

HUMAN RIGHTS COMMITTEE

Campbell v. Jamaica

Communication No 307/1988**

24 March 1993

CCPR/C/47/D/307/1988*

VIEWS

Submitted by: John Campbell

Alleged victim: The author

State party: Jamaica

Date of communication: 20 June 1988

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

Meeting on 24 March 1993,

Having concluded its consideration of communication No. 307/1988, submitted to the Human Rights Committee by John Campbell 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 the State party,

Adopts its

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

1. The author of the communication (dated 20 June 1988) is John Campbell, a Jamaican citizen at the time of submission awaiting execution at St. Catherine District Prison, Jamaica. He claims that his rights under the International Covenant on Civil and Political Rights have been violated by Jamaica, without specifying which provisions of the Covenant he considers to have been violated.

Facts as submitted

2.1 The author states that after a marital argument on 2 December 1980, both he and his wife sustained burns. The wife was hospitalized and the author taken into custody, although the wife had not accused him of intentionally hurting her. On 3 December 1980, the investigating officer formally charged him with assault. On 13 December 1980, his wife died of pneumonia in the hospital.

2.2 Subsequently, the author was charged with murder, although, according to him, his wife had consistently refused to accuse him of injuring her intentionally. This was apparently corroborated by the investigating officer in his testimony before the Circuit Court. At the preliminary inquiry, the author's 10-year-old son, Wayne, accused his father of having intentionally injured the mother. The eldest son, Ralston, testified that he was asleep when the event occurred. Both statements, according to the author, were false.

2.3 In June 1983 the author went on trial before the Circuit Court of Kingston. The legal aid attorney assigned to the case allegedly made a number of serious errors which contributed to the author's conviction. At the start of the trial, the author's son, Wayne, allegedly told the court that he did not see his father do anything and had no questions to answer. Since Wayne did not alter this statement after several searching questions from both the prosecutor and the judge, the judge allegedly threatened him with detention if he refused to answer. At the end of the first day of the trial, the author's son was in fact brought to the police headquarters and detained overnight. Upon resumption of the trial the next morning, the judge and the prosecutor resumed their questioning of the son; the latter, however, still refused to answer, and as a consequence, the judge adjourned. Upon resumption of the trial, the same scenario repeated itself, and Wayne allegedly broke down and testified against his father. The Circuit Court found the author guilty as charged and sentenced him to death. On 11 June 1985, the Court of Appeal dismissed his appeal.

2.4 Shortly after the rejection of the appeal, a representative of the Jamaica Council for Human Rights informed the author that Wayne had made a written statement revoking his testimony during the trial. Wayne stated that, on 2 December 1980, his father came home drunk and that a quarrel ensued between him and his mother. Apparently, in the course of the altercation, the deceased doused herself with kerosene oil and set herself ablaze with a match, given to her by the author. The author then ran out of the house, and his wife jumped into a cistern of water adjoining the house, in an attempt to seek relief from the burns sustained. She was taken to the hospital, where she died of pneumonia, 10 days later. In his written statement Wayne explains that he had previously made a statement to the effect that his father had poured the kerosene on his mother and set it alight, because he had blamed his father for his mother's death. Moreover, Wayne claims that he had been intimidated by the judge's attitude towards him during the trial, when he tried to alter his previous statement. In this context, he states: "I thought that if I changed the statement I would be sent to prison. This was when I gave evidence against Dad."

Complaint

3.1 The author claims that he was denied a fair trial, and that irregularities occurred throughout the judicial proceedings in his case. In particular, he submits that his legal representation was inadequate. During the preliminary investigation, his legal aid lawyer tried to persuade him to enter a plea of manslaughter, which the prosecution allegedly was willing to accept. The author refused and asked the court to assign another lawyer to the case; his request was granted. During the trial, his lawyer allegedly did not question the judge why he refused to accept Wayne's testimony that he had not witnessed the incident, why he had to enter a second plea, why Wayne had been remanded in custody for one day, and why he also had to take the oath a second time. The lawyer allegedly disregarded his complaints concerning the conduct of the trial. According to the author, the lawyer, when cross-examining Wayne, did not pose the appropriate questions and did not take up the opportunity afforded him by the judge, who asked if he had anything to say after the jury had returned without a verdict and with a request for more information. The author further claims that his lawyer should have objected when the judge prevented the author from continuing his testimony. No witnesses were sought to testify on the author's behalf.

