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HUMAN RIGHTS COMMITTEE
Fifty-seventh session
8-26 July 1996

VIEWS

Communication No. 527/1993

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| Submitted by: | Uton Lewis [represented by counsel] |
| Victim: | The author |
| State party: | Jamaica |
| Date of communication: | 10 December 1992 (initial submission) |
| Date of adoption of Views: | 18 July 1996 |

On 18 July 1996, the Human Rights Committee adopted its Views under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 527/1993. The text of the Views is appended to the present document.

* Made public by decision of the Human Rights Committee.

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, fifty-seventh session

concerning

Communication No. 527/1993* **

Submitted by: Uton Lewis [represented by counsel]

Victim: The author

State party: Jamaica

Date of communication: 10 December 1992 (initial submission)

Date of decision on admissibility: 15 March 1995

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

Meeting on 18 July 1996,

Having concluded its consideration of communication No. 527/1993 submitted to the Human Rights Committee by Mr. Uton Lewis 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 the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1. The author of the communication is Uton Lewis, a Jamaican citizen, at the time of submission of the communication awaiting execution at St. Catherine District Prison, Jamaica. He claims to be a victim of violations by Jamaica of articles 6, 7, 10 and 14, paragraphs 1, 3 (b), (d) and (e), of the International Covenant on Civil and Political Rights. He is represented by counsel. Mr. Lewis' death sentence was commuted to life imprisonment on 30 March 1995, following the classification of his offence as non-capital murder.

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* Pursuant to rule 85 of the rules of procedure, Committee member Laurel Francis did not take part in the adoption of the Views.

** The text of an individual opinion by Committee member Francisco José Aguilar Urbina is appended to the present document.

The facts as submitted by the author

2.1 On 25 October 1985, the author and one P.G. were arrested and charged with burglary, larceny and wounding one B.D. with intent. On 30 October 1985, they were both charged with the murder of B.D.; the latter had died from septicaemia resulting from infection of his wounds. On 1 May 1986, the author was found guilty as charged and sentenced to death in the St. James Circuit Court; P.G. was acquitted. The Court of Appeal of Jamaica dismissed the author's appeal on 22 May 1987. On 20 February 1991, the Judicial Committee of the Privy Council dismissed his petition for special leave to appeal. With this, it is submitted, all domestic remedies have been exhausted.

2.2 The prosecution's case was that, on 25 October 1985 at about 3 a.m., the author and P.G. broke into a shop to steal cloth. When they were surprised by B.D., the guard on duty, they attacked him with a blunt instrument and/or a knife, causing cuts to head and neck. The victim's cries for help were heard by two police officers on patrol in the vicinity. According to their evidence, they saw two men, carrying rolls of cloth, running away from the shop. One of the police officers then pursued the men, whom he identified as the author and as P.G. Both were known to him.

2.3 The prosecution further relied on evidence from the owner of the shop; she testified that, three weeks prior to the burglary, the author had visited the shop but had not bought any cloth. She identified pieces of cloth, found in the possession of P.G. and of two witnesses who claimed they had received it from the author, as part of that which had been taken from her store. Furthermore, the arresting officer testified that after having charged both men with shop-breaking, larceny and wounding with intent, and after having cautioned them, the author said that "it was Allan who cut the night watchman's throat, and threw the knife in the creek". P.G. then allegedly said that it was the author who broke into the shop and attacked B.D. with the knife, upon which the author stated that he, P.G. and one Allan broke into the shop. The arresting officer further testified that the accused repeated their earlier statements after they had been charged with murder.

2.4 During the trial, the author made an unsworn statement from the dock. He testified that he had been elsewhere at the time of the murder and that he had been ill-treated by the police during the interrogation at Montego Bay Police Station. He alleged that, on 25 October 1985, he had been kicked, beaten and threatened with a gun and that one of the officers hit him in his side with a big lock about 10 times. The same officer then ordered him to put his finger on the edge of a desk and struck it with a gun until his finger burst; he was then ordered to use his socks to tie up his finger and to wipe off the blood. The author further claimed that, on 28 October 1985, he was again brought to the C.I.B. office for interrogation. All the officers on duty participated in beating him and one of them struck him in the face with a piece of a mirror. He was then brought back to his cell where a weight was tied to his testicles. When he regained consciousness, he was told to sign a paper, which he refused to do in the absence of a Justice of the Peace. He was then allegedly subjected to electric shocks applied to his ears; after this treatment, he signed the paper.

