

HUMAN RIGHTS COMMITTEE

Campbell v. Jamaica

Communication No. 248/1987

30 March 1992

VIEWS

Submitted by: Glenford Campbell (represented by counsel)

Alleged victim: The author

State party: Jamaica

Date of communication: July 1987 (initial submission)

Date of the decision on admissibility : 30 March 1989

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

Meeting on 30 March 1992,

Having considered communication No. 248/1987, submitted to the Committee by Mr. Glenford Campbell for consideration 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 is Glenford Campbell, a Jamaican citizen born on 27 October 1961 in the Parish of Manchester, Jamaica, and currently awaiting execution at St. Catherine District Prison, Jamaica. He claims to be the victim of a violation by Jamaica of articles 7; 9, paragraphs 1 to 3; 10, paragraph 1; and 14, paragraphs 1 to 3 and 5, of the International Covenant on Civil and Political Rights. He is represented by counsel.

Facts as submitted by the author

2.1 The author was arrested at midnight on 12 December 1984 at his fiancée's residence in the Copperwood District, Parish of Clarendon. He was informed that he was suspected of having killed Ferdinand Thompson, but he was not formally charged with any offence.

2.2 On 26 January 1985, still in detention, the author was charged with larceny of a cow, valued at \$1,000 and belonging to Mr. Thompson, as well as the theft of two ropes and a chain. On 12 March 1985 the author was served a warrant for the murder of Mr. Thompson. It was submitted that he was the last person to have been seen with the deceased, before the latter disappeared. A preliminary inquiry was conducted before the Court of Petty Sessions for the Parish of Manchester on 4 July 1985; the resident examining magistrate, Mr. Sang, ruled that a prima facie case had been made about the charge that, between 27 November and 14 December 1984, the author had murdered Mr. Thompson; the author was committed to stand trial in the Circuit Court for the Parish of Manchester. A legal aid attorney was assigned to him for the preparation of the trial.

2.3 The author's trial began 14 October 1985. Mr. Campbell made an unsworn statement from the dock. Several witnesses gave evidence for the prosecution, but the author contends that there remain several serious discrepancies between the trial transcript, the judge's summing up and the facts as found by the Court of Appeal. On 16 October 1985, the jury returned a verdict of guilty and the author was sentenced to death.

2.4 For his appeal, which was filed on 22 October 1985, the author was assigned a different legal aid attorney. On 15 May 1987, supplementary grounds of appeal were filed by this lawyer, and the Court of Appeal heard the appeal on 18 May 1987. On 19 May 1987, the appeal was dismissed. The author, who had indicated on the appeal form that he wished to be present during the hearing of the appeal, did not attend the hearing; he indicates that he merely was informed by his lawyer, by letter of 19 May 1987, that the appeal had been dismissed. The attorney further indicated the possibility of a further petition to the Judicial Committee of the Privy Council. Mr. Campbell indicates that he had no opportunity to instruct this lawyer.

2.5 On 27 October 1988, the author petitioned the Judicial Committee of the Privy Council for special leave to appeal. On 21 November 1988, the Judicial Committee refused leave to appeal. With this, it is submitted, available domestic remedies have been exhausted.

Complaint

3.1 The author alleges a violation of article 9, paragraphs 1 to 3. He indicates that when he was arrested on 12 December 1984, the police officer who brought him to the Frankfield police station and questioned him without informing him of his rights merely told him that Mr. Thompson had been reported missing and that as he (the author) was the last person to have been seen with Mr. Thompson, he was suspected of having killed him. It is submitted that the author was detained from 12 December 1984 to 12 March 1985 without being formally charged with the only offence on which he was finally indicted, murder. During this time, he claims, he did not have access to legal representation. The author contends that, in violation of article 9, paragraphs 2 and 3, he was not promptly informed of the charges against him, or brought before a judge or other judicial officer

authorized by law to exercise judicial power between 12 December 1984 and 26 January 1985. In this context, he invokes the jurisprudence of the Human Rights Committee as well as the decision of the European Court of Human Rights in the case of McGoff v. Sweden, concerning article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. a/

3.2 The author further alleges a violation of article 14, paragraph 3 (b), of the Covenant, in that both time and facilities available to him for the preparation of his defence were severely curtailed. Thus, he was not given the opportunity of speaking with his counsel prior to the preliminary hearing. The same legal aid lawyer represented the author for the trial; the author states that this lawyer visited him in prison three days before the start of the trial and prepared a statement for him. Although that statement appears to have formed the basis for the author's unsworn statement from the dock on 15 October 1985, he was not given a copy; he submits that his lawyer did not review the prosecution's case with him.

