

## HUMAN RIGHTS COMMITTEE

### Lambert v. Jamaica

Communication No. 517/1992

21 July 1994

CCPR/C/51/D/517/1992\*

### ADMISSIBILITY

*Submitted by: Curtis Lambert [represented by counsel]*

*Alleged victim: The author*

*State party: Jamaica*

*Date of communication: 13 February 1992 (initial submission)*

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

Meeting on 21 July 1994,

Adopts the following:

### **Decision on admissibility**

1. The author of the communication is Curtis Lambert, a Jamaican citizen and fisherman who, at the time of submission of his communication, was awaiting execution at St. Catherine District Prison, Jamaica, and who is now serving a sentence of life imprisonment. He claims to be a victim of violations by Jamaica of article 14 of the International Covenant on Civil and Political Rights. He is represented by counsel.

The facts as submitted by the author:

2.1 On 20 July 1987, the author was arrested and charged with the murder, in the evening of 1 July 1987 in the parish of Clarendon, of one D.C. On 21 July 1988, he was found guilty as charged and sentenced to death in the Clarendon Circuit Court. The Court of Appeal of Jamaica dismissed his appeal on 17 April 1989. In December 1992, the author's crime was

classified as non-capital murder under the Offences against the Persons (Amendments) Act of 1992; the death sentence was accordingly commuted to life imprisonment.

2.2 In the Clarendon Circuit Court, the prosecution's principal witness, one D.B., a second-degree cousin of the deceased, testified that in the evening of 1 July 1987, he had been standing on the main road, opposite a bar, at the race course in Clarendon, together with another man. He saw D.C. riding down the road on a bike; he called him, whereupon the deceased turned around and rode towards them. D.B. then saw the author appearing from behind a telephone company post, rush towards the deceased and stab him in the back with a long sharp knife. D.B. and the other man ran after the author but could not catch him. D.C. fell from the bike, calling out that "Skipper" - the nickname the author was generally known by - had stabbed him. D.B. further testified that he had been told of an argument between the author and D.C., approximately three and a half weeks prior to the crime.

2.3 Another witness, the brother of D.B., essentially confirmed this version of the events. He added that he had seen the author standing alone by a telegraph pole prior to the incident, holding his hands behind his back. One witness was called on the author's behalf; he testified that he had been out fishing with the author, from 5 p.m. on 1 July 1987 until 6 a.m. the next morning.

2.4 The main issue in the case was proper identification. It was accepted that both witnesses and the deceased had known each other for many years, having attended the same school. As to the lighting of the **locus in quo**, it was found that the scene had been lit by a 100-watt light bulb on the porch of the bar and by light coming from a house facing the bar, approximately 14 yards away from the scene.

2.5 The author admits that he had had a dispute with the deceased a few weeks prior to the latter's death and acknowledged that he had had a fight with D.B. He contends, however, that he acted in self-defence, because the deceased was carrying a gun at the time of the crime, and that a shot had actually been fired at him. The author contends that he wished to plead guilty to manslaughter, but during the trial his court-appointed lawyer, one D.W., told him not to raise this point and to instead insist that he did not know about the crime.

### The complaint:

3.1 The author claims that he was denied a fair and impartial trial and that several irregularities occurred in its course. Thus, on the first day of the trial, one member of the jury allegedly was seen talking to the deceased's parents outside the court room; the same person then reportedly sought to influence the other jurors. The judge was informed about the matter and proceeded to disqualify the juror. The author contends, however, that said juror had already influenced the remaining members of the jury, that, consequently, the jury was biased, and that the judge should have dismissed the entire jury and ordered the empanelling of another jury.

3.2 The author complains that his court-appointed attorney did not, in spite of his instructions, raise this particular objection in court. In this context, he submits that he was

poorly represented, and that he had no means to influence the choice of the lawyer. Allegedly, D.W. was the only legal aid lawyer available; the author asserts that his lawyer was under the influence of alcohol in court, and that his strange behaviour was noted disapprovingly by the trial judge. Before the Court of Appeal, the author was represented by another lawyer, D.C., who did not consult with him and allegedly admitted that he could not find any grounds on which to base the appeal.

3.3 As to the requirement of exhaustion of domestic remedies, the author observes that, after the dismissal of his appeal, he received a letter from his counsel informing him that there were no merits in a petition for special leave to appeal to the Judicial Committee of the Privy Council. A petition for clemency was sent to the Governor-General of Jamaica on 8 November 1989. In 1990, two Queen's Counsels acting as leading counsels confirmed that in their opinion, a petition to the Judicial Committee would be bound to fail, as the grounds of appeal related to issues of evidence which had not been raised either during the trial or on appeal.

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

4. By submission of 7 July 1993, the State party argues that the communication is inadmissible, since the author has failed to petition the Judicial Committee of the Privy Council for special leave to appeal and therefore has not exhausted available domestic remedies.

5.1 In his comments on the State party's submission, counsel refers to the joint opinion of Queen's counsels, which he transmitted to the Committee before and where it was found that there were no merits in a petition to the Privy Council. He adds, however, that, in view of the State party's objection, he instructed a different counsel to prepare a petition seeking leave to appeal to the Judicial Committee of the Privy Council.

5.2 In a letter, dated 6 September 1993, the author informs the Committee that he has retained the services of a lawyer to prepare the filing of a constitutional motion before the Supreme Court of Jamaica.

#### Issues and proceedings before the Committee:

6.1 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.

6.2 The Committee notes that the author's claims relate primarily to the conduct of the trial by the judge and the evaluation of the evidence by the jury. It recalls that it is generally for the courts of States parties to the Covenant to review the facts and evidence in a particular case. Similarly, it is for the appellate courts of States parties and not for the Committee to review the judge's instructions to the jury or the conduct of the trial, unless it is clear that the instructions to the jury were arbitrary or amounted to a denial of justice, or that the judge manifestly violated his obligation of impartiality. The author's allegations and the trial

transcript do not reveal that the conduct of his trial suffered from such defects. In particular, it is not apparent that the judge, by disqualifying one juror after the first morning of the trial and then letting the trial proceed, violated his obligation of impartiality. In this respect, therefore, the author's claims do not come within the competence of the Committee. Accordingly, this part of the communication is inadmissible as incompatible with the provisions of the Covenant, under article 3 of the Optional Protocol.

6.3 In respect of the author's claim that his court-appointed lawyer did not respect his professional obligations and failed to properly represent him, the Committee notes that the trial transcript does not reveal that the lawyer acted in ways incompatible with his mandate; the Committee also notes that neither the author nor his counsel has substantiated the allegations, for purposes of admissibility. In the circumstances, the Committee concludes that the author has failed to advance a claim within the meaning of article 2 of the Optional Protocol.

7. The Human Rights Committee therefore decides:

- (a) The communication is inadmissible under articles 2 and 3 of the Optional Protocol;
- (b) This decision shall be communicated to the State party, to the author of the communication and to his counsel.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

#### Footnotes

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