

H. Communication No. 223/1987, Frank Robinson v. Jamaica
(Views adopted on 30 March 1989 at the thirty-fifth
session)

Submitted by: Frank Robinson

Alleged victim: The author

State party concerned: Jamaica

Date of communication: 5 February 1987 (date of initial letter)

Date of decision on admissibility: 2 November 1987

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

Meeting on 30 March 1989,

Having concluded its consideration of communication No. 223/1987, submitted to the Committee by Frank Robinson under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and by the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1. The author of the communication (initial letter dated 5 February 1987; further letter dated 15 July 1987) is Frank Robinson, a Jamaican citizen serving a life sentence in Jamaica. He claims to be a victim of a violation of article 14 of the Covenant by the Government of Jamaica. He is represented by counsel.

2.1 On 31 August 1978, Frank Robinson was arrested and charged, jointly with another man, of having committed murder. The trial was initially fixed for 18 April 1979 but had to be postponed on six occasions because the prosecution had not been able to locate its chief witness. After the witness was found, the trial was fixed for 30 March 1981, but on that date counsel for Mr. Robinson were not present, allegedly because they had not been given full instructions. The trial judge understood this to mean that counsel had not received the funds necessary to finance Mr. Robinson's defence. After Mr. Robinson was arraigned, he was told of his right to challenge jurors, but he did not exercise this right and merely asked to see his counsel. The jury was sworn in and a two-hour adjournment was granted to attempt to contact Mr. Robinson's counsel. At the resumption of the trial, the judge was informed that junior counsel for Mr. Robinson would appear in court the next day. The trial, however, was allowed to proceed. On the following day junior counsel appeared and requested the judge's permission, on behalf of senior counsel and himself, to withdraw from the case. The judge refused this request but invited counsel to appear on legal aid. Counsel refused this offer, left the court and never returned. The judge refused any further adjournment and the trial continued

with Mr. Robinson unrepresented. During the trial, Mr. Robinson called his mother as a witness to support his alibi defence. He called no other witnesses, although it is alleged that there were others in court who could have been called. He did not cross-examine any of the witnesses called for the prosecution and only made a final speech lasting three minutes. On 2 April 1981 (after three days of proceedings), he was convicted of murder and sentenced to death.

2.2 With regard to the issue of the exhaustion of domestic remedies, Mr. Robinson appealed to the Court of Appeal of Jamaica, which dismissed the appeal on 18 March 1983. The Court did not give any reasons. He further appealed to the Judicial Committee of the Privy Council, contending that the trial judge, by refusing an adjournment to enable him to make arrangements for his defence by other counsel, had infringed on his right under section 20, paragraph 6 (c), of the Constitution of Jamaica to "be permitted to defend himself ... by a legal representative of his own choice" and that therefore his conviction should be quashed. In a decision by a three to two majority, the Privy Council dismissed the appeal on the grounds: (a) that he did not enjoy an absolute right to legal representation, but was merely permitted to exercise the right to be legally represented, provided that he himself arranged for his representation; (b) that the judge was not required to grant repeated adjournments, especially considering the present and future availability of witnesses; (c) that he should have applied in advance for legal aid; and (d) that no miscarriage of justice had occurred as a result of the absence of legal counsel, because the judge had put the case very fully and fairly to the jury and, once the veracity of the chief prosecution witnesses had been established under cross-examination by counsel for the co-accused and the alibi defence of the mother had been rejected, the case against the author was overwhelming.

2.3 As a result of representations made to the Governor-General of Jamaica, Mr. Robinson's sentence of death was commuted in mid-1985 and changed to life imprisonment. It is claimed that Mr. Robinson is a victim of a violation of article 14, paragraph 3 (d), of the Covenant, because he was tried without the benefit of legal representation, not only as a result of the withdrawal of his counsel, but because of the judge's refusal to grant an adjournment to allow him to make alternative arrangements for his legal representation. It is also claimed that he is a victim of a violation of article 14, paragraph 3 (e), because, not being properly represented, he was unable effectively to cross-examine witnesses against him or to obtain the attendance of witnesses on his own behalf. In this connection, it is claimed that Mr. Robinson was denied a fair hearing, in violation of article 14, paragraph 1, of the Covenant.

