UNITED
NATIONS

CCPR

International Covenant on Civil and Political Rights

Distr.
RESTRICTED*

CCPR/C/64/D/649/1995
23 November 1998

Original: ENGLISH

HUMAN RIGHTS COMMITTEE
Sixty-fourth session
19 October - 6 November 1998

VIEWS

Communication Nº 649/1995

Submitted by:	Winston Forbes (represented by Mr. S. Lehrfreund from Simons Muirhead & Burton, a law firm in London)
Alleged victim:	The author
State party:	Jamaica
Date of communication:	8 November 1994 (initial submission)
Date of adoption of Views	20 October 1998

On 20 October 1998, the Human Rights Committee adopted its Views under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 649/1995. 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-fourth session -

concerning

Communication Nº 649/1995

Submitted by:	Winston Forbes (represented by Mr. S. Lehrfreund from Simons Muirhead & Burton, a law firm in London)
Alleged victim:	The author
State party:	Jamaica
Date of communication:	8 November 1994 (initial submission)
Date of decision on admissibility and Views	20 October 1998

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

Meeting on 20 October 1998,

Having concluded its consideration of communication No.649/1995 submitted to the Human Rights Committee by Winston Forbes, 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:

---

* The following members of the Committee participated in the examination of the present communication: Mr. Prafullachandra N. Bhagwati, Mr. Th. Buergenthal, Lord Colville, Mr. Omran El Shafei, Ms. Elizabeth Evatt, Ms. Pilar Gaitan de Pombo, Mr. Eckart Klein, Mr. David Kretzmer, Mr. Rajsoomer Lallah, Ms. Cecilia Medina Quiroga, Mr. Martin Scheinin, 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 Winston Forbes, a Jamaican national, currently serving a prison term at St. Catherine District Prison, Jamaica. He claims to be a victim of violations by Jamaica of articles 2, paragraph 3; 7; 9, paragraphs 2, 3 and 4; 10, paragraph 1; and 14, paragraph 3 (b) and (d), of the International Covenant on Civil and Political Rights. He is represented by Mr. Saul Lehrfreund of the London law firm Simons Muirhead & Burton.

Facts as submitted by the author

2.1 The author was convicted of the murder of one Michael Brown and sentenced to death on 25 January 1984, by the Home Circuit Court, Kingston, Jamaica. His appeal was dismissed by the Court of Appeal of Jamaica on 20 February 1987. On 21 June 1993, the author's petition for Special Leave to Appeal to the Judicial Committee of the Privy Council was dismissed. The author's death sentence has been commuted.

2.2 The case for the prosecution was that, on 6 May 1982, at 18.00, the author went to the Crystal Theatre, argued with Michael Brown about politics, and then left. Later in the evening, at 20.00, when the author returned and tried to enter without paying, an argument broke out between him and Michael Brown. The author then left. Brown and the theatre manager called the police, who came, made inquires and left. A few minutes after the police had left, the author returned, remonstrated with Mr. Brown and shot him.

2.3 During the trial, Franklin White testified that, on 6 May 1982, at around 19.00, the author went to the theatre and tried to enter without paying. When chided by Mr. Brown, the author grabbed him by the collar and threatened him saying " You want me shoot you", then left. He further testified that Mr. Brown and the theatre manager called the police. Just after the police had gone the author returned and rebuked Brown saying "you call the police on me" and shot him. The deceased was sitting in the cashier's booth at the entrance of the theatre, next to Eustance Stephenson.

2.4 Eustance Stephenson identified the author during the trial and testified that he had been at school with him. The witness further testified that at the time of the murder, at 9.35 p.m. he had been sitting next to the deceased in the cashier's booth.

2.5 A third witness Alvin Comrie also testified to having seen the murder from where he was standing just inside the theatre.

2.6 Leslie Ashman, the investigating officer of the Spanish Town Police Station, testified that he obtained a warrant for the author's arrest; on 31 May 1982, he arrested and charged him with the murder of Michael Brown. He further testified that the author claimed to be called Paul Wright from Central Village; however, Newton Forbes, the author's father, who was present at the police station, identified him as his son.