The complaint

3.1 It is submitted that, in jurisdictions based on common law, it is obligatory for the judge to warn the jury in cases involving identification evidence that experience has shown that misidentifications can occur, that even though a witness claims to know a suspect he or she may be mistaken, and that an honest witness can make mistakes. The judge should further point out to the jury the lack of an identification parade and the necessity of corroborating evidence in a case of purported identification. In the instant case, it is submitted, the judge failed to adequately instruct the jury in all of the above respects, thereby denying the author a fair trial.

3.2 The author claims that he did not receive adequate legal representation during the judicial proceedings, within the meaning of article 14, paragraph 3 (b) and (d). In this context, he submits that, prior to the preliminary inquiry, he was assigned a lawyer who, however, did not even attend the hearing. Consequently, and in spite of the fact that there existed a conflict of interest between him and P.G., he was represented by the latter's lawyer. The author contends that he did not meet with the lawyer assigned to him until the day before the trial. During the interview, he informed the lawyer that there were three witnesses who could support his alibi and provided him with their names and addresses. The lawyer, however, did not interview these witnesses, nor did he call them to testify on his behalf, although they were present in court. This is said to amount to a violation of article 14, paragraph 3 (e), of the Covenant.

3.3 With regard to the appeal, the author complains that he was excluded from the hearing, in breach of article 14, paragraph 3 (d), despite his request to be present in court. He submits that this was all the more serious as he did not meet with his (privately retained) lawyer prior to the hearing and only had the opportunity to communicate with him through a third party. The author further complains that the only ground argued by counsel on appeal was the inadequacy of the judge's instructions to the jury on the issue of common design; according to the author, counsel saw no merit in raising the issue of the inadequacy of his representation at the trial because, although Chapter III of the Jamaican Constitution guarantees the right of an accused person to have adequate time and facilities for the preparation of the defence and to communicate with counsel of own choosing, it does not guarantee the adequacy of the representation.

3.4 With regard to the treatment to which he was subjected on 25 and 28 October 1985 at the Montego Bay Police Station, the author submits that this amounts to a violation of his rights under article 7 of the Covenant. He claims that electric wire was pushed into his ears by the police officers and that the hearing in his left ear has since been impaired. Furthermore, he claims that he sustained a scar on his right ear and on his finger, as a result of being struck with a piece of mirror and with a gun, respectively.

3.5 The living conditions in St. Catherine District Prison, combined with the anxiety caused by a prolonged detention on death row, and the treatment to which prisoners on death row are subjected, are said to amount to a violation of articles 7 and 10 of the Covenant. With regard to his individual case, the author alleges that, on 12 occasions, he was locked up in a cell without being given water. He further alleges that the prison authorities have failed to provide the medical assistance that he requires, in spite of his requests.

3.6 The author concedes that, on request of the Ombudsman, he has on occasion received medical treatment, but only on the condition that he pays for the medication prescribed. The author explains that, for the past five years, he suffers from "bumps" on his skin. The prison authorities allegedly failed to take any action in this respect until early 1992, when a member of the Jamaica Council for Human Rights intervened on his behalf. He was then allowed three times to visit a doctor at the hospital; the fourth time, however, he was not permitted to attend his appointment, nor on subsequent occasions. Furthermore, the author complains that he suffers from another skin disease and from recurrent stomach pains, which, according to him, are caused by the inadequacy of the prison diet. His daily ration reportedly consists of 12 biscuits, one packet of skimmed milk powder and a small quantity of dark sugar. He submits that in spite of his complaints, the diet has not been modified. Finally, it is submitted that prisoners on death row are not afforded the same facilities as other prisoners with regard to work and recreation. It is not substantiated how this has affected the author's own situation.

3.7 The author finally claims that, in the absence of clear criteria for the exercise of the prerogative of mercy by the Privy Council in Jamaica, and in the light of illogical distinctions applied in practice, any decision not to exercise the prerogative of mercy in the author's case that might lead to his execution would amount to an arbitrary deprivation of life, contrary to article 6 of the Covenant.

State party's observations on admissibility and author's comments

4.1 By submission of 6 April 1994, the State party argued that the communication was inadmissible for failure to exhaust domestic remedies. In this context, the State party argued that the rights protected by articles 7, 14 (3) (d) and (e) are coterminous with sections 17, 20 (6) (c) and (d) of the Jamaican Constitution and that it was open to the author to seek redress for the alleged violations of his rights by way of a constitutional motion to the Supreme Court.

4.2 With regard to the author's claim that he was denied access to medical treatment, the State party indicated that it had requested the Department of Corrections to investigate the matter. The State party stated that it would inform the Committee as soon as the results of the investigation would be available.

5.1 In his comments, dated 4 January 1994, the author stated that, since legal aid is not made available for constitutional motions, a constitutional motion does not constitute an effective remedy in his case.