3. By its decision of 19 March 1987, the Working Group of the Human Rights Committee transmitted the communication under rule 91 of the provisional rules of procedure to the State party, requesting information and observations relevant to the question of the admissibility of the communication.

4.1 In its submission under rule 91, dated 4 June 1987, the State party argues that none of the rights enumerated in article 14 which have been invoked by the author have been violated in his case.

4.2 The State party observes that the Judicial Committee of the Privy Council, when examining the author's appeal in 1985, found that there had been no breach of section 20, paragraph 6 (c), of the Jamaican Constitution, which stipulates that "every person who is charged with a criminal offence shall be permitted to defend himself in person or by a legal representative of his own choice" and which the

State party seen as being coterminous with an individual's right, laid down in article 14, paragraph 3 (d), of the Covenant, "to defend himself in person or through legal assistance of his own choosing". It further recalls that the Privy Council held that the aforementioned constitutional provision did not grant an absolute right to legal representation in the sense that it obliged a judge, "whatever the circumstances, always to grant an adjournment so as to ensure that no one who wishes legal representation is without such representation". Concerning the author's case, the State party reiterates that while it is true that the case was adjourned 19 times, 6 of which were trial dates, these adjournments were largely due to the difficulties of the prosecution in finding its chief witness, who allegedly had been subjected to threats against his life. The trial judge unsuccessfully tried to persuade the two attorneys who had appeared on behalf of the author on all previous occasions to continue to represent the author. The attorneys, however, stated that they had not been "fully instructed", which according to the State party can only be construed as a euphemism to indicate that they had not received their full fees. The one attorney present in court refused an assignment of legal aid from the judge to appear for the author.

4.3 Concerning the author's allegation of a breach of his right, under article 14, paragraph 3 (e), of the Covenant, "to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him", the State party argues that since there was no denial of the right to be represented by counsel, this allegation cannot be upheld. It notes that the author "was given every opportunity to examine and cross-examine witnesses, and was in fact significantly assisted by the judge in the examination of his principal witnesses".

4.4 Finally, the State party rejects the author's contention that he was denied a fair hearing in violation of article 14, paragraph 1:

"... [I]n any event it is clear from the facts, as well as the above-mentioned judgement of the Judicial Committee of the Privy Council, that there was no breach of the right to a fair hearing either under the Jamaican Constitution or the Covenant. In particular, it is to be noted that the Privy Council ... found that the judge had put the applicant's defence to the jury very fairly and fully, and that there was no miscarriage of justice."

5.1 Commenting on the State party's submission under rule 91, the author, in a submission dated 15 July 1987, contends that his allegations with respect to a violation of article 14, paragraphs 1 and 3, are well founded.

5.2 He submits that all the issues raised by the State party were comprehensively dealt with in his initial communication, and that the State party's reference to the numerous adjournments granted in the case merely confirm that the latter were meant to accommodate the prosecution. The facts, therefore, confirm his contention that he was denied equality of arms guaranteed by article 14, paragraph 3 (e). The author submitted a copy of a recent judgment of the English Court of Appeal which is said to support his contention, and in which the Court of Appeal held that if it was clear that it would be impossible for a litigant to obtain justice, an adjournment order should be made, even if it was highly inconvenient to do so.

5.3 The author also rejects the State party's contention that the trial judge put the author's defence to the jury "very fairly and fully": while the judge could give some guidance and assistance to the author, he was not in a position, as an

impartial and independent arbiter, to represent the author in the same way as a defence counsel could have done. Finally, the author contends that the commutation of his death sentence into one of life imprisonment does not constitute an appropriate remedy in the circumstances of his case, as the State party has asserted.

