Distr.
RESTRICTED */

CCPR/C/46/D/255/1987
2 November 1992

Original: ENGLISH

HUMAN RIGHTS COMMITTEE
Forty-sixth session

DECISIONS

Communication No. 255/1987

Submitted by : Carlton Linton
[represented by counsel]

Alleged victim : The author

State party : Jamaica

Date of communication : 11 October 1987 (initial submission)

Documentation references : Prior decisions
- CCPR/C/31/D/255/1987 (Decision under rules 86 and 91, dated 12 November 1987)
- CCPR/C/WG/32/D/255/1987 (Further Working Group combined rule 86, rule 91 decision, dated 22 March 1988)
- CCPR/C/36/D/255/1987 (Decision on admissibility, dated 24 July 1989)

Date of adoption of Views : 22 October 1992

On 22 October 1992, the Human Rights Committee adopted its Views under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 255/1987. The text of the Views is annexed to the present document.

[Annex]

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

DEC255.46 cm

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. 255/1987

Submitted by :	Carlton Linton [represented by counsel]
Alleged victim :	The author
State party :	Jamaica
Date of communication :	11 October 1987
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 22 October 1992,

Having concluded its consideration of communication No. 255/1987, submitted to the Human Rights Committee by Mr. Carlton Linton 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 its Views under article 5, paragraph 4, of the Optional Protocol.

The facts as presented by the author :

1. The author of the communication is Carlton Linton, a Jamaican citizen currently serving a sentence of life imprisonment at St. Catherine District Prison, Jamaica. He claims to be a victim of violations of his rights under articles 7 and 14 of the International Covenant on Civil and Political Rights by Jamaica. He is represented by counsel.

2.1 The author was arrested in November 1979 and charged with the murder, on 2 July 1979, of a security guard in the Parish of Clarendon. He was tried in the Home Circuit Court, Kingston, found guilty as charged and sentenced to death on 17 November 1981. On 21 April 1983, the Court of Appeal dismissed his appeal, treating the hearing of the application for leave to appeal as the hearing of the appeal itself. A further petition for special leave to appeal to the Judicial Committee of the Privy Council was dismissed on 25 January 1988. According to counsel, the author's death sentence was commuted to life imprisonment by the Governor-General of Jamaica early in 1991.

2.2 Mr. Linton was said to be one of three armed men who, on 2 July 1979, went to the Vere Technical High School in the Parish of Clarendon, and shot down the victim, one Simeon Jackson. The author was identified by police constable W. Barrett, the principal prosecution witness who had found the victim lying next to the guardhouse of the school, as one of three men who had been running into a nearby canefield; on the occasion, the author allegedly wore something around his waist that "looked like a gun".

2.3 During the trial, Mr. Linton made an unsworn statement from the dock. While this was incoherent, it was clear that he claimed to know nothing about the crime. His statement was interpreted by the Court of Appeal as meaning that, out of malice, Mr. Barrett had accused him of the murder.

2.4 The author considers that the evidence against him was wholly circumstantial and contradictory, and that the evidence of the only witness that could have proven Mr. Barrett to be wrong was rejected on the ground that she had not submitted a timely report to the police. The author also notes that during his pre-trial detention, he suffered "beating(s) and torture for over two months" at the hand of the police, whom he also accuses of

having "trumped up" the charges against him by transferring the preliminary investigation from one police station to another.

2.5 As to the conditions of detention, the author indicates that throughout the years spent on death row, he experienced physical abuse and psychological torture. From 1986, the situation allegedly deteriorated gradually; thus, on 20 November 1986, warders allegedly led a party consisting of about 50 men who came to his cell early in the morning with clubs, batons and electric wire, forced him out and beat him unconscious. At around midnight the same day, he found himself on a stretcher in the hospital of Spanish Town, in severe pain, with bruises all over his body and blood trickling from his head. At 1 a.m., he was taken back to the prison and transferred to another cell. Subsequently, he contends, the warders tried to depict him as a "subversive character", so as to cover up the brutalities to which he had been subjected.

2.6 Towards the end of January 1988, five inmates were transferred to the death cells. When the rumour spread that a warrant for the execution of the author and of the inmate occupying the neighbouring cell, F.M., had also been issued, and warders began to tease the author and F.M. by describing in detail all the stages of the execution, the author and F.M. began to plan their escape. They sawed off the bars in front of their doors and, on 31 January 1988, attempted to escape by climbing over the prison walls. Warders fired at them; the author was hit in the hip, whereas F.M. was fatally shot in the head, allegedly after indicating his surrender.

2.7 The author notes that the injuries sustained in the escape attempt have left him handicapped, as medical treatment received subsequently was inadequate; as a result, he cannot walk properly. He considers that he cannot be held responsible for the escape attempt, on account of what had occurred previously. He further notes that he complained to the official charged with the investigation of the incident and to the prison chaplain. Since that time, he has not been given further information about the result of the investigation and his complaint.

The complaint :

3.1 The author complains that he did not receive a fair trial, in violation of article 14, in that the trial judge misdirected the jury because she did not properly summarize the legal requirements of common design in relation to murder and manslaughter. It is submitted that the judge's direction on

common design would at best have justified an indictment on burglary, since the jury was not told to ponder the question of whether the author became a party to the attack on Mr. Jackson and whether he joined in it with the intention of causing serious physical injury or death.

3.2 The author further contends, without providing additional details, that he was poorly assisted by the lawyer assigned to him for the preparation of his defence and during the trial. He also claims that he did not have adequate opportunities to consult with this lawyer prior to and during the trial.

3.3 The treatment suffered by the author during pre-trial detention (in 1979-1980) and on death row (especially in November 1986 and January 1988) is said to amount to a violation of articles 7 and 10, paragraph 1, of the Covenant.

