

C. Communication No. 231/1987, A. S. v. Jamaica (Decision of 21 July 1989, adopted at the thirty-sixth session)

Submitted by: A. S. [name deleted]

Alleged victim: The author

State party concerned: Jamaica

Date of communication: 7 June 1987 (date of initial letter)

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

Meeting on 21 July 1989,

Adopts the following:

Decision on admissibility

1. The author of the communication (initial submission dated 7 June 1987; several subsequent submissions) is A. S., 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 the Government of Jamaica.

2.1 The author states that he and Winston Wright were arrested and charged with the murder, on 28 November 1983, of one Jasper Vernon, but claims to be innocent of the crime. He was convicted and sentenced to death on 29 January 1985 in the St. James Circuit Court, while his co-defendant was convicted of manslaughter and sentenced to 10 years of hard labour.

2.2 With respect to the facts of the case, it appears a/ that the deceased and the author were living in the same area and reputed to be good friends. On the night of 28 November 1983, at or around 9 p.m., one of the witnesses, Roy Clarke, heard the sound of wrestling and of two gunshots outside his house, and then a voice calling out for help. After a few moments, he went outside and found the victim, who had been seriously wounded by bullets fired at close range. He then recognized that it was the victim's voice which he had previously heard, asking "[Name], what do you want to kill me for?". During the trial, the author's representative objected to this statement of Mr. Clarke as being hearsay and thus inadmissible, but the judge ruled it to be admissible, as part of the res gestae.

2.3 Mr. Vernon was brought to the Cornwall Regional Hospital in Montego Bay, where emergency surgery was performed on him. Two police inspectors went to the hospital shortly after his admission. One of them, upon his arrival in the casualty ward, heard a voice calling out the author's name and identifying him as the one who had fired the shots. He later recognized the voice as being that of the deceased. The inspector conducted a brief interview with the victim, who was in a serious condition but still conscious. At the trial, author's counsel again objected to the inspector's evidence as hearsay and requested that it be excluded, but the judge ruled the evidence admissible as the "dying declaration of a victim of homicide". Mr. Vernon succumbed to his injuries later on 28 November or in the early hours of 29 November 1983.

2.4 The author and his co-defendant claimed that they themselves had been held up that same evening by three gunmen near the spot where the deceased had been shot, and gave evidence to this effect during the trial. The prosecution, however, contended that their account contained so many discrepancies as to suggest that their version was merely a concoction to persuade others that they had not perpetrated the crime in question.

2.5 The author appealed against his sentence on the grounds of "unfair trial" and "unreliable evidence", but on 9 July 1986, the Court of Appeal refused leave to appeal and confirmed the sentence, after counsel for the author had conceded that there were no grounds of appeal that could be argued with any hope of success. The Court of Appeal delivered a written judgement on 24 September 1986. The author submits that his representative subsequently told him that there was no merit in the case justifying an appeal to the Judicial Committee of the Privy Council, and that the case would be placed before the Governor-General for clemency.

3. By decision of 21 July 1987, the Human Rights Committee transmitted the communication, for information, to the State party and requested it, under rule 86 of the provisional rules of procedure, not to carry out the death sentence against the author before it had had an opportunity to consider further the question of the admissibility of the communication. The author was requested, under rule 91 of the provisional rules of procedure, to furnish information concerning the facts of his case and the circumstances of his trial and to provide the Committee with the transcripts of the written judgements.

4. In a submission dated 21 October 1987, the State party argues that the communication is inadmissible on the ground of non-exhaustion of domestic remedies because the case has not yet been adjudicated by the Judicial Committee of the Privy Council. The State party adds that "[i]n circumstances such as these a reasonable interpretation of the Optional Protocol and the Committee's rules of procedure does not yield to the conclusion that the State party is required to furnish documents and information in relation to a communication which is patently inadmissible". Under cover of a further note dated 10 December 1987, the State party does, however, forward a copy of the Notes of Evidence in the author's case.

5. Under cover of a letter dated 10 February 1988, the lawyer who represented the author before the Court of Appeal forwarded a copy of the judgement of the Court of Appeal. He states that he had formed the opinion that there was no merit in the author's case, since the author had been, in his opinion, properly identified. He adds that the case was not further pursued with a view to filing a petition for leave to appeal to the Judicial Committee of the Privy Council.

6. By decision of 16 March 1988, the Working Group of the Human Rights Committee transmitted the communication to the State party, requesting it, under rule 91 of the provisional rules of procedure, to provide information and observations relevant to the question of the admissibility of the communication. In particular, it requested the State party to clarify whether the author retained the right to petition the Judicial Committee of the Privy Council for leave to appeal and whether legal aid would be available to him in that respect. The Working Group 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.

7. In its submission under rule 91, dated 20 July 1988, the State party contends that the communication is inadmissible on the ground of non-exhaustion of domestic remedies because the author retains the right, under section 110 of the Jamaican Constitution, to petition the Judicial Committee of the Privy Council for special leave to appeal. The State party adds that legal aid would be available to him for this purpose pursuant to section 3, paragraph 1, of the Poor Prisoners' Defence Act.

8. Commenting on the State party's submission, the author, in a letter dated 11 January 1989, states that he has contacted a law firm in London, which he claims would be willing to assist him for purposes of filing a petition for leave to appeal to the Privy Council. By phone call of 8 June 1989, author's counsel in London confirmed that he is preparing a petition on behalf of the author.

9.1 Before considering any claims contained in a communication the Human Rights Committee must, in accordance with rule 87 of its provisional rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

9.2 The Committee has ascertained as it is required to do under article 5, paragraph 2 (a), of the Optional Protocol, that the matter is not being examined under another procedure of international investigation or settlement.

9.3 With respect to the requirement of exhaustion of domestic remedies, the Committee has noted 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, although claiming that there would be no merit in pursuing such a petition, has obtained pro bono representation for this purpose, and that his representative is currently preparing a petition for special leave to appeal on his behalf. The Committee cannot conclude, on the basis of the information before it, that a petition for special leave to 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.

10. The Human Rights Committee therefore decides:

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

(b) That, since this decision may be reviewed under rule 92, paragraph 2, of the Committee's provisional 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, taking into account the spirit and purpose of rule 86 of the Committee's provisional 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;

(c) That this decision shall be transmitted to the State party and to the author.

#### Notes

a/ The author's initial and subsequent submissions do not provide a detailed account of the facts. The following description is drawn primarily from the outline of the facts contained in the judgement of the Court of Appeal.