Distr.
RESTRICTED */

CCPR/C/43/D/283/l988
19 November 1991

ORIGINAL: ENGLISH

HUMAN RIGHTS COMMITTEE
Forty-third session

DECISIONS

Communication No. 283/l988

Submitted by : Aston Little (represented by counsel)

Alleged victim : The author

State party : Jamaica

Date of communication : 19 January 1988 (initial submission)

Documentation references : Prior decisions -
CCPR/C/WG/32/D/283/1988 (Working Group combined rule 86/ rule 91 decision, dated 22 March 1988)
- CCPR/C/36/D/283/1988 (decision on admissibility, dated 24 July 1989)
- CCPR/C/42/D/283/1988 (interlocutory decision, dated 24 July 1991)

Date of adoption of Views under article 5, paragraph 4, of the Optional Protocol : 1 November 1991

On 1 November 1991, the Human Rights Committee adopted its Views under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 283/1988. The text of the Views is appended to the present document.

[Annex]

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

DEC283.43

ANNEX

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights
- Forty-third session -

concerning

Communication No. 283/1988

Submitted by :	Aston Little (represented by counsel)
Alleged victim :	The author
State party :	Jamaica
Date of communication :	19 January 1988 (initial submission)
Date of decision on admissibility :	24 July 1989

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

Meeting on 1 November 1991,

Having considered communication No. 283/1988, submitted to the Committee by Aston Little 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 the following Views under article 5, paragraph 4, of the Optional Protocol.

The facts as presented by the author :

1. The author of the communication is Aston Little, a Jamaican citizen born on 6 February 1952 at Maroon Town, Jamaica, and currently awaiting execution at St. Catherine District Prison, Jamaica. He claims to be the victim of a violation by Jamaica of articles 6, 7, lO, and l4, paragraphs 1, 2, 3(b),(d), (e), and 5 of the International Covenant on Civil and Political Rights. He is represented by counsel.

2.1 The author was arrested on 12 January 1982 on suspicion of having murdered, on 9 January 1982, one Oswald Dawes. After his apprehension, the arresting officer allegedly hit him with his gun. The prosecution contended that the author had made a statement to the arresting officer, one Detective Corporal C., to the effect that he was not the only one involved, and that one O.B. and her daughter, L.D., also knew about the crime. The author denied ever having made such a statement. Subsequently, the investigating officer suggested to him that he should plead guilty to the charge of murder; when the author professed his innocence, the officer threatened to use O.B., who had been charged along with the author, as the prosecution's principal witness against him.

2.2 The author was detained until 16 February 1982, when he was released on bail; on 31 March 1983 he was again remanded in custody. On 24 April 1984 he was charged with the murder of Mr. Dawes; he went on trial in the Circuit Court of Spanish Town between 23 and 25 July 1984. Upon conclusion of the trial, the jury at first did not return a unanimous verdict; having been told by the judge to reconsider the evidence, it again retired and thereafter returned a guilty verdict. During the trial, the woman who had initially been charged with him, O.B., did in fact testify against the author, and it was, inter alia, on the basis of her testimony that he was convicted.

2.3 On 31 July 1984, the author appealed to the Court of Appeal of Jamaica on the grounds that the judge had misdirected the jury (a) on the issue of corroborative evidence, and (b) on the value of the author's alleged confession made after his arrest. On 20 January 1986, the appeal was dismissed. Early in 1989, the author petitioned the Judicial Committee of the Privy Council for special leave to appeal; the petition was dismissed on 5 May 1989. With this, it is submitted, available domestic remedies have been exhausted.

The complaint :

3.1 The author submits that the conduct of the trial violated article 14, paragraph 1, of the Covenant, because the trial judge's instructions to the jury on the issue of "corroborative evidence" were inadequate. It is submitted that these directions were vitally important given that (a) the testimony of O.B. provided the only evidence against the author, (b) her evidence was inconsistent with respect to the author's possession of the knife with which Mr. Dawes had been stabbed; and (c) no motive on the part of the author was ever established. Counsel further submits that the trial judge wrongly directed the jury that the statement made by the author in the presence of Det. Corp. C. ("ah no mi alone involve. L. and O. no about it too") amounted to a confession of murder: these words could not have amounted, in law, to a confession. It is further submitted that the judge should have directed or warned the jury that a mere "involvement" in any crime cannot necessarily be deemed, in the absence of further evidence, to amount to participation sufficient to establish guilt. Pursuant to the judge's instructions, the jury had to convict Mr. Little if it was convinced that he had played some part in the overall enterprise but remained unsure as to whether he was a principal or an abettor.

