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RESTRICTED */

CCPR/C/46/D/292/1988
19 November 1992

Original: ENGLISH

HUMAN RIGHTS COMMITTEE
Forty-sixth session

DECISIONS

Communication No. 292/1988

Submitted by : Delroy Quelch [represented by counsel]

Alleged victim : The author

State party : Jamaica

Date of communication : 24 February 1988 (initial submission)

Documentation references : Prior decisions
- CCPR/C/WG/33/D/292/1988 (Working Group combined rule 86, rule 91 decision, dated 8 July 1988)
- CCPR/C/37/D/292/1988 (Interlocutory decision, dated 8 November 1989)
- CCPR/C/38/D/292/1988 (Decision on admissibility, dated 15 March 1990)

Date of adoption of Views : 23 October 1992

On 23 October 1992, the Human Rights Committee adopted its Views under article 5, paragraph 4, of the Optional Protocol, concerning communication No. 292/1988. The text of the Views is annexed to the present document.

[See annex]

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

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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-sixth session -

concerning

Communication No. 292/1988

Submitted by :	Delroy Quelch [represented by counsel]
Alleged victim :	The author
State party :	Jamaica
Date of communication :	24 February 1988
Date of decision on admissibility :	15 March 1990

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

Meeting on 23 October 1992,

Having concluded its consideration of communication No. 292/1988, submitted to the Human Rights Committee on behalf of Delroy Quelch 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, his counsel and by the State party,

Adopts its Views under article 5, paragraph 4, of the Optional Protocol.

The facts as submitted by the author :

1. The author of the communication is Delroy Quelch, a Jamaican citizen currently awaiting execution at St. Catherine District Prison, Jamaica. He claims to be a victim of a violation by Jamaica of articles 6, paragraph 1, 7, and 14, paragraphs 1 and 3(d), in conjunction with article 2, paragraph 3, of the International Covenant on Civil and Political Rights. He is represented by counsel.

2.1 The author states that he was arrested on 10 July 1984 on suspicion of complicity in the murder of a police constable, V.W., on 3 July 1984. He and his co-defendants, Errol Reece and Robert Taylor, were tried at the Portland Circuit Court and sentenced to death on 21 June 1985. Their appeal was dismissed by the Court of Appeal of Jamaica on 15 December 1986. All three defendants subsequently petitioned the Judicial Committee of the Privy Council for special leave to appeal. By decision of 27 July 1989, the Privy Council quashed the decision of the Jamaican Court of Appeal with respect to the author's co-defendants, whereas it dismissed the author's appeal.

2.2 The author states that, on 3 July 1984, he was approached by a man, whom he knew as "Chappel", and five other individuals. He was asked by Chappel to escort them since he was more familiar with the area they were heading to. On the way, they stopped to buy drinks, and the author and Chappel were ordered to wait while the others headed towards Moore Town Post Office a few blocks away. Upon their return, a half hour later, the men were armed with rifles and ordered the author to lead them to Millbank District, where they assaulted the driver of a van parked at the roadside and drove off in the van to a nearby hill; there the men became engaged in a shoot-out with three policemen in plain clothes, one of whom was fatally shot. The author states that the men then threatened to kill him if he informed the police about the incident. He further maintains that it was only later the same day that he learned that the Moore Town Post Office had been robbed.

2.3 After his arrest, the author was placed on an identification parade during which, he claims, a serious error was made in that the parade sheet indicated that he had been standing in the No. 1 position, and not No. 9, as the witness who identified him

testified. This issue was raised during the trial. The author adds that the main prosecution witness, a policeman who survived the shooting, testified to having seen him twice at a gate, and then running close to the scene of the crime. He contends that the description of him given by this witness did not at all correspond to his appearance, in particular his beard and the style of his hair at the time in question.

2.4 He further submits that he was assigned an inexperienced lawyer, who, in addition, was constantly obstructed in his defence by the judge. He concedes that witnesses called to testify against him were cross-examined but claims that those whom he sought to have testify on his behalf were not called by his legal aid lawyer. With respect to his appeal, the author claims that his court-appointed lawyer did not appear at all for the hearing.

2.5 By submission of 30 November 1989, counsel argues that the central issue in this case relates to the treatment of identification evidence. He submits that the author's identification by the main prosecution witness depended entirely on 'fleeting glance' and points out that the witness admitted this himself during cross-examination. Counsel further contends that the author was denied the right to adequate and effective legal assistance, both during trial and appeal; in particular, his representative allegedly failed to call witnesses to testify that the author's identification parade had not been properly conducted and to attest to the author's appearance at the time of the offence, in order to clarify the alleged discrepancies in the prosecution witness' evidence.

The complaint :

3. The author claims that he has been denied a fair trial, in violation of article 14, paragraph 1, of the Covenant; that he has been denied the right to adequate and effective legal representation, in violation of article 14, paragraph 3(d), of the Covenant; that his death sentence is disproportionate and constitutes cruel and inhuman punishment, in violation of article 7 of the Covenant; that the execution of his death sentence would constitute an arbitrary deprivation of his life, in violation of article 6 of the Covenant. He further claims that he has been denied the right to an effective domestic remedy, in violation of

article 2, paragraph 3, of the Covenant.

