

C. Communication No. 229/1987, Irvine Reynolds v. Jamaica
(views adopted on 8 April 1991, forty-first session)

Submitted by: Irvine Reynolds

Alleged victim: The author

State party concerned: Jamaica

Date of communication: 22 April 1987

Date of the decision on admissibility: 18 July 1989

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

Meeting on 8 April 1991,

Having concluded its consideration of communication No. 229/1987, submitted to the Committee by Irvine Reynolds 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 authors of the communications 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 submission dated 22 April 1987 and subsequent correspondence) is Irvine Reynolds, a Jamaican citizen awaiting execution at St. Catherine District Prison, Jamaica. He claims to be the victim of a violation of his human rights by Jamaica, without specifying which provisions of the International Covenant on Civil and Political Rights he considers to have been violated. It is clear from his submissions, however, that the allegations relate primarily to article 14 of the Covenant. He is represented by counsel.

Facts as submitted by the author

2.1 The author was arrested on 1 November 1982 on suspicion of having murdered, in the early morning of 31 October 1982, Reginald Campbell, a shopkeeper living in the district of Sanquinetti, parish of Clarendon, Jamaica. The author and a co-defendant, Errol Johnson, were tried in the Clarendon Circuit Court. On 15 December 1983, they were found guilty as charged and sentenced to death. Their appeal was dismissed by the Court of Appeal of Jamaica on 29 February 1988 and the Court issued its written judgement on 14 March 1988. Author's counsel subsequently endeavoured to petition the Judicial Committee of the Privy Council for special leave to appeal; as of January 1991, a petition had not been filed, owing to the unavailability of relevant court documents.

2.2 The evidence relied on during the trial was circumstantial. On 31 October 1982 at about 9 a.m., the deceased's daughter found her father dead on the floor of a passageway in his shop, where he used to spend his nights. He had been stabbed in the neck, and death had been caused by severance of the right carotid artery and the right jugular vein. Earlier in the morning, the author and his co-defendant had been seen standing across the street from Mr. Campbell's shop by one of the prosecution witnesses, Lawrence Powell. Mr. Powell was acquainted with the author, who asked him for cigarettes. Mr. Powell suggested that the author and Mr. Johnson wait for the opening of Mr. Campbell's shop.

2.3 Later the same morning, another prosecution witness, Errol Carnegie, saw the accused walking along the road from the direction of the deceased's shop, about one mile from the scene of the crime. Errol Johnson was carrying one travelling bag, while the author was carrying two. The author asked Mr. Carnegie to join them and to help them carry the bags, which contained a number of unspecified items. They walked for about two miles, and Mr. Carnegie noted that the author was manifestly nervous, playing around ostentatiously with a knife and trying to hide at the approach of a bus. Subsequently, Mr. Carnegie identified the accused. a/

2.4 On 1 November, the police searched the house inhabited by the accused. In a room occupied by the author, police officers found a brown leather bag with several packs of cigarettes as well as cheques signed by Mr. Campbell. In the room occupied by Mr. Johnson, they found a blue travelling bag with a pair of sneakers. On 12 November 1982, the deceased's daughter was shown these items at the Mandeville police station. She confirmed that the objects seized in the author's room were similar to those sold in her father's store, and that the cheques belonged to her father, who had signed them as chairman of the Area Coffee Industry Board. On this occasion, Errol Johnson made a remark clearly implicating the author in the crime.

2.5 Immediately thereafter, Errol Johnson made a statement to the police. Although he sought to exculpate himself, he did admit that he had been present at the scene of the crime. He added that he was shocked to see that the author had brutally attacked Mr. Campbell. The author allegedly brushed his remonstrations aside and made a remark linked to the deceased's political allegiance.

2.6 During the trial, both the author and Mr. Johnson claimed that they had been elsewhere on the morning in question, and presented alibi evidence to that effect.

Complaint

3.1 The author claims that the judicial proceedings in his case were unfair, both in respect of the preliminary investigation and in respect of the trial in the Clarendon Circuit Court. Thus, he affirms that he was unrepresented on each of the five identification parades on which he was placed after his arrest. No one purportedly was able to identify him on any of the parades.

3.2 The author further submits that his trial was unfair, in that the judge admitted as evidence contradictory statements made by some of the prosecution witnesses. Thus, one witness apparently testified that he had known the

author since January 1981, whereas the author could prove that he was in detention at that time, until December 1981, on account of a previous conviction. Another witness testified that he had known the author since 1978, which was also proved to be wrong.

