

HUMAN RIGHTS COMMITTEE

D. B. v. Jamaica

Communication No. 259/1987

13 July 1990

CCPR/C/39/D/259/1987

ADMISSIBILITY

Submitted by: D. B. [name deleted]

Alleged victim: The author

State party concerned: Jamaica

Date of communication: 19 November 1987 (date of initial letter)

Date of decision on inadmissibility: 13 July 1990

Decision on admissibility

1. The author of the communication (initial letter dated 19 November 1987; several subsequent letters) is D. B., a Jamaican citizen awaiting execution at St. Catherine District Prison, Jamaica. He claims to be the victim of violations of his human rights by the Government of Jamaica.

2.1 The author states that he was charged with the murder, on 24 November 1980, of one H. P., convicted and sentenced to death on 13 July 1983. He claims to be innocent and states that, although he was present at the scene of the crime, he did not participate in the killing but actually risked his own life by pleading with the killers that Mr. Patton be spared, as can be allegedly confirmed by witnesses. No details are provided about the circumstances of the author's trial -it is merely stated that the author was assisted by a legal aid attorney.

2.2 The Jamaican Court of Appeal dismissed the author's appeal on 9 December 1985. For his appeal, the author was also represented by a legal aid attorney. The author had requested to be present during the hearing of the appeal but allegedly was not granted the right to do so.

2.3 The author further states that since the dismissal of the appeal, he has been unable to pursue his case further. He wrote to the Supreme Court in October 1986, requesting the transcripts of

evidence in his case, both from the trial and the appeal, but did not receive either. A second letter was sent to the Supreme Court in September 1987; this time the author received a copy of the notes of evidence of his trial. At the same time, he was informed that the Court of Appeal had not yet issued a written judgment. This, the author claims, is the situation with regard to many judgments of the Court of Appeal in capital cases.

2.4 With respect to a petition for leave to appeal to the Judicial Committee's of the Privy Council, the author alleges that the Jamaican Government does not assist death row inmates in bringing their cases before the Judicial Committee 1 of the Privy Council. He claims that since he cannot afford a legal representative, he is unable to submit his case to the Privy Council, and that if his case cannot be brought before that body, the Government will not exercise its prerogative of mercy. He further refers to the case of one N.C . , an inmate executed on 19 November 1987, who had allegedly been unable to exhaust all available domestic remedies because of lack of means to pay for a lawyer to represent him before the Judicial Committee of the Privy Council.

2.5 The author, finally, claims that the prolonged time spent on death row - since July 1983 - constitutes degrading and inhuman treatment, without however, further substantiating this allegation.

3. By decision of 9 February 1988, the Special Rapporteur of the Human Rights Committee for communications involving the death penalty transmitted the communication, for information, to the State party, requesting it, under rule 86 of the rules of procedure, not to carry out the death sentence against the author before the Committee had had an opportunity to consider further the question of the admissibility of the communication. The author was requested, under rule 91 of the rules of procedure, to provide the Committee with several clarifications concerning the conduct of his trial and appeal and to forward to the Committee a copy of the Notes of Evidence. By further decision of 22 March 1988, the Working Group of the Human Rights Committee reiterated the Special Rapporteur's request under rule 86 and asked the State party to provide information and observations relevant to the question of the admissibility of the communication. The State party was further requested to provide the Committee with the texts of the written judgments in the case and to clarify whether the author retained the possibility to petition the Judicial Committee of the Privy Council for special leave to appeal.

4.1 In three submissions dated 19 and 26 February and 18 April 1988, the "author replies to the Special Rapporteur's request for clarifications. He states that on 24 November 1980, in the District of Deuce Pass, several men forced him to lead them to an isolated house in James Hill. The men broke 1 into the house, demanded money and threatened to shoot the owner, Hedley Patton. Appeals by the author to leave the man alone were unsuccessful. In the end, the men shot H. P. and left the house with what they could find. The next morning, the author temporarily left the area where he resided. Upon his return, he was informed that the police were looking for him. That very night, on 29 November 1980, the police came to the house and arrested him. He made a written statement on 29 December 1980, but since his writing and reading abilities were deficient at the time, he requested, on 1 January 1981, that the statement be rewritten. The author states that he was placed on an identification parade without legal representation. One witness purportedly identified him whereas his co-defendant, A. H., was identified by two witnesses. The author indicates that he was informed of the charges against him on 8 January 1981, and that he was brought for the first time

before a Magistrate on 14 January 1981. During the preliminary enquiry, as well as during the trial and the appeal, he was represented by a legal aid attorney.