3.3 The author further contends that his lawyer did not comply with many of his instructions; this is said to constitute a violation of article 14, paragraph 3 (e). Thus, he had requested that witnesses be called on his behalf; counsel, in a letter of 19 April 1990, states that he had been given the names of prospective witnesses but was unable to trace them, and that none of the author's relatives had come to see him. Towards the end of the trial, one person who claimed to know the author spoke to counsel and told him that she had not testified because she did not want to "get involved". In the author's opinion, the only reason why witnesses were not traced and called was that the legal aid rates were so inadequate that the lawyer was not able to make the necessary inquiries and initiate the necessary steps in order to prepare his defence.

3.4 The author specifically instructed his lawyer that the evidence presented by one of the investigating police officers was incorrect. He was told that this matter would have to be addressed at a later stage during the trial; in the end, it was not addressed at all. The author also informed counsel that the two investigating officers had beaten him during interrogation and forced him to sign a statement without knowing what it was about. Although so informed, counsel did not act on these instructions. Neither the trial transcript nor any of the depositions taken during the preliminary hearing indicate that the police officers' evidence was challenged or objected to, as it should have been in accordance with the author's instructions. Counsel contends that, notwithstanding, the judge should have given due consideration to the admissibility of unwritten confessional material. In this context, she refers to the Judges Rules, which police officers must respect. Under rule 2, an officer must caution anyone whom he suspects may have committed an offence before putting further questions to that person. The author submits that he was not cautioned. Under rule 9, statements taken in accordance with the Rules should, wherever possible, be taken down in writing and signed by the person making them, after having been given an opportunity to make appropriate corrections. The author was not asked by the police officers whether he wished to write down his statement, nor was he invited to make any corrections.

3.5 Counsel notes that the Judges Rules have been adopted by several Commonwealth jurisdictions, including Jamaica. Whenever a statement made in breach of the Rules is sought to be admitted, the judge must exercise his discretion as to whether or not to admit such a statement. If the judge decides to admit it, he must carefully instruct the jury as to how to treat it; the author submits that the judge did not display this particular care. He concludes that as he was never advised that he had

a right to remain silent, he was, in effect, compelled to make a statement, in violation of article 14, paragraph 3 (g).

3.6 The author, while conceding that it is in principle for the domestic courts and not for the Committee to evaluate facts and evidence in a particular case, contends that the instructions to the jury in respect of the author's trustworthiness were so tainted by the judge's own opinion as to amount to a denial of justice, especially if combined with his instructions concerning the circumstantial evidence and motive and with respect to the failure of counsel to challenge the confession statement. Counsel points, in particular, to the following remark made by the judge when summing up the author's unsworn statement: "It would be your duty as judges of fact to pay attention to the demeanour of the accused while he was giving his unsworn statement".

3.7 Moreover, it is contended that the judge did not follow the directions given by Lord Norman in Teper v. Regina (AC 480, at 489), according to which circumstantial evidence must always be narrowly examined. In the author's case, the judge in fact asked the jury to infer that the theft of the cow was the motive for the murder of Mr. Thompson, i.e., that Mr. Campbell had committed the murder in order to facilitate or conceal the theft of the cow. It is submitted that the judge, in a case turning on the evaluation of circumstantial evidence, attached undue weight to one of several possible inferences which could be drawn from a general finding of untruthfulness.

3.8 In respect of the conduct of his appeal, the author alleges violations of article 14, paragraphs 3 (b) and (d) and 5, of the Covenant. The attorney assigned to his appeal concedes that he did not seek instructions from the author; the author argues that as he had no opportunity to consult with that lawyer, he was denied his right to properly prepare his defence. He further contends that because he was at no time informed when his appeal was being heard and was represented for the appeal by an attorney not of his choosing, his rights under article 14, paragraphs 3 (d) and 5, were also violated: the conduct of the appeal is said to have jeopardized an effective appeal to the Judicial Committee of the Privy Council.

3.9. The author notes that more than 18 months passed between his conviction and the dismissal of appeal. On 7 August 1987 and again on 6 April 1988, the Court of Appeal's written judgement was requested. Counsel only obtained a copy of the latter in early July 1988; he served notice of his intention to petition the Judicial Committee for special leave to appeal on 25 August 1988, and filed his petition on 27 October 1988. These delays, coupled with the time spent in detention without being charged, are said to amount to a breach of article 14, paragraph 3 (c).

