HUMAN RIGHTS COMMITTEE

Shukuru Juma v. Australia

Communication No. 984/2001**

28 July 2003

CCPR/C/78/D/984/2001*

ADMISSIBILITY

Submitted by: Shukuru Juma

Alleged victim: The author

State party: Australia

Date of communication: 19 February 2001 (initial submission)

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

Meeting on 28 July 2003

Adopts the following:

DECISION ON ADMISSIBILITY

1. The author of the communication is Shukuru Juma, an Australian citizen born in Tanzania, currently serving a sentence of life imprisonment at Wolston Correctional Centre, Queensland, Australia. He claims to be a victim of violations by Australia of article 14, paragraphs 3(f) and 5, of the International Covenant on Civil and Political Rights. He is not represented by counsel.

The facts as submitted by the author

2.1 On 2 February 1997, the author was arrested and brought to Dutton Police Station where he was charged with murder. On 25 November 1998, he was convicted of murder and on 26 November 1998 sentenced to life imprisonment. He appealed against his conviction and applied for an extension of time for the filing of the appeal to the Court of Appeal. Both his appeal and request for an extension of time were

dismissed on 16 July 1999. The author then sought special leave to appeal from the High Court of Australia. On 24 November 2000, the High Court dismissed his application.

2.2 From the time of his arrest to the final appeal of his case the author was not provided with interpretation facilities, despite his requests for an interpreter at each stage of the proceedings. He claims that he requested the assistance of an interpreter prior to the interview with the police, and that he requested interpretation from his lawyer during the trial at first instance. During the Court of Appeal hearing, the author was provided access to an interpreter to conduct interpretation by telephone conference. However, the author refused this facility as the interpreter was not in the courtroom and he believed that he could not trust him/her. He states that he refused to talk to the interpreter, as the police had forced me against my will to give a record of interview and I was assaulted by [a Detective] of the Queensland police .[1]

2.3 In his application for special leave to appeal to the High Court, the author alleged that he was "forced to accept a legal aid lawyer who was only assigned to his case on the morning of the appeal, and was, therefore, unfamiliar with it. In addition, the lawyer refused to refer to the points of law raised in the application prepared by the author. Also during the hearing, the author alleges that one of the judges asked on three occasions where the interpreter was but his counsel merely responded that he knew the case.

The complaint

3.1 The author claims that the State party has violated his right to a fair and unbiased trial . In particular, he claims that, as his first language is Swahili and English only his fourth language, he was unable to understand what was taking place during the court hearings and unable to understand the complexities of the legal process. He argues that because he did not understand what was being said during the proceedings, he agreed with the questions posed. He claims that because he did not have the assistance of an interpreter, the State party violated article 14, paragraph 3(f), of the Covenant.

3.2 The author also claims that the State party violated article 14, paragraph 5, of the Covenant, but does not explain further how he considers his rights in this regard to have been violated.

The State party s submission on the admissibility and merits of the communication

4.1 By note verbale of 21 December 2001, the State party comments on the admissibility and merits of the communication. It provides the following version of the facts, from the author s arrest to his appeal. The author was born in Tanzania, and arrived in Australia in 1989. His first language is Swahili.

Pre-trial detention and interview

4.2 The offence took place on 1 February 1997. The author was interviewed that same evening by the investigating detective, and informed of the investigation into the murder of Mr. M.. He was placed in custody overnight. He was questioned by the same detective in a formal record of interview the following morning.[2] He did not request the services of an interpreter during the interview, nor was he considered by the investigating officers to require such assistance. He was formally charged with the murder of Mr. M. on 2 February 1997 and placed in custody on remand on 7 February 1997.[3]

Trial and conviction

4.3 The initial trial started in July 1998, but was aborted due to the illness of counsel for the co-accused. The second trial started on 9 November 1998 in the Supreme Court of Queensland. The author was provided with free legal representation. At trial, he gave evidence in person. No request was made to the trial judge for the assistance of an interpreter, and the point was never raised before the Court. The record of interview of 2 February 1997 (conducted the morning after the murder) was played to the jury. The author was convicted of murder on 25 November 1998.

