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HUMAN RIGHTS COMMITTEE
Sixty-sixth session
12 - 30 July 1999

VIEWS

Communication Nº 616/1995

Submitted by:	Zephiniah Hamilton (represented by counsel of the London law firm Macfarlanes)
Alleged victim:	The author
State party:	Jamaica
Date of communication:	6 January 1995
Documentation references:	Prior decisions - Special Rapporteur's rule 86/91 decision, transmitted to the State party on 31 January 1995 - CCPR/C/60/D/616/1995, dated 7 July 1997.
Date of adoption of Views	23 July 1999

On 23 July 1999, the Human Rights Committee adopted its Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 616/1995. The text of the Views is appended to the present document.

[ANNEX]

* 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
- Sixty-sixth session -

concerning

Communication Nº 616/1995

Submitted by:	Zephiniah Hamilton (represented by counsel of the London law firm Macfarlanes)
Alleged victim:	The author
State party:	Jamaica
Date of communication:	6 January 1995

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

Meeting on 23 July 1999

Having concluded its consideration of communication No. 616/1995 submitted to the Human Rights Committee by Mr. Zephiniah 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 the following:

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* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra N. Bhagwati, Ms. Christine Chanet, Lord Colville, Ms. Elizabeth Evatt, Mr. Eckart Klein, Mr. David Kretzmer, Mr. Rajsoomer Lallah, Mr. Martin Scheinin, Mr. Hipólito Solari Yrigoyen, Mr. Roman Wieruszewski, Mr. Maxwell Yalden and Mr. Abdallah Zakhia.

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

1. The author of the communication is Mr. Zephiniah Hamilton, a Jamaican citizen who at the time of submission of his communication was awaiting execution at St. Catherine District Prison, Jamaica. He claims to be a victim of violations by Jamaica of articles 6; 7; 9, paragraph 3; 10 and 14, paragraphs 1, 3 (c) and 5, of the International Covenant on Civil and Political Rights. He is represented by a counsel of the London law firm, Macfarlanes. The author's death sentence has been commuted.

The facts as submitted by the author:

2.1 The author was arrested on 28 March 1989 and charged with the murders of Lynval Henry and Robert Bell, which had occurred on 13 October 1988. The preliminary enquiry was held in May 1990. On 24 December 1991, the author was found guilty as charged and sentenced to death. The Court of Appeal of Jamaica dismissed his appeal on 12 October 1992. A further application for special leave to appeal to the Judicial Committee of the Privy Council has not been filed and there has been no appeal to the Supreme (Constitutional) Court of Jamaica.

2.2 The author was convicted by the jury of murder as being part of a joint enterprise; the two victims were attacked in the evening, in the presence of two other men, one of whom gave evidence that he recognised the author, as a person known to him from childhood, and the other of whom said that he had seen the author on previous occasions. The author's defence, based on an alibi and mistaken identity (supported by an unsworn statement) was rejected by the jury.

2.3 At the time of the original communication the author was under sentence of death. His appeal to the Court of Appeal of Jamaica was dismissed two days before the Offences against the Persons (Amendment) Act 1992 came into force; the communication also included a detailed submission about the classification procedure under that Act, leading to a complaint of violations of articles 6 and 14 paragraph 1, and 5, of the Covenant, with full supporting argument. The commutation of the author's sentence by the Governor-General has made it unnecessary to deal with these issues in detail.

The complaint

3.1 Counsel explains that the author was shot, in the lower area of his spine by a police officer after a hearing by the Magistrate as part of the Preliminary Enquiry. He had, for other reasons, been in hospital prior to his arrest. He was then readmitted to hospital, because of the injury to his back, where he spent three months between his arrest and his trial. As a long term outcome, as a result of this, he is paralysed in both legs and is unable to move from his cell unless he is carried by other inmates. He is also unable to remove his slop bucket from the cell himself and he has therefore been obliged to pay other inmates to remove it. This means that sometimes it has to remain in his cell until he has obtained the necessary funds. The author complained several times to the superintendent about the conditions in which he is kept, to no avail. Furthermore, the London solicitors wrote twice to the Prison Governor on Mr. Hamilton's behalf, requesting him to ensure that the author is given proper assistance to enable him to leave his cell for some period during each day, and

also to make proper arrangements for his slop bucket to be removed from his cell daily. To date no reply has been received. Counsel refers to a 1993 report from a non-governmental organisation in which it is stated that, although the Parliamentary Ombudsman seems to make a genuine effort to address the problems in the prisons of Jamaica, his office does not have sufficient funding to be effective, and the Ombudsman has no powers of enforcing his recommendations which are non-binding. Therefore, counsel argues, the office of the Parliamentary Ombudsman does not provide an effective remedy in the circumstances of the author's case. It is submitted that the author's rights under articles 7 and 10 of the Covenant have been violated, because of the prison authorities' failure to take into account the author's paralysed condition and to make proper arrangements for him. The lack of proper care is also said to be in violation of the UN Standard Minimum Rules for the treatment of Prisoners.

3.2 Counsel points out that the author was arrested on 28 March 1989, but was not tried until 24 December 1991, and that it took a further ten months before his appeal was heard and dismissed. The delay of thirty-three months between arrest and conviction is said to amount to a violation of articles 9, paragraph 3, and 14, paragraph 3 (c).