3.10 The author contends that on the basis of his allegations detailed in paragraphs 3.2 to 3.7 above, his right, under article 14, paragraph 2, to be presumed innocent until proved guilty according to law has been violated. He refers to the jurisprudence of the Committee in this respect. b/

3.11 Finally, the author contends that the conditions of his imprisonment are inhuman and degrading, amounting to a violation of articles 7 and 10 of the Covenant. Thus, he claims that he has received physical threats from prison warders; that there is a lack of hygienic and sanitary facilities on death row, which makes the living conditions highly insalubrious; and that the conditions of imprisonment are seriously detrimental to his health. In support of his contentions, the author submits a copy of a report about the conditions of detention at St. Catherine District

Prison, prepared by a United States non-governmental organization. Furthermore, the constant stress and anxiety suffered as a result of prolonged detention on death row are said to constitute a separate violation of article 7 of the Covenant.

3.12 With respect to the requirement of exhaustion of domestic remedies, the author contends that an application to the Supreme (Constitutional) Court would not be an available and effective remedy in his case. He points out that legal aid is not available for this purpose under the Poor Prisoners' Defence Act of 1961 or the Poor Persons (Legal Proceedings) Act of 1941, that he does not have the means to himself secure legal representation in Jamaica to argue a constitutional motion on a pro bono basis.

3.13 The author further notes that this allegation that he was denied a fair trial was specifically rejected by the Judicial Committee of the Privy Council. In the circumstances, he should not be required to argue points of law before a court of lower jurisdiction in Jamaica which he had already argued before the Privy Council. The Privy Council, if seized of an appeal on a decision on motion pursuant to section 25 of the Constitution, would in all probability confirm its earlier decision. Finally, a court of lesser jurisdiction in Jamaica would be bound by the Judicial Committee's earlier decision.

State party's information and observations

4.1 By submission of 20 July 1988, the State party argued that the author retained the right, under section 110 of the Jamaican Constitution, to petition the Judicial Committee of the Privy Council for special leave to appeal. It added that legal aid would be available to him for that purpose. The author subsequent petition to the Judicial Committee was dismissed on 21 November 1988.

4.2 In a further submission dated 4 April 1990, made after the Committee's decision on admissibility, the State party contends that although the author's petition for special leave to appeal to the Judicial Committee of the Privy Council was dismissed, he retains the right, under sections 20 and 25 of the Constitution, to apply to the Supreme (Constitutional) Court for redress. A decision of the Supreme Court may be appealed to the Court of Appeal of Jamaica and from there the Judicial Committee of the Privy Council.

4.3 As to the author's allegations that the trial judge misdirected the jury on the issue of circumstantial evidence and that witnesses against him allegedly gave false evidence, the State party argues that these claims seek to raise issues of fact and evidence which the Committee has no competence to evaluate. The State party refers to the Committee's jurisprudence in this respect. c/

4.4 As to the issue of whether a copy of the written judgement of the Court of Appeal was made available to the author or his counsel without delay, the State party notes that "the written judgement would have been available to [the author's] representative at the time it was delivered by the Court of Appeal".

Issues and proceedings before the Committee

5.1 During its thirty-fifth session, in March 1989, the Committee considered the admissibility of

the communication. With respect to the requirement of exhaustion of domestic remedies, the Committee concluded that, after the dismissal of the author's petition for special leave to appeal by the Judicial Committee, there were no further remedies available to the author.

5.2 On 30 March 1989, the Committee declared the communication admissible.

5.3 The Committee has noted the State party's submission of 4 April 1990, made after the decision on admissibility, in which it reaffirms its position that the communication remains inadmissible on the ground of non-exhaustion of domestic remedies. The Committee takes the opportunity to expand on its admissibility findings, in the light of the State party's further observations.

5.4 The Committee observes that domestic remedies within the meaning of the Optional Protocol must be both available and effective. It recalls that by submission of 10 October 1991 concerning a different case, the State party indicated that legal aid is not provided in respect of constitutional motions. d/ It is further uncontested that no lawyer in Jamaica is willing to represent the author for this purpose on a pro bono basis. In this context, the Committee observes that it is not the author's indigence that absolves him from pursuing constitutional remedies, but the State party's inability or unwillingness to provide legal aid for that purpose.

5.5 The State party has claimed, again in respect of different cases involving capital punishment, that it has no obligation under the Covenant to make legal aid available in respect of constitutional motions, as such motions do not involve the determination of a criminal charge, as required by article 14, paragraph 3 (d), of the Covenant. This issue before the Committee has not, however, been raised in the context of article 14, paragraph 3 (d), but in the context of whether domestic remedies have been exhausted.

5.6 For the above reasons, the Committee maintains that 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 reverse its decision on admissibility of 30 March 1989.