Appeal

4.4 The author sought leave to appeal his conviction from the Supreme Court of Queensland to the Court of Appeal, on the ground that his conviction was unsafe. No particulars were given. The author conducted his appeal in person. The Court of Appeal arranged for an interpreter to attend by telephone from Sydney but the author declined this offer. The appeal against conviction was unanimously dismissed by the Court of Appeal on 16 July 1999.[4] An application for an extension of time within which to apply for leave to appeal against sentence was refused. On the argument that the author did not have an interpreter in court and was disadvantaged both in fully grasping the Crown s case and in giving his own evidence, the Court of Appeal found that there were no reasonable arguments supporting the appeal.

4.5 The author subsequently sought leave to appeal from the High Court of Australia[5] arguing that he had suffered a miscarriage of justice because he did not sufficiently understand the trial in which he was convicted of murder. On 24 November 2000, the High Court dismissed the application.

On admissibility

5.1 The State party submits that the allegation of a violation of article 14, paragraph 3(f), is inadmissible as incompatible ratione materiae with the Covenant, and has not been sufficiently substantiated. In the State party s view, the author s complaint is essentially that he was not able to speak his native tongue, Swahili, during police investigations or court proceedings, notwithstanding that the record of interview and the trial transcript reveal that he could express himself adequately in the court s official language. It understands the author s notion of a fair trial , within the meaning of article 14 of the Covenant, to suggest a right, in criminal proceedings, to express oneself in the language in which one normally expresses oneself, and that the denial of an interpreter in such circumstances constitutes a violation of article 14, paragraph 3(f).

5.2 The State party recalls the Committee s jurisprudence that this article does not provide any right to have court proceedings conducted in the language of one s choice or to express oneself in the language in which one normally expresses oneself. If members of a linguistic minority or aliens are sufficiently proficient in the court s official language, they have no right to the free assistance of an interpreter.[6] The State party submits that the author has not shown that he was unable to address the police officers and the court in simple but adequate English, and, accordingly, that he was incapable of being defended without interpretation before the court.

5.3 Alternatively, the State party submits that the communication does not reveal any facts in substantiation of the author s claim that he was unable to address the investigating police officers, or the courts, in adequate English. In respect of the record of interview, the State party submits that the investigating detective asked the author whether or not he understood the questions put to him, and whether or not he was able to effectively communicate a response to those questions. In each case, the author affirmed his ability to understand and communicate in English.

5.4 Concerning the conduct of the trial in the Supreme Court, the State party notes that the records show that there was no request made either by the author or his lawyer for an interpreter. The records reveal that the author understood the questions put to him, and was able to make himself understood. Those representing the author at trial, and at the High Court felt that he was able to communicate sufficiently in English. Neither counsel nor the author, at any stage in the proceedings, requested an adjournment on the basis that the author did not understand what was going on. The State party recalls that the author himself gave evidence at the trial without the assistance of an interpreter and also argued his own case on appeal, declining the services of an interpreter. In dismissing the author s appeal, the Court of Appeal found that there was no evidence, at trial or on appeal, that the author could not communicate in, or comprehend, English. It noted the Court s observation that the author s counsel did not find it necessary to obtain an interpreter to receive instructions, nor to have an interpreter in court during the trial. Even more telling, the State party submits, was the fact that the author refused the offer to address the Court in Swahili by utilising the services of an interpreter (as arranged by the Court). Further, it submits that, the judges of the Court of Appeal who heard the author in person on appeal said they could understand his submissions.

5.5 Similarly, the State party refers to the finding of the High Court which found that there was no merit in the claim, that the author was denied an interpreter throughout the proceedings, sufficient to cast doubt on the conviction and to warrant the grant of special leave. Furthermore, it notes that, the Court was not convinced that English was the author s fourth language, as claimed, given that he came from Tanzania, where English is widely spoken. The State party recalls, the Court s observation that the author had lived in Australia for a number of years before his conviction, and that no application was made for an interpreter by the applicant or his counsel at the trial. Besides, the High Court noted that the judges of the Court of Appeal who heard the applicant in person on the appeal said they could understand his submissions.