6.1 Before considering any claims 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.

6.2 The Committee noted that the State party did not claim that the communication was inadmissible under article 5, paragraph 2, of the Optional Protocol. With regard to article 5, paragraph 2 (a), the Committee observed that the matter complained of by Mr. Robinson had not been submitted to another procedure of international investigation or settlement. With regard to article 5, paragraph 2 (b), the State party did not contest the author's claim that there were no effective remedies which he could still pursue.

6.3 With regard to the parties' submissions concerning alleged violations of article 14, paragraphs 1, 3 (d) and 3 (e), the Committee decided to examine these issues with the merits of the case.

7. On 2 November 1987, the Human Rights Committee therefore decided that the communication was admissible.

8. In its submission under article 4, paragraph 2, of the Optional Protocol, dated 17 November 1988, the State party reiterates, as it had done in its submission of 4 June 1987, that it does not consider any of the rights invoked by the author to have been violated by the Jamaican courts. It further draws attention to the fact that the Governor-General exercised his prerogative of mercy in Mr. Robinson's case and commuted the death sentence to one of life imprisonment.

9. The Committee has ascertained that the judgement of the Judicial Committee of the Privy Council made no finding with regard to a breach of the Covenant by the Jamaican Government, confining itself to findings concerning the Jamaican Constitution.

10.1 The Human Rights Committee, having considered the present communication in the light of all the information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol, hereby decides to base its views on the following facts, which appear uncontested.

10.2 Frank Robinson was arrested on 31 August 1978 and charged with murder. His trial, initially scheduled to start on 18 April 1979, had to be postponed on this and on six subsequent occasions; this was attributable to the fact that the prosecution had not been able to establish the place of residence and to subpoena its chief witness, allegedly because the latter had been subjected to threats against his life. When this witness was finally located and the trial began, neither of the author's two lawyers was present in court. The judge, however, allowed the trial to proceed. On the following day, one of the defence lawyers made a brief appearance only to request the judge's permission, on behalf of senior counsel and himself, to withdraw from the case. The judge refused this request and invited counsel to appear on legal aid. Counsel, however, refused this offer, and the judge ordered the trial to proceed with the author unrepresented. Mr. Robinson

was left to defend himself, and on 2 April 1981 was convicted and sentenced to death. On 18 March 1983, the Jamaican Court of Appeal rejected his appeal without a written judgement, and in 1985 the Judicial Committee of the Privy Council dismissed his further appeal by a 3 to 2 majority decision. In June 1985, the Governor-General of Jamaica exercised his prerogative of mercy and commuted the author's death sentence to life imprisonment.

10.3 The main question before the Committee is whether a State party is under an obligation itself to make provision for effective representation by counsel in a case concerning a capital offence, should the counsel selected by the author for whatever reason decline to appear. The Committee, noting that article 14, paragraph 3 (d) stipulates that everyone shall have "legal assistance assigned to him, in any case where the interests of justice so require", believes that it is axiomatic that legal assistance be available in capital cases. This is so even if the unavailability of private counsel is to some degree attributable to the author himself, and even if the provision of legal assistance would entail an adjournment of proceedings. This requirement is not rendered unnecessary by efforts that might otherwise be made by the trial judge to assist the author in handling his defence in the absence of counsel. In the view of the Committee, the absence of counsel constituted unfair trial.

10.4 The refusal of the trial judge to order an adjournment to allow the author to have legal representation, when several adjournments had already been ordered when the prosecution's witnesses were unavailable or unready, raises issues of fairness and equality before the courts. The Committee is of the view that there has been a violation of article 14, paragraph 1, due to inequality of arms between the parties.

10.5 The Committee, basing itself on the information provided by the parties concerning the author's entitlement to examine witnesses, finds that there has been no violation of article 14, paragraph 3 (e).

11. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts as submitted reveal a violation of article 14, paragraphs 1 and 3 (d), of the Covenant.

12. The Committee, accordingly, is of the view that the State party is under an obligation to take effective measures to remedy the violations suffered by the author, through his release, and to ensure that similar violations do not occur in the future.