2.7 The author gave sworn evidence, admitting to having been to the Crystal Theatre at around 18.00 and arguing about politics with Michael Brown, but denying that he had returned and shot him. He testified that he had gone to his father's shop at about 20.30 and stayed there all night. Since the author denied having committed the murder, the issue at the trial was one of identification and the defence was solely directed at the witnesses' credibility and their ability, given the lighting in the theatre hall at the time of the incident, to correctly identify the author. The author was represented by a legal aid attorneys. The only witness called to testify on the author's behalf was his father who testified that the author had been with him from 20.30 to around 23.00 hours.

The complaint

3.1 It is stated that the trial, which started on 23 January 1984, took longer than both the trial judge and counsel had expected. On the morning of 24 January 1984, the trial judge had to send away a number of jurors in waiting who had been summoned for that day to attend another trial saying " Members of the jury in waiting we thought we'd do another case this morning, but we thought wrongly ...". Further just before the lunch recess on 24 January 1984, while the author was giving his evidence in chief to the jury, senior counsel addressed the judge and explained that he had committed himself to attending a funeral at three o'clock; after a short discussion, it was agreed that senior counsel would finish the examination in chief and that junior counsel should re-examine. However, after the lunchtime recess, junior counsel continued the examination in chief and senior counsel re-examined, being excused by the judge at 14.32. Counsel submits that the author was deprived of proper representation at a very important stage of his trial, because his senior legal aid counsel put a personal engagement before his professional duty, his evidence in chief to the jury being unexpectedly and improperly interrupted; this is said to amount to a violation of article 14, paragraph 3 (d), of the Covenant.

3.2 Counsel claims that had the author known that senior counsel was going to leave early he would have asked that counsel request an adjournment. Counsel refers to the Committee's jurisprudence[1] and submits that what took place at the trial was a material irregularity in the conduct of the same and amounts to a violation of article 14, paragraph 3 (b), of the Covenant.

3.3 In an affidavit, dated 27 October 1994, the author claims that he spent about two weeks in detention before he was charged for murder, without seeing a lawyer. On 14 May 1982, the author was taken into custody at Ocho Rios Police Lock-Up. He was later transferred to Admiral Town Police Station, before he was moved to the Spanish Town Lock-Up, where he was charged and arrested on 31 May 1982. He claims that it took a further two weeks for him to be brought before a judge. It is submitted that this constitutes a

[1]Communication No 356/1989, Collins v. Jamaica, Views adopted on 25 March 1993.

violation of article 9, paragraphs 2, 3 and 4, of the Covenant. In this respect counsel refers to the Committee's jurisprudence and General Comments[2].

3.4 The author claims, in a letter sent to counsel in London, that he was ill-treated while in detention at Spanish Town Lock-Up; stating "I was severely beaten by two police officers who used a baton to hit me in my head and continued punching me all over my body. I informed my family of the ill-treatment and they arranged for the doctor, Dr. Richard, to examine me at the Spanish Town Lock-Up. Although I was badly bruised and cut, the doctor confirmed that I had no broken bones". The author explains that this police brutality was not brought to the attention of his lawyer at the preliminary hearing because so much time had elapsed.

3.5 Counsel submits that fundamental and basic requirements of the UN Standard Minimum Rules for the Treatment of Prisoners were not met during the author's detention at the Spanish Town Lock-Up and that the treatment to which he was subjected while in detention and the inadequate medical treatment he received amount to violations of articles 7 and 10, paragraph 1, of the Covenant. Counsel points out that the author did not bring the matter to the attention of his lawyer due to the lapse of time, and stresses the ineffectiveness of the system, at the domestic level,in order to obtain redress. Counsel concludes that, since domestic remedies, and in particular the internal prison process and the complaints process of the Office of the Parliamentary Ombudsman, are not effective remedies, the requirements of article 5, paragraph 2(b), of the Optional Protocol, have been met. In this respect counsel refers to the Committee's jurisprudence[3].

3.6 Counsel points out that the author was held on death row for over eleven years; reference is made to the decision of the Judicial Committee of the Privy Council in the case of Pratt and Morgan[4], where it was held, inter alia, that it should be possible for the State party to complete the entire domestic appeals process within approximately two years. Counsel submits that the author's prolonged stay on death row amounts to a violation of articles 7 and 10, paragraph 1.