5.7 With regard to the allegations under articles 7 and 10, paragraph 1, of the Covenant, concerning the conditions of the author's detention on death row, the Committee notes that the substantiation thereof was not submitted by counsel until after the adoption of the Committee's decision on admissibility. The Committee further observes that the issues concerning Mr. Campbell's detention on death row and the question of whether prolonged detention on death row constitutes inhuman and degrading treatment were not placed before the Jamaican courts, nor apparently brought to the attention of any other competent Jamaican authority. As domestic remedies in this respect have manifestly not been exhausted, the Committee is precluded from considering these allegations on their merits.

6.1 As to the substance of Mr Campbell's admissible allegations, the Committee regrets that several requests for clarifications notwithstanding, the State party has confined itself to the observation that the author seeks to raise issues of facts and evidence that the Committee is not competent to evaluate. The Committee cannot but interpret this as the State party's refusal to cooperate under article 4, paragraph 2, of the Optional Protocol. This provision enjoins a State party to investigate

in good faith all the allegations of violations of the Covenant made against it and to make available to the Committee all the information at its disposal. The summary dismissal of the author's allegations, as in the instant case, does not fulfil the requirements of article 4, paragraph 2. In the circumstances, due weight must be given to the author's allegations, to the extent that they have been credibly substantiated.

6.2 The Committee rejects the State party's contention that the communication merely seeks to raise issues of facts and evidence which the Committee does not have the competence to evaluate. It is the Committee's established jurisprudence that it is in principle for the appellate courts of State parties to the Covenant to evaluate facts and evidence in a particular case or to review the judge's 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. e/ In this case, the Committee has been requested to examine matters belonging in this latter category. After careful consideration of the material before it, the Committee concludes that the remarks made by Justice T. about the author's "demeanour" in his summing up to the jury were neither arbitrary nor amounted to a manifest violation of his obligation of impartiality. The Committee cannot conclude either that the judge's directions unfairly buttressed the case of the prosecution. In the circumstances, the Committee finds no violation of article 14, paragraph 1. It follows that the conduct of the trial by the judge had no incidence on the author's right, under article 14, paragraph 2, to be presumed innocent until proved guilty according to law.

6.3 In respect of the allegations pertaining to article 9, paragraphs 1 to 3, the State party has not contested that the author was detained for three months before he was formally charged with murder, and that throughout the period from 12 December 1984 to 12 March 1985 he had no access to legal representation. The Committee does not consider that the author's arrest was arbitrary within the meaning of article 9, paragraph 1, as he was apprehended on suspicion of having committed a specified criminal offence. However, the Committee finds that the author was not "promptly" informed of the charges against him: one of the most important reasons for the requirement of "prompt" information on a criminal charge is to enable a detained individual to request a prompt decision on the lawfulness of his or her detention by a competent judicial authority. A delay from 12 December 1984 to 26 January 1985 does not meet the requirements of article 9, paragraph 2.

6.4 The Committee further considers that the delay from 12 December 1984 to 26 January 1985 in the present case between Mr. Campbell's arrest and his presentation to a judge violates the principle, in article 9, paragraph 3, that anyone arrested on a criminal charge shall be brought "promptly" before a judge or other officer authorized by law to exercise judicial power. The Committee considers to be an aggravating factor that the author had not access to legal representation from December 1984 to March 1985. This means, in the author's case that his right under article 9, paragraph 4, was also violated, since he was not in due time afforded the opportunity to obtain, on his own initiative, a decision by a court on the lawfulness of his detention.

6.5 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 an important aspect of the principle of equality of arms. In cases in which a capital sentence may be pronounced on the accused, it is axiomatic that sufficient time must be granted to the accused and his counsel to prepare the defence for the trial. The determination of what constitutes "adequate time" requires an

assessment of the individual circumstances of each case. The author also contends that he was unable to secure the attendance of witnesses on his behalf. The Committee notes, however, that the material before it does not reveal that either counsel or the author complained to the trial judge that the time or facilities were inadequate. The Committee therefore finds no violation of article 14, paragraph 3 (b) and (e).

6.6 Concerning the adequacy of the author's legal representation, both on trial and on appeal, the Committee recalls that it is axiomatic that legal assistance be made available to individuals facing a capital sentence. In the present case, it is uncontested that the author instructed his lawyer to raise objections to the confessional evidence, as he claimed this was obtained through maltreatment; this was not done. This failure had a clear incidence on the conduct of the appeal; the written judgement of the Court of Appeal of 19 June 1987 emphasizes that no objections were raised by the defence in respect of the confessional evidence. Furthermore, although the author had specifically indicated that he wished to be present during the hearing of the appeal, he was not only absent when the appeal was heard but, moreover, could not instruct his representative for the appeal, despite his wish to do so. Taking into account the combined effect of the above-mentioned circumstance, and bearing in mind that this is a case involving the death penalty, the Committee considers that the State party should have allowed the author to instruct his lawyer for the appeal, or to represent himself at the appeal proceedings. To the extent that the author was denied effective representation in the judicial proceedings and in particular as far as his appeal is concerned, the requirements of article 14, paragraph 3 (d), have not been met.