5.2 With regard to his claim that he was denied medical treatment, he stated that, on eight occasions in 1993, appointments were made for him to see a doctor, but that none of these appointments were kept. He also stated that an appointment was made to see a skin doctor in February 1994, but that prison officials refused to transport him without payment.

The Committee's admissibility decision

6.1 At its 53rd session, the Committee considered the admissibility of the communication.

6.2 It ascertained, as required under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter was not being examined under another procedure of international investigation or settlement.

6.3 The Committee took note of the State party's claim that the communication was inadmissible for failure to exhaust domestic remedies. The Committee recalled its constant jurisprudence that for purposes of article 5, paragraph 2 (b), of the Optional Protocol, domestic remedies must be both effective and available. As regards the State party's argument that a constitutional remedy was still open to the author, the Committee noted that the Supreme Court of Jamaica had, in some cases, allowed applications for constitutional redress in respect of breaches of fundamental rights, after the criminal appeals in these cases had been dismissed. However, the Committee also recalled that the State party had indicated on several occasions 1/ that no legal aid is made available for constitutional motions. The Committee considered that, in the absence of legal aid, a constitutional motion did not, in the circumstances of the instant case, constitute an available remedy which needed to be exhausted for purposes of the Optional Protocol. In this respect, the Committee therefore found that it was not precluded by article 5, paragraph 2 (b), from considering the communication.

6.4 The Committee noted that part of the author's allegations related to the instructions given by the judge to the jury. The Committee referred to its prior jurisprudence and reiterated that it is generally for the appellate courts of States parties to the Covenant to evaluate facts and evidence in a particular case. Similarly, it is not for the Committee to review specific instructions to the jury by the trial judge, unless it can be ascertained that the instructions to the jury were clearly arbitrary or amounted to a denial of justice. The material before the Committee did not show that the trial judge's instructions or the conduct of the trial suffered from such defects. Accordingly, this part of the communication was inadmissible as incompatible with the provisions of the Covenant, pursuant to article 3 of the Optional Protocol.

6.5 The Committee took note of the author's claims that he was not adequately represented during trial, in particular that his legal aid lawyer did not represent him at the preliminary hearings, that he only met him a day before the trial and that he did not interview or call any witnesses. The Committee considered that these claims might raise issues under article 14, paragraph 3 (b), (d) and (e), to be examined on the merits.

6.6 With regard to the author's complaint that his appeal did not fulfil the requirements of article 14, paragraph 3 (d), the Committee noted that the author was represented on appeal by a lawyer paid for by a relative. The Committee considered that the State party could not be held accountable for alleged errors made by a privately retained lawyer unless it would have been manifest to the judge or the judicial authorities that the lawyer's behaviour was incompatible with the interests of justice. In the circumstances of the instant case, this part of the communication was therefore inadmissible.

6.7 The Committee considered that the author's complaint that he was subjected to maltreatment upon his arrest in order to force him to sign a statement might raise issues under articles 7 and 14, paragraph 3 (g), of the Covenant, to be examined on the merits.

6.8 The Committee noted the State party's statement that it had ordered an investigation into the author's complaint about the lack of medical treatment. The Committee noted that almost a year had elapsed since the State party's statement and that the results of the investigation had still not been forwarded. In the circumstances, the Committee considered that the author's complaint might raise issues under article 10 of the Covenant, to be considered on their merits.

6.9 In so far as the author claimed that his prolonged detention on death row amounted to a violation of article 7 of the Covenant, the Committee reiterated its prior jurisprudence that lengthy detention on death row does not per se constitute cruel, inhuman or degrading treatment in violation of article 7 of the Covenant. 2/ The Committee observed that the author had not substantiated, for purposes of admissibility, any specific circumstances of his case that would raise an issue under article 7 of the Covenant in this respect. This part of the communication was, therefore, inadmissible under article 2 of the Optional Protocol.

7. Accordingly, on 15 March 1995, the Human Rights Committee decided that the communication was admissible in so far as it appeared to raise issues under articles 7 (in respect to the maltreatment upon arrest), 10, and 14, paragraph 3 (b), (d) (with respect to the preliminary hearing and the trial), (e) and (g) of the Covenant.

State party's observations on the merits and counsel's comments

8.1 The State party, by submission of 9 January 1996, argues that the author failed to mention at the preliminary inquiry that he had been subjected to ill-treatment. The State party further notes that there is no medical evidence to support his claim, although he contends that he has suffered permanent damage to his hearing.

8.2 As regards the author's representation at the preliminary hearing, the State party notes that the author was free to protest if he had not wanted the counsel of his co-accused to represent him, but that he did not do so. Further, the State party explains that the nature of the preliminary inquiry is to establish whether a *prima facie* case exists, which only requires a low standard of proof. The State party contends that there is nothing to suggest that the magistrate's decision would have been different if another lawyer would have represented the author.

