Distr.
RESTRICTED */

CCPR/C/45/D/293/1988
27 August 1992

Original: ENGLISH

HUMAN RIGHTS COMMITTEE
Forty-fifth session

DECISIONS

Communication No. 293/1988

Submitted by: Horace Hibbert
[represented by counsel]

Alleged victim: The author

State party: Jamaica

Date of communication: 24 January 1988 (initial submission)

Documentation references: Prior decisions - CCPR/C/WG/33/D/293/1988 (Working Group rule 86, rule 91 decision, dated 8 July 1988) combined -CCPR/C/37/D/293/1988 (decision on admissibility, dated 19 October 1989)

Date of adoption of Views: 27 July 1992

On 27 July 1992, the Human Rights Committee adopted its Views under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 293/1988. The text of the Views is appended to the present document.

[Annex]

_____

*/ Made public by decision of the Human Rights Committee.

DEC293.45 cm

ANNEX

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights
- Forty-fifth session -

concerning

Communication No. 293/1988

Submitted by : Horace Hibbert [represented by counsel]

Alleged victim : The author

State party : Jamaica

Date of communication : 24 January 1988

Date of decision on admissibility : 19 October 1989

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

Meeting on 27 July 1992,

Having concluded its consideration of communication No. 293/1988, submitted to the Human Rights Committee by Mr. Horace Hibbert 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 its Views under article 5, paragraph 4, of the Optional Protocol.

The facts as submitted by the author :

1. The author of the communication is Horace Hibbert, a Jamaican citizen currently awaiting execution at St. Catherine

District Prison, Jamaica. He claims to be a victim of violations by Jamaica of article 14 of the International Covenant on Civil and Political Rights. He is represented by counsel.

2.1 The author was a corporal in the police force of Jamaica and formerly assigned to the Morant Bay Constabulary Station in the parish of Saint James. In the late evening of 11 June 1984, he was assigned to special duty in the district of Prospect with three other officers from the Morant Bay Station, to search for a notorious local criminal who was wanted on a charge of burglary and larceny. He states that it was in performance of his duties that, on the night in question, he shot two individuals, Maureen Robinson and Leroy Sutton, who had been approaching the police vehicle around which the police officers were gathering. Ms. Robinson died instantly, whereas Mr. Sutton was paralysed by a bullet fired from the author's 0.38 calibre service weapon; he died in December 1985. The police investigation established that the other police officers and a third person, who had been interrogated by them, had seen Ms. Robinson and Mr. Sutton, that one of the officers told them to return to their homes on account of the advanced hour and that they had been sitting next to the police car for five minutes. The author, however, claims that he saw them for the first time when their bodies were placed in the trunk of the car.

2.2 The author submits that just before discharging the fatal shots, he had himself been fired at from the direction where the deceased had been standing or walking; he therefore argues that he acted in self-defence. The prosecution, however, contended that the two were shot from behind, from a short distance, estimated at around seven yards. After an investigation that lasted three days, the author was arrested and charged with murder; he submits that he was charged on the basis of false witness testimony. A preliminary investigation was conducted at Morant Bay in March 1985; in its course, Leroy Sutton was cross-examined by the author's counsel. In October 1985, Mr. Sutton signed a written deposition incriminating the author in the presence of the examining magistrate. This deposition was later tendered as evidence and admitted by the trial judge.

2.3 The author was tried in the Home Circuit Court, Kingston, from 18 to 20 May 1987; during the trial, he was represented by two legal aid attorneys, H.E., Q.C., and N.E., Q.C. The author entered a plea of not guilty but was found guilty as charged and sentenced to death. The jury took a mere 11 minutes to return a unanimous verdict. The Court of Appeal of Jamaica dismissed his appeal on 25 January 1988; the appeal centred on the issue of the admissibility as evidence of a written deposition made by a witness who died before the start of the trial. A subsequent

petition for special leave to appeal to the Judicial Committee of the Privy Council was dismissed on 24 July 1989.

2.4 Counsel submits that his client has exhausted available domestic remedies, and that a constitutional motion in the Supreme (Constitutional) Court does not constitute an available and effective remedy.

2.5 Counsel further contends that the State party does not make legal aid available for the purpose of constitutional motions. Even if the author had a theoretical constitutional remedy, it would not be available to him because of the absence of legal aid.

The complaint :

3.1 The author contends that his trial was moved from Saint Thomas to Kingston, after threats against and intimidation of his representatives. This allegedly caused a considerable delay in the adjudication of his case.