The State party's information and observations:

4. In its submission under rule 91 of the Committee's rules of procedure, the State party argued that the communication was inadmissible under article 5, paragraph 2(b), of the Optional Protocol, as the author had failed to avail himself of constitutional remedies in the Supreme (Constitutional) Court of Jamaica, thereby seeking to enforce his right to a fair trial under Section 20 of the Jamaican Constitution, in accordance with the procedure under Section 25 of the Constitution.

The Committee's admissibility decision:

5.1 During its 36th session in July 1989, the Committee considered the admissibility of the communication. While taking note of the State party's contention that the communication was inadmissible on account of the author's failure to avail himself of constitutional remedies, the Committee concluded that recourse to the Supreme (Constitutional) Court was not a remedy available to the author within the meaning of article 5, paragraph 2(b), of the Optional Protocol.

5.2 The Committee further noted that the application of domestic remedies since the trial of the author in 1981 had already been unreasonably prolonged, and held that the requirements of article 5, paragraph 2(b), had been met.

5.3 On 24 July 1989, the Committee declared the communication admissible in so far as it appeared to raise issues under articles 7, 10 and 14 of the Covenant.

The State party's objections to the admissibility decision:

6.1 In a submission dated 11 March 1991, the State party contends that the Committee's admissibility decision reflects a misunderstanding of the operation of Sections 25(1) and 25(2) of the Jamaican Constitution. The right to apply for redress under Section 25(1) is "without prejudice to any other action with respect to the same matter which is lawfully available". The only limitation in Section 25(2) is not applicable to the case in the State party's opinion, since the alleged breach of the right to a fair trial was not an issue in the author's criminal appeals:

> "... If the contravention alleged was not the subject of the criminal law appeal, ex hypothesi, that appeal could hardly constitute an adequate remedy for that contravention. The decision of the Committee would render meaningless ... the 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 ... right to apply for constitutional redress..."

6.2 With respect to the Committee's finding that the application of domestic remedies had already been unreasonably prolonged, the State party notes that nothing in the author's complaint would point to any State party responsibility for such delays as may have occurred in the judicial proceedings. Accordingly, it requests the Committee to review the decision on admissibility.

Post-admissibility proceedings and examination of merits:

7.1 The Committee has taken note of the State party's arguments on admissibility formulated after the Committee's decision declaring the communication admissible, especially in respect of the availability of constitutional remedies which the author may still pursue. 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.

7.2 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.

7.3 The Committee further notes that the author was arrested in 1979, tried and convicted in 1981, and that his appeal was dismissed in 1983. 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 24 July 1989.

8.1 The Committee is called upon to determine whether (a) the author was denied a fair trial, in violation of article 14, because of the alleged failure of the judge properly to direct the jury on the issue of common design, and (b) the treatment he was subjected to in detention was contrary to articles 7 and 10.

8.2 The Committee notes with regret the absence of cooperation from the State party in not making any submissions concerning the substance of the matter under consideration. It is implicit in article 4, paragraph 2, of the Optional Protocol, that a State party make available to the Committee all the information at its disposal; this is so even where the State party objects to the admissibility of the communication and requests the Committee to review its admissibility decision, as requests for a review of admissibility are examined by the Committee in the context of the

---

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

consideration of the merits of a case, pursuant to rule 93, paragraph 4, of the Committee's rules of procedure. In the circumstances, due weight must be given to the author's allegations, to the extent that they have been substantiated.

8.3 In respect of the claim of unfair trial, the Committee recalls that it is in general for the courts of States parties to the Covenant to evaluate the facts and the evidence in a given case, and for the appellate courts to review the evaluation of such evidence by the lower courts. It is not in principle for the Committee to review the evidence and the judge's instructions to the jury in a trial by jury, unless it can be ascertained that the instructions were clearly arbitrary or amounted to a denial of justice, or that the judge otherwise violated his obligation of independence and impartiality. In Mr. Linton's case, the material before the Committee does not reveal that the instructions to the jury suffered from such defects; it accordingly concludes that there has been no violation of article 14, paragraph 1.

8.4 In respect of the author's contention that he was poorly represented and had inadequate opportunities for the preparation of his defence, the Committee notes that these claims were not, on the basis on the information before it, placed before the Jamaican courts. It further observes that these claims have not been substantiated to the extent that they would justify a finding of a violation of article 14, paragraph 3(b) and (d), of the Covenant.

8.5 Concerning the author's claim of ill-treatment during pre-trial detention and on death row, the Committee deems it appropriate to distinguish between the various allegations. Concerning the claim of ill-treatment during pre-trial detention, the Committee notes that this has not been further substantiated. Other considerations apply to the claims relating to the author's treatment in November 1986 and January 1988, which have not been refuted by the State party. In the absence of such detailed refutation, the Committee considers that the physical abuse inflicted on the author on 20 November 1986, the mock execution set up by prison warders and the denial of adequate medical care after the injuries sustained in the aborted escape attempt of January 1988 constitute cruel and inhuman treatment within the meaning of article 7 and, therefore, also entail a violation of article 10, paragraph 1, of the Covenant, which requires that detained persons be treated with respect for their human dignity.

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 it disclose a violation of articles 7 and 10, paragraph 1, of the Covenant.

10. The Committee urges the State party to take effective steps (a) to investigate the treatment to which Mr. Linton was subjected in November 1986 and subsequent to his aborted escape attempt in January 1988, (b) to prosecute any persons found to be responsible for his ill-treatment, and (c) to grant him compensation.

11. The Committee would wish to receive information, within ninety days, on any relevant measures adopted 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.]

-*-