8.3 As regards the author's representation at trial, the State party asserts that the duty of the State party is to appoint competent counsel to represent clients in need of legal aid and not to obstruct counsel in the performance of his duties.

8.4 As regards the allegations under article 10 of the Covenant, concerning the denial of medical care to the author on death row, the State party indicates that it will make an attempt to expedite the investigation and that it will forward the results to the Committee as soon as they are available.

9.1 In her comments on the State party's submission, counsel for the author points out that in view of the inadequate legal representation of the author at the preliminary inquiry, it is likely that the author did not know that he could make a statement concerning his ill treatment nor that he could make arrangements for a medical examination. Counsel notes that the author did comment on the ill-treatment when he had an opportunity to do so at his trial.

9.2 As regards the author's representation at the preliminary inquiry, counsel states that possibly the author would have gone unrepresented if he had not accepted the representation by counsel of his co-accused. It is stated that counsel for the co-accused should have informed the author of the potential conflict of interest and should not have acted for him unless specifically so instructed by the author.

Issues and proceedings before the Committee

10.1 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.

10.2 With respect to the alleged violation of articles 7 and 14, paragraph 3 (g), of the Covenant, the Committee notes from the trial documents that the issue was before the jury during the trial, that the jury rejected the author's allegations, and that the matter was not raised on appeal. In the circumstances, the Committee concludes that the information before it does not justify a finding of a violation of articles 7 and 14, paragraph 3 (g), of the Covenant.

10.3 As regards the author's claims concerning his representation at the preliminary and at the trial, the Committee notes that it is uncontested that the legal aid lawyer assigned to the author did not attend the preliminary inquiry, that the author was consequently represented by counsel of his co-accused with whom he had a conflict of interests, and that the author met his lawyer only one day before the commencement of the trial. The Committee

considers that the author's privately retained lawyer could have brought these issues on appeal and that his failing to do so cannot be imputed to the State party. Accordingly, the Committee concludes that the information before it does not justify a finding of a violation of article 14, paragraph 3 (b), (d) and (e), of the Covenant.

10.4 As regards the author's claim that he has been denied medical treatment on death row, the Committee notes that the author has furnished specific information showing that although appointments were made for a medical doctor to see him, these appointments were not kept, and that his skin condition has been left untreated. The Committee further notes that the State party has stated that it is investigating the matter, but that, two and a half years after the complaint was brought to the State party's attention and more than a year after this communication was declared admissible, the State party has not forwarded any information explaining the matter. In the circumstances, the Committee finds that the lack of medical treatment constitutes a violation of article 10, paragraph 1, of the Covenant.

11. 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 10, paragraph 1, of the International Covenant on Civil and Political Rights.

12. The Committee is of the view that Mr. Uton Lewis is entitled, under article 2, paragraph 3 (a), of the Covenant, to an effective remedy, entailing compensation and adequate medical treatment in the future. The State party is under an obligation to ensure that similar violations do not occur in the future.

13. Bearing in mind that, by becoming a State party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within 90 days, information about the measures taken to give effect to 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.]

Individual opinion by Committee member Francisco José Uguilar Urbina

Although I concur with the majority opinion in the present case, the way in which it is formulated compels me to express my individual opinion. The majority opinion again maintains the earlier jurisprudence that, as far as the death row phenomenon is concerned, the time factor does not, *per se*, constitute a violation of article 7 of the International Covenant on Civil and Political Rights. The Committee has repeatedly maintained that the mere fact of being sentenced to death does not constitute cruel, inhuman or degrading treatment or punishment.

In this connection, I refer to my opinion and analysis regarding communication No. 588/1994 (Errol Johnson v. Jamaica).

Francisco José Aguilar Urbina [signed]

[Original: Spanish]

Notes

1/ See e.g. communications No. 283/1988 (*Aston Little v. Jamaica*), Views adopted on 1 November 1991, No. 321/1988 (*Maurice Thomas v. Jamaica*), Views adopted on 19 October 1993, and No. 352/1989 (*Douglas, Gentles and Kerr v. Jamaica*), Views adopted on 19 October 1993.

2/ See Committee's Views on communications Nos. 210/1986 and 225/1987 (*Earl Pratt and Ivan Morgan v. Jamaica*), adopted on 6 April 1989, para. 12.6. See also *inter alia* Committee's Views on communications Nos. 270/1988 and 271/1988 (*Randolph Barrett and Clyde Sutcliffe v. Jamaica*), adopted on 30 March 1992, and No. 470/1991 (*Kindler v. Canada*), adopted on 30 July 1993.

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