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HUMAN RIGHTS COMMITTEE
Fiftieth session

VIEWS

Communication No. 333/1988

Submitted by:	Lenford Hamilton (represented by counsel)
Victim:	The author
State party:	Jamaica
Date of communication:	7 November 1988 (initial submission)
Documentation references:	Prior decisions - CCPR/C/34/D/333/1988 (Special Rapporteur's combined rule 86/rule 91 decision, dated 11 November 1988) - CCPR/C/44/D/333/1988 (decision on admissibility, dated 20 March 1992)
Date of adoption of Views:	23 March 1994

On 23 March 1994, the Human Rights Committee adopted its Views under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights in respect of communication No. 333/1988. The text of the Views is appended to the present document.

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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 - fiftieth session

concerning

Communication No. 333/1988

Submitted by: Lenford Hamilton (represented by counsel)

Alleged victim: The author

State party: Jamaica

Date of communication: 7 November 1988 (initial submission)

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

Meeting on 23 March 1994,

Having concluded its consideration of communication No. 333/1988, submitted to the Human Rights Committee on behalf of Mr. Lenford Hamilton 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 the State party,

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

1. The author of the communication is Lenford Hamilton, a Jamaican citizen under sentence of death, detained at St. Catherine District Prison, Jamaica. He claims to be a victim of violations by Jamaica of articles 7 and 14 of the International Covenant on Civil and Political Rights. He is represented by counsel.

The facts as submitted by the author:

2.1 The author was convicted for the shooting and killing of a policeman, Caswell Christian, on 27 February 1981 in the parish of St. Catherine. The deceased and other police officers were in the process of searching a number of houses in the ghetto area of Tawes Pen when he was shot from behind a curtain in the living room of an apartment that was being searched. It was submitted that at least two police officers had seen the author running away from the block of apartments where the shooting had taken place. The author indicates that he was not arrested until almost 17 months later, on 23 July 1982. He claims that he

was not placed on an identification parade, and that he was identified by confrontation only.

2.2 The author was tried in the Home Circuit Court, Kingston, from 15 to 17 November 1983. From the trial transcript, it transpires that the police officers who had arrested the author at the Central Police Station had not themselves identified the author at the scene of the crime but merely relied on the reports filed by two other police officers. One of these officers testified during the trial that he had not been able to see the face of the accused for more than a "split second".

2.3 Upon conclusion of the trial, the author was found guilty as charged and sentenced to death. He appealed to the Court of Appeal of Jamaica, which heard and dismissed the appeal on 14 January 1986. The author has since manifested his desire to file a petition for special leave to appeal with the Judicial Committee of the Privy Council, but has been unable to do so, as the Court of Appeal did not issue a reasoned judgement.

2.4 On 7 November 1988, a warrant for the execution of the author on 15 November 1988 was issued. On 14 November 1988, he was given a stay of execution, pending the outcome of representations to the Judicial Committee of the Privy Council on his behalf.

The complaint :

3. The author claims to be a victim of a violation of article 7 of the Covenant, on account of the length of time spent on death row, and of article 14, because of the Court of Appeal's failure to issue a reasoned judgement.

The State party's information and observations :

4.1 In submissions dated 3 March and 7 July 1989 and 21 February 1990, the State party argues that the communication is inadmissible on the ground of non-exhaustion of domestic remedies, because the author had not yet applied to the Judicial Committee of the Privy Council for special leave to appeal.

4.2 As to the author's contention that he was prevented from filing a petition for special leave to appeal because of the absence of a reasoned judgement of the Court of Appeal, the State party argues that this statement has no basis in law or practice. It observes in this context that the Judicial Committee (General Appellate Jurisdiction) Rules Order 1982 does not stipulate that a written judgement of the Court of Appeal is a necessary prerequisite for a petition for special leave to appeal and that, in practice, the Judicial Committee has heard several petitions in the absence of a written judgement.

4.3 The State party further submits that the Court of Appeal did not issue a reasoned judgement in the author's case since it was not then the practice of the Court to do so in appeals considered to be unmeritorious.

