

H. Communication No. 260/1987, C. B. v. Jamaica
(Decision of 13 July 1990, adopted at the
thirty-ninth session)

Submitted by: C. B. [name deleted]
Alleged victim: The author
State party concerned: Jamaica
Date of communication: 20 November 1987 (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 letter dated 20 November 1987; further letters dated 27 December 1987 and 2 October 1988) is C. B., a Jamaican citizen born on 5 June 1956, currently awaiting execution at St. Catherine District Prison, Jamaica. He claims to be the victim of a violation by the Government of Jamaica of articles 7 and 14, paragraphs 3 (b), (c) and (d), of the International Covenant on Civil and Political Rights. He is represented by counsel.

2.1 The author, who claims to be innocent of the charges against him, states that he was arrested on 11 August 1981 and told that he was to go on an identification parade, as a suspect in a burglary case. The police officer who conducted three identification parades including the author's allegedly informed him that he had been identified on all three; however, when the legal aid attorney assigned to the author's case asked this officer about the identification parades during a court hearing, the latter stated that the author had not been identified. The author was thus acquitted of the charge in the Gun Court.

2.2 Several days later, the author was taken again to the Gun Court by a different police officer, for a preliminary hearing concerning a murder charge. This, the author states, was the first time he was informed of a murder charge against him. During the preliminary hearing, a police officer came in with a young girl, unknown to the author and allegedly the main witness in the murder case. The author states that during this preliminary hearing no attorney represented him; because of this the judge told him that he himself could cross-examine the witness. The author, however, merely asked that the lawyer who had represented him earlier in the Gun Court be contacted. This, however, proved impossible, and he remained without counsel until his case went to the Home Circuit Court in Kingston, where he was represented by two legal aid lawyers, who also represented him on appeal. On 2 February 1984, the author was convicted of murder and sentenced to death; on 4 December 1985, the Court of Appeal dismissed his appeal. After the dismissal of the appeal, the author received a letter from one of his representatives,

suggesting that he contact the Jamaica Council for Human Rights for further help. The author's letters sent to this lawyer after December 1985 reportedly were not answered.

2.3 The author further states that he intends to take his case to the Judicial Committee of the Privy Council in London. To be able to do so would, however, require the services of a lawyer and the written judgment of the Court of Appeal. Since the dismissal of his appeal and until submitting his case to the Committee, the author, who claims not to have adequate financial means, has unsuccessfully sought to obtain the services of a lawyer. Despite repeated requests, the State party has not provided him with legal aid. In this context, the author refers to the case of N. C., an inmate executed on 19 November 1987, who allegedly had been unable to apply for leave to appeal to the Judicial Committee of the Privy Council, because of lack of means to pay for a lawyer to represent him.

2.4 As regards the written judgment of the Court of Appeal, the author states that he has requested it since the dismissal of his appeal. Only on 30 November 1987 was he informed by the Registrar of the Supreme Court that no written judgment had been rendered by the Court of Appeal in his case.

2.5 The author claims that the State party, by failing to provide him with legal counsel and with the written judgment of the Court of Appeal, has violated its obligations under the Covenant. He offers the following description of how capital cases are handled after inmates have lost what he refers to as the "local appeal". Allegedly, some time after an inmate has lost his appeal, the representative of a legal aid clinic visits the inmate and requests him to sign an appeals form so that the case can be submitted to the Judicial Committee of the Privy Council; when this is done, the legal aid clinic prepares the case superficially, usually without the written judgment of the Court of Appeal, and sends it to London, where it is received by the Secretariat of the Judicial Committee of the Privy Council. The case is examined after some time and, since the case file cannot go before the Judicial Committee unless all requirements have been met, it is returned to Jamaica with a statement that the petition for leave to appeal has been dismissed. Thereupon, in many cases, death warrants are issued for the execution of inmates. The author again refers to the case of N. C.

3. By decision of 9 February 1988, the Special Rapporteur of the Human Rights Committee for cases involving the death penalty transmitted the communication, under rule 91, to the State party, requesting information and observations relevant to the question of admissibility, in particular, whether the author still had the opportunity to petition the Judicial Committee of the Privy Council for leave to appeal, and whether legal aid would be available to the author for that purpose. The State party was further requested, under rule 86 of the rules of procedure, not to carry out the death sentence against the author before the Committee had had the opportunity to decide on the question of the admissibility of the communication.

4. In its submission under rule 91, dated 29 July 1988, the State party indicates that the author may still petition the Judicial Committee of the Privy Council for special leave to appeal in forma pauperis. The State party further explains that legal aid is available to C. B. under Section 3 of the Poor Prisoners' Defence Act.

5.1 Commenting on the State party's submission, the author, in a letter dated 2 October 1988, claims, in particular, that since the day he has been on death row (2 February 1984), he has not heard of one single case in which the Jamaican

Government has granted legal aid pursuant to Section 3 of the Poor Prisoners' Defence Act to inmates who intended to petition the Judicial Committee of the Privy Council for special leave to appeal.

5.2 Concerning his own case, the author states that he recently contacted a firm of London solicitors with a view to obtaining their assistance in filing a petition for leave to appeal to the Privy Council. This firm has declined to represent him and transmitted the file to a different law firm.

5.3 In a submission dated 12 January 1989, the author requests the Committee to defer consideration of his case, pending the outcome of his petition for special leave to appeal to the Judicial Committee of the Privy Council. By letters dated 14 August and 18 September 1989, the author states that he has not received any indication about the status of his petition. By telefax of 19 February 1990, counsel indicates that she has obtained the transcript of the author's trial but that she has not yet received the written judgment of the Court of Appeal which would enable her to assess the merits of a petition for special leave to appeal to the Judicial Committee of the Privy Council.

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 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 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.

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 and his counsel 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, the author and his counsel.