3.2 The author further claims that he was denied adequate time and facilities for the preparation of his defence, contrary to article 14, paragraph 3(b), as well as inadequate facilities to cross-examine witnesses, contrary to article 14, paragraph 3(e). He states that he was assigned two representatives, Mr. A.S. and his assistant, Ms. H.M.; although they were assigned to the case prior to the hearing before the examining magistrate, the author only had a brief interview with Ms. H.M. prior to the preliminary hearing. He further only met once for about 30 minutes with Mr. A.S. about one month before the trial. The author submits that his representatives were inexperienced and did not adequately consult with him in preparation of the defence. Thus,

(a) the statements of the prosecution witnesses were not reviewed with the author;

(b) his comments on the case of the prosecution were not acted upon by his representatives;

(c) he had only 10 minutes at the end of each trial day to consult with counsel;

(d) inconsistencies in the testimony of O.B. were picked

up by the author and notified to counsel, who failed to take any action;

(e) counsel initially intended to call the author to testify but then changed his mind;

(f) at least one witness identified by the author as capable of providing relevant and credible evidence on his behalf was not called by A.S., who indicated that this was unnecessary, without however providing an explanation;

(g) the author pointed out that the distance between the bar where he had been drinking and the locus in quo was such that he could not possibly have killed Mr. Dawes and made it in time for the beginning of his work shift at 7 a.m. The author's presence in the bar and on the bus to work could have been established, but counsel did not investigate the matter, in spite of requests to this effect formulated by the author.

3.3 The author acknowledges that the Court of Appeal assigned a lawyer, Mr. W.C., to him for the preparation of the appeal. He submits, however, that he was not consulted by this lawyer either before, during or after the appeal; he addressed several letters to W.C. before and after the hearing of the appeal, requesting an interview, but his letters went unanswered. It is submitted that this situation constitutes a violation of article 14, paragraphs 3(b), (d), and 5, of the Covenant.

3.4 Counsel claims that the delays in the judicial proceedings in his client's case constitute violations of articles 7, lO, and l4, paragraphs 3(c) and 5, of the Covenant. Thus, two years and six months passed between arrest and trial and sentence, one year and seven months between conviction and the dismissal of the appeal, and three years and four months between the appeal and the dismissal of Mr. Little's petition for special leave to appeal to the Judicial Committee of the Privy Council.

3.5 In this context, it is submitted that the Court of Appeal of Jamaica never issued a properly reasoned judgment in the case. It was only on 31 January 1989 that counsel representing the author before the Judicial Committee received a note from the Registrar of the Court of Appeal of Jamaica, signed by one of the judges on appeal. This note merely states that the Court of Appeal considered counsel's submissions to

be devoid of merit, that there was no ground on which an application for leave to appeal could be based, and that the application was, accordingly, refused by oral judgment. Counsel submits that this note does not constitute proper grounds for the dismissal of the appeal, as it fails to address the central issue of corroboration, namely whether the statement allegedly given by Mr. Little to the police after his arrest was capable of corroborating the evidence of the prosecution's only witness, O.B.

3.6 The author further submits that the conditions of his detention are inhuman and degrading, amounting to a violation of articles 7 and 10 of the Covenant. He confirms the findings of a recent report on prison conditions in Jamaica, including the death row section of St. Catherine District Prison to which he is confined, prepared by an American non-governmental organization. [1] Specifically, he complains that prison conditions are extremely insalubrious, with waste littering the area and constant unpleasant odours. A slop bucket in his cell, filled with human excrement, waste and stagnant water is only emptied once a day. Inmates are required to share eating utensils made of plastic, which are not properly cleaned. Finally, the daily time devoted to recreational activities is often limited to half an hour. Combined, these conditions are said to violate the author's inherent dignity, protected by article 10, paragraph 1. Furthermore, the treatment allegedly constitutes cruel, inhuman and degrading treatment within the meaning of article 7, particularly if taking into consideration the inherent uncertainty of the author's position as a person under sentence of death, prolonged by the delays in the judicial proceedings referred to in paragraph 3.4 above. Finally, the mental anguish and anxiety resulting from prolonged detention on death row in themselves are said to violate article 7. [2]

3.7 With regard to the requirement of exhaustion of domestic remedies in respect of the author's claim under article 7 of the Covenant, counsel refers to the decision of the Judicial Committee of the Privy Council in the case of Noel Riley et al. v. Attorney General, where it had been held that whatever the reasons for or length of delay in executing a sentence of

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[1] "Prison Conditions in Jamaica", May 1990.