3.2 With respect to the circumstances of the appeal, the author states that although he was informed that a legal aid lawyer had been assigned to him for the purpose, he only learned of his name after the appeal had been dismissed. He claims that he does not know whether he was in fact represented by his attorney during the hearing of the appeal. All his written requests for clarifications to his attorney went unanswered.

3.3 With regard to the requirement of exhaustion of domestic remedies, the author claims that he has unsuccessfully requested assistance from the Jamaica Council for Human Rights to file a petition for special leave to appeal to the Judicial Committee of the Privy Council. He further indicates that, in spite of numerous requests addressed to the lawyer who represented him before the Circuit Court and to the Jamaica Council for Human Rights, he has not succeeded in obtaining the written judgements in his case. On 4 December 1990, the Secretariat requested the author to indicate whether a written judgement in the case had been issued by the Court of Appeal, and whether he had taken any further steps to petition the Judicial Committee of the Privy Council. In his reply, the author confirms that in spite of numerous requests to the Registrar of the Supreme Court for the written judgements, including the judgement of the Court of Appeal, he has still not been able to obtain them.

State party's observations

4. In its only submission, the State party contended that the communication was inadmissible on the ground of non-exhaustion of domestic remedies, since the author could still petition the Judicial Committee of the Privy Council for special leave to appeal, pursuant to section 110 of the Jamaican Constitution.

Committee's decision on admissibility

5.1 During its forty-first session the Committee considered the admissibility of the communication. It considered that the author's failure to petition the Judicial Committee of the Privy Council could not be attributed to him, since the relevant court documents had not

been made available to him, thereby frustrating his attempts to have his case entertained by the Judicial Committee.

5.2 Inasmuch as the author's claims related to the review and the evaluation of evidence, the communication was declared inadmissible under article 3 of the Optional Protocol. The Committee, however, considered that the author's allegations that his son was detained in order to force him to testify against him and that he was unrepresented during the hearing of his appeal should be considered on the merits. Accordingly, the Committee declared the communication admissible inasmuch as it might raise issues under article 14, paragraphs 1 and 3 (d) of the Covenant.

Examination of the merits

6.1 The Committee has considered the communication in the light of all the information made available to it by the parties, as required under article 5, paragraph 1, of the Optional Protocol. The Committee regrets the absence of cooperation by the State party regarding 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 to make available to the Committee all the information at its disposal. In the absence of any State party submission on the merits of the case, due weight must be given to the author's allegations, to the extent that they have been substantiated.

6.2 In respect of the author's claim that he was not properly represented during the hearing of his appeal, the Committee notes with concern that the author was not notified of the name of his court-appointed lawyer until after the appeal was dismissed. This effectively prevented the author from consulting with his lawyer and from giving him instructions in preparation of the appeal. In the circumstances the Committee finds a violation of article 14, paragraph 3 (d), of the Covenant.

6.3 As regards the author's claim that his son Wayne was detained in order to force him to testify against him, the Committee observes that this is a grave allegation, which the author has endeavoured to substantiate, and which is corroborated by his son's statement. In the absence of any information from the State party, the Committee bases its decision on the facts as provided by the author.

6.4 Article 14 of the Covenant gives everyone the right to a fair and public hearing in the determination of a criminal charge against him; an indispensable aspect of the fair trial principle is the equality of arms between the prosecution and the defence. The Committee observes that the detention of witnesses in view of obtaining their testimony is an exceptional measure, which must be regulated by strict criteria in law and in practice. It is not apparent from the information before the Committee that special circumstances existed to justify the detention of the author's minor child. Moreover, in the light of his retraction, serious questions arise about possible intimidation and about the reliability of the testimony obtained under these circumstances. The Committee therefore concludes that the author's right to a fair trial was violated.

6.5 The Committee is of the opinion that the imposition of a sentence of death upon conclusion of a trial in which the provisions of the Covenant have not been respected constitutes, if no further appeal against the sentence is possible, a violation of article 6 of the Covenant. As the Committee noted 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 [of conviction and sentence] by a higher tribunal". a/ In the present case, since the final sentence of death was passed without having met the requirements for a fair trial set out in article 14, it must be concluded that 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 a violation of articles 6 and 14, paragraphs 1 and 3 (d), of the International Covenant on Civil and Political Rights.

8. The Committee is of the view that Mr. John Campbell is entitled to an appropriate remedy. In this case, as the Committee finds that Mr. Campbell did not receive a fair trial, the Committee considers that the appropriate remedy entails release. The State party is under an obligation to ensure that similar violations do not occur in the future.