5.6 On the allegation that the author was assaulted by the investigating detective and forced to participate in a record of interview, the State party does not understand the author to be making a separate claim in this respect but to be offering a reason for his refusal to accept the services of a court-appointed interpreter. However, the State party submits that, to the extent that these allegations raise the question of violations of articles 14, paragraph 3(g), 7 and/or 10, paragraph 1, the author has failed to exhaust domestic remedies in pursuing those allegations, and that therefore his claim is inadmissible.

5.7 In the alternative, the State party submits that the author has failed to submit sufficient evidence substantiating his allegation, and that, therefore, the Committee should declare this allegation inadmissible on the grounds of non-substantiation. The State party submits the report of the investigating detective to refute the allegations of coercion and assault.[7]

5.8 On the alleged violation of article 14, paragraph 5, the State party submits that, since the author does not give particulars of the basis upon which he asserts a violation of this article, his allegations in this respect are inadmissible as incompatible with that provision, and further, that he has failed to substantiate his claim.

5.9 The State party notes that, the Committee has considered the application of article 14, paragraph 5 to domestic legal systems and recognised that the phrase according to law permits States to regulate the domestic modalities of the exercise of the right of review, provided that they do not so regulate it as to preclude effective access.[8] The State party argues that the regulation of the number of appeals heard by the High Court does not preclude effective access to that court by applicants seeking review of decisions made by lower courts .[9] It submits that it regulates the exercise of the right to review by the High Court by requiring applicants to obtain special leave to appeal. In considering whether to grant an application for special leave to appeal, the High Court may have regard to any matters that it considers relevant but shall have regard to: a. whether the proceedings in which the judgment to which the application relates was pronounced involve a question of law: 1. that is of public importance, whether because of its general application or otherwise; or 2. in respect of which a decision of the High Court, as final appellate court, is required to resolve differences of opinion between different courts, or within the same court, as to the state of the law; and b. whether the interests of the administration of justice, either generally or in the particular case, require consideration by the High Court of the judgment to which the application relates. In addition to these mandatory factors, the High Court will take into consideration whether: judgment from which appeal is sought is correct or unattended with sufficient doubt; there are insufficient prospects of success of an appeal; the proposed appeal exclusively involves questions of fact; the proposed appeal is not a suitable vehicle for determination of the point sought to be agitated; and there is a real possibility of a miscarriage of justice. The State party recalls that the conformity of this requirement with the protection guaranteed by article 14, paragraph 5, was previously considered by the Committee in *Pereira v Australia*,[10] where the Committee observed that article 14, paragraph 5 does not require an appellate court to proceed to a factual retrial, but that a Court conduct an evaluation of the evidence presented at the trial and of the conduct of the trial .

5.10 The State party further submits that the High Court is the most appropriate body to determine whether or not there are sufficient grounds for granting special leave to appeal, and, in particular, whether the circumstances of a particular case are such as to warrant the utilisation of the full resources of the High Court. To the extent that the author s communication would require the Committee to assess the substantive, rather than the procedural, correctness of the decision of the High Court, the State party submits that this would require the Committee to exceed its proper functions under the Optional Protocol. In this respect, it refers to the Committee s jurisprudence.[11]

5.11 The State party refers to the Committee s jurisprudence that States parties cannot be held accountable for decisions that lawyers may choose to make when exercising their professional judgement, unless it is manifestly evident that counsel acted in a manner contrary to his or her client s interests.[12] With respect to the contention that the author did not have an effective appeal since the High Court did not re-examine witnesses and counsel did not advance proper grounds of appeal, the Committee has held that these allegations do not in themselves support the contention that the author did not have a review of his

sentence by a higher tribunal according to law.[13]

5.12 With respect to the adequacy of the review process available to the author, the State party submits that the fact that his application for special leave to appeal was dismissed by the High Court cannot, by itself constitute, evidence that he was not afforded an adequate and sufficient right to review. The State party submits that no issue arises from a limitation of appeals to questions of law. Although the fact that no legal questions are raised in an appeal is one factor that might influence the High Court to dismiss an application for special leave in a particular case, an application for special leave to appeal to the High Court is not exclusively restricted to questions of law. Similarly, the fact that the High Court is generally deferential to the findings of fact made by the lower court does not mean that the Court will not review such findings if the circumstances of the case so demand. The recognised ground for granting special leave to appeal namely a real possibility of miscarriage of justice indicates that the High Court will undertake a consideration of the facts if so required.[14]

5.13 The State party submits that no question arises regarding the author being denied effective access to the High Court. It argues that he had access to the reasons for the judgment of the court from which appeal was sought; he had sufficient time in which to prepare his appeal; he had access to counsel, and he was entitled to, and did, make submissions to the Court.