[2] Counsel refers to the decision of the European Court of Human Rights in the case of Soering v. United Kingdom, where the "death row phenomenon" was considered in terms of inhuman and degrading treatment.

death lawfully imposed, the delay could afford no ground for holding the execution of the sentence to be in contravention of Section 17 of the Jamaican Constitution (similar to article 7 of the Covenant). [3] Counsel submits that, on the basis of judicial precedent, any constitutional motion based on this ground would inevitably fail.

3.8 Furthermore, counsel submits that a constitutional motion based on alleged violations of the right to a fair trial (Sections 20 and 25 of the Jamaican Constitution) would not be an available and effective remedy within the meaning of the Optional Protocol. If the State party submits that Mr. Little should argue before a court of lower jurisdiction in Jamaica issues which he had already placed before the Judicial Committee of the Privy Council, then, as noted by the International Court of Justice in a recent decision, the State party should provide authority for that contention. [4] More specifically, counsel observes that no legal aid is provided for constitutional motions pursuant to the Poor Prisoners' Defence Act (1961) or the Poor Persons (Legal Proceedings) Act 1941, at Appendix 6 and Associated Rules. The Poor Prisoners' Defence Act only allows for the grant of legal aid certificates in respect of "appropriate proceedings", defined as the preliminary examination, the trial or any subsequent appeal from conviction. Constitutional motions are not appeals from conviction but applications for constitutional redress. As the Poor Persons (Legal Proceedings) Act 1941 was enacted before the Jamaican Constitution, the "legal proceedings" referred to in the Rules do not include applications to the Supreme Court. In any event, the author has not succeeded in securing legal representation in Jamaica to argue a constitutional motion on a pro bono basis.

The State party's observations :

4. The State party, in a submission of 21 June 1989, contends that the communication is inadmissible because of the author's failure to pursue remedies available to him under the Jamaican Constitution. It notes that the provisions of the Covenant invoked by the author are co-terminous with the rights protected by Sections 14, 17 and 20 of the Jamaican Constitution. Under Section 25 of the Constitution, anyone who alleges that any of his fundamental rights has been, is

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[3] See 1982 3 A.E.R. 469.

[4] Elettronica Sicula S.p.A., ICJ Reports 1989, p. 59, at Appendix 5.

being or is likely to be contravened in relation to him, may, without prejudice to any other available action with respect to the same matter, apply for constitutional redress.

The Committee's admissibility considerations and decision:

5.1 At its 36th session, the Committee considered the admissibility of the communication. It noted the State party's contention that the communication was inadmissible because of the author's failure to apply for constitutional redress. In the circumstances of the case, the Committee found that recourse to the Constitutional Court under Section 25 of the Constitution was not a remedy available to the author within the meaning of article 5, paragraph 2(b), of the Optional Protocol.

5.2 On 24 July 1989, the Committee declared the communication admissible in so far as it appeared to raise issues under article 14 of the Covenant.

The State party's objections to the admissibility decision and the Committee's request for further clarifications:

6.1 The State party, by submission of 10 January 1990, rejects the Committee's findings on admissibility and challenges the reasoning described in paragraph 5.1 above. It argues, in particular, that the Committee's arguments reflect a misunderstanding of the relevant Jamaican law, especially the operation of Section 25(1) and (2) of the Constitution. In its opinion, the proviso to Section 25(2) cannot apply to the case, as the constitutional remedy under Section 25 is distinct from and independent of any appellate remedies pertaining to a criminal charge. The State party refers to the case of Noel Riley v. Attorney General (see paragraph 3.7), in which the appellant, after exhausting his criminal appeals, filed a constitutional motion alleging violations of certain of his constitutionally guaranteed rights. The decision of the Supreme Court was in turn appealed to the Court of Appeal and to the Judicial Committee of the Privy Council.

6.2 In a further submission dated 10 October 1990, the State party argues that the proviso to Section 25 (2) would only be applicable to a person whose criminal appeal had been adjudicated by the Judicial Committee of the Privy Council if

the right whose violation has been alleged, has been the subject of judicial determination by the Judicial Committee. In Mr. Little's case, the State party notes, the issue of a violation of the right to a fair trial was not determined by the Judicial Committee. In the State party's opinion, the Committee's admissibility decision

> "would render meaningless and nugatory the hard earned constitutional rights of Jamaicans and persons in Jamaica by its failure to distinguish between the right to appeal against the verdict and sentence of the court in a criminal case and the "brand new right" to apply for constitutional redress granted in 1962."