9. The Committee wishes to receive information, within 90 days, from the State party in respect of the Committee's views.

* An individual opinion submitted by Mr. Bertil Wennergren is appended.

** Pursuant to rule 85 of the Committee's rules of procedure, Committee member Mr. Laurel Francis did not take part in the adoption of the Committee's views.

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

Notes

a/ See CCPR/C/21/Rev.1, General Comment 6 [16], para. 7.

Appendix

Individual opinion submitted by Mr. Bertil Wennergren,
pursuant to rule 94, paragraph 3, of the Committee's rules of procedure

I concur with the Committee's findings. However, my reasons for finding a violation of the

author's right to a fair trial differ from those explained by the Committee in paragraph 6.4 of the views.

Article 14, paragraph 1, of the Covenant entitles everyone to a fair and public hearing by a competent, independent and impartial tribunal established by law. Paragraph 3 of the same article contains further guarantees for those charged with a criminal offence. In the present context, one may recall article 14, paragraph 3 (e), which guarantees that an accused shall have the right, in full equality, to examine or have examined, the witnesses against him and to obtain the attendance and the examination of witnesses on his behalf under the same conditions as witnesses against him. In my opinion, however, the issue in this case is not whether the principle of equality of arms was violated with respect to hearing the author's son Wayne as a witness, but whether his examination was compatible with the principles of due process of law and fair trial. It must be recalled first that, when Wayne was heard as a witness by the court, he was merely 13 years of age, and he was expected to truthfully recount an event which had occurred nearly three years earlier, when he was 10, and which might seriously incriminate his father. Secondly, measures of coercion were employed against him to make him testify and otherwise comply with his obligations as a witness.

Although most legal systems provide for the possibility of hearing children as witnesses in court, it is generally understood that particular care must be exercised in view of the vulnerability of children. Measures must be taken to ensure that a child is stable and mature enough to withstand the pressures and the stress that witnesses in a criminal case may encounter. If a hearing is considered necessary and may be carried out without risk for the child's well-being, every effort must be made to conduct the hearing in as considerate and sympathetic a way as possible. In the same context, it should be recalled that article 24 of the Covenant entitles every child to such measures of protection as are required by his status as a minor.

There is ample reason to believe that when Wayne testified in court, he had acquired a degree of maturity that calling him as a witness was as such permissible. However, an aggravating factor was that he was the accused's son and, moreover, the only person whom the prosecution could adduce as witness to prove the guilt of Mr. Campbell. Some legal systems exempt individuals from the obligation to testify against close relatives, the rationale being that an obligation to testify would be inhuman and thus unacceptable. Due to the lack of a generally recognized principle in this respect, however, I cannot rule out as inadmissible the hearing of Wayne as a witness simply because he was the son of the accused.

The case file contains a letter written by Wayne, in which he states that he was the "crown evidence" and gave a statement against his father in court. At that time, he was 10 years old. He was frightened and believed that his father was the cause of everything, and he was upset with him then. In respect of the trial, he mentions in his letter that he told the court that it had been his father who had thrown the oil on his mother and lit the matches; at that point, he stopped talking, and the judge ordered him taken into custody. He spent one night in the central police lock-up. Scared, he planned on changing his statement, but the judge scared him even further. He thought that if he changed his statement, he would be sent to prison; this is when he "gave evidence against Dad".

Testimony in a court of law is civic duty and all legal systems provide for certain coercive measures to guarantee compliance with that duty. Subpoena and imprisonment are the most common coercive measures and should be used for the equal benefit of the prosecution and the defence, whenever deemed necessary for the presentation of evidence to the jury which, on the basis of such evidence, must determine guilt or innocence of the accused. In its views, the Committee observes that the detention of witnesses is an exceptional measure, which must be regulated by strict criteria in practice and in law, and that it is not apparent that special circumstances existed in the author's case to justify the detention of a 13-year old. For me, it is difficult to imagine circumstances that would justify a child's detention in order to compel him to testify against his father. In any event, this case in no way discloses such special circumstances; the judge therefore must be deemed to have violated the principle of due process of law, and the requirements of a fair hearing under article 14, paragraph 1. The violation was in fact the violation of the rights of a witness, but its negative impact on the conduct of the trial was such that it rendered it unfair within the meaning of article 14, paragraph 1, of the Covenant.