The Committee's admissibility decision:

5.1 During its forty-fourth session in March 1992, the Committee considered the admissibility of the communication. It noted that the Court of Appeal of Jamaica had still not issued a written judgement in the author's case, although the appeal had been dismissed more than six years earlier. It concluded that in the circumstances, the application of domestic remedies had been unreasonably prolonged within the meaning of article 5, paragraph 2 (b), of the Optional Protocol.

5.2 As to the author's allegation of a violation of article 7 of the Covenant, the Committee considered that the author had failed to substantiate this claim, for purposes of admissibility, and concluded that Mr. Hamilton had no claim within the meaning of article 2 of the Optional Protocol.

5.3 Inasmuch as the author's claims related to the evaluation of the evidence against him by the Home Circuit Court in Kingston, the Committee, by reference to its established jurisprudence, 1/ considered that this part of the communication was inadmissible under article 3 of the Optional Protocol.

5.4 Finally, the Committee considered that the Court of Appeal's failure to issue a written judgement could raise issues under article 14, paragraphs 3 (c) and 5, which should be considered on the merits; accordingly, on 20 March 1992, it declared the communication admissible in respect of article 14, paragraphs 3 (c) and 5, of the Covenant.

The State party's request for a review of admissibility and counsel's comments:

6.1 In a submission dated 11 February 1993, the State party reiterates that it considers the communication inadmissible on the ground of non-exhaustion of domestic remedies. It observes that Mr. Hamilton's counsel is presently in the process of pursuing two domestic remedies available to his client: firstly, a criminal appeal to the Judicial Committee of the Privy Council and, secondly, an application to the Governor-General under Sec. 29 (1) of the Judicature (Appellate Jurisdiction) Act to have the author's case remitted to the Court of Appeal for a re-hearing. The State party submits that it is "clear that these are domestic remedies available to the author, which must be exhausted before the Committee is competent to examine the case".

6.2 The State party further argues that the author may still seek redress under Section 25 of the Constitution for any alleged violation of his constitutional rights: in this context, it is noted that the right in article 14, paragraph 3 (c), of the Covenant is similar to the right protected under Section 20, paragraph 1, of the Jamaican Constitution.

7.1 In his comments, counsel complains that the State party has failed to address the merits of the claims under article 14, paragraphs 3 (c) and 5. He observes that the Government of Jamaica has not made available legal aid to Mr. Hamilton to pursue his application to the Governor-General pursuant to

Sec. 29 (1) of the Judicature (Appellate Jurisdiction) Act; this remedy is not therefore available to him in practice. Similarly, no legal aid has been made available under Section 25 of the Jamaican Constitution and, accordingly, this remedy is not available to Mr. Hamilton in practice either.

7.2 Counsel notes that the Court of Appeal of Jamaica heard Mr. Hamilton's application under Section 29 (1) between 29 September and 1 October 1993, when judgement was reserved. To date, no judgement has been given. Counsel contends, however, that the issues that were considered by the Court of Appeal of Jamaica under Section 29 (1) were entirely different from those submitted to the Human Rights Committee for consideration.

7.3 Finally, counsel observes that a Notice of Intention to apply for special leave to appeal (in forma pauperis) to the Judicial Committee could be filed without necessarily attaching a copy of the reasoned judgement of the Court of Appeal. He adds that in practice, however, the case could never be argued before the Judicial Committee without such reasons being made available to it. In this context, he recalls that an appeal to the Judicial Committee is against the "judgement" of the Court of Appeal.

Review of admissibility and considerations of merits:

8.1 The Committee has taken note of the parties' arguments made in respect of admissibility. It takes the opportunity to expand on its admissibility findings.

8.2 Concerning a re-hearing of the author's case under Section 29 (1) of the Judicature (Appellate Jurisdiction) Act, the Committee notes that although the author was not assigned legal aid for the purpose, he secured legal representation for it. This is evidenced by the State party's own submission of 11 February 1993 and conceded by counsel, who points to the fact that the Court of Appeal indeed did re-hear the case between 29 September and 1 October 1993. However, as counsel indicates, the issues before the Court of Appeal differ from those before the Committee, as the re-hearing concerned the re-evaluation of evidence in the case, an aspect in respect of which the communication before the Committee was declared inadmissible under article 3 of the Optional Protocol. An application pursuant to Section 29 (1) of the Judicature (Appellate Jurisdiction) Act therefore is not a remedy the author is required to exhaust for purposes of the Optional Protocol, in this particular communication.