3.7 Finally, counsel alleges a violation of articles 7 and 10, paragraph 1, on the grounds of the conditions of his detention both prior to and after his conviction. As to the latter, reference is made to the findings of a delegation of Amnesty International, which visited St. Catherine District Prison in November 1993. In Amnesty's report it is observed, inter alia, that the prison is holding more than twice the number of inmates for which it was constructed in the nineteenth century, and that the facilities provided by

---

[2]General Comment No. 8. Communication No. 336/1988, Andres Fillastre v Bolivia, Views adopted on 5 November 1991; Communication No. 253/1987, Kelly v Jamaica, Views adopted on 8 April 1991; Communication No. 277/1988, Terán Jijon v Ecuador, Views adopted on 26 March 1992.

[3]Communication No 458/1991, A.W. Mukong v Cameroon, Views adopted on 21 July 1994.

[4]Earl Pratt and Ivan Morgan v. Attorney-General of Jamaica; PC Appeal No. 10 of 1993, judgment delivered on 2 November 1993.

the State are scant; no mattresses, other bedding or furniture in the cells; no integral sanitation in the cells; broken plumbing, piles of refuse and open sewers; no artificial lighting in the cells and only small air vents through which natural light can enter; almost no employment opportunities are available to inmates; no doctor is permanently attached to the prison so that medical problems are generally treated by warders who lack proper training. It is submitted that the particular impact of these general conditions upon the author were that he was confined to his cell for twenty-three hours and forty-five minutes every day. He spent most of the day isolated from other men, with nothing to keep him occupied. Much of the time he spent in enforced darkness. He further complained about the quality of the food and the sanitary conditions. The conditions under which the author was detained at St. Catherine District Prison are said to amount to cruel, inhuman and degrading treatment within the meaning of articles 7 and 10, paragraph 1, of the Covenant.

3.8 Counsel contends that, in practice, constitutional remedies are not available to the author because he is indigent and Jamaica does not make legal aid available for constitutional motions. Reference is made to the precedent set by the Judicial Committee of the Privy Council[5] and to the Human Rights Committee's jurisprudence[6]. Counsel submits therefore that all domestic remedies have been exhausted for purposes of article 5, paragraph 2 (b), of the Optional Protocol.

3.9 It is stated that the case has not been submitted to another procedure of international investigation or settlement.

The State party's information and observations and counsel's comments thereon

4.1 In its observations of 19 October 1995, the State party does not formulate objections to the admissibility of the case and offers, "in the interest of expediting the Committee's processing of the application", comments on the merits of the communication.

4.2 With regard to the alleged violation of article 9 on the ground that the author had not been informed of the charges against him until ten days after his arrest, the State party denies that this occurred. It is submitted that there is no evidence that the author, at the time of his arrest, was not made aware of the general reasons for his arrest.

4.3 With regard to the alleged violation of article 9 on the ground that the author was not brought before a Magistrate until two weeks after his detention, the State party admits that two weeks is longer than desirable, but does not accept that article 9 was violated. It is submitted that "part of the reason for the delay was the transfer of the author from Ocho Rios Police Lock-up to Spanish Town Lock-up."

---

[5]DPP v. Nasralla and Riley et al v. Attorney General of Jamaica.

[6]Communication No. 445/1991, Lynden Champagnie, Delroy Palmer and Oswald Chisholm v Jamaica, Views adopted on 18 July 1994.

4.4 As to the author's claim that article 14, paragraphs 3(b) and 3(d), were violated because on the last day of his trial, senior counsel had to leave due to a personal engagement and left junior counsel to examine in chief the author's only alibi witness and to address the jury, the State party contends that the State is not responsible for the conduct of a case by counsel. The State party submits that the State's responsibility is to provide competent counsel to represent an accused person, and argues that junior counsel in this case was a competent attorney who had been actively involved in the preparation of the case, and in the opinion of the senior counsel was well able to perform the duties given to him.

4.5 With regard to the alleged violations of articles 7 and 10 on the ground that the author was beaten by a police officer at the Spanish Town Lock-up, the State party denies that such a incident occurred. The State party argues that the author has no independent evidence to confirm the fact that he was injured. He states that he was seen by a doctor provided by his family, but has not produced a medical report or any other documentary evidence confirming his injuries. Furthermore, the State party points out that the preliminary inquiry began in August 1982, whilst the alleged beatings occurred after the author's arrest on 31 May 1982, and yet the author did not inform his attorney of the incident. The State party submits that in these circumstances, the credibility of the author's allegation is debatable.