3.3 According to the author, his right to a fair trial had been violated in that four of the jurors allegedly had been close friends of the deceased. It remains unclear, however, whether he alerted his representative to this situation. With respect to legal assistance, the author notes that he was represented during the trial by two legal aid lawyers; he acknowledges that they assisted him adequately in the preparation of his defence and that he had sufficient opportunity to consult with them during the trial.

3.4 According to the author, some of the witnesses whom he had called to testify on his behalf and who were present in court on one day did not testify because they had allegedly been intimidated by one of the investigating officers.

3.5 With respect to the appeal, it is submitted that immediately upon the author's conviction, his lawyer informed him that there were six potential grounds of appeal, the main one being the inadequacy of the judge's instructions to the jury in respect of the identification evidence. According to the author, a prison officer prevented him from filling out the appeal forms in prison. The author complained of this to the Parliamentary Ombudsman, who replied that he had issued the necessary instructions. The author also sought to consult with his lawyer, who ignored, however, his requests for assistance. An appeal was nevertheless filed and dismissed. Thereupon, the author was told by his lawyer that there would be merits in a petition for special leave to appeal to the Judicial Committee of the Privy Council.

3.6 In respect of the requirement of exhaustion of domestic remedies, counsel indicates that in spite of regular and prolonged efforts, copies of relevant court documents necessary to effectively petition the Judicial Committee have not been made available by the State party. In this context, counsel points out that rule 4 of the Judicial Committee's Statutory Instrument, governing the procedure relating to petitions to this body, requires that the judgement from which special leave to appeal is sought be filed with the Registry of the Judicial Committee. Between July 1988 and the autumn of 1990, counsel addressed numerous written requests for copies of the committal papers, the trial transcript and the judgement of the Court of Appeal to the authorities, all of which were unsuccessful. It was not until December 1990 that several court documents were furnished by the State party, including parts of the trial transcript; crucial parts of the trial transcript, however, are missing, including the summing up of the case to the jury by the trial judge. Counsel submits that without the complete trial transcript, a petition to the Judicial Committee will not be an effective remedy within the meaning of the Optional Protocol.

State party's observations

4.1 The State party contends that the communication is inadmissible under article 5, paragraph 2 (b), of the Optional Protocol, since the author retains the right, under section 110 of the Jamaican Constitution, to petition the

Judicial Committee for special leave to appeal; it adds that legal aid would be available to the author for this purpose under section 3 of the Poor Prisoners' Defence Act.

4.2 The State party further contends that the rules of procedure of the Judicial Committee do not make a written judgement from the Court of Appeal of Jamaica a prerequisite for a petition for special leave to appeal. While rule 4 provides that any petitioner for special leave to appeal must submit the judgement from which leave to appeal is sought, rule 1 defines "judgement" as "decree, order, sentence or decision of any court, judge or judicial officer". Thus, the State party argues, an order or a decision of the Court of Appeal, as distinct from a reasoned judgement, is a sufficient basis for a petition for special leave to appeal to the Judicial Committee. It indicates that the Privy Council has heard petitions on the basis of the order or decision of the Court of Appeal dismissing the appeal. The State party forwards a copy of the judgement of the Court of Appeal, adding that it would have been available, upon request, to author's counsel from the date of its delivery, 14 March 1988.

4.3 Finally, the State party affirms that its judicial authorities are not responsible for such delays in the pursuit of domestic remedies as might have occurred in the case, to the extent that the author would be absolved from availing himself of domestic remedies on the ground that their application has been "unreasonably prolonged".

Issues and proceedings before the Committee

5.1 On the basis of the information before it, the Human Rights Committee concluded that the conditions for declaring the communication admissible had been met. It observed that the author's failure to petition the Judicial Committee of the Privy Council for leave to appeal could not be attributed to him, since relevant court documents, which are a prerequisite for a petition for special leave to appeal to be entertained by the Judicial Committee, had not been made available to the author or his counsel. The Committee further noted that the State party had not complied with the Working Group's request, made on 22 March 1988, to provide the Committee with the texts of the written judgements in the case. It concluded that since the author's and his counsel's sustained efforts to bring the case before the Judicial Committee had been frustrated, the application of domestic remedies had been unreasonably prolonged.

