

ANNEX XII*

Decisions of the Human Rights Committee declaring communications inadmissible under the Optional Protocol to the International Covenant on Civil and Political Rights

A. Communication No. 234/1987, D.S. v. Jamaica (Decision of 8 April 1991, adopted at the forty-first session)

Submitted by: D.S. (name deleted)
Alleged victim: The author
State party concerned: Jamaica
Date of communication: 3 May 1987 (date of initial letter)

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

Meeting on 8 April 1991,

Adopts the following:

Decision on admissibility

1. The author of the communication (initial submission dated 3 May 1987 and subsequent correspondence) is D.S., a Jamaican citizen currently awaiting execution at St. Catherine District Prison, Jamaica. He claims to be the victim of a violation of his human rights by the Government of Jamaica. Although he does not specifically invoke the International Covenant on Civil and Political Rights, it is apparent from the context of his submissions that his claims relate to article 14, paragraphs 1 and 3 (d), of the Covenant.

Facts as submitted by the author

2.1 The author was arrested on 4 June 1985 and charged with the murder, on 31 May 1985, of L.E., in the district of Bell Plain, Clarendon. He was tried in the Clarendon Circuit Court, found guilty as charged and sentenced to death on 3 October 1985. The Court of Appeal of Jamaica dismissed his appeal on 2 July 1986. The author indicates that he intended to petition the Judicial Committee of the Privy Council for special leave to appeal, but that he is unable to retain a representative privately.

2.2 The evidence relied on by the prosecution during the trial was that, on the evening of 31 May 1985, a group of young men, including the author and L.E., went to a "mango feast" (described as the stoning of mango trees in

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

order to collect the ripe fruits falling from the trees). At around 8 p.m., the group broke up, and three of the men walked to a nearby store to buy tobacco; D.S. continued to walk down a road by himself, followed, at a short distance, by the other men. L.E. approached the author, who began to insult him and suddenly cast the fatal stone. Medical evidence showed that L.E. suffered a depressed skull fracture, which left brain tissue protruding from the wound. According to two prosecution witnesses, D.S. then remarked "ah so me do it", identifying his victim as a man who had stabbed him in the forehead three weeks earlier. These two witnesses, as well as a third one, further testified that the author threatened to kill them if they were to report the incident to the police.

2.3 The author's version of the incident was that, on the evening in question, he and a few other people walked along the road after a "mango feast". When they reached another group of mango trees, all of them began to throw stones into the trees, in an attempt to bring down the fruit. When he went to retrieve the mangoes, he heard groans and saw a body lying under a tree. The author stated that he did not know which stone had hit L.E., emphasizing that the hit was accidental.

2.4 As to his prior relations with the deceased, the author stated that L.E. had stabbed him in the forehead about three weeks earlier, in the mistaken belief that the author had called him by the nickname of "Duppy Batty" and was engaged in an affair with his wife. After realizing his mistake, L.E. visited the author to apologize for his attack, handing over to him some money to cover medical expenses and promising more later.

2.5 With regard to the circumstances of the trial and appeal, the author acknowledges that he was represented by a legal aid attorney throughout the trial. On 4 July 1986, he was informed that his appeal had been heard and dismissed. The principal ground of appeal had been that the verdict of the jury was "unsafe and/or unreasonable having regard to the circumstances", and that the proper verdict should have been "guilty of manslaughter". His representative for the appeal, however, informed him that this ground could not be argued since the trial judge had clearly put the issue of manslaughter to the jury, which had returned a verdict of "guilty of murder". On 14 July 1986, the same lawyer filed a petition for mercy with the office of the Governor-General; no follow-up was given to it.

Complaint

3.1 The author contends that the conduct of his trial was beset by several irregularities. Thus, the prosecution witnesses allegedly committed perjury, falsely accusing him of having cast the fatal stone deliberately. He further affirms that although he was represented by a legal aid attorney, the assistance of his lawyer left much to be desired. It is not specified, however, in what respect the assistance was inadequate; the author concedes that all the prosecution witnesses were cross-examined. He finally claims that the only witnesses sought to testify on his behalf were his sister and his mother, whose testimony related to the prior relations between himself and L.E.