5.14 The State party understands the author s claim that the High Court Registrar forced him to accept the assistance of a solicitor who did not know the particulars of his case and who refused to use the points of law raised in his application, to be an extension of the alleged denial of the right of review, and not a separate allegation. However, to the extent that this claim raises issues under article 14, paragraphs 3(d), and (b) regarding the preparation of a defence, the State party submits the claim is incompatible *ratione materiae* with the provisions of the Covenant, and is therefore inadmissible.

5.15 The State party disputes the claim that the Registrar of the High Court forced the author to accept the assistance of counsel. Rather, the author agreed to accept the pro bono services of counsel in lieu of representing himself.[15] The State party submits that, in any event, the right of the accused to choose his or her own lawyer is not absolute.

On the merits

5.16 On the claim of a violation of article 14, paragraph 3 (f), the State party reiterates its arguments on the admissibility of this claim. It refers to the author s allegation that the high court judge asked three times where the interpreter was and the solicitor said that he knew the case, [sic] and asserts that, contrary to this allegation, the transcript of the application for special leave to the High Court shows that the judge asked at one point only whether or not the applicant had an interpreter. The judge was informed by the respondent that the Court had arranged for an interpreter by telephone line to be made available if necessary, but the author s counsel felt that he had received sufficient instructions to put the matter before the Court. Satisfied with this response, the High Court reconsidered the author s application for leave to appeal and ultimately dismissed it.

5.17 While Australian law does not give everyone a right to speak his or her own language in court (which

the Committee has held does not per se violate article 14[16]) those unable to speak or understand English are provided with the services of an interpreter. Such assistance would have been available to the author, had the facts required it. Australian law recognises that the provision of an interpreter is a matter which arises at earlier stages of the criminal justice process than the appearance of the accused in court. Thus, Section 101 of the Police Powers and Responsibilities Act 1997 (Qld) provides that a police officer must arrange for the presence of an interpreter if he or she reasonably suspects a person in custody is unable, because of inadequate knowledge of the English language, or a physical disability, to speak with reasonable fluency in English. Regulation 73 of the Police Responsibilities Code in Schedule 2 of the Police Powers and Responsibilities Act 1997, states, in subparagraph (2), that the investigating police officer may ask questions that indicate whether or not the person in custodies is *inter alia,* capable of understanding the questions put to him or her. The State party argues that from the record of interview, one cannot infer that the investigating detective should have suspected that the author had an inadequate knowledge of English to speak with reasonable fluency in the language. Finally, Section 131A(1) of the Evidence Act 1977 (Qld) provides that in a criminal proceeding, a court may order the State to provide an interpreter for a complainant, defendant or witness, if the court is satisfied that the interests of justice so require. According to the State party, Section 131A is compatible with article 14, paragraph 3 (f) of the Covenant, and, given the broad coverage of the interests of justice , goes even further in its protection of the accused.

5.18 On the author s claim of a violation of article 14, paragraph 5, the State party submits, that the Committee should dismiss the claim as unmeritorious for the reasons set out above (paras. 5.8 to paras. 5.13).

Comments by the author

6.1 By letter of March 2002, the author responded to the State party submissions. He contests the State party s arguments on admissibility and merits and reiterates his two claims of a violation of article 14, paragraphs 3(f) and 5. He also gives detailed information on statements in the trial transcripts made by the investigating detective and the witnesses which, according to him, shows that they were all inconsistent and unreliable in their testimony.

6.2 On the issue of his treatment by the investigating detective, the author reiterates that he was assaulted during his police interview by him. He states that he was asked during the trial to identify the person who assaulted him and he identified the investigating detective.

