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Original: ENGLISH

HUMAN RIGHTS COMMITTEE
Forty-fifth session

DECISIONS

Communication No. 383/1989

Submitted by : H.C.

Alleged victim : The author

State party : Jamaica

Date of communication : 4 March 1989 (initial submission)

Documentation references : Prior decisions - Special Rapporteur's
rule 91 decision,
transmitted to the
State party on
12 December 1989
(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. 383/1989

Submitted by : H.C. (name deleted)
Alleged victim : The author
State party : Jamaica
Date of communication : 4 March 1989 (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 H.C., a Jamaican citizen serving a twenty-year sentence at the General Penitentiary at Kingston. He claims to be a victim of a violation of his human rights by Jamaica.

The facts as submitted by the author :

2.1 The author states that on 4 May 1987, at 2.30 p.m., he was on his way home together with three others. They stopped at a shop, where two of them bought drinks. The author, who had been waiting outside the shop, states that one E.G. was standing on the veranda of his house just near the shop and told him to move away from the gateway. According to the author, E.G. assumed an aggressive attitude as he stepped forward and began pushing him,

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accusing him of being a thief planning to rob his house. The argument was stopped by E.G.'s wife.

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

2.2 The author indicates that later the same day, while returning from his farm, he realized that he was being followed by E.G.; the latter first threatened him verbally and then with a long knife. The author, who was carrying a machete, alleges that he began defending himself, but only after E.G. had stabbed him three times in the shoulder. He claims that the aggressor backed away after receiving injuries on his cheek and his right hand. The incident was witnessed by four persons, one of whom alerted the police. However, it is submitted that the police did not question the author or those present. E.G. was seriously injured and hospitalized. He suffered inter alia permanent nerve damage.

2.3 On 15 May 1987 the author was arrested and charged with "assault with intent to harm". On 1 June 1987 he appeared in court and on 19 June 1987 he was released on bail. On 5 November 1987, he was found guilty and sentenced to 20 years' imprisonment.

2.4 The author claims to have acted in self-defence and submits that during the trial two witnesses testified that he had actually been a victim of aggression. He contends that his lawyer did not properly represent him during the trial, since he did not cross-examine E.G. and was reluctant in calling witnesses on the author's behalf. He further indicates that on 10 October 1987 he appealed to the Court of Appeal; however, he claims that his lawyer, who was privately retained, did not attend the hearing. On 18 April 1988, he was informed that his application for leave to appeal had been dismissed. He submits that he later learned that the judge who tried his case at first instance also participated in the judgment of the Court of Appeal.

The complaint :

3. The author claims that his trial was unfair and his conviction unjust. Although he 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 of article 14 of the Covenant.

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

4. By submission of 22 February 1990, the State party argues

that the communication is inadmissible on the ground of non-exhaustion of domestic remedies, since the author may still appeal to the Judicial Committee of the Privy Council, either by leave of the Court of Appeal or by leave of the Judicial Committee itself.

5. In his comments on the State party's observations, the author states that he has not been able to petition the Judicial Committee of the Privy Council, because he does not have legal representation. He submits that he has requested assistance from various instances, including the Legal Aid Clinic, the Jamaica Council for Human Rights, the Ministry of Justice and the Registrar of the Court of Appeal, all to no avail.

The issues and proceedings before the Committee :

6.1 Before considering any claim 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 observes that the author's claims relate primarily to the evaluation of facts and evidence by the courts. It recalls that it is generally for the courts of States parties to the Covenant, and not for the Committee, to evaluate facts and evidence in a particular case, unless it is apparent that the courts' decisions are manifestly arbitrary. The Committee has no evidence that this was the case in the author's trial. Accordingly, this part of the communication is inadmissible under article 3 of the Optional Protocol.

6.3 As regards the author's claim concerning his legal representation, the Committee observes that the author's lawyer was privately retained and that his alleged failure to properly represent the author cannot be attributed to the State party. This part of the communication is therefore inadmissible.

6.4 As regards the author's claim concerning the participation of the trial judge at the appeal proceedings, the Committee, on the basis of the information before it, finds that the allegations are incorrect and thus unsubstantiated for purposes of admissibility. This part of the communication is therefore inadmissible under article 2 of the Optional Protocol.

7. The Human Rights Committee therefore decides:

(a) that the communication is inadmissible under articles 2 and 3 of the Optional Protocol;

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(b) that this decision shall be communicated 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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