6.3 As to the author's claim concerning inadequate preparation of his defence, the State party notes that article 14, paragraph 3(b), of the Covenant is co-terminous with Section 20, paragraph 6(b), of the Jamaican Constitution, and adds that the author should have seized the Supreme Court of the alleged violation of his rights under this provision.

6.4 As to the author's allegation that he was denied a fair trial because the judge misdirected the jury on the issue of "corroborative evidence", the State party, by reference to the Committee's jurisprudence, [5] submits that this claim seeks to raise issues of evaluation of facts and evidence in the case, which the Committee has no competence to evaluate.

6.5 In June 1991, counsel informed the Committee that the Supreme (Constitutional) Court had rendered its judgment in the cases of Earl Pratt and Ivan Morgan, on whose behalf constitutional motions had been filed earlier in 1991. [6] In the light of this judgment and in order better to appreciate whether recourse to the Supreme (Constitutional) Court was a remedy which the author had to exhaust for purposes of the Optional Protocol, the Committee adopted an interlocutory decision during its 42nd session, on 24 July 1991. In this decision, the State party was requested to provide detailed information on the availability of legal aid or free legal

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[5] See CCPR/C/37/D/369/1989 (G.S. v. Jamaica), decision of 8 November 1989, paragraph 3.2.

[6] On 6 April 1989, the Human Rights Committee had adopted its Views under article 5, paragraph 4, of the Optional Protocol in respect of these cases: see CCPR/C/35/D/210/1986 and 225/1987.

representation for the purpose of constitutional motions, as well as examples of such cases in which legal aid might have been granted or free legal representation might have been procured by applicants. The State party did not forward this information within the deadline set by the Committee, that is, 26 September 1991. By submission of 10 October 1991, the State party replied that no provision for legal aid in respect of constitutional motions exists under Jamaican law, and that the Covenant does not require the States parties to provide legal aid for this purpose.

Post-admissibility proceedings and examination of merits:

7.1 In the light of the above, the Committee decides to proceed with its consideration of the communication. It has taken note of the State party's arguments on admissibility formulated after the Committee's decision declaring the communication admissible insofar as it raised issues under article 14 of the Covenant, and the author's further claims concerning violations of articles 7 and 10 of the Covenant, which were only substantiated after the Committee's admissibility decision.

7.2 The State party argues that the provision to Section 25(2) of the Jamaican Constitution cannot apply in the case, as the alleged breach of the right to a fair trial was not placed before the Judicial Committee of the Privy Council and thus not subject to judicial determination by that body. Based on the material placed before the Committee by the author, this statement would appear to be misleading. The author's petition to the Judicial Committee, dated 23 January 1989, submits that he was the victim of a miscarriage of justice. The Committee observes that the issue of whether or not a particular claim was the subject of a criminal appeal should not necessarily depend upon the semantic expression given to a claim, but on its underlying reasons. From this broader perspective, Mr. Little was in fact also complaining to the Judicial Committee of the Privy Council that his trial was unfair, in violation of Section 20 of the Jamaican Constitution. Furthermore, the courts of every State party should ex officio test whether the lower court proceedings observed all the guarantees of a fair trial, a fortiori in capital punishment cases.

7.3 The Committee recalls that by submission of 10 October 1991, the State party indicated that legal aid is not provided

for constitutional motions. In the view of the Committee, this supports the finding, made in its decision on admissibility, that a constitutional motion is not an available remedy which must be exhausted for purposes of the Optional Protocol. In this context, the Committee observes that it is not the author's indigence which absolves him from pursuing constitutional remedies, but the State party's unwillingness or inability to provide legal aid for this purpose.

7.4 The State party claims that it has no obligation under the Covenant to make legal aid available in respect of constitutional motions, as such motions do not involve the determination of a criminal charge, as required by article 14, paragraph 3(d), of the Covenant. But the issue before the Committee has not been raised in the context of article 14, paragraph 3(d), but only in the context of whether domestic remedies have been exhausted.

7.5 The Committee further notes that the author was arrested in 1982, tried and convicted in 1984, and that his appeal was dismissed in 1986. The Committee deems that for purposes of article 5, paragraph 2(b), of the Optional Protocol, a further appeal to the Supreme (Constitutional) Court would, in the circumstances of this case, entail an unreasonable prolongation of the application of domestic remedies.

7.6 For the above reasons, the Committee maintains that a constitutional motion does not constitute a remedy which is both available and effective within the meaning of article 5, paragraph 2(b), of the Optional Protocol. Accordingly, there is no reason to reverse its decision on admissibility of 24 July 1989, as far as article 14 is concerned.

