D/276/1988*

VIEWS

Submitted by: Trevor Ellis [represented by counsel]

Alleged victim: The author

State party: Jamaica

Date of communication: 1 March 1988

Date of decision on admissibility: 18 July 1989

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

Meeting on 28 July 1992,

Having concluded its consideration of communication No. 276/1988, submitted to the Human Rights Committee on behalf of Trevor Ellis 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, his counsel and by the State party,

Adopts its

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

The facts as submitted by the author:

1. The author of the communication is Trevor Ellis, a Jamaican citizen born in 1958, at

present awaiting execution at St. Catherine District Prison, Jamaica. He claims to be a victim of a violation by Jamaica of articles 6, 7, and 14 of the International Covenant on Civil and Political Rights.

2.1 The author states that he was sentenced to death on 3 October 1980 after being convicted of having murdered a van driver (a newspaper distributor) on 22 December 1978. He alleges that he was convicted solely on the testimony of a single eyewitness, a female passenger in the van, who pointed him out at an identification parade held some six weeks after the crime. The witness identified the author as one of three men who, on the night of the murder, had been given a lift by the van driver, then shot him and subsequently raped her. The author was the only person arrested or prosecuted for the crime. Although there was no evidence that he had shot the victim or that he had been armed, he was convicted, he states, on the basis of the principle of 'common design'. The author always maintained his innocence of the crime and, at the trial, two alibi witnesses testified that he was at home on the night of the murder.

2.2 The author's appeal was dismissed by the Jamaican Court of Appeal on 17 December 1982. A subsequent petition for special leave to appeal to the Judicial Committee of the Privy Council was dismissed without a hearing on 11 July 1985. Early in January 1988, a warrant for the execution of the author, on 14 January 1988, was issued, but this was stayed for reasons unknown. A further warrant for his execution on 8 March 1988 was served late in February 1988¹.

2.3 The author claims that in the course of his trial the judge misdirected the jury on the issue of identification and did not apply the principles set out in the leading case on the subject, **Turnbull** (1976) Cr. App. R.132. According to him the trial judge failed to give adequate instruction to the jury about the need for caution in an identification case or to point out to the jury that an identification witness might be subjectively convinced though objectively mistaken. It is also claimed that the author's legal aid lawyer did little pre-trial preparation and failed to pursue adequately a number of points which arose during the trial. The failure of counsel to raise objections to these points at the time of the trial precluded their being considered on appeal.

2.4 The author's current counsel submits that Mr. Ellis' case bears some resemblance to the case of Oliver Whyllie², Junior Reid and Roy Dennis (all Jamaican citizens sentenced to death) in which the Judicial Committee of the Privy Council granted special leave to appeal on 8 October 1987, primarily on the account of the large number of petitions reaching the Judicial Committee from Jamaica that raise serious issues of inadequate directions to juries in capital cases where identification is in question.

The complaint:

3. The author claims to be a victim of a violation by Jamaica of articles 6, 7, and 14 of the Covenant.

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

4. The State party, by submission dated 26 October 1988, contends that the communication is inadmissible on the ground of non-exhaustion of domestic remedies. In this connection, the State party notes that the author "has petitioned the Governor General for a stay of execution and that the Privy Council has recommended to the Governor General that a stay of execution should be granted pending the outcome of the representations made on his behalf". The State party does not explain what it understands by representations.

5.1 In his comments on the State party's submission, dated 22 December 1988, author's counsel argues that the State party's contention with regard to the Privy Council's recommendation to the Governor General concerning the granting of stay of execution to Mr. Trevor Ellis fails to indicate whether the recommendation has been adopted by the Governor General and, therefore, whether a stay of execution is in force.

5.2 It is further submitted that said recommendation has not been communicated to counsel and that counsel's petition to the Governor General, dated 2 March 1988, requesting a stay of execution, pending the outcome of a number of similar cases before the Judicial Committee of the Privy Council in London, has remained as yet unanswered.

5.3 Moreover, author's counsel observes that the remaining remedies are ineffective and the procedures for securing such remedies are unduly prolonged and uncertain; therefore, the present communication should not be deemed inadmissible under article 5, paragraph 2(b), of the Optional Protocol.

The Committee's admissibility decision:

6.1 At its 36th session, the Committee considered the admissibility of the communication. It noted the State party's contention that the communication was inadmissible because of the author's failure to exhaust domestic remedies. In this connection, the Committee observed that a petition to the Governor General for a stay of execution is not a domestic remedy that can render a communication inadmissible under article 5, paragraph 2(b), of the Optional Protocol.

6.2 On 18 July 1989, accordingly, the Committee declared the communication admissible.

Review of admissibility:

7. The State party, in submissions dated 10 January 1990 and 4 September 1990, maintains that the communication is inadmissible. It submits that, pending the outcome of three other appeals before the Judicial Committee of the Privy Council regarding the issue of identification, the author is seeking to petition the Governor General for mercy under section 90 of the Jamaican Constitution. The State party further argues that remedies under section 20 and 25 of the Constitution are still available to the author. Finally, it argues that the Committee is not competent to evaluate issues of facts and evidence.

8. Counsel, by submission of 10 April 1990, indicates that he has lodged a petition with the Governor General to allow the rehearing of the author's case under section 29 of the

Judicature Act.

9.1 The Committee observes that a petition for mercy addressed to the Governor General cannot be considered a domestic remedy within the meaning of article 5, paragraph 2(b), of the Optional Protocol. Nor does the author's filing of a petition with the Governor General for a rehearing preclude the consideration of the communication by the Committee.

9.2 The Committee further refers to its decisions in communications Nos. 230/1987 and 283/1988³ and reaffirms that, in view of the absence of legal aid for constitutional motions, a constitutional motion does not, in the circumstances of this case, constitute an available and effective remedy within the meaning of article 5, paragraph 2(b), of the Optional Protocol.

9.3 The Committee thus confirms its decision on admissibility.

Examination of the merits:

10.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol.

10.2 Having considered the information before it, the Committee finds that the evidence discloses no violation of article 14 of the Covenant.

10.3 The Committee further finds that the evidence discloses no violation of article 7 of the Covenant.

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 do not disclose a violation of articles 7 and 14 of the International Covenant on Civil and Political Rights.

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

Footnotes

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

1/ By telegram of 2 March 1988 the Special Rapporteur of the Human Rights Committee on death penalty cases, Mr. Andreas Mavrommatis, requested the Jamaican Minister of Foreign Affairs to grant a stay of execution, to allow the Committee to consider Mr. Ellis' communication. On 8 March 1988 stay of execution was granted.

2/ Mr. Whyllie's communication, No. 227/1987, was declared inadmissible by the Human Rights Committee on 26 July 1988, on the ground of non-exhaustion of domestic remedies.

3/ Raphael Henry v. Jamaica , Views adopted on 1 November 1991, paragraphs 7.3 to 7.6,
and Aston Little v. Jamaica , Views adopted on 1 November 1991, paragraphs 7.2 to 7.6.