

## **HUMAN RIGHTS COMMITTEE**

### **Edwards v. Jamaica**

**Communication No. 529/1993**

**31 October 1995**

**CCPR/C/55/D/529/1993\***

### **ADMISSIBILITY**

*Submitted by: Hervin Edwards (represented by counsel)*

*Alleged victim: The author*

*State party: Jamaica*

*Date of communication: 19 January 1993 (initial submission)*

*Documentation references: Prior decision - Special Rapporteur's combined rule 86/91 decision, transmitted to the State party on 11 August 1994*

*Date of present decision: 31 October 1995*

### **Decision on admissibility**

1. The author of the communication is Hervin Edwards, a Jamaican citizen currently serving a life sentence at the General Penitentiary in Kingston, Jamaica. He claims to be a victim of violations by Jamaica of articles 7 and 14, paragraph 3(b), juncto article 6, paragraph 2, 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 31 December 1983, and charged with the murder, on 29 December 1983, of his wife. On 12 June 1984, he was found guilty as charged and sentenced to death by the Manchester Circuit Court. The Court of Appeal dismissed his appeal on 22 January 1986. The murder for which the author stands convicted was initially classified as a capital murder under the Offences against the Person (Amendment) Act of 1992. On review the Court of Appeal reclassified the author's offence as non-capital on 28 March 1995.

2.2 The first prosecution witness, a trainee policeman, testified that on 29 December 1983, at

around 1:15 p.m., he saw the author walking with his son and wife, from whom he was separated at that time. He saw the author push his wife to the ground, take out a machete, and strike her four or five times in the region of the chest and neck, as a result of which she died. On the issue of identification, he testified that he had known the author for seven years, that during the attack he had shouted at the author who then looked up, and that, after having struck his wife, the author ran towards him before disappearing into a side road. The author's son followed the author, but was stopped by the officer.

2.3 The second prosecution witness, a police officer who had known the author for fifteen years, stated that in the morning of 29 December 1983, he had gone to the author's home, following report that the author had taken his child from his wife's custody. He saw the author, his wife and their child leave together, but later saw the wife without the child. He then told the author to return the child to his wife. Another witness for the prosecution, the arresting officer, testified that after being cautioned, the author said: "She a tell me a hot word and me got vex and me chop her".

2.4 In an unsworn statement from the dock, the author contended that on 29 December 1983, he had been working all day on his allotment. No evidence was presented in support of his alibi. He further stated that he was wearing clothes different from those worn by the attacker, and that he had instructed the police to find the clothes he had been wearing on the day of the crime.

2.5 The author was represented by a privately retained lawyer during the preliminary hearing and on trial, and by another privately retained lawyer on appeal. The application for leave to appeal against conviction and sentence was based on the grounds that there was insufficient evidence to warrant a conviction, but at the hearing of the appeal, the author's lawyer conceded to the Court that he was unable to find any grounds on which to argue the appeal.

2.6 As to the requirement of exhaustion of domestic remedies, leading counsel in London advised on 7 November 1990, that there were no reasonable prospects of success in a petition for special leave to appeal to the Judicial Committee of the Privy Council. Leading counsel referred in particular to the strong identification evidence of the first prosecution witness, to the fact that the judge's summing-up was in accordance with the relevant rules, and that the author's alibi was seriously undermined by the evidence of the second prosecution witness. Therefore, it is submitted that a petition for special leave to appeal to the Judicial Committee of the Privy Council does not constitute an available and effective remedy within the meaning of article 5, paragraph 2(b), of the Optional Protocol.

### The complaint

3.1 The author submits that he was not adequately represented on trial. He submits that he saw his lawyer only fifteen minutes prior to the preliminary hearing, and that he did not see her again until the day of the trial. He complains that she did not ask him for instructions and that she should have requested an adjournment in order to properly prepare the defence. Furthermore, she did not contact any witnesses to testify on his behalf, and failed to cross-examine the prosecution witnesses on essential issues, such as the clothes worn by the attacker and the confession he allegedly made to the arresting officer. The inadequate conduct of the author's defence is said to amount to a violation of article 14, paragraph 3(b), of the Covenant. It is further submitted that, as a result, article 6,

paragraph 2, has also been violated, since a sentence of death was passed upon the author after a trial in which the provisions of the Covenant have not been respected.

3.2 The author points out he was sentenced to death on 12 June 1984 and argues that the execution of a sentence of death after such a long period would, because of the extreme anguish caused by the delay, amount to cruel, inhuman and degrading treatment, within the meaning of article 7 of the Covenant.

