

D. Communication No. 303/1988, E.B. v. Jamaica (Decision of 26 October 1990, adopted at the fortieth session)

Submitted by: E.B. (name deleted)

Alleged victim: The author

State party concerned: Jamaica

Date of communication: 25 May 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 25 May 1988 and subsequent submissions) is E.B., 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 he was arrested in 1979 and charged with the murder of a police inspector. He claims that his arrest was the result of false information given to the police by his estranged girlfriend and her sister, who allegedly told the police of the quarrels between them and falsely added that he possessed a gun. The police allegedly made the girlfriend sign a statement without her reading it. Both women have since retracted this information in sworn statements to the Jamaica Council on Human Rights. They claim that they attempted to correct their story to the police and to testify in court, but that they were intimidated by the police, who threatened to arrest and prosecute them for perjury should they retract their initial testimony.

2.2 The author claims that the police used five "bogus" witnesses in the identification parade, three of whom, including a police officer and a home guard, purported to identify him. A Jamaican citizen assisting the author on a private basis claims to have spoken to several people who confirm that none of these individuals was in the area on the day of the crime. The author further points out that he was unrepresented during the parade, and that no court official attended it, which he claims to be in violation of the Jamaican Constitution.

2.3 The author claims that his court-appointed counsel refused to call witnesses on his behalf, although he had requested him to do so. He adds that the attorney failed to represent him properly, allegedly because of their membership in rival political parties.

2.4 The author further observes that several individuals, including the owner of a shop close to where the murder occurred, L.N., attest that he had not been present at the scene of the crime. L.N. claims to have seen two men struggling with the victim, to have heard the fatal shots and to have recovered the murder weapon. He gave evidence to the police during the preliminary inquiry but did not participate in the identification parade nor was he called as a witness at trial. The murder weapon allegedly was not tendered as evidence in court. L.N. made a sworn statement, dated 24 February 1987, to this effect to the Jamaican Council on Human Rights; he has since died.

2.5 The author states that he has secured the pro bono assistance of a London law firm for purposes of a petition for special leave to appeal to the Judicial Committee of the Privy Council. He states that the Jamaican courts, however, have only provided his representatives with the notes of evidence and the copy of an oral judgement dismissing his appeal. He fears that in the absence of a reasoned judgement from the Court of Appeal, his petition for special leave to appeal would inevitably be dismissed. On 29 August 1990, author's counsel confirmed that he had not obtained the written judgement of the Court of Appeal, adding, however, that leading counsel has already prepared a draft petition for special leave to appeal, and that he endeavours to place the case before the Judicial Committee.

3. By decision of 8 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 and to provide the Committee with the texts of the written judgements in the case. The Working Group further requested the State party, pursuant to 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 8 December 1988, the State party contends 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 petition the Judicial Committee of the Privy Council for special leave to appeal, pursuant to Section 110 of the Jamaican Constitution. The State party has not forwarded to the author or the Committee copies of the judgements in the case.

5.1 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.

5.2 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.

5.3 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 endeavouring to file a petition for special leave to appeal on his behalf. While expressing concern about the apparent unavailability, so far, of a reasoned judgement from the Court of Appeal 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.

5.4 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.

6. 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 shall be requested to make all the relevant court documents available to the author and to 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 reasonable time to complete the effective domestic remedies available to him and 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.

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