

## HUMAN RIGHTS COMMITTEE

### Marriott v. Jamaica

Communication No. 519/1992

30 June 1994

CCPR/C/51/D/519/1992\*

### ADMISSIBILITY

*Submitted by:* Lyndon Marriott [represented by counsel]

*Alleged victim:* The author

*State party:* Jamaica

*Date of Communication:* 14 July 1992 (initial submission)

*Documentation references:* Prior decisions: CCPR/C/47/D/519/1992 (Decision under rule 91, dated 31 March 1993)

*Date of present decision:* 30 June 1994

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 Lyndon Marriott, a Jamaican citizen currently serving a sentence of life imprisonment at St. Catherine District Prison. He claims to be a victim of violations by Jamaica of articles 7 and 14 of the International Covenant on Civil and Political Rights. He is represented by counsel.

#### The facts as submitted by the author

2.1 The author was arrested on 12 March 1987 and charged with the murder on the same day of one Aston Nugent. He was tried in the Home Circuit Court, Kingston, found guilty as charged and sentenced to death on 16 December 1987. The Court of Appeal dismissed his appeal on 3 October 1988. A further petition for special leave to appeal was dismissed by the Judicial Committee of the

Privy Council on 4 October 1990. According to counsel, the author's case has been reviewed pursuant to the Offences against the Person (Amendment) Act, 1992. The murder for which the author was convicted has been classified as a non-capital murder, consequently, the author's death sentence was commuted to life imprisonment in December 1992; he will be entitled to parole after 15 years.

2.2 During the trial, Rosetta Brown, a former girlfriend of the author and, at the time of the incident, the girlfriend of the deceased, testified that on 12 March 1987, the author arrived at the deceased's house, at which she was staying, and told her to go home. She walked over to a neighbour's yard, followed by the author and the deceased. The two men started a dispute about her. Nugent apparently tried to disengage the author, who had taken hold of Brown's blouse, upon which the author stabbed Nugent with a knife. Rosetta Brown testified that she saw the author take out the knife from his waist, but that she could not see him stab Nugent, since she was standing behind the deceased. Doretta Williams, a neighbour, testified that she saw the author stab the deceased in the chest.

2.3 The third prosecution witness, Rosemarie Barnett, was another friend of both the deceased and the author. She testified that the author had come to her house in the morning of 12 March 1987, threatening to kill Nugent. He returned to her home an hour later, holding a knife with blood on the handle, and telling her that he had stabbed him.

2.4 In an unsworn statement from the dock, the author contended that Nugent had pushed and kicked him; that the deceased had then pulled out a knife from his pocket and raised it in order to stab the author; and that, in the ensuing struggle, Nugent was stabbed.

### The complaint

3.1 The author contends that he was denied a fair hearing by an impartial tribunal, in violation of Section 20(1) of the Jamaican Constitution and article 14 of the Covenant. He claims that the judge failed to direct the jury properly on the issue of provocation and that he withdrew the issue of self-defence from it. Moreover, the trial judge was allegedly biased against the author and made ironical and provocative comments on the sentence, which were later criticized by the Court of Appeal, and which according to the author provide further evidence of the court's bias.

3.2 The author further contends that the foreman of the jury was an acquaintance of the deceased, and that the court was therefore not impartial. It is further submitted that the defence was not informed at the preliminary hearing that the prosecution would call a third witness at the trial, so that no counter-arguments could be prepared. This issue was raised with the trial judge, who refused to admit it.

3.3 Furthermore, the author submits that before the Court of Appeal, his counsel, who had not represented him at first instance, made no submissions in support of the appeal. Counsel, who was assigned to the case by the Jamaica Council for Human Rights, explains that there were issues which could have been raised at first instance, but, since "the incompetence of counsel is not a ground for appeal", he claimed that it would have been futile to canvass this aspect.

3.4 The author finally asserts that the time spent on death row, during which he could not avail himself of appellate remedies, constitutes cruel, inhuman or degrading treatment within the meaning of Section 17(1) of the Jamaican Constitution and article 7 of the Covenant.

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

4.1 By submission of 22 June 1993, the State party argues that the communication is inadmissible. It refers to Section 25 of its Constitution, which provides that anyone who alleges that any of his constitutional rights have been violated may apply to the Supreme Court for redress. The right to fair trial is protected by Section 20 of the Constitution. Since the author has not filed a constitutional motion, the State party argues that the communication is inadmissible for failure to exhaust domestic remedies.

4.2 The State party further argues that the communication raises issues of facts and evidence which the Committee is not competent to determine. It argues that the communication is inadmissible also on this ground.