5.2 On 18 July 1989, the Human Rights Committee declared the communication admissible.

5.3 The Committee has considered the State party's submission of 10 January 1990, made after the decision on admissibility, in which it reaffirmed its position that the communication was inadmissible on the ground of non-exhaustion of domestic remedies. It takes the opportunity to expand on its admissibility findings.

5.4 The State party contends that the Judicial Committee of the Privy Council may entertain a petition for leave to appeal even without a written judgement of the Court of Appeal. It bases itself on its interpretation of rule 4 *juncto* rule 1 of the Privy Council's rules of procedure. While the Judicial

Committee's rules of procedure do not exclude this reasoning, it fails to take into account that, for purposes of the Optional Protocol, a judicial remedy must not only be available in theory but must also be effective, that is, have a reasonable prospect of success. The Committee recalls, in this context, that domestic remedies need not be exhausted if they objectively have no prospect of success.

5.5 According to the State party, a copy of the written judgement of the Court of Appeal would have been available to either author or counsel upon request, after its delivery on 14 March 1988. On the other hand, the material placed before the Committee reveals that counsel unsuccessfully requested the court documents in the case on at least two occasions, on 16 December 1988 and 9 February 1989, after it had proved impossible to obtain them from her client's former representatives. The Committee notes that it was only in December 1990 that counsel obtained copies of some court documents, including the judgement of the Court of Appeal. It remains uncontested, however, that the trial transcript is incomplete in crucial parts, including the summing up of the judge. As any prospective petition for leave to appeal to the Judicial Committee would be primarily based on the issue of evaluation of identification evidence by the court of first instance, there was no meaningful prospect in lodging the petition in the absence of a complete set of the trial transcript.

5.6 After considering the material submitted by the parties, the Committee concludes that such delays as have occurred in the pursuit of domestic remedies are not attributable to the author or his counsel, and that counsel was entitled to assume that under the circumstances a petition for leave to appeal to the Privy Council was not available and effective within the meaning of the Optional Protocol. There is, accordingly, no reason to revise the Committee's decision on admissibility of 18 July 1989.

6.1 As to the substance of the author's allegations, the Committee notes with concern that, several requests for clarifications notwithstanding, the State party has confined itself to issues of admissibility, while failing to address the substance of the matter under consideration. Article 4, paragraph 2, of the Optional Protocol enjoins a State party to investigate in good faith all the allegations of violations of the Covenant made against it and its judicial authorities, and to make available to the Committee all the information at its disposal. In the circumstances, due weight must be given to the author's allegations, to the extent that they have been sufficiently substantiated.

6.2 As to the author's claim of judicial bias and prejudice, the Committee reaffirms that it is generally for the appellate courts of States parties to the Covenant to evaluate the facts and evidence in a particular case. It is not in principle for the Committee to review specific instructions to the jury by the judge in a trial by jury, unless it can be ascertained that the instructions to the jury were clearly arbitrary or amounted to a denial of justice, or that the judge manifestly violated his obligation of impartiality.

6.3 After considering those parts of the judge's instructions that were made available to it, the Committee concludes that the judge's instructions to the jury on 15 December 1983 were neither arbitrary nor amounted to a denial of justice. The Committee has no evidence either that by admitting alleged contradictory statements of prosecution witnesses as evidence, the judge

violated his obligation of impartiality. The Committee further notes that the author's allegation that the jury was biased because of the presence of four acquaintances of the deceased has not been supported by any evidence as to whether the author or his counsel sought to challenge these jurors. The Committee, in these circumstances, finds no violation of article 14, paragraph 1, of the Covenant.

6.4 In respect of the author's claim that witnesses on his behalf who would have been available to testify were not called, the Committee is not in a position to ascertain whether the failure of the representative to call these witnesses or, if necessary, to subpoena them, was a matter of professional judgment or of negligence. The evidence before the Committee does not support a finding of a violation of article 14, paragraph 3 (e), of the Covenant.

6.5 Concerning the author's allegation that he was unrepresented on any of the identification parades held in connection with the murder of Mr. Campbell and that he was prevented by a prison officer from properly filing his appeal, the Committee notes that this claim has not been supported by sufficient evidence for it to justify a finding of a violation of article 14, paragraph 3 (d), of the Covenant.

7. 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 before the Committee, do not disclose a violation of any of the provisions of the International Covenant on Civil and Political Rights.

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

Notes

a/ It remains unclear whether the identification occurred during an identification parade or during the trial.