

HUMAN RIGHTS COMMITTEE

Peart v. Jamaica

Communication No. 482/1991

19 March 1993

CCPR/C/47/D/482/1991 *

ADMISSIBILITY

Submitted by: Andrew Peart (represented by counsel)

Alleged victim: The author

State party: Jamaica

Date of communication: 12 November 1991 (initial submission)

Documentation references: Prior decisions - Special Rapporteur's combined rule 86/rule 91 decision, transmitted to the State party on 21 January 1992 (not issued in document form)

Date of present decision: 19 March 1993

The Human Rights Committee, acting through its Working Group pursuant to rule 87, paragraph 2, of the Committee's rules of procedure, adopts the following decision on admissibility.

Decision on admissibility

1. The author of the communication is Andrew Peart, a Jamaican citizen awaiting execution at St. Catherine District Prison, Jamaica. He claims to be a victim of violations by Jamaica of articles 2, paragraph 3(a); 6, paragraphs 1, 2 and 4; 7; 9; 10, paragraphs 1 and 3; and 14, paragraphs 1, 3 (c), (d) and (e), of the International Covenant on Civil and Political Rights. He is represented by counsel. Communication No. 464/1991 concerning the author's brother, G.P., is also pending before the Committee.

Facts as submitted by the author:

2.1 The author was arrested on 14 July 1986 and charged with the murder, on 24 June 1986, of the one D.G. The author's brother was arrested on 5 March 1987, in connection with the same murder.

On 26 January 1988, after a trial lasting six days, they were convicted and sentenced to death in the Home Circuit Court of Kingston. The Court of Appeal dismissed their appeal on 18 October 1988; they received a copy of the judgement on 7 February 1989. A petition for special leave to appeal was dismissed by the Judicial Committee of the Privy Council on 6 June 1991. With this, it is submitted, domestic remedies have been exhausted. The murder for which the author was convicted has now been classified as a capital offence under the Offences against the Person (Amendment) Act, 1992.

2.2 During the trial, the only eyewitness for the prosecution, one L.W., testified that, on 24 June 1986 at about 9 p.m., he had been watching a bingo game with friends. Among those present was the deceased. According to the witness, the author, whom he had known since childhood, came up to the group and called D.G. The witness, together with the deceased, one H.W., and the author, went to the latter's home. L.W. then described what appeared to be an ambush: an armed man told D.G. not to move, the author wrestled D.G. to the ground, while the author's brother threatened him with a gun. L.W. and H.W. ran indoors to hide. L.W. testified that he heard gunshots and a voice saying "make sure he is dead". The witness was then discovered by the author, who tied him up with electric wire and threatened him. The witness managed to escape and reported the incident to the police.

2.3 In an unsworn statement from the dock, the author contended that, on the night of the murder, he was in the company of his girlfriend until 11 p.m., and that he had been framed. The author's brother contended that, at the time in question, he was watching a movie with friends; two witnesses testified on his behalf.

2.4 The author alleges that he was beaten and injured by prison warders in 1989; as a result, he received three stitches to the head and two stitches behind his left ear. He further states that he suffered several injuries at the hands of prison warders during riots in May 1990. Counsel refers to a letter from the author, dated 11 December 1990, in which he indicates that he still suffers from the injuries sustained, namely a fractured knee, injuries to his right foot, which required 12 stitches, and back injuries which caused internal bleeding. The author claims that he was denied adequate medical treatment; despite numerous complaints, he has been attended mainly by warders and a doctor of a prenatal care clinic.

2.5 Counsel indicates that the remedies open to the author in respect of the latter allegations - i.e., complaints to the Superintendent of St. Catherine District Prison and to the Parliamentary Ombudsman, are ineffective. The Ombudsman, for example, did not reply to a complaint filed by the author's mother on her son's behalf. Counsel herself requested the Superintendent to provide clarifications. The latter replied that the author was in good health and that the record did not show that he had suffered any serious injuries. In addition, she informed the Commissioner for Corrections about the beatings; he answered that the author received adequate medical care and that the police was investigating the matter. Since no further action has been taken in this regard, this remedy is said to be ineffective. Furthermore, in the absence of legal aid, a constitutional motion cannot be deemed to constitute an available remedy.

Complaint:

3.1 The author claims that he was denied a fair trial, in violation of article 14, paragraph 1, of the Covenant. He contends that he was convicted solely on the basis of the evidence of L.W., who was only 13 or 14 years old at the time of the incident, and 15 years old at the time of the trial. H.W. was not called to give evidence; it is submitted that the trial transcript reveals that H.W. was not called because his evidence would not have supported that of L.W.