8.3 Similar considerations apply to the possibility of a petition for special leave to appeal to the Judicial Committee of the Privy Council. On the basis of the information before the Committee, it would appear that the author's case falls into the category of "fleeting glance identification", for which the Judicial Committee established precise rules and guidelines in a judgement of July 1989. 2/ However, even if it could be argued that the directions of the Jamaican courts on the "fleeting glance" identification of Mr. Hamilton did not meet the guidelines established by the Judicial Committee, it is not this issue which is before the Human Rights Committee; furthermore, the absence of a

reasoned judgement of the Court of Appeal is likely to prevent the author from successfully arguing his petition before the Judicial Committee although the availability of the judgement is not a precondition for lodging an application for special leave to appeal. The Committee is aware that the Judicial Committee has indicated that it can review an appeal even in the absence of a written judgement. But, as the Judicial Committee itself has noted in the recent judgement of Earl Pratt and Ivan Morgan v. Attorney-General , 3/ it is in practice "necessary to have the reasons of the Court of Appeal at the hearing of the application for special leave to appeal, as without them it is not usually possible to identify the point of law or serious miscarriage of justice of which the appellant complains". Under the Committee's jurisprudence, a remedy must be effective, as well as formally available. An appeal on the merits would thus necessarily require a written judgement. Accordingly, the Committee finds that it is unnecessary, in order to exhaust local remedies, to petition the Judicial Committee for special leave to appeal in the absence of a reasoned written judgement.

8.4 As to the possibility of filing a constitutional motion pursuant to Section 25 of the Jamaican Constitution, it is uncontested that no legal aid is available for the purpose. As the author would have to rely on the provision of legal aid, the Committee considers that, in the absence of legal aid, a constitutional motion does not, in the circumstances of the case, constitute an available and effective remedy within the meaning of article 5, paragraph 2 (b), of the Optional Protocol. Accordingly, the Committee has no reason to review its decision of admissibility of 20 March 1992.

9.1 It remains for the Committee to decide whether the failure of the Jamaican Court of Appeal to issue a reasoned written judgement violated the author's rights under article 14, paragraphs 3 (c) and 5. Article 14, paragraph 5, guarantees the right of convicted persons to have the conviction and sentence reviewed by a "higher tribunal according to law". The Committee, having noted that the failure to issue a reasoned written judgement has effectively prevented the availability of a further remedy, also finds that the author's right, under article 14, paragraphs 3 (c) and 5, to be tried without undue delay and to have his sentence reviewed by a higher tribunal according to law, has been violated.

9.2 The Committee is of the opinion that the imposition of a sentence of death upon conclusion of judicial proceedings in which the provisions of the Covenant have not been respected constitutes, if no further appeal against the sentence is available, a violation of article 6 of the Covenant. As the Committee observed in its General Comment 6 (16), the provision that a sentence of death may only be imposed 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 by a higher tribunal. In the instant case, since the final sentence of death was passed and an important requirement under article 14 was not met, it must be concluded that the right protected under article 6 of the Covenant was violated.

9.3 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 disclose a violation of article 14, paragraphs 3 (c) and 5, 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. Lenford Hamilton, victim of a violation of article 14, paragraphs 3 (c) and 5 and consequently of article 6, is entitled, pursuant to article 2, paragraph 3 (a), of the Covenant, to an effective remedy entailing his release; the State party is under an obligation 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.

[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.]

Notes

1/ See, for example, D. S. v. Jamaica, communication No. 304/1988 , declared inadmissible on 11 April 1991, paragraph 5.2.

2/ Oliver Whylie et al. v. Attorney-General of Jamaica.

3/ Judicial Committee of the Privy Council, judgement of 2 November 1993, p. 8.