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

4. By submission, dated 28 September 1989, the State party contends that, in spite of the dismissal of the author's petition by the Judicial Committee of the Privy Council, the communication is inadmissible for failure to exhaust domestic remedies, since the author has not pursued the remedies available to him under the Jamaican Constitution. In this context, the State party submits that the provisions of the Covenant invoked by the author (articles 6, 7, and 14) are coterminous with the rights protected by sections 14, 17 and 20 of the Jamaican Constitution, which guarantee to everyone the right to life, protection against torture, inhuman or degrading punishment or treatment, and due process of law, respectively. Under the Constitution, if anyone alleges that any of these fundamental rights has been, is being or is likely to be contravened in relation to him, he may, without prejudice to any other action with respect to the same matter which is lawfully available, apply to the Supreme Court for redress.

5. In his comments on the State party's submission, counsel challenges the State party's contention that the author may still pursue constitutional remedies and submits that these remedies are not available to the author owing to lack of financial means and unavailability of legal aid for the purpose, despite the guarantees of section 25(1) of the Jamaican Constitution.

The Committee's admissibility considerations and decision:

6.1 During its 38th session, in March 1990, the Committee considered the admissibility of the communication. It observed that recourse to the Constitutional Court under section 25 of the Jamaican Constitution was not a remedy available to the author within the meaning of article 5, paragraph 2(b), of the Optional Protocol.

6.2 In respect of the author's contention that the judge failed to direct the jury adequately on the issue of identification evidence in the case, the Committee considered that, while

article 14 of the Covenant guarantees the right to a fair trial, it is in principle for the appellate courts of States parties to the Covenant, and not for the Committee, to evaluate facts and evidence in a particular case and to review specific instructions to the jury. It found therefore that this part of the communication was inadmissible under article 3 of the Optional Protocol.

6.3 The Committee further considered that the author's claim that he suffered inhuman and degrading treatment in violation of article 7 of the Covenant had not been substantiated, for purposes of admissibility.

6.4 The Human Rights Committee, therefore, declared the communication admissible in so far as it might raise issues under article 14, paragraph 3(d), of the Covenant, in respect of the claim that no lawyer was present during the author's appeal.

Review of admissibility :

7. The State party, by submission of 6 February 1991, maintains that the communication is inadmissible because of the author's failure to file a constitutional motion.

8.1 The Committee has taken note of the State party's argument that constitutional remedies are still available to the author. It recalls that the Supreme Court of Jamaica has, in recent cases, allowed applications for constitutional redress in respect of breaches of fundamental rights, after the criminal appeals in these cases had been dismissed.

8.2 However, the Committee also recalls that by submission of 10 October 1991 concerning another case [1], the State party indicated that legal aid is not provided for constitutional motions, and that it has no obligation under the Covenant to make legal aid available in respect of such motions, as they do not involve the determination of a criminal charge, as required under article 14, paragraph 3(d), of the Covenant. In the view of the Committee, this supports the finding, made in the decision on admissibility, that a constitutional motion is not an available remedy for an author who has no means of his own to pursue it. In this context, the Committee observes that the author does not claim that he is absolved from pursuing constitutional remedies because of his indigence; rather it is the State party's unwillingness or inability to provide legal aid for the purpose that renders the remedy one that need not be pursued for purposes of the Optional Protocol.

8.3 The Committee further notes that the author was arrested in 1984, tried and convicted in 1985, and that his appeals were dismissed in December 1986 by the Court of Appeal of Jamaica and

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[1] Communication No. 283/1988 (Aston Little v. Jamaica), Views adopted on 1 November 1991.

in July 1989 by the Judicial Committee of the Privy Council. The Committee deems that for purposes of article 5, paragraph 2(b), of the Optional Protocol, the pursuit of constitutional remedies would, in the circumstances of the case, entail an unreasonable prolongation of the application of domestic remedies. Accordingly, there is no reason to revise the decision on admissibility of 15 March 1990.

Examination of the merits :

9.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol.

9.2 The Committee notes with concern that the State party in its submissions has confined itself to issues of admissibility. Article 4, paragraph 2, of the Optional Protocol enjoins a 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 observes that the State party's failure to meet the requirements of article 4, paragraph 2, of the Optional Protocol renders the examination of the instant communication unduly difficult.

9.3 With regard to the author's claim that he was not represented during the appeal proceedings, the Committee notes that the written judgment of the Court of Appeal shows that counsel for the author was present during the appeal hearing, and argued that the evidence against the author, based solely on identification by one eye-witness and the author's own statement to the police, was not sufficient. Accordingly, the Committee, in this respect, finds no violation of article 14, paragraph 3(d), of the Covenant.

10. 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 it do not disclose a violation of article 14 of the International Covenant on Civil and Political Rights.

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

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