3.2 Counsel observes that under Jamaican law in respect of evidence on which the prosecution does not wish to rely at the trial, it is the prosecution's duty to inform the defence if there are material differences between a statement given by a witness to the police and his or her evidence given in court, and to provide the defence with a copy of such statement. If the prosecution refuses to do so, the defence is entitled to apply to the judge for the release of the statement and the judge should examine it and, if deemed appropriate, make it available to the defence. Counsel submits that there were such discrepancies between L.W.'s testimony during trial and his initial statement to the police. He further notes that, during the trial, the author's lawyer requested to see the original statement, that the prosecution refused to release it, and that the judge refused the application without having examined the statement. It is submitted that by dismissing the application, the judge prejudiced the defence, as the original statement would have cast doubt on the credibility of the witness. The Court of Appeal considered the issue of discrepancies in the testimony of L.W., and held that these discrepancies did not destroy or severely impugn the credibility of the evidence.

3.3 Counsel further notes that the judge allowed a dock identification, although there had not previously been an identification parade. She submits that the failure to conduct an identification parade, combined with the lack of corroborative evidence, and a dock identification of the author in front of the jury, violated his right to a fair trial.

3.4 Furthermore, the judge is said to have been biased, because he allowed evidence which was not directly related to the crime, and the prejudicial effect of which far outweighed its probative value.

3.5 Counsel points out that the jury remained in court during a submission of "no case to answer" made by G.P.'s lawyer, which was rejected by the judge. ^{1/} Counsel argues that this was a question of law, to be considered by the judge, and that the judge had to decide whether the matter should be left to the jury. The prejudicial effect of the jury's presence, when the judge rejected the lawyer's arguments, is said to have been compounded by the judge's summing-up.

3.6 Counsel contends that the judge failed to warn the jury properly about the dangers inherent in visual identification evidence, and that he disregarded the guidelines laid down in the case of R. v. Turnbull (1977). This error allegedly was compounded by the judge's refusal to admit as evidence L.W.'s original statement and by his failure to remind the jury of the difficulties presented by the insufficient lighting conditions at the locus in quo.

3.7 The author argues that article 14, paragraph 3 (e), was breached because, as a result of the refusal to disclose L.W.'s statement, his lawyer was precluded from adequately cross-examining L.W. on the issue of identification. Furthermore, E.B., who had been subpoenaed as a defence witness, never appeared in court, despite police efforts to bring him to court. At the trial, the defence alleged that L.W., after having

been freed, told E.B. that he did not know who had killed D.G.; this was denied by L.W. Moreover, an expert witness, whose opinion on the state of the moon during the night of the crime had been requested to counter L.W.'s evidence that there had been moonlight, was not called. This witness was called at short notice, since L.W. had stated during the preliminary enquiry that the premises were dark. It is further submitted that the judge cut short the cross-examination of the arresting officer, thereby depriving the defence of an opportunity to reveal inconsistencies in L.W.'s statement.

3.8 The author complains that, during an interview with his lawyer, prison officers were present. This is said to be a breach of the right to unimpeded access to a lawyer.

3.9 The author further alleges violations of articles 9 and 14, paragraph 3 (c), of the Covenant, on account of the delays in the judicial proceedings in his case. Thus, he was arrested on 14 July 1986, was not brought before an examining magistrate until 5 March 1987, and was not tried until the end of January 1988. It is submitted that a delay of 18 months between arrest and trial is unreasonable. It is submitted that similar delays occurred between the dismissal of the author's appeal and the refusal of leave to appeal by the Judicial Committee, which is mainly attributable to the Jamaican judicial authorities; counsel explains that it was difficult to obtain copies of the deposition and the original statement of L.W.

3.10 The author claims that the death row section of St. Catherine District Prison is extremely overcrowded, that recreational and sanitary facilities are virtually non-existent, and that there is hardly any medical care. In support of this contention, counsel encloses copies of reports prepared by a non-governmental organization and by a London law firm. Counsel submits that the conditions described in the reports apply to all prisoners on death row, and consequently to the author. Furthermore, it appears from one of the reports that the author was injured by prison warders during the riots of May 1990. The living conditions on death row, the brutal treatment by the prison warders and the absence of medical care are said to constitute violations of articles 7 and 10, paragraphs 1 and 3, of the Covenant. Counsel indicates that, in respect of these violations, remedies theoretically open to the author are ineffective. In this context, counsel refers to information received from the Jamaica Council for Human Rights, from which it appears that complaints to the Superintendent or to the Ombudsman often remain unfiled, for fear of reprisals.

State party's information and observations and counsel's comments:

4.1 On 21 January 1992, the Special Rapporteur on New Communications requested the State party to indicate whether a medical examination had been carried out on the author, and, in the affirmative, to provide the Committee with a copy of the medical record. The State party did not comply with this request.

4.2 The State party submits that the communication is inadmissible on the ground of non-exhaustion of domestic remedies. It contends that the author may still apply to the Supreme (Constitutional) Court of Jamaica to seek redress for the alleged breaches, pursuant to sections 14, 15, 20, and 110 of the Jamaican Constitution.

4.3 The State party further contends that the alleged ill-treatment of the author is presently under

investigation, conducted by the inspectorate of the Ministry of National Security and Justice. It submits that a statement has been made by the author in this respect. Therefore, the State party argues, it would be improper for the Committee to declare this part of the communication admissible.