5.1 In his comments on the State party's submission, counsel to the author contests that an application to the Supreme Court of Jamaica under Section 25 of the Jamaican Constitution is an available and effective remedy in the circumstances of the author's case. In this connection, he states that no legal aid is available to the author to pursue this remedy. He further argues that, since the author had available to him an appeal to the Court of Appeal and to the Privy Council, the Supreme Court would not have exercised its powers, pursuant to paragraph 2 of Section 25 of the Constitution.

5.2 With regard to his claim under article 7 of the Covenant, counsel claims that a constitutional motion would have been ineffective, since the Supreme Court would have considered itself bound by the decision of the Judicial Committee of the Privy Council in 1981 (Riley v. Attorney General) where it was held that whatever the reasons for delay the Privy Council would not allow a ground that an execution contravened Section 7 of the Jamaican Constitution.

5.3 Finally, counsel argues that the author does not request the Human Rights Committee to evaluate the facts of the case and that he does not raise issues of facts and evidence. Counsel emphasizes that the author requests the Committee to determine whether he has received a fair hearing within the meaning of article 14 of the Covenant, and that the facts and issues of the case are relevant bearing in mind that a defendant should not be convicted of a capital offence except upon clear and incontrovertible evidence.

#### 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 procedures, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 The Committee has taken note of the State party's claim that the communication is inadmissible on the grounds of failure to exhaust domestic remedies. The Committee recalls its constant

jurisprudence that for purposes of article 5, paragraph 2(b), of the Optional Protocol, domestic remedies must be both effective and available. The Committee notes that the Supreme Court of Jamaica has, in recent cases, allowed applications for constitutional redress in respect of breaches of fundamental rights, after the criminal appeals in these cases had been dismissed. However, the Committee also recalls that the State party has indicated on several occasions 1/ that no legal aid is made available for constitutional motions. The Committee considers that, in the absence of legal aid, a constitutional motion does not, in the circumstances of the instant case, constitute an available remedy which needs to be exhausted for purposes of the Optional Protocol. In this respect, the Committee therefore finds that it is not precluded by article 5 paragraph 2(b), from considering the communication

6.3 As regards the author's claims under article 14, the Committee observes that the author's allegations relate partly 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 author's allegations do not show that the judge's instructions or the conduct of the trial suffered from such defects. In this respect, therefore, the author's claims do not come within the competence of the Committee. Accordingly, this part of the communication is inadmissible as incompatible with the provisions of the Covenant, under article 3 of the Optional Protocol.

6.4 As regards the author's allegation that the foreman of the jury was a friend of the deceased, the Committee notes that this matter was not raised by the author or his counsel during the trial or at appeal. This part of the communication is therefore inadmissible for failure to exhaust domestic remedies.

6.5 The Committee notes that the author also claims that his defence counsel had not been informed that the prosecution would call a third witness, that the matter was brought to the attention of the judge, but that the judge failed to adjourn the hearing to give counsel time to prepare for the cross-examination. The Committee considers that this claim may raise issues under article 14, paragraph 3(b) and (e), of the Covenant, that need to be examined on the merits.

6.6 As regards the author's claim concerning his legal representation at the appeal proceedings, the Committee notes that the author's lawyer was provided by the Jamaica Council for Human Rights, a non-governmental organization. The Committee considers therefore that the alleged failure to properly represent the author cannot be attributed to the State party. This part of the communication is therefore inadmissible under article 3 of the Optional Protocol.

6.7 With regard to the author's claim under article 7, the Committee considers that the author has failed to show what steps he has taken to bring this complaint to the attention of the authorities in Jamaica. In this respect, the author has failed to fulfil the requirement of exhaustion of domestic remedies, set out in article 5, paragraph 2(b), of the Optional Protocol.

7. The Human Rights Committee therefore decides:

(a) That the communication is admissible in so far as it appears to raise issues under article 14, paragraph 3(b) and (e) of the Covenant;

(b) That, in accordance with article 4, paragraph 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 this decision, written explanations or statements clarifying the matter and the measures, if any, that may have been taken by it;

(c) That any explanations or statements received for the State party shall be communicated to the author's counsel pursuant to rule 93, paragraph 3, of the Committee's rules of procedure, with the request that any comments he may wish to submit thereon should reach the Committee, care of Centre for Human Rights, United Nations Office in Geneva, within six weeks of the date of transmittal;

(d) that this decision shall be transmitted to the State party and to the author's counsel.

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

1/ See, for example, communications No. 283/1988 (Aston Little v. Jamaica), Views adopted on 1 November 1991, No. 321/1988 (Maurice Thomas v. Jamaica), Views adopted on 19 October 1993, and No. 352/1989 (Douglas, Gentles and Kerr v. Jamaica), Views adopted on 19 October 1993.