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on Civil and Political
Rights**

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HUMAN RIGHTS COMMITTEE
Sixty-fifth session
22 March - 9 April 1999

DECISIONS

Communication N° 634/1995

<u>Submitted by:</u>	Desmond Amore (represented by Denton Hall, a London law firm)
<u>Alleged victim:</u>	The author
<u>State party:</u>	Jamaica
<u>Date of communication:</u>	17 January 1995
<u>Prior decisions</u>	- Committee's rule 91 decision, transmitted to the State party on 15 August 1995 (not issued in document form)
<u>Date of present decision</u>	23 March 1999

[ANNEX]

* Made public by decision of the Human rights Committee.
Inad. 634

ANNEX*

DECISION OF THE HUMAN RIGHTS COMMITTEE UNDER
THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT
ON CIVIL AND POLITICAL RIGHTS
- Sixty-fifth session -

concerning

Communication N° 634/1995

Submitted by: Desmond Amore
(represented by Denton Hall, a London law firm)

Alleged victim: The author

State party: Jamaica

Date of communication: 17 January 1995

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

Meeting on 23 March 1999

Adopts the following:

Decision on admissibility

1. The author of the communication is Desmond Amore, a Jamaican citizen, who at the time of submission was awaiting execution at St. Catherine's District Prison, Jamaica. He claims to be a victim of violations by Jamaica of articles 7; 10, paragraph 1; 14, paragraphs 1 and 2, of the International Covenant on Civil and Political Rights. He is represented by the London law firm Denton Hall. On 16 May 1995, his sentence was commuted to life imprisonment.

*The following members of the Committee participated in the examination of the communication: Mr. Afbdelfattah Amor, Mr. Nisuke Ando, Mr. Thomas Buergenthal, Ms. Christine Chanet, Lord Colville, Ms. Elizabeth Evatt, Mr. Eckart Klein, Mr. David Kretzmer, Mr. Rajsoomer Lallah, Ms. Cecilia Medina Quiroga, Mr. Fausto Pocar, Mr. Martin Scheinin, Mr. Hipólito Solari Yrigoyen, Mr. Roman Wieruszewski, Mr. Maxwell Yalden and Mr. Abdallah Zakhia.

The facts as submitted by the author

2.1 The author was convicted of the murder of one Christopher Jones and sentenced to death on 23 July 1987, by the Home Circuit Court, Jamaica. His appeal was refused by the Court of Appeal of Jamaica on 23 March 1988. On 15 March 1994, the author's Appeal to the Judicial Committee of the Privy Council was dismissed.

2.2 It is contended by counsel that a constitutional remedy is not available to the author in practice, due to his impecunious situation. Reference is made to the Human Rights Committee's jurisprudence¹. Counsel therefore submits that all domestic remedies have been exhausted for purposes of article 5, paragraph 2(b), of the Optional Protocol.

2.3 The author was arrested on 14 April 1986. After he was pointed out at an identification parade, the author was charged on 18 April 1986 with the murder of one Christopher Jones. At the trial, the case for the prosecution rested on the uncorroborated identification evidence of the sole eyewitness, one Angella Jones. She testified that on 3 October 1985, the house where she and her husband resided was broken into by the author. She claimed that the author, who was armed with a gun, ransacked their bedroom, threatened her and her husband, and proceeded to rape her; in the ensuing struggle, her husband, Christopher Jones, was shot in the chest. Angella Jones testified she had never seen the author before the incident on 3 October 1985, but that she had been able to see him clearly for more than five minutes, in the light of a fluorescent bedside lamp. On 18 April 1986, she attended an identification parade and picked out the author as being the intruder. She also made a dock identification of the author at his trial. The other prosecution evidence was that of a doctor describing the injuries he witnessed on the deceased. In addition, the police officers testified as to the discovery of the body and as to the parade, and the deceased's brother as to the identification of the body.

2.4 In an unsworn statement from the dock, the author denied being involved in the offence and said he knew nothing about it. His defence throughout the trial was that Angella Jones was mistaken as to her identification of him as the intruder. No other evidence was called in support of the author's case. The author was represented by a legal aid lawyer, who in cross-examining Angella Jones asked only one question pertaining to the identification evidence.

The complaint

3.1 The author claims that the directions by the trial judge to the jury were inadequate and did not meet the requirements of impartiality, and therefore amounted to a denial of justice in violation of article 14, paragraphs 1 and 2. On the importance of high standards as to thoroughness and impartiality of the judge's instructions in a capital case, counsel makes reference to the jurisprudence of the Human Rights Committee².

¹Communication no. 445/1991 (Lynden Champagnie, Delroy Palmer and Oswald Chisholm v. Jamaica), Views adopted on 18 July 1994.

²Communication no. 232/1987 (Daniel Pinto).