4.4 In her comments on the State party's submission, counsel challenges the State party's contention that the author may still pursue constitutional remedies, and submits that these remedies are not available, because, as a prisoner on death row, the author does not have the financial means, and because legal aid is not made available for this purpose.

4.5 Counsel further enclose a copy of correspondence from the Minister of Justice of Jamaica, stating that an investigation has been opened regarding the alleged ill-treatment of the author. The Commissioner of Corrections has been instructed to ensure that the author would be given the protection which his situation warrants, that he would receive adequate medical treatment, and that everything would be done to ensure that the warders do not cause any physical harm to him. Counsel observes, however, that her client has not informed her of any improvement in his situation.

Issues and proceedings before the Committee:

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

5.2 The Committee notes that parts of the author's allegations relate to the conduct of the trial by the judge, the evaluation of evidence by the court, and the judge's instructions to the jury. It recalls that it is generally for the appellate courts of States parties to the Covenant to evaluate the facts and evidence in a particular case. Similarly, it is for the appellate courts and not for the Committee to review specific instructions to the jury by the judge, unless it is clear that the instructions to the jury were arbitrary or amounted to a denial of justice, or that the judge manifestly violated his obligation of impartiality. The material before the Committee does not show that the author's trial suffered from such defects. In particular, both the trial judge, in his summing up, and the Court of Appeal extensively addressed the issue of discrepancies in the statements of L.W. In this respect, therefore, the author's claims do not come within the competence of the Committee, and this part of the communication is inadmissible as incompatible with the provisions of the Covenant, under article 3 of the Optional Protocol.

5.3 As to the claim under article 14, paragraph 3 (e), because of the judge's refusal to disclose the content of the deposition made by L.W. and the unavailability of a material defence witness, the Committee notes that the author's privately retained lawyer did not request an adjournment of the trial. On the other hand, the Committee notes that, on the basis of the material before it, the issue of the unavailability of E.B. and of the statement of L.W. could not have been solved by a mere brief adjournment of the trial. In the circumstances of the case, the Committee considers that this issue should be considered on its merits.

5.4 As to the author's claim of undue delay in the judicial proceedings, the Committee notes a gap of 18 months between the author's arrest and his trial in the Home Circuit Court does not

substantiate a claim of “undue delay” within the meaning of article 14, paragraph 3(c), especially given the nature of the alleged offence. On the other hand, the Committee considers that a delay of eight months between the author’s arrest and his presentation to an examining magistrate may raise issues under article 9, paragraph 3, which entitles anyone arrested or detained on a criminal charge to be brought promptly before a judge or other officer authorized by law to exercise judicial power.

5.5 The author has further claimed that he did not have unimpeded access to a lawyer because prison officers were present during conversations with his representative. In the Committee’s opinion, whether the guarantee of a fair trial protects an accused’s right to private (and/or unsupervised) contact with his lawyer, is an issue that should be considered on the merits.

5.6 Finally, as to the claims under articles 7 and 10, the Committee has noted the State party’s contention that as an investigation into these claims is under way, it would be improper to make a finding on admissibility at this point in time. It considers, however, that the author has made all efforts that could reasonably have been expected from him to exhaust available domestic remedies. It further notes that the investigations into the author’s claims do not appear to have produced results after close to three years, and that the State party has failed to inform the Committee, as requested, whether a medical examination of the author has been carried out. In the circumstances, the Committee concludes that it is not precluded, under article 5, paragraph 2(b), of the Optional Protocol, from considering this part of the communication. The investigations of the State party, if and when concluded, could assist the Committee on the examination of the merits.

6. The Human Rights Committee therefore decides:

(a) That the communication is admissible in so far as it appears to raise issues under articles 7, 9, paragraph 3, 10, paragraph 1, 14, paragraphs 1 and 3(e), of the Covenant;

(b) That, in accordance with article 4(2) of the Optional Protocol, the State party shall be requested to submit to the Committee, within six months of the date of transmittal to it of the present decision, written explanations or statements clarifying the matter and the measures, if any, that may have been taken by it;

(c) That the decision may be reviewed pursuant to rule 93, paragraph 4, of the Committee’s rules of procedure in respect of the author’s claims under articles 7 and 10, upon receipt of information from the State party to the effect that the reasons for admissibility no longer apply;

(d) That the State party shall be requested, under rule 86 of the rules of procedure, not to carry out the death sentence against the author while his communication is under consideration by the Committee. This request does not imply a determination of the merits of the communication;

(e) That any explanations or statements received from the State party shall be communicated by the Secretary-General under rule 93, paragraph 3, of the rules of procedures to the author, with the request that any comments which he may wish to submit thereon should reach the Human Rights Committee, in care of the Centre for Human Rights, United Nations Office at Geneva, within six weeks of the date of the transmittal;

(f) That this decision shall be communicated to the State party, to the author and to his counsel.

(Done in English, French, and Spanish, the English text being the original version.)

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

1/ The nature of a no-case submission is that the defence highlights the weaknesses and inconsistencies in the evidence in order to argue that there is no evidence upon which, if the evidence adduced were accepted, a reasonable jury, properly directed, could convict.