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HUMAN RIGHTS COMMITTEE
Forty-fifth session

DECISIONS

Communication No. 405/1990

Submitted by : M.R.

Alleged victim : The author

State party : Jamaica

Date of communication : 23 April 1990 (initial submission)

Documentation references : Prior decisions - Special Rapporteur's combined rule 86/91 decision, transmitted to the State party on 31 July 1991 (not issued in document form)

Date of present decision : 28 July 1992

Decision on admissibility

[See Annex]

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ANNEX **/

Decision of the Human Rights Committee under the Optional Protocol
to the International Covenant on Civil and Political Rights
- Forty-fifth session -

concerning

Communication No. 405/1990

Submitted by : M.R. (name deleted)

Alleged victim : The author

State party : Jamaica

Date of communication : 23 April 1990 (initial submission)

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

Meeting on 28 July 1992,

Adopts the following:

Decision on admissibility

1. The author of the communication is M.R., a Jamaican citizen serving a twenty year prison term at St. Catherine District Prison, Jamaica. Although he does not invoke any of the provisions of the Covenant, it appears from his submissions that he claims to be a victim of violations by Jamaica of articles 6, 10, 14 and 26 of the International Covenant on Civil and Political Rights.

The facts as submitted by the author:

2.1 The author states that, on 18 October 1980, he was taken away from his home by three policemen, in the presence of his relatives. He claims that the police officers forced him to board a jeep in the back of which lay the body of a dead man. Instead

of bringing him to the Constant Spring Police Station for interrogation, the officers drove him to Morebrook. The arresting officer, one A.M., allegedly said that too many people lived in the neighbourhood to allow the police to kill him outright, upon which the author cried

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

out for help. Subsequently the policemen drove him to an empty lot on Marcus Garvey Drive in Kingston, where they shot him at point blank range; he states that he only survived because he simulated death. He was then taken to a hospital in Kingston, where three bullets were removed from his abdomen.

2.2 The author complains that so as to cover their activities, the policemen charged him with rape and participation in an armed robbery. He claims that, while still in the hospital, he was confronted with the alleged rape victim, whose testimony was in total contradiction with the police's own version of what had happened. In this context, he submits that A.M.'s evidence during the trial was that, on Saturday 18 October 1980, at about 8 a.m., he received a phone call that a robbery was taking place. Upon arrival at the locus in quo, he saw two men and the author, whom he knew. An exchange of gunfire took place during which one of the robbers was hit and fell to the ground; the author ran away and jumped in a gully. The complainant, however, testified that the assailants had worn masks, and that after they had left she went next door to call the police. She did not mention that any shooting had taken place between the robbers and the police, nor that one of the assailants had been killed on the spot.

2.3 With respect to the "fabricated nature" of the evidence against him, the author claims that in November 1980, he was forced by A.M. to pull out some pubic hair. The police also allegedly took some clothes from his room and perforated them, purportedly to show the bullet holes from the shooting at the scene of the crime.

2.4 On 12 January 1981, the author was indicted for robbery with aggravation, illegal possession of fire-arms and rape. On 28 May 1981, the Gun Court sentenced him to life imprisonment; on separate unspecified accounts, 3 concurrent fourteen year sentences were also imposed on him. The Court of Appeal dismissed his appeal in March 1983. It appears that after the dismissal of the appeal, the Review Board of the Gun Court reduced his sentence to twenty years, to run from August 1981.

2.5 The author submits that, once he had ascertained that he fulfilled all the necessary requirements, he applied for parole in November 1987. As of the end of 1989, there had been no reply from the Parole Board which, according to him, is reluctant to ensure that the documents necessary for release on parole - such as a medical report and the superintendent's report - are

prepared and processed in a timely manner. He alleges that he has been discriminated against, as six other inmates who were sentenced after him and who applied for parole after he did were granted parole.

2.6 The author further submits that he is unable to obtain the court documents pertaining to his case, and that his request for legal aid for the purpose of filing a petition for special leave to appeal to the Judicial Committee of the Privy Council was turned down by the Jamaica Council for Human Rights in 1992.

The complaint :

3.1 The author contends that he was "framed" by the police, who abducted him from his home, with the intention of killing him. Although article 6 of the Covenant is not specifically invoked, it transpires from the submissions that the author claims a violation of his right to life.

3.2 The author further claims that he had an unfair trial and submits that:

(a) the judge ignored the fact that he had been indicted in the absence of a prior identification parade;

(b) the judge did not investigate the discrepancy between the evidence of A.M. and that of the alleged rape victim;

(c) the author was denied the right to prove his claim that the bullet holes in the clothes did not correspond with the wounds inflicted upon him by the police;

(d) the evidence of the police was that he was shot from a distance of approximately 5 yards, whereas the medical certificate issued by the surgeon of the Kingston Public Hospital clearly indicates that he was shot from point blank range[1];

(e) no medical expert was called during the trial to corroborate the prosecution's evidence; as to the rape, he complains that he was convicted on purely circumstantial evidence;

(f) the judge ignored the news broadcasted by two radio

[1] It is not clear from the author's submissions whether the medical certificate, which he obtained in 1982, was presented as evidence in court or not.

stations (the R.J.R. and the J.B.C.) on 18 and 19 October 1980, respectively, stating that he was shot in a place different from that where the robber was shot; nor did the judge raise any questions as to why he was not taken to the Constant Spring Police Station in the morning of 18 October 1980;

(g) his lawyer failed to properly represent him during the trial;

(h) his appeal was heard without the presence of a lawyer.

3.3 The author claims that he is subjected to inhuman and degrading treatment in prison. He explains that he suffers from the effects of laparotomies, and that he is refused medical treatment by the prison authorities.

3.4 Finally, he claims to be a victim of discrimination in connection with the denial of his application for parole.

The State party's observations and author's comments:

4.1 By submission of 3 October 1991, the State party argues that the author's communication is inadmissible on the ground of non-exhaustion of domestic remedies, since his case has not been adjudicated upon by the Judicial Committee of the Privy Council. It points out that legal aid would be available to him under Section 3 of the Poor Prisoners' Defence Act. The State party adds that, in addition to his right to petition the Judicial Committee of the Privy Council in respect of his criminal case, the author still has constitutional remedies he may pursue in respect of the alleged violations of his fundamental rights and freedoms.

4.2 In his reply to the State party's observations, the author claims that he was denied the right to seek redress under Section 25 of the Jamaican Constitution. He requests the Human Rights Committee to assist him in obtaining the court documents in his case, and to provide him with legal aid for the purpose of exhausting local remedies.

Issues and proceedings before the Committee:

6.1 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.

6.2 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.

6.3 With respect to the requirement of exhaustion of domestic remedies, the Committee notes the State party's contention that the author may still petition the Judicial Committee of the Privy Council for special leave to appeal and that legal aid would be available for this purpose. The Committee further notes that the author's submissions do not show that he petitioned the competent authorities in respect of his claim that he is denied medical treatment in prison. In the circumstances, the Committee concludes that the requirements of article 5, paragraph 2(b), have not been met.

7. The Human Rights Committee therefore decides:

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

(b) that 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;

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

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

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