3.3 The author further submits that he has been subjected to the deplorable conditions of detention at St. Catherine District Prison. In this context, he submits that he has spent the past 10 years alone in a cell measuring 6 feet by 14 feet, being let out for three and a half hours a day. He receives no training nor books.

3.4 By letter of 23 August 1995, counsel concedes that the author has not applied to the Supreme (Constitutional) Court of Jamaica for redress. He argues that a constitutional motion in the Supreme Court would inevitably fail, in light of the precedent set by the Judicial Committee of the Privy Council in the cases of DPP v. Nasralla and Riley & others v. Attorney General of Jamaica, where it was held that the Jamaican constitution was intended to prevent the enactment of unjust laws and not unjust treatment under the law. Since the author claims unjust treatment under the law, and not that post constitutional laws are unconstitutional, a constitutional motion would not be an effective remedy in his case. Counsel further argues that, if it were accepted that a constitutional motion is a final remedy to be exhausted, it would not be available to the author because of his lack of funds, the absence of legal aid for the purpose and because of the unwillingness of Jamaican lawyers to represent applicants on a pro bono basis. In support of his contention, counsel states that the author informed him that, although he had privately retained lawyer at his trial and appeal, it was his family which paid counsel's fees and that he is thus not in a position to privately retain a lawyer for the purpose of filing a constitutional motion.

#### State party's observations

4. The State party informed the Committee that on 28 March 1995 the Court of Appeal reviewed the author's case and reclassified the offence as non-capital murder. His death sentence was changed by law to one of life imprisonment. The author is to serve seven more years of detention, counted from the date of reclassification, before he becomes eligible for parole.

#### Issues and proceeding 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 procedure, decide whether or not it is admissible under the Optional protocol to the Covenant.

5.2 The Committee has ascertained, as required under article 5, paragraph 2(a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

5.3 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 has noted that, in respect of the author's conviction, leading counsel in London has advised that a petition for special leave of appeal to the Judicial Committee of the Privy Council would have no prospect of success. The Committee recalls that domestic remedies within the meaning of the Optional Protocol must be both available and effective. In the instant case, given leading counsel's uncontested opinion, the Committee considers that a petition for special leave to appeal to the Judicial Committee of the Privy Council is not an effective remedy which the author must exhaust for purposes of the Optional Protocol.

5.4 With regard to the author's claim concerning his legal representation, the Committee observes that the author's lawyer was privately retained. The Committee considers that the State party cannot be held accountable for alleged errors made by a privately retained lawyer, unless it would have been manifest to the judge or the judicial authorities that the lawyer's behaviour was incompatible with the interests of justice. The Committee considers that, in the instant case, there is no indication that the author's defence suffered from such defect. This part of the communication is incompatible with the provisions of the Covenant and is therefore inadmissible under article 3 of the Optional Protocol.

5.5 With regard to the author's claim that the execution of a sentence of death after more than ten years on death row would amount to cruel, inhuman and degrading punishment, the Committee observes that following the reclassification of his offence as non-capital the author is no longer under the threat of execution. With regard to the question whether his lengthy stay on death row could amount to a violation of article 7 of the Covenant, the Committee refers to its jurisprudence "that prolonged judicial proceedings do not per se constitute cruel, inhuman and degrading treatment, and that, in capital cases, even prolonged periods of detention on death row cannot generally be considered to constitute cruel, inhuman or degrading treatment". <sup>1/</sup> In the instant case the Committee wishes to examine on the merits whether the length of Mr. Edward's detention on death row was the result of delays imputable to the State and whether there were other compelling circumstances particular to the author, including the conditions of his imprisonment, which would amount to a violation of articles 7 and 10, paragraph 1, of the Covenant.

6. The Human Rights Committee therefore decides:

(a) that the communication is admissible in so far as it may raise issues under articles 7 and 10, paragraph 1, 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 the transmittal to it of this decision, written explanations or statements clarifying the matter and the measures, if any, that may be taken by it;

(c) 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 procedure to the author, with the request that any comments which he may wish to make should reach the Human Rights Committee, in care of the Centre for Human Rights, United Nations Office in Geneva, within six weeks of the date of the transmittal;

(d) that this decision shall be communicated to the State party and to the author.

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

1/ See Views on communication No. 373/1989, (Lennon Stephens v. Jamaica), adopted on 18 October 1995, paragraphs 9.4. See also Views on communications Nos. 270/1988 and 271/1988, Barrett and Sutcliffe v. Jamaica, adopted on 30 March 1992, paragraph 8.4.