6.3 In addition, the author contends that he thinks the reason his lawyer did not request an interpreter during the trial was because of the costs involved. He notes that while English is widely spoken in Tanzania this does not mean that everyone speaks or understands it. He admits that he could express himself reasonably, but at no time did he have much comprehension of the proceedings, and adds that in his summing-up the trial judge should have requested the jury to take into account his difficulties with the English language.

6.4 Finally, he argues, without giving further details, that the jury was prejudiced against him because of circumstantial evidence, and because he is black and had language difficulties.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claim contained in a communication, the Human Rights Committee must decide, in accordance with rule 87 of its rules of procedure, whether the claim is admissible under the Optional Protocol to the Covenant.

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

7.3 With respect to the claim that the author was denied the services of an interpreter, the Committee finds that the author has failed to substantiate his claim sufficiently, for the purposes of admissibility. It notes from the documentation provided that the author could express himself adequately in English, that he did not apply for an interpreter during the trial at which he gave evidence, that he refused the assistance of an interpreter during the Court of Appeal hearing at which he represented himself, and that he concedes in his response to the State party s submission that he could express himself reasonably in the English language. The Committee reaffirms that the requirement of a fair hearing does not obligate States parties to make the services of an interpreter available *ex officio* or upon application to a person whose mother tongue differs from the official court language, if such person is otherwise capable of expressing himself adequately in the official language of the court.[17] The Committee therefore finds this part of the claim inadmissible as incompatible with the provisions of the Covenant, pursuant to article 3 of the Optional Protocol.

7.4 With respect to the issue of the alleged assault on the author by the investigating detective, the Committee observes that it remains unclear whether the author claims a separate violation of the Covenant in this regard, or whether it is merely a reason why he refused the services of an interpreter during his Court of Appeal hearing. In any event, the Committee finds that neither has the author demonstrated that he has exhausted domestic remedies in this respect, nor has he substantiated his claim for the purposes of admissibility. A mere allegation with no further information on the facts is insufficient to raise a claim under the Covenant. The Committee therefore finds any claim of ill-treatment by the police inadmissible under articles 2, and 5, paragraph 2 (b) of the Optional Protocol.

7.5 With respect to the issue of a violation of article 14, paragraph 5, the Committee observes that it is not clear from the author s submission on what grounds he makes such a claim. This article protects his right to have his conviction and sentence reviewed by a higher tribunal. It appears that his claim relates to the dismissal by the High Court of his application for special leave to appeal as well as the fact that he was allegedly forced to accept a legal aid lawyer who was entrusted to his case only the day before his application to the High Court and during the hearing his lawyer allegedly failed to bring up the arguments outlined in the author s application. The Committees notes that the mere dismissal of a request for special leave to appeal is not sufficient to demonstrate that there has been a violation of article 14, paragraph 5. It recalls[18] that this article does not require an appellate court to proceed to a factual retrial, but that it

conduct an evaluation of the evidence presented at the trial and of the conduct of the trial . The Committee notes from the judgment of the Court of Appeal that it did evaluate the evidence against the author and specifically dealt with the author s main claim that he should have been provided with an interpreter. The High Court also examined this claim and rejected it. The Committee also observes that the complaints made against counsel do not support the allegation of a violation of article 14, paragraph 5. It, therefore, finds this part of the communication inadmissible on the grounds of insufficient substantiation, under article 2 of the Optional Protocol.

7.6 To the extent that the author s arguments relating to counsel s involvement in his application to the High Court may raise an issue under article 14, paragraphs 3 (b) and (d), the Committee finds that the author has failed to substantiate any such claim. Similarly, the Committee finds that the new claim of racial prejudice raised by the author in his letter of March 2002 has also not been substantiated. These claims are therefore inadmissible under article 2 of the Optional Protocol.

8. The Human Rights Committee therefore decides that:

(a) The communication is inadmissible under articles 2, 3 and 5, paragraph 2 (b) of the Optional Protocol;

(b) This decision be communicated to the author and to the State party.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued in Arabic, Chinese and Russian as part of the Committee s annual report to the General Assembly.]

