

H. Communication No. 315/1988, R.M. v. Jamaica (Decision of 26 October 1990, adopted at the fortieth session)

Submitted by: R.M. (name deleted)

Alleged victim: The author

State party concerned: Jamaica

Date of communication: 30 June 1988 (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 30 June 1988 and subsequent submission) is R.M., a Jamaican citizen currently awaiting execution at St. Catherine District Prison, Jamaica. He claims to be innocent of the murder for which he was convicted and sentenced to death, and to be a victim of a violation of his human rights by Jamaica.

2.1 The author states that in July 1984 he accompanied a friend to Discovery Bay, St. Ann, to help collect money that someone owed to his friend. He claims that a quarrel ensued over the money and that he and his friend were attacked with knives and machetes. He fled towards the Discovery Bay main road, where he boarded a bus. Shortly thereafter, the bus was stopped by police and he was arrested. The body of the friend was found the next morning.

2.2 The author claims that his case was never thoroughly investigated, and that the Home Circuit Court convicted and sentenced him on the wholly circumstantial evidence that he had been seen running on the main road.

2.3 The author states that he appealed to the Court of Appeal and that his appeal was dismissed. At the time of submission in 1988 he had not applied for leave to appeal to the Judicial Committee of the Privy Council because of lack of financial means.

3. By decision of 15 July 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. The author was requested to substantiate his allegation that he was detained for three months without charges against him, to further explain the circumstances of his trial and to clarify what he considers to have been unfair in the conduct

of his trial and to indicate whether he has sought legal aid, under the Poor Prisoners' Defence Act, for purposes of a petition for leave to appeal to the Judicial Committee of the Privy Council.

4. In his reply, dated 8 October 1988, the author states that he was arrested on 15 June 1984 and not charged until the last week of August 1984. He was convicted on 27 May 1987; the appeal was dismissed on 27 November 1987. He was defended by a legal aid attorney under the Poor Prisoners' Defence Act. He states that at the trial, he intended to call witnesses on his behalf, but his attorney advised against this because he felt it would prolong the case and pointed out that he had not received payment for his services. The lawyer allegedly informed him that payment would be required if he were to call witnesses on the author's behalf. The author further alleges that in the course of the trial, one of the prosecution witnesses changed his testimony to the author's favour, but the court refused to admit it. The author reiterates his principal complaint that the police made no effort to investigate what really happened to his friend on the day of the crime or to discover a motive or to trace eyewitnesses. The police and the court, the author alleges, relied on witnesses who had merely seen the two of them together before the incident and the author running away afterwards.

5. In its submission under rule 91, dated 2 December 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 had not applied, pursuant to Section 110 of the Jamaican Constitution, for special leave to appeal to the Judicial Committee of the Privy Council. No comments were received from the author. On 12 July 1990, the author's representative in London informed the Committee that she is endeavouring to file a petition for special leave to appeal to the Judicial Committee of the Privy Council on the author's behalf, but that she has not yet been able to obtain several documents considered to be relevant for purposes of such a petition. She has, however, obtained a copy of the written judgment of the Court of Appeal in the 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 the communication 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 matter has not been submitted to another instance 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 case to the Human Rights Committee, and that his representative is endeavouring to file a petition 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. Accordingly, it finds that the requirements of article 5, paragraph 2 (b), of the Optional Protocol have not been met.

6.4 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.

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 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 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 shall be requested, under 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 author and to the State party.

[Done in English, French, Russian and Spanish, the English text being the original version.]