4. On May 11, 1995 the communication was transmitted to the State party, with a request to submit to the Committee information and observations in respect of the admissibility of the communication. As of July 1997 no reply had been received.

The Committee's admissibility decision

5.1 During its 60th session the Committee considered the admissibility of the communication.

5.2 The Committee noted with concern the absence of co-operation from the State party on the matter under consideration. In particular, it observed that the State party had failed to provide information on the question of admissibility of the communication. On the basis of the information before it the Committee found that it was not precluded from considering the communication under article 5, paragraph 2 (a), of the Optional Protocol.

5.3 The Committee noted that the State party had not contested the admissibility of the author's allegations about the conditions of his detention at St. Catherine District Prison which have been aggravated by his handicap. In the circumstances, the Committee found that the author and his counsel had met the requirements of article 5, paragraph 2 (b), of the Optional Protocol in this respect, and made no finding about the complaint under articles 6 and 14, paragraphs 1, and 5 (as having been overtaken by the commutation of the death sentence), but considered that the allegations might raise issues under articles 10, paragraph 1 and also articles 9, paragraph 3, and 14, paragraph 3 (c), of the Covenant.

States party's merits observations and the counsel's comments:

6.1 In a submission dated 28 September 1998, the State party informed the Committee that with respect to the allegation of violations of article 9, paragraph 3, and article 14, paragraph 3, (c) due to the delays between arrest

and trial and trial and appeal, it denied that those periods were so prolonged as to constitute undue delay, since a preliminary enquiry was held over several sessions between arrest and trial thereby mitigating any potential delay.

6.2 With regard to the alleged breach of article 10 , paragraph 1, due to the circumstances of the author's detention and the difficulties he is experiencing because of his disability, the State party contends that since the author is no longer on death row the conditions in which he is now detained will facilitate his movements more effectively. This is subject to the fact that the prison is not designed to accommodate disabled persons, therefore special arrangements have to be put in place to assist these persons.

6.3 The State party also responded to points concerning the classification process.

7.1 By submission dated 22 December 1998, counsel reiterates his affirmation that articles 9, paragraph 3, and 14, paragraph 3, (c) have been violated since there was a 33 month delay between the author's arrest and his trial, he rejects the State party's contention that a preliminary enquiry heard within that period mitigates any "potential delay".

7.2 Counsel has provided a copy of the "report of investigation" in respect of the author's complaint against special constable Mendez, which reflects contradictory versions of the shooting incident in which the author was injured. It also contains a note from the Police Public Complaints Authority recommending that proceedings be initiated against Special Constable Mendez for wounding with intent.

7.3 With regard to the State party's information that since the author is no longer on death row and that therefore the conditions of his detention have improved, counsel argues that the author continues to need someone to slop out for him and since what money he had was confiscated by a prison guard he is in an untenable position. Counsel reiterates that the author does not receive a low fat diet as prescribed by the doctor. He also points out the author's fear of being transferred to the prison hospital since he could become the victim of a homosexual assault and his disability would impede him from defending himself.

7.4 Furthermore, counsel reaffirms that no special arrangements have been put in place to accommodate the author in prison. In this respect he points out that since the author's disability is so severe that he will never present a threat to society he should be transferred to a rehabilitation centre.

Examination of the merits:

8.1 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 for in article 5, paragraph 1, of the Optional Protocol.

8.2 With regard to the author's complaints with respect to his conditions of detention at St. Catherine's District Prison, the Committee notes that the author has made very precise allegations, relating to the difficulties he has encountered as a disabled person (see paragraph 3.1 supra). All of this has not been contested by the State party, except to say that measures would have to

be put in place to accommodate the author as a disabled person in prison. In the Committee's opinion, the conditions described in para 3.1, are such as to violate the author's right to be treated with humanity and with respect for the inherent dignity of the human person, and are therefore contrary to article 10, paragraph 1.

8.3 The author has claimed a violation of articles 9, paragraph 3, and 14 paragraph 3 (c) in that he was not tried without undue delay, since there were 33 months between the author's arrest on 28 March 1989 and his trial on 24 December 1991.The Committee notes that the State party contends that since a preliminary hearing was held in that period this constituted a mitigating circumstance and consequently rejects any violation of the Covenant. Nevertheless, the Committee is of the view that the mere affirmation that a delay does not constitute a violation is not sufficient explanation. The Committee therefore finds that 33 months between arrest and trial does not comply with the minimum guarantees required by the Covenant. Consequently, and in the circumstances of the case the Committee finds that there has been a violation of articles 9, paragraph 3 and 14, paragraph 3 (c).

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 article 10, paragraph 1, 9, paragraph 3, and 14, paragraph 3 (c), of the Covenant.

10. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide Mr. Hamilton with an effective remedy, entailing compensation and placement in conditions that take full account of his disability. The State party is under an obligation to ensure that similar violations do not occur in the future.

11. On becoming a State party to the Optional Protocol, Jamaica recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not. This case was submitted for consideration before Jamaica's denunciation of the Optional Protocol became effective on 23 January 1998; in accordance with article 12(2) of the Optional Protocol it continues to be subject to the application of the Optional Protocol. Pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals with its territory or 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 ninety days, information about the measures taken to give effect to the Committee's Views. The State party is requested to publish 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.]