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

** The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Alfredo Castillero Hoyos, Mr. Franco Depasquale, Mr. Maurice Gl 1 Ahanhanzo, Mr. Walter K lin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Martin Scheinin, Mr. Hip lito Solari Yrigoyen, Mr. Roman Wieruszewski and Mr. Maxwell Yalden.

Pursuant to rule 85 of the Committee's rules of procedure, Mr. Ivan Shearer did not participate in the adoption of the decision.

[1] No further information on this point is provided and the author does not specifically state it as a claim.

[2] The State party provides a copy of the transcript of the police record of interview. [It is not apparent from the transcript that the author requested an interpreter at that point.]

[3] Neither the State party nor the author indicates where the author was between 2 and 7 February 1997.

[4] A copy of the decision of the Court of Appeal is attached to the State party submissions. [It appears from the judgement that as the only ground in the notice of appeal was that the conviction was unsafe and unsatisfactory, and no particulars were given, the appeal judges decided that the question which the court must ask itself is whether it thinks that upon the whole of the evidence it was open to the jury to be satisfied beyond reasonable doubt that the accused was guilty. In this regard, the Court considered the witness evidence during the trial, the summing up by the trial judge and whether the author should have had an interpreter.]

[5] The State party has provided a copy of the transcript from the High Court. [It appears from the transcript that four arguments were advanced by author s counsel and considered by three judges of the High Court whether the author should have had an interpreter, the question of inconsistencies in witness evidence, and the allegations of intoxication of a witness and coaching of another witness.]

[6] The State party refers *inter alia* to the Committee s decisions in Guesdon v France, Communication No. 219/1986, Views adopted on 25 July 1990; Cadoret and Le Bihan v France, Communication Nos. 221/1987 and 323/1998, Views adopted on 11 April 1991; Barzhig v France, Communication No. 237/1998, Views adopted on 11 April 1991.

[7] The State party provides a copy of the report, dated 19 September 2001, prepared by the detective in question describing the procedure and details behind the arrest and interview of the author in the police station. Included is a copy of the statement prepared by the investigation detective, and submitted during the court proceedings.

[8] The State party refers to HRC, General Comment 13/21 of 12 April 1984, para. 17. Domestic modalities include matters such as the procedures of appeal, access to and the powers of reviewing tribunals, requirements for appeals, and the way in which the procedure before the review tribunal takes account of the fair and public hearing requirements of article 14, paragraph 1. It also refers to Consuelo Salgar de Montejo v Colombia, Communication No. 064/1979, Views adopted on 24 March 1982.

[9] The State party also refers to the Article 2(1) of Protocol No. 7 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention) which states that:

Everyone convicted of a criminal offence by a tribunal shall have the right to have his conviction or sentence reviewed by a higher tribunal. The exercise of his right, including the grounds on which it may be exercised, shall be governed by law. In applying this provision, the European Commission on Human Rights (ECHR) has held that it is sufficient for a State to limit a right of appeal to questions of law.

[10] Communication No. 536/1993, Inadmissibility decision adopted on 28 March 1995.

[11] Maroufidou v Sweden, Communication No. 58/1979, Views adopted on 9 April 1981.

[12] The State party refers to Tomlin v Jamaica, Communication No. 589/1994, Views adopted on 16 July 1996.

[13] The State party refers to *Tomlin v Jamaica*, Communication No. 589/1994, Views adopted on 16 July 1996.

[14] As an example, the State party refers to, *Chamberlain v The Queen (No. 2)* (1984) 153 CLR 521, where the High Court quashed the conviction on the ground that the evidence presented to the jury at trial failed to establish beyond reasonable doubt the guilt of the accused; *M v The Queen* (1994) 181 CLR 487.

[15] The State party submits a copy of the letter from the Acting Chief Executive and Principal Registrar of the High Court to the author, dated 24 August 2001, in which it is explained that the author was given the choice of either appearing for himself with an interpreter or being represented by counsel and was in no way forced to accept the representation of counsel.

[16] The State party refers to *Communication No. 219/1986, supra*.

[17] Communication No. 219/1986, Guesdon v. France, Views adopted on 25 July 1990.

[18] *Perera v. Australia*, Communication No. 536/1993, Inadmissibility Decision adopted on 28 March 1995.