4.6 As to the author's claim that articles 7 and 10 were violated as the author was in detention on death row for a period of more than 10 years, the State party submits that a prolonged stay on death row per se does not automatically constitute cruel and inhuman treatment, but that the facts of each case must be examined according to the applicable legal principles.

5.1 In his comments of 9 January 1996 on the State party's submission, counsel agrees to the joint examination of the admissibility and the merits of the case. He reaffirms that his client is a victim of a violation of article 9, paragraph 2, on the ground that the author was not made aware of the general reasons for his arrest before two weeks after his arrest. It is submitted that evidence for this is placed before the Committee, as the author in a sworn Affidavit on 27 October 1994 stated that "I spent two weeks in detention before I was charged with murder." Counsel further argues that the State party's denial is not supported by any positive evidence countering the Affidavit of the author.

5.2 Counsel also reaffirms that his client is a victim of a violation of article 9, paragraphs 3 and 4, as he was not brought before a Magistrate before two weeks after his detention. Counsel argues that the word "promptly" must be interpreted as not to permit a delay of more than two or three days. Reference is made to the Committee's jurisprudence.

5.3 As to the alleged violation of article 14, paragraphs 3(b) and 3(d), counsel reiterates that it is axiomatic that legal assistance be made available in capital cases and that once assigned, legal assistance must provide effective representation. It is submitted that the duty of the State party goes further than merely providing legal assistance in a capital case and that their duty must be to provide effective representation. Reference is made to the Committee's jurisprudence.

5.4 As to the alleged violation of articles 7 and 10 on the ground that the author was beaten during his pre-trial detention at Spanish Town Lock-Up, counsel submits that in the circumstances that prevail within the prisons and lock-ups in Jamaica, it is extremely difficult for an inmate to substantiate allegations of ill-treatment by making complaints directly to the prison authorities due to the fear of reprisals. Reference is made to reports by the Ombudsman of Jamaica and Amnesty International. It is also submitted that evidence of the beatings is placed before the Committee as the allegations are contained in the author's Affidavit of 27 October 1994 and in his letters to counsel of 7 September 1993, 27 July 1994 and 29 August 1994.

Admissibility considerations and examination of merits

6.1 Before considering any claims 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 The Committee observes that with the dismissal of the author's petition for special leave to appeal by the Judicial Committee of the Privy Council on 21 June 1993, the author has exhausted domestic remedies for purposes of the Optional Protocol. The Committee notes that the State party has not raised objections to the admissibility of the complaint and has forwarded comments on the merits so as to expedite the procedure. The Committee, accordingly, decides that the case is admissible and proceeds, without further delay, to an examination of the substance of the author's claims, in the light of all the information made available to it by the parties, as required by article 5, paragraph 1, of the Optional Protocol.

7.1 With respect to the author's claim that he is a victim of a violation of article 14, paragraphs 3(b) and 3(d), as senior counsel on the last day of the trial proceedings had to leave the court on a personal engagement and thereby left to junior counsel the remainder of the examination-in-chief of the author, the examination-in-chief of the author's only alibi witness, and the closing argument, the Committee recalls its prior jurisprudence where it has held that the State party cannot be held accountable for any alleged deficiencies in the defence of the accused or alleged errors committed by the defence lawyer, unless it should have been manifest to the court that the lawyer's behaviour was incompatible with the interests of justice. In the instant case, the information in the file does not support an allegation that junior counsel was not qualified to give effective, legal representation. It is clear that it was both senior counsel's and the trial judge's opinion that the remainder of the defence was left in capable hands. The file shows that junior counsel was a qualified lawyer, and that he had worked closely with senior counsel in the preparation of the case. The trial transcripts show that he had conducted the cross-examination of several of the Prosecution's witnesses earlier in the proceedings. In the circumstances, the Committee concludes that there has been no violation of article 14 of the Covenant.