6.7 As to the claim under article 14, paragraph 3 (g), the Committee notes that the wording of this provision - i.e. that no one shall "be compelled to testify against himself or to confess guilt" - must be understood in terms of the absence of any pressure from the investigating authorities on the accused, with a view to obtaining a confession of guilt. In the present case, the author's claim that he was beaten during interrogation and forced to sign a blank confession statement has not been contested by the State party. It remains the Committee's duty to ascertain whether the author has sufficiently substantiated his allegation, notwithstanding the State party's failure to address it. After careful consideration of the material before it, the Committee is unable to determine that the investigating officers used force to compel Mr. Campbell to confess his guilt, in violation of article 14, paragraph 3 (g), or that the judge erred in admitting the confessional evidence put forth by the prosecution.

6.8 With respect to the claim of "undue delay" in the proceedings against the author, the Committee does not consider that a delay of 10 months between conviction and the dismissal of the appeal, resulted in "undue delay(s)" within the meaning of article 14, paragraph 3 (c), of the Covenant. The Committee is further unable to conclude that the conduct of the appeal jeopardized the author's chances of an effective appeal to the Judicial Committee of the Privy Council, in violation of article 14, paragraph 5. In this context, the Committee notes that the Court of Appeal produced a written judgement within one month after dismissing the appeal; it also lacks evidence that such delays as were experienced by counsel in obtaining a copy of the written judgement must be attributed to the State party.

6.9 The Committee is of the opinion that the imposition of a sentence of death upon the conclusion of a trial in which the provisions of the Covenant have not been respected constitutes, if no further

appeal against the sentence is available, a violation of article 6 of the Covenant. As the Committee observed in its General Comment 6 (16), the provision that a sentence of death may be imposed only in accordance with the law and not contrary to the provisions of the Covenant implies that “the procedural guarantees therein prescribed must be observed, including the right to a fair hearing by an independent tribunal, the presumption of innocence, the minimum guarantees for the defence, and the right to review by a higher tribunal”. In the instant case, while a constitutional motion to the Supreme (Constitutional) Court might in theory still be available, it would not be an effective remedy within the meaning of article 5, paragraph 2 (b), of the Optional Protocol, for the reasons outlined in paragraphs 5.4 to 5.7 above. It may thus be concluded that the final sentence of death was passed without having met the requirements of article 14, and that as a result the right protected by article 6 of the Covenant has been violated.

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 it disclose violations of articles 6; 9, paragraphs 2 to 4; and 14, paragraph 3 (d), of the Covenant.

8. In capital punishment cases, the obligation of State parties to observe rigorously all the guarantees for a fair trial set out in article 14 of the Covenant admits of no exception. The Committee is of the view that Mr. Glenford Campbell is entitled, according to article 2, paragraph 3 (a), of the Covenant, to an effective remedy, in this case entailing his release. The State party is under an obligation to take measures to ensure that similar violations do not occur in the future.

9. The Committee would wish to receive information, within 90 days, on any relevant measures taken by the State party in respect of the Committee’s views.

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

Notes

a/ See 8 ECHR 246 [1986].

b/ Communication No. 8/1977 (Weismann and Lanza Perdomo v. Uruguay) in: Selected Decisions of the Human Rights Committee under the Optional Protocol (United Nations publication, Sales No. E.89.XIV.1, vol. I, pp. 45-49

c/ See Official Records of the General Assembly, Forty-fifty Session, Supplement No. 40 (A/45/40), vol. II, annex X, sects. M and S, communications Nos. 290/1988 (A.W v. Jamaica), decisions of 8 November 1989, para. 8.2, and 369/1989 (G.S. v. Jamaica), para. 3.2.

d/ See sect. J below, communication No. 283/1988 (Aston Little v. Jamaica), Committee’s views adopted on 1 November 1991, paras. 7.3 and 7.4

e/ See Official Records of the General Assembly, Forty-sixth Session, Supplement No. 40 (A/46/40), annex XI, sect. D. communication No. 253/1987 (Paul Kelly v. Jamaica), views adopted on 8 April 1991, para. 5.13; and section C above, communication No. 240/1987 (Willard Collins v.

Jamaica), views adopted on 1 November 1991, para. 8.3