K. Communication No. 278/1988, N. C. v. Jamaica (Decision of 13 July 1990, adopted at the thirty-ninth session)

Submitted by: N. C. [name deleted]

Alleged victim: The author

State party concerned: Jamaica

Date of communication: 8 February 1988 (date of initial letter)

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

Meeting on 13 July 1990,

Adopts the following:

Decision on admissibility

1. The author of the communication (initial communication dated 8 February 1988 and subsequent correspondence) is N. C., a Jamaican citizen currently awaiting execution at St. Catherine District Prison, Jamaica. He claims to be the victim of a violation of his human rights by Jamaica.

2.1 The author states that he was sentenced to death on 12 February 1985 for the murder of a boy which had occurred in March 1982. The Jamaican Court of Appeal dismissed his appeal on 1 December 1986.

2.2 The author states a/ that he was convicted primarily on the evidence of one prosecution witness. This witness testified that on the night of the crime, at about 3 a.m., he and the deceased were walking down a road when he heard a shot. He began to run down the road; turning back after a few moments, he saw the accused, who was holding a short gun, with two of his friends standing next to a gate. The author asserts that this witness, when cross-examined during the trial by his legal aid attorney, made several contradictory statements; still, the evidence was admitted by the judge. It is also stated that prior to the opening of the trial, the witness was seen talking to the police for an entire morning. Asked by the author's lawyer what had been the subject of the discussion with the police, the witness allegedly failed to answer. According to the author, it would have been possible to prove that he was confined to bed when the murder occurred. He states that he had just been released from the hospital following an operation, and that he could prove this. He further states that there were witnesses who could have testified on his behalf; they did not do so, according to the author, because they were never informed of the trial date.

3. By decision of 21 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 and observations relevant to the question of the admissibility of the communication. It further requested the State party, 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

4. In its submission under rule 91, dated 20 July 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 may still apply, under Section 110 of the Jamaican Constitution, for special leave to appeal to the Judicial Committee of the Privy Council. The State party further indicates that legal aid would be available to N. C. for that purpose under the Poor Prisoners' Defence Act.

5. In his comments, dated 28 September 1988, the author states that he unsuccessfully requested assistance from the Jamaica Council for Human Rights for the purpose of filing a petition for special leave to appeal to the Privy Council. By further letters dated 17 May and 22 June 1989, he indicates that a London law firm has agreed to assist him for the purpose of filing such a petition, adding, however, that his case "is not ready to be tried in the Privy Council", presumably because of the unavailability of relevant court documents. He therefore requests the Committee to postpone consideration of his communication until the Privy Council has adjudicated his case.

6.1 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.

6.2 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.

6.3 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 has secured pro bono legal representation from a London law firm for this purpose, after submitting his communication to the Human Rights Committee, and that his representative continues to investigate the possibility of filing a petition for special leave to appeal on his behalf. While expressing grave concern about the apparent unavailability of relevant court documents in the case, the Committee cannot conclude that a petition for special leave to appeal to the Judicial Committee of the Privy Council 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.

7. 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.

Notes

a/ The author's account is confusing. The secretariat has endeavoured to reflect what appears to be the intended meaning.