

E. Communication No. 269/1987, Delroy Prince v. Jamaica (views adopted on 30 March 1992, at the forty-fourth session)

Submitted by: Delroy Prince  
Alleged victim: The author  
State party: Jamaica  
Date of communication: 15 December 1987  
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 30 March 1992,

Having concluded its consideration of communication No. 269/1987, submitted to the Human Rights Committee by Mr. Delroy Prince 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.

Facts as submitted by the author

1. The author of the communication is Delroy Prince, 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 Jamaica.

2.1 The author states that he and three others were arrested and charged with the murder of a young girl in 1980, but claims to be innocent of the charge. He was convicted and sentenced to death on 8 March 1983, while his codefendants were acquitted. The Court of Appeal in Jamaica dismissed his appeal on 25 July 1985.

2.2 In 1986, a warrant for the execution of the author was issued, but a stay was granted. After the office of the Governor-General had transmitted new evidence, a retrial was requested. The Court of Appeal did not, however, grant the Governor-General's request. A petition for special leave to appeal to the Judicial Committee of the Privy Council was then filed on the author's behalf; on 15 December 1987, the Judicial Committee refused special leave to appeal. Towards the end of 1987, a second warrant for the author's execution was issued, and another last-minute stay was granted. Subsequently a petition for mercy was submitted to the Governor-General, requesting a commutation of the death sentence.

2.3 The author alleges that during pretrial detention he was severely beaten by the arresting police officers, to whom he refused to make a statement; this allegation was before the Court of first instance, but was rejected. The author's girlfriend, who he claims would have been able to provide an alibi

and corroborate his evidence, reportedly did not testify on his behalf because of threats against her life. The author himself allegedly also received threats prior to his trial; during the trial he did not disclose the identity of the murderer for fear of his family's and his own life.

2.4 The author further alleges that other witnesses who would have been able to testify on his behalf during the trial did not do so because of fear for their lives; some of these potential witnesses are even said to have left their homes for this reason. It is not clear whether the witnesses against the author were cross-examined during the trial, and it appears that no witnesses were called to testify on his behalf.

#### Complaint

3. Although the author does not invoke any article of the International Covenant on Civil and Political Rights, it appears from his submission that he claims to be a victim of a violation by Jamaica of articles 7 and 14 of the Covenant.

#### Committee's admissibility considerations and decision

4. The time-limit for the State party's observations on admissibility expired on 12 September 1988. In spite of a reminder sent on 13 July 1989, no submission was received from the State party.

5.1 At its thirty-seventh session, the Committee considered the admissibility of the communication, noting that the Judicial Committee of the Privy Council had dismissed the author's petition for special leave to appeal. The Committee also noted that the subsequent petition for mercy to the Governor-General did not appear to have produced any result. The Committee further observed that a petition for mercy to the highest executive officer of a State party to the Optional Protocol does not constitute a remedy that must be exhausted for purposes of article 5, paragraph 2 (b), of the Optional Protocol. On the basis of the information before it, the Committee concluded that there were no further remedies that the author was required to exhaust for purposes of admissibility.

5.2 The Committee noted that the author had failed to provide detailed information about the circumstances of the trial, although he was explicitly requested to do so in the Working Group's decision of 15 March 1988. It considered that the author's allegations, in so far as they related to the guarantee of a fair hearing, laid down in article 14 of the Covenant, pertained above all to paragraph 3 (e); it decided that these allegations, as well as the author's allegations of maltreatment, should be considered on the merits.

5.3 On 19 October 1989, the Committee declared the communication admissible in respect of articles 7 and 14, paragraph 3 (e), of the Covenant.

#### Review of the admissibility decision

6.1 By submission dated 8 May 1990, the State party challenges the admissibility decision and argues that the communication is inadmissible on the ground of failure to exhaust all available domestic remedies. It submits

that, notwithstanding the dismissal of the author's petition to the Judicial Committee of the Privy Council, the author still has constitutional remedies he may pursue.

6.2 The State party contends that the rights protected by articles 7 and 14, paragraph 3 (e), of the Covenant are also protected by sections 14 and 20, paragraph 5 (d), of the Jamaican Constitution.

6.3 The State party states that under section 25 of the Constitution any person who alleges that any of the rights protected in the Constitution have been, are being or are likely to be contravened in relation to him may without prejudice to any other action with regard to the same subject-matter which is lawfully available, apply to the Supreme Court for redress. An appeal lies from the decision of the Supreme Court to the Court of Appeal and from the decision of that Court to the Judicial Committee of the Privy Council.

7. The Committee has considered the State party's arguments and 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 a/ the State party indicated that legal aid is not provided for constitutional motions. The Committee, therefore, considers 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. There is therefore no reason to revise the Committee's earlier decision on admissibility of 19 October 1989.

#### Examination of the merits

8.1 As to the substance of the author's allegations, the Committee notes with concern that the State party has confined itself to the observation that the information provided by the author does not support his allegations; it has not addressed the author's specific claims under articles 7 and 14, paragraph 3 (e), of the Covenant. Article 4, paragraph 2, of the Optional Protocol enjoins the State party to investigate in good faith all the allegations made against it, and to make available to the Committee all the information at its disposal. The Committee is of the opinion that the summary dismissal of the author's allegations in general terms does not meet the requirements of article 4, paragraph 2, of the Optional Protocol.

8.2 As to the author's claims relating to article 14, paragraph 3 (e), the Committee notes that the trial transcripts disclose that the prosecution witnesses were in fact cross-examined by the defence. The Committee is not in a position to ascertain whether the failure of the defence to call witnesses on the author's behalf was a matter of counsel's professional judgement or the result of intimidation. The material before the Committee does not disclose whether either counsel or author complained to the trial judge that potential defence witnesses were subjected to intimidation. Similarly, the Committee is unable to conclude, from the information before it, that the defence was actually denied the opportunity to call witnesses. The Committee therefore finds no violation of article 14, paragraph 3 (e), of the Covenant.

8.3 With respect to the alleged violation of article 7 of the Covenant, the Committee notes that the author's claim has not been contested by the State party. Notwithstanding, it is the Committee's duty to ascertain whether the

author has substantiated his allegation. After careful examination of the information before it, and taking into account that the author's allegation was before the jury during the trial, the Committee concludes that the author has failed to substantiate his claim that he is a victim of a violation by the State party of article 7 of the Covenant.

9. 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 the Committee do not disclose a violation of any of the provisions of the International Covenant on Civil and Political Rights.

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

#### Notes

a/ See sect. J below, communication No. 283/1988, Little v. Jamaica, views adopted by the Committee on 1 November 1991.