7.2 Article 9, paragraph 2, of the Covenant gives the right to everyone arrested to know the reasons for his arrest and to be promptly informed of the charges against him. Article 9, paragraph 3, gives anyone arrested or detained on a criminal charge the right to promptly be brought before a

competent judicial authority. The author contends that he was not informed of the reasons for his arrest until two weeks after he was first arrested, and that it took a further two weeks before he was brought before a magistrate. The author claims to have been detained at the Ocho Rios Police Lock-Up in May 1982, and that he was later transferred to the Admiral Town Police Station in Kingston before he on 31 May 1982 was taken to Spanish Town Lock-Up where he was officially charged with the murder. The author claims that he was originally detained at least 14 days before he was officially charged. The State party denies that the author during this period was unaware of the general reasons for his arrest. However, the State party does not deny that from the arrest of the author at least 14 days passed before he was brought before a magistrate. According to the State party, part of the reason for the delay was the transfer of the author from Oche Rhos Police Lock-Up to Spanish Town Lock-Up. In the circumstances, and notwithstanding the State party's arguments, the Committee finds that to detain the author for a period of 14 days before bringing him before a competent judicial authority constitutes a violation of article 9, paragraph 3, of the Covenant.

7.3 As to the author's claim that he is a victim of a violation of articles 7 and 10, paragraph 1, on the ground that he was severely beaten by two police officers while at Spanish Town Lock-Up, the Committee notes both that the author has not given any medical evidence of such an occurrence, and that he has failed to bring these allegations to the attention of his former lawyers and the courts. The author has explained that this failure was due partly to the lapse of time from the occurrence until he obtained counsel, and partly to the fear of reprisals. The Committee notes, however, that the author in his statement of 8 September 1994 claims that the beatings occurred in July of 1982, and that he in his letter of 7 September 1993 claims that he had contact with his counsel, Mr. Robert Pickersgill, several times before the preliminary hearings started in August 1982. Subsequently, there does not appear to have been much of a lapse of time from the alleged beatings until the author obtained contact with his lawyer. The Committee also notes that the author soon after the alleged beatings was moved from Spanish Town Lock-Up to the General Penitentiary, and therefore any fear of reprisal should have been reduced. In these circumstances, on the basis of the information before it, the Committee concludes that the author has not substantiated his claim and, accordingly, there is no basis for finding a violation of articles 7 or 10 on the ground of beatings. Consequently, the Committee also finds that there is no basis for finding a violation of articles 7 and 10 on the ground of inadequate medical treatment during the author's detention at Spanish Town Police Lock-Up.

7.4 The Committee must determine whether the length of time the author spent on death row - more than 11 years - amounts to a violation of articles 7 and 10, paragraph 1, of the Covenant. Counsel has claimed a violation of these provisions by reference to the length of time the author was confined to death row. It remains the Committee's jurisprudence that detention on death row for a specific time does not violate articles 7 and 10, paragraph 1, in the absence of further compelling circumstances. The Committee refers, in this context, to its Views on communication No. 588/1994[7] in which it

[7]Communication No 588/1994, Errol Johnson v. Jamaica, Views adopted on 22 March 1996, paras. 8.2 to 8.5.

explained and clarified its jurisprudence on this issue. In the Committee's opinion, neither the author nor his counsel have shown the existence of further compelling circumstances beyond the length of detention on death row. While a period of detention on death row of over eleven years is a matter of serious concern, the Committee finds that it does not per se constitute a violation of articles 7 and 10, paragraph 1.

7.5 The author has alleged violations of articles 7 and 10, paragraph 1, on the grounds of the conditions of his pre-trial detention at the General Penitentiary and his detention at St. Catherine's District Prison. The Committee notes that the author, as to the conditions of detention in St. Catherine's District Prison, in his original communication made specific allegations regarding the deplorable conditions of detention. He alleged that he throughout his detention there has spent twenty-three hours and forty-five minutes each day in solitary confinement, with nothing to keep him occupied, and in enforced darkness. The State party has made no attempt to refute these specific allegations. In these circumstances, the Committee takes the allegations as proven. It finds that holding a prisoner in such conditions of detention constitutes a violation of article 10, paragraph 1.

8. 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 violations of articles 9, paragraph 3, and 10, paragraph 1.

9. In accordance with article 2, paragraph 3(a), of the Covenant, the State party is under an obligation to provide Mr. Forbes with an effective remedy including compensation. The State party is under an obligation to ensure that similar violations do not occur in the future.

10. 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 within its territory or subjected 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 also 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.]