3.2 In respect of the circumstances of his trial, the author claims that the jurors were intimidated by the police. Inhabitants of the district of St. Thomas allegedly came to the Home Circuit Court in Kingston and identified the author in the presence of the jurors, who were about to be empanelled, with the following words: "See the PNP police boy from St. Thomas who shoot the boy and the girl - him for hung". The author's lawyer was informed about this but did not take action; further, he is said to have acted negligently since he failed to refute false evidence produced against Mr. Hibbert and did not attempt to tender as evidence the police station diary, an important piece of evidence in the author's opinion. The author further claims that the judge pressured the prosecution witnesses and intimidated both the jurors and his lawyers.

3.3 According to the author, his former colleagues in the police force were threatened and informed that they would lose their jobs and be transferred away from their families, or even charged jointly with the author, if they did not testify in support of the case made by the prosecution.

3.4 The author further claims that he did not have adequate opportunities to consult with his lawyers, since they never visited him during pre-trial detention and his letters addressed to them remained unanswered; his wife visited their offices on several occasions, but all she obtained was a promise that they would contact him. He adds that he informed one of his lawyers

about what he considered to have been unfair in the conduct of the trial and the preliminary enquiry, and notes that the lawyer promised to inform his colleague(s), but failed to do so. One of his representatives cross-examined prosecution witnesses during the trial; the author alleges, however, that the trial judge ruled many of the questions posed by the lawyer inadmissible or sustained the prosecution's objections to some of them. Only one witness sought to testify on his behalf; according to the author, this witness had been heard as a prosecution witness during the preliminary enquiry, when his testimony had been rejected.

3.5 Finally, the author submits that the investigating officer, an activist for the Jamaican Labour Party (JLP) who was not called as a witness during the trial, received a bribe from the Member of Parliament for St. Thomas to continue the investigation. The author surmises that the officer did not attend court because he did not want to be seen by the other witnesses, who had also been promised a share of the bribe, which he had not passed on. In the same context, the author contends that the case against him was widely publicized by the Member of Parliament, the Police Commissioner and other individuals, with the resulting prejudicial impact on the potential members of the jury.

The State party's information and observations:

4.1 By submission of 17 November 1988, the State party submitted that the communication was inadmissible on the ground of non-exhaustion of domestic remedies, because of the author's failure to petition the Judicial Committee of the Privy Council for special leave to appeal. By further submissions of 8 May and 26 September 1990, made after the adoption of the Committee's decision on admissibility, the State party contended that the communication remained inadmissible since the author had not availed himself of constitutional remedies, pursuant to section 25 of the Jamaican Constitution. Any decision of the Supreme (Constitutional) Court could be appealed to the Court of Appeal of Jamaica and from there to the Judicial Committee of the Privy Council.

4.2 The State party argues that many of the facts presented by the author, in particular in so far as they relate to legal representation and counsel's failure to cross-examine witnesses, do not point to any responsibility of the State party's judicial authorities. Additionally, and with reference to recent decisions

of the Human Rights Committee, the State party observes that the facts as presented merely seek to raise issues of evaluation of evidence in the case, which the Committee is not competent to examine. [1]

[1] See CCPR/C/37/D/369/1989 (G.S. v. Jamaica), decision of 8 November 1989, paragraph 3.2.

4.3 The State party further points to section 24, paragraph 2, of the Constitution, which provides that no person shall be treated in a discriminatory manner by any person acting in accordance with any written law or in performance of the function of any public office or any public authority. Subsection 3 defines as "discriminatory" the different treatment of persons based wholly or mainly on their respective attributes, e.g., political opinions. The State party submits that Mr. Hibbert may seek redress for the alleged discrimination on the ground of his political affiliation by way of an application under section 25 of the Constitution. In that respect, therefore, it deems the communication inadmissible on the ground of non-exhaustion of domestic remedies.

4.4 As to the author's complaint about undue delays in the proceedings against him, the State party notes, in a submission dated 30 October 1991, that such delays as occurred were attributable to an application for a change of venue, filed by the author's lawyer and based on the latter's perception of threats and intimidation. The decision to change the venue does not, in the State party's opinion, reveal a violation of any provision of the Covenant.

4.5 With respect to the claims detailed in paragraphs 3.2 to 3.4 above, the State party observes that they pertain to an alleged breach of the right to a fair trial, and that these claims have not been subject to judicial determination under section 25 of the Constitution.