3.2 Counsel submits that the trial judge erred fundamentally in failing to direct the jury explicitly that identification evidence is fraught with the risk of inculcating innocents, and that due to the vulnerability of visual evidence, honest witnesses can give inaccurate but convincing evidence. Counsel contends that by directing the jury that "the frankness of the witness is very important", the trial judge failed to emphasise the fact that the only issue was the correctness of the witness' identification of the author; the trial judge in effect rendered her directions nugatory by confusing honesty with accuracy. Counsel further contends that the trial judge failed to properly direct the jury that there was no evidence to confirm or support the accuracy of Angella Jones' evidence of identification, or to warn that the evidence before them could mistakenly be regarded as confirming or supporting the accuracy of her identification. Furthermore, counsel submits that the trial judge's analysis of Angella Jones' evidence was inadequate as she failed to analyze the absence of any description of physical features of the intruder in the evidence, or what in particular made his appearance memorable and identifiable to the witness.

3.3 Counsel submits that the "agony of suspense" resulting from the author's incarceration on death row from his sentencing on 23 July 1987 to the commutation in May 1996 amounted to cruel, inhuman and degrading treatment, in violation of article 7. Reference is made to the jurisprudence of the Judicial Committee of the Privy Council³ in support of this view.

3.4 Counsel further claims that the conditions of the prison regime of St. Catherine's District Prison, which he notes are well documented in reports by Americas Watch and Amnesty International, constitute a breach of article 10, paragraph 1, of the Covenant.

State party's comments and counsel's observations thereon:

4.1 In its submission of 29 April 1996, the State party comments on the author's claims of violations of articles 7, 10 and 14 of the Covenant. The State party states that its comments are made both in regard of the admissibility and the merits of the case, but it does not explicitly contest the admissibility of the communication.

4.2 With respect to the alleged violation of articles 7 and 10, paragraph 1, of the Covenant on the ground of "agony of suspense" suffered by the author due to the delay of execution, the State party submits that a prolonged stay on death row does not per se constitute a cruel and inhuman treatment.

4.3 With respect to the alleged violation of the right to a fair trial, as provided for in article 14 of the Covenant, the State party submits that the trial judge's directions to the jury on the issues of identification and reasonable doubt, are matters which fall outside the Committee's jurisdiction. It is submitted that the exceptions to this principle, i.e. that the instructions were arbitrary or amounted to a denial of justice or that the judge

³Earl Pratt and Ivan Morgan v. Attorney General, judgment on 2 November 1993, All E.R. 1993.

otherwise violated his obligation of impartiality, are not applicable in this case.

5.1 In his submission of 12 December 1997, counsel notes that nowhere in the State party's response are the merits dealt with in any detail. Counsel reiterates that the trial judge failed properly to deal with the crucial issue of identification, that the instructions therefore were in breach of established law, and, consequently, amounted to a denial of justice and a violation of article 14 of the Covenant. With respect to the claim of a violation of articles 7 and 10, paragraph 1, of the Covenant, counsel states that the fact that the author's sentence was commuted to life imprisonment after 8 years on death row, is evidence that to keep someone on death row for such a period is cruel and inhuman treatment or punishment in breach of the Covenant.

Issues and proceedings before the Committee

6.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 With regard to the author's allegation of a violation of article 14 on the ground of improper instructions from the trial judge to the jury on the issues of identification and reasonable doubt, the Committee reiterates that while article 14 guarantees the right to a fair trial, it is generally for the domestic courts to review the facts and evidence in a particular case. Similarly, it is for the appellate courts of States parties to review whether the judge's instructions to the jury and the conduct of the trial were in compliance with domestic law, as it in this case was done by the Judicial Committee of the Privy Council. The Committee can, when considering alleged breaches of article 14 in this regard, solely examine whether the judge's instructions to the jury were arbitrary or amounted to a denial of justice, or if the judge manifestly violated his obligation of impartiality. The material before the Committee and the author's allegations do not show that the trial judge's instructions or the conduct of the trial suffered from such defects. Accordingly, this part of the communication is inadmissible as the author has failed to forward a claim within the meaning of article 2 of the Optional Protocol.

6.3 Concerning the author's claim that his detention on death row amounts to a violation of articles 7 and 10, paragraph 1, of the Covenant, the Committee refers to its prior jurisprudence⁴ where it has held that detention on death row for any specific period of time does not per se constitute cruel, inhuman or degrading treatment in violation of the Covenant, in the absence of further compelling circumstances. Since neither the author nor his counsel has adduced any such "further compelling circumstance", this part of the communication is inadmissible under article 2 of the Optional Protocol for lack of substantiation.

⁴See, inter alia, the Committee's Views on communication No 588/1994, Errol Johnson v. Jamaica, adopted on 22 March 1996.

6.4 With regard to the author's claim to be a victim of articles 7 and 10, paragraph 1, of the Covenant because of the conditions of the prison regime at St. Catherine's District Prison, the Committee notes that counsel merely makes reference to reports by Americas Watch and Amnesty International, and does not adduce any particular sufferings by the author. Therefore, also this part of the communication is inadmissible under article 2 of the Optional Protocol for lack of substantiation.

7. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible;

(b) That this decision shall be communicated to the State party and to the author.

[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.]