4.2 The trial did not start until 5 July 1983. The author claims that the prosecution witnesses merely testified that they had identified the author as one of the men who had been at the house at the time of the murder. He does not recall that any of them testified that they had actually seen him commit any crime. According to him, they mainly incriminated his co-defendant. Two witnesses testified that they had heard someone beg for the deceased's life. The author reiterates that it was he who had pleaded for the victim's life and indicates that the witnesses could not agree among themselves on that particular point. On 12 July 1983, the author's representative made a no-case submission, but the judge ruled against him. The author therefore took the stand and made a sworn statement. According to him, his lawyer further requested the judge to subpoena the author's father to attend court and asked that a police inspector assist in bringing him to court. He explains that his parents are poor and cannot afford the fare to come to court; although his father wanted to attend the court sessions, he was unable to do so.

4.3 The author states that he was able to consult with his lawyer during the trial, but only once while he was awaiting the outcome of his appeal. He indicates that the prosecution's witnesses were cross-examined but doubts whether their examination was thorough enough. He further claims that, as his father was the only witness called to testify on his behalf and was unable to attend court, there were no witnesses who testified on his behalf.

4.4 According to the author, he has lost contact with his legal aid attorney since the dismissal of the appeal and is now without a legal representative. He wrote to the Jamaican Bar Association, with a request for legal assistance and with a request for an investigation of his case. He received one reply, on 11 March 1987, informing him that a letter had been sent by the Bar Association to Mr. F. P. on 5 March 1987. On 10 February 1988, the author also received a letter from a firm of solicitors with a plea to the Government not to execute the author, because of the author's request to have his case submitted to the Judicial Committee of the Privy Council.

4.5 With respect to the possibility of petitioning the Judicial Committee of the Privy Council for leave to appeal, the author points out that if his case is sent to the Privy Council without the written judgment of the Court of Appeal, the Privy Council will simply dismiss his petition and return the case to Jamaica. He further indicates that he is unable to afford the services of a lawyer to take his case to the Privy Council; this, he alleges, has been the situation of many inmates on death row who intended to petition the Privy Council for leave to appeal but were unable to do so, and who were subsequently executed.

4.6 In the author's opinion, the events described above constitute a Violation by Jamaica of article 14, paragraphs 3(d) and (e), and article 14, paragraph 5, of the Covenant.

5. In its submission under rule 91 of the rules of procedure, dated 23 January 1989, the State party contends that the communication is inadmissible on the ground of non-exhaustion of domestic remedies, because the author's "case has not been adjudicated upon by the Judicial Committee of the Privy Council, Jamaica's highest appellate Court".

6.1 In his reply, dated 25 February 1989, the author reiterates that he cannot afford the kind of legal assistance required for his case to be submitted to the Privy Council. He again refers to the case of N. C. as well as to that of two other inmates, who allegedly were made to pay forty thousand Jamaican dollars to have their petition to the Privy Council attended to properly. Finally, he claims that his co-defendant, A. H., has been informed by the Jamaica Council for Human Rights that their case lacked merit to justify filing an appeal to the Privy Council. In a further letter dated 18 May 1989, the author indicates that he has now obtained the services of a London law firm to take his case to the Privy Council and requests the Committee to defer consideration of his communication until the Privy Council has heard his petition for special leave to appeal.

6.2 In a further submission, dated 12 August 1989, the author states that on 20 April 1989, the Jamaica Council for Human Rights informed him that the court papers in his case had been sent to his representatives in London. He indicates that he has not, since then, received any further indication about the status of this petition and requests the Committee to defer consideration of his case.

7.1 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.

7.2 The Committee has ascertained, as it is required to do 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.

7.3 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, pursuant to Section 110 of the Jamaican Constitution. It observes that the author, although claiming that there would be no merit in pursuing such a petition, has secured pro bono legal representation from a London law firm for this purpose, after submitting his communication to the Human Rights Committee. While expressing grave concern about the apparent unavailability of a reasoned judgment of the Jamaican Court of Appeal in the case, the Committee cannot conclude that a petition for special leave to appeal to the Judicial Committee of the Privy Council, even without a written judgment of the Court of Appeal, must be considered a priori futile. It therefore finds that the requirements of article 5, paragraph 2 (b), of the Optional Protocol have not been met.

8. The Human Rights Committee therefore decides:

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

(b) That the State party be requested to make the written judgment of the Court of Appeal available to the author without further delay, so as to permit an effective recourse to the Judicial Committee of the Privy Council, and to ensure that adequate legal aid be made available to the author;

(c) That, since this decision may be reviewed under rule 92, paragraph 2, of the Committee's rules of procedure upon receipt of a written request by or on behalf of the author containing information

to the effect that the reasons for inadmissibility no longer apply, the State party is requested, taking into account the spirit and purpose of 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 and to the author.