4.6 Finally, the State party rejects as "totally unsubstantiated" the allegation that the investigating officer received bribes from a member of parliament.

Admissibility decision and review thereof :

5.1 During its thirty-seventh session, the Committee considered the admissibility of the communication. As to the requirement of exhaustion of domestic remedies, it considered that with the dismissal of the author's petition for leave to appeal by the Judicial Committee of the Privy Council on 24 July 1989, there were no further effective remedies for the author to exhaust.

5.2 On 19 October 1989, the Committee declared the communication admissible in so far as it appeared to raise issues under article

14 of the Covenant.

6.1 The Committee has taken due note of the State party's contention, made after the decision on admissibility, that in respect of the author's claim of a violation of article 14 and in respect of alleged discrimination based on political opinion, domestic remedies have not been exhausted.

6.2 The Committee reiterates that domestic remedies within the meaning of the Optional Protocol must be both available and effective. The Committee recalls that in a different case [2] the State party indicated that legal aid is not provided for constitutional motions. Therefore, the Committee considers that, in the circumstances of the case, a constitutional motion does not constitute a remedy that is both available and effective within the meaning of article 5, paragraph 2(b), of the Optional Protocol. Accordingly, there is no reason to revise the Committee's decision on admissibility of 19 October 1989.

Examination of the merits :

7.1 With respect to the alleged violation of article 14, three principal issues are before the Committee: (a) whether the alleged intimidation of the jurors by the judge and his objections to several of the questions posed by author's counsel amounted to a denial of a fair trial; (b) whether alleged references to the author's political affiliation and alleged irregularities in the conduct of the police investigation violated the principle of "equality before the court"; and (c) whether the author had adequate time and facilities for the preparation of his defence and was able to have witnesses called on his behalf.

7.2 Concerning the first issue under article 14, the Committee reaffirms that it is generally for the appellate courts of State parties to the Covenant to evaluate the facts and evidence in a particular case. It is not in principle for the Committee to assess the conduct of the trial by the trial judge or to review his instructions to the 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. The Committee lacks evidence that the conduct of the trial by the judge or his instructions to the jury

---

[2] A. Little v. Jamaica , No. 283/1988, Views adopted by th e Committee on 1 November 1991, paragraphs 7.3 and 7.4.

suffered from such defects. In particular, after considering the material before it, including the trial transcript, the Committee has no evidence that by objecting to several of counsel's questions during cross-examination, or by sustaining the prosecution's

objections to some of these questions, the judge violated his obligation of impartiality. Nor is there any evidence that the judge's questions "intimidated" any of the witnesses. The Committee, in these circumstances, finds no violation of article 14, paragraph 1, of the Covenant.

7.3 The Committee takes the opportunity, at this stage of entering the merits of the case, to reconsider issues of admissibility, in accordance with rule 93(4) of its rules of procedure. In respect of the author's claim that his political affiliations were used against him in court, the Committee observes that after careful review of the material before it, evidence in substantiation of this claim for purposes of admissibility cannot be discerned. This also applies to the claim that the investigating officer received a bribe from a Member of Parliament for the district where the murder had occurred. The Committee notes, moreover, that the latter allegation was introduced by author's counsel subsequent to the Committee's decision on admissibility of 19 October 1989, that the issue of alleged discrimination on the basis of political opinion was not placed before the domestic courts and that domestic remedies in this respect have not been exhausted. Accordingly, this part of the communication is inadmissible under articles 2 and 5, paragraph 2(b), of the Optional Protocol.

7.4 As to Mr. Hibbert's claim relating to article 14, paragraphs 3(b) and (e), of the Covenant, the Committee notes that the right of an accused person to have adequate time and facilities for the preparation of his defence is an important element of the guarantee of a fair trial and a corollary of the principle of equality of arms. The determination of what constitutes "adequate time" depends on an assessment of the particular circumstances of each case. The Committee notes that the author benefitted from senior counsel, who chose not to request a delay for further preparation of the defence. The Committee is not in a position to ascertain whether the alleged failure of the representatives either to introduce the police station diary as evidence or to call other witnesses on the author's behalf was a matter of professional judgment or of negligence. Accordingly, the material before the Committee does not justify a finding of a violation of article 14, paragraphs 3(b) and (e).

8. 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 it do not disclose violations of any provisions of

the Covenant.

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

-*-