3.2 As to the subsequent stages of the judicial proceedings, the author claims, without further clarifying his allegation, that because the lawyers who represented him did not receive their fees, they are unwilling to inform him about the current status of his case. He further contends that he has unsuccessfully sought legal aid for purposes of a petition for special leave to appeal to the Judicial Committee of the Privy Council.

State party's observations

4.1 The State party submits that the communication is inadmissible on the ground of non-exhaustion of domestic remedies because the author retains the right, under section 110 of the Jamaican Constitution, to petition the Judicial Committee of the Privy Council for special leave to appeal, and that legal aid would be available for this purpose pursuant to section 3 of the Poor Prisoners' Defence Act.

4.2 The State party explains that the principal criterion for granting legal aid is the inability of the convicted individual to retain counsel on his own. The formalities are laid down in section 3, paragraph 1, which stipulates that:

"Where it appears to a certifying authority, that is, a resident magistrate or judge of the Supreme Court, that the means of a person charged with or ... convicted of a criminal offence are insufficient to enable that person to obtain legal aid, the certifying authority shall grant in respect of that person a legal aid certificate, which shall entitle him to free legal aid in the preparation and conduct of his defence in the appropriate proceedings ..., and to have counsel or solicitor assigned to him for that purpose in the prescribed manner."

4.3 As to the author's case, the State party indicates that all the available records reveal that D.S. was represented in the Court of Appeal by two legal aid attorneys, to whom legal aid certificates had been issued. Furthermore, the records do not disclose that D.S. made any attempt to apply for legal aid for purposes of a petition for leave to appeal to the Judicial Committee of the Privy Council, or that a petition was submitted to this body.

Issues and proceedings before the Committee

5.1 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.

5.2 With respect to the author's claims of unfair trial, the Committee observes that it is generally for the appellate courts of States parties to the Covenant and not for the Committee to evaluate the facts and evidence placed before domestic courts and to review the interpretation of domestic law by national courts. Similarly, it is for the appellate courts and not for the Committee to review specific instructions to the jury by the judge, unless it is apparent from the author's submission that the instructions to the jury were clearly arbitrary or tantamount to a denial of justice, or that the judge manifestly violated his obligation of impartiality. The author's allegations

do not show that the judge's instructions or conduct of the trial suffered from such defects in the present case. In particular, it transpires that the issue of manslaughter, legitimate self-defence or murder was clearly put to the jury by the trial judge. In this respect, therefore, the author's claims as submitted do not come within the competence of the Committee and, in that sense, fall outside the scope of protection provided by article 14, paragraph 1, of the Covenant. Accordingly, this part of the communication is inadmissible as incompatible with the provisions of the Covenant, pursuant to article 3 of the Optional Protocol.

5.3 With respect to the requirement of exhaustion of domestic remedies, the Committee takes note of the State party's contention that the communication is inadmissible because of the author's failure to petition the Judicial Committee of the Privy Council for special leave to appeal. It has further noted the author's claim that he has not been able to secure legal aid for this purpose. No additional clarifications have, however, been received from the author in this context, in spite of several reminders, and the State party has indicated that its records do not reveal that any formal request for legal aid was filed. On the basis of the information provided by the parties, the Committee must conclude that the author failed to pursue remedies available to him under Jamaican law, and that the requirements of article 5, paragraph 2 (b), of the Optional Protocol, have not been met.

6. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under articles 2 and 3 of the Optional Protocol inasmuch as it relates to the author's claim under article 14, paragraph 1, of the Covenant, and inadmissible under article 5, paragraph 2 (b), inasmuch as it relates to the author's claim under article 14, paragraph 3 (d), of the Covenant;

(b) That this decision be transmitted to the State party and to the author.

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