W. W. [name deleted] v. Jamaica, Communication No. 254/1987, U.N. Doc. CCPR/C/40/D/254/1987 (1990).

Communication No. 254/1987 : Jamaica. 06/11/90.

CCPR/C/40/D/254/1987. (Jurisprudence)

Convention Abbreviation: CCPR

Human Rights Committee

Fortieth session

DECISION OF THE HUMAN RIGHTS COMMITTEE UNDER THE
OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT
ON CIVIL AND POLITICAL RIGHTS FORTIETH SESSION
concerning

Communication No. 254/1987

Submitted by: W. W. [name deleted]

Alleged victim: The author

State party concerned: Jamaica

Date of communication: 21 September 1987 (date of initial letter)

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

Meeting on 26 October 1990,

Adopts the following:

Decision on admissibility

1. The author of the communication (initial submission dated 21 September 1987 and subsequent
submissions) is W. W., a Jamaican citizen currently awaiting execution at St. Catherine District Prison,
Jamaica. He claims that his rights under the International Covenant on Civil and Political Rights were

violated by Jamaica in that the trial and the pre-trial proceedings leading to his conviction were neither fair nor impartial.

2.1 The author states that he was charged with murder, tried, convicted and sentenced to death by the Home Circuit Court in Kingston on 29 January 1987 and that his appeal was dismissed on 22 July 1987. He claims that the identification parade at which he was identified was unfair and suggestive.

3. By decision of 21 September 1987, the Human Rights Committee transmitted the communication to the State party and requested it, under rule 86 of the rules of procedure, not to carry out the death sentence against the author while his communication was under consideration by the Committee. The author was requested to substantiate his allegation that the identification parade was improperly conducted, to explain what he considered to have been unfair in the conduct of his trial and to indicate whether he had sought legal aid for purposes of a petition for special leave to appeal to the Judicial Committee of the Privy Council.

4. In his reply, dated 4 January 1988, the author claims that the judge interfered with his presentation of the evidence by repeatedly admonishing him to keep it short. He also claims that his rights were inadequately summed up by the trial judge for the jury. He further claims that he was not afforded adequate time to consult with his counsel prior to both trial and appeal. He claims that he was not informed of the name of his court-appointed representative for the appeal until two days before the hearing of the appeal. Finally, he states that he is in the process of seeking counsel to petition the Judicial Committee of the Privy Council for special leave to appeal. In the light of these circumstances, he claims that his rights under article 14, paragraphs 3(b)and 3(d), of the Covenant have been violated.

5. By decision of 22 March 1988, the Working Group of the Human Rights Committee transmitted the communication to the State party and requested it, under rule 91 of the rules of procedure, to provide information an d observations relevant-to the question of admissibility. The State party was .further requested, under rule 86 of the rules of procedure, not to carry out the death sentence against the author while his communication was under consideration.

6. In its submission under rule 91, dated 16 November 1988, the State party argues that the communication is inadmissible under article 5, paragraph 2(b), of the Optional Protocol, on the ground of non-exhaustion of domestic remedies, because the author has failed to petition the Judicial Committee of the Privy Council for special leave to appeal. The State party further claims
that legal aid would be available to W. W. pursuant to Section 3 of the Poor Prisoners' Defence Act.

7. In his comments, dated 14 December 1988, the author indicated that his initial submission to the Committee was made in the absence of any knowledge about the availability of legal aid for purposes of petitioning the Judicial Committee of the Privy Council for special leave to appeal .and requested the Committee to postpone consideration of his communication, pending the outcome of the petition. Subsequently, the author has obtained pro bono representation from a London law firm for purposes of petitioning the Judicial Committee of the Privy Council. His representatives have indicated that they are

filing a petition and that the hearing is expected before the end of 1990. Under cover of a note dated 10 October 1990, counsel forwards a copy of a legal opinion, formulated by leading counsel in the case; according to this opinion, there is merit in a petition for special leave to appeal.

8.1 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.

8.2 The Committee has ascertained, as it is required to do under article 5, paragraph 2(a), of the Optional Protocol, that the matter has not been submitted to another instance of international investigation or settlement.

8.3 With regard to the requirement of exhaustion of domestic remedies, the Committee has taken note of the State party's contention that the communication is inadmissible because of the author's failure to petition the Judicial Committee of the Privy Council for special leave to appeal. It observes that the author has secured pro bono legal representation from a London law firm for this purpose, after submitting his case to the Human Rights Committee, and that his representatives are seeking to petition the Privy Council for special leave to appeal on his behalf. While expressing concern about the apparent unavailability, so far, of relevant court documents in the case, the Committee does not consider that a petition for special leave to appeal to the Judicial Committee of the Privy Council would be a priori ineffective and as such a remedy that authors need not exhaust before addressing a communication to the Committee. It therefore finds that the requirements of article 5, paragraph 2(b), of the Optional Protocol have not been met.

8.4 With regard to the practical operation of the system of legal aid in Jamaica, the Committee stresses that article 14, paragraph 3(d), of the Covenant requires States parties to ensure proper legal assistance to persons accused of criminal offences at all stages of their trial and appeal, including appeals to the Judicial Committee of the Privy Council. In the light of article 6, paragraph 2, of the Covenant it is imperative that whenever legal aid is provided, it must be sufficient to ensure that the trial can be conducted fairly.

9. The Human Rights Committee therefore decides:

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

(b) to request the State party to make all the relevant court documents available to the author and his counsel without further delay, so as to permit an effective recourse to the Judicial Committee of the Privy Council;

(c) That, since this decision may be reviewed under rule 2, 92, paragraph rule 86 of the Committee's rules of procedure, not to carry out the death sentence against the author before he has had a reasonable time, after completing the effective domestic remedies available to him, to request the Committee to review the present decision;

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