7.7 With regard to the author's allegations of ill-treatment during detention, the Committee notes that the substantiation thereof was not submitted by the author until after the Committee's decision declaring the communication admissible with respect to article 14 of the Covenant. Moreover, the Committee observes that the issues concerning the conditions of detention on death row and the question whether prolonged detention on death row constitutes inhuman and degrading treatment were not placed before the Jamaican courts, nor brought before any other competent Jamaican authority. Since domestic remedies in this respect have not been exhausted, the Committee is precluded from considering these allegations on the merits.

8.1 With respect to the alleged violation of article 14, three issues are before the Committee: (a) whether the judge's instructions to the jury violated the author's right to a fair trial; (b) whether the author had adequate time and facilities for the preparation of his defence, and (c) whether any violation of the Covenant ensued from the Court of Appeal's failure to issue a written judgment after dismissing his appeal.

8.2 In as much as the alleged inadequacy of, and mistakes in, the judge's instructions to the jury are concerned, the Committee reiterates that it is generally for the appellate courts of States parties to the Covenant to evaluate the facts and evidence in any particular case. It is not in principle for the Committee to make such an evaluation or to review specific instructions to the jury, unless it can be ascertained that said instructions were clearly arbitrary or amounted to a denial of justice, or that the judge manifestly violated his obligation of impartiality. On the basis of the material placed before it, the Committee finds no evidence that the author's trial suffered from such defects.

8.3 The right of an accused person to have adequate time and facilities for the preparation of his defence is an important element of the guarantee of a fair trial and a corollary of the principle of equality of arms. In cases in which a capital sentence may be pronounced, it is axiomatic that sufficient time must be granted to the accused and his counsel to prepare the defence for the trial; this requirement applies to all the stages of the judicial proceedings. The determination of what constitutes "adequate time" requires an assessment of the individual circumstances of each case. In the instant case, it is uncontested that the author did not have more than half an hour for consultation with counsel prior to the trial and approximately the same amount of time for consultation during the trial; it is further unchallenged that he was unable to consult with counsel prior to and during the appeal, and that he was unable to instruct his representative for the appeal.

8.4 On the basis of the material placed before it, and bearing in mind particularly that this is a capital punishment case and that the author was unable to review the statements of the prosecution's witnesses with counsel, the Committee considers that the time for consultation was insufficient to ensure adequate preparation of the defence, in respect of both

trial and appeal, and that the requirements of article 14, paragraph 3(b), were not met. As a result, article 14, paragraph 3(e), was also violated, since the author was unable to obtain the testimony of a witness on his behalf under the same conditions as testimony of witnesses against him. On the other hand, the material before the Committee does not suffice for a finding of a violation of article 14, paragraph 3(d), in respect of the conduct of the appeal: this provision does not entitle the accused to choose counsel provided to him free of charge, and while counsel must ensure effective representation in the interests of justice, there is no evidence that author's counsel acted negligently in the conduct of the appeal itself.

8.5 It remains for the Committee to decide whether the failure of the Court of Appeal of Jamaica to issue a written judgment violated any of the author's rights under the Covenant. Article 14, paragraph 5, of the Covenant guarantees the right of convicted persons to have the conviction and sentence reviewed "by a higher tribunal according to law". In order to enjoy the effective exercise of this right, a convicted person is entitled to have, within a reasonable time, access to written judgments, duly reasoned, for all instances of appeal. To the extent that the Jamaican Court of Appeal has not, more than five years after the dismissal of Mr. Little's appeal, issued a reasoned judgment, he has been denied the possibility of an effective appeal to the Judicial Committee of the Privy Council, and is a victim of a violation of article 14, paragraph 5, of the Covenant.

8.6 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". [7] 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.

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 disclose a violation of article 14, paragraphs 3(b), (e), and 5, the latter read in conjunction with paragraph 3(c), and consequently of article 6 of the Covenant.

10. In capital punishment cases, the obligation of States parties to observe rigorously all the guarantees for a fair trial set out in article 14 of the Covenant admits of no exception. The Committee is of the view that Mr. Aston Little, a victim of violations of article 14, and consequently of article 6, is entitled, according to article 2, paragraph 3(a), of the Covenant, to an effective remedy, in this case entailing his release; the State party is under an obligation to take measures to ensure that similar violations do not occur in the future.

11. The Committee would wish to receive information, within ninety days, on any relevant measures taken by the State party in respect of the Committee's Views.

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

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[7] See CCPR/C/21/Rev.1, page 7, paragraph 7.