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HUMAN RIGHTS COMMITTEE
Eightieth session
15 March to 2 April 2004

VIEWS

Communication No. 797/1998

<u>Submitted by:</u>	Dennis Lobban (represented by counsel, Mr. Saul Lehrfreund, the Law Firm of Simons Muirhead & Burton, London)
<u>Alleged victim:</u>	The author
<u>State party:</u>	Jamaica
<u>Date of communication:</u>	16 January 1998 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 91 decision, transmitted to the State party on 22 January 1998 (not issued in document form)
<u>Date of adoption of Views:</u>	16 March 2004

On 16 March 2004, the Human Rights Committee adopted its Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 797/1998. 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

Eightieth session

concerning

Communication No. 797/1998*

Submitted by: Dennis Lobban (represented by Mr. Saul Lehrfreund, the
Law Firm of Simons Muirhead & Burton, London)

Alleged victim: The author

State party: Jamaica

Date of communication: 16 January 1998 (initial submission)

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

Meeting on 16 March 2004,

Having concluded its consideration of communication No. 797/1998, submitted to the
Human Rights Committee on behalf of Dennis Lobban 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:

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Franco Depasquale, Mr. Maurice Glèlè Ahanhanzo, Mr. Walter Kalin, Mr. Ahmed Tawfik Khalil, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Martin Scheinin, Mr. Ivan Shearer, Mr. Hipólito Solari Yrigoyen, Ms. Ruth Wedgwood, Mr. Roman Wieruszewski, and Mr. Maxwell Yalden.

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

1.1 The author of the communication, dated 16 January 1998, is Dennis Lobban, a Jamaican citizen born on 16 January 1955, currently detained at the General Penitentiary, Kingston, Jamaica. He claims to be a victim of violations by Jamaica of articles 7 and 9, paragraphs 2 and 3, article 10, paragraph 1, article 14, paragraph 1, and article 2, paragraph 3, of the International Covenant of Civil and Political Rights. He is represented by counsel.

1.2 Both the Covenant and Optional Protocol entered into force for the State party on 23 March 1976. The State party denounced the Optional Protocol on 23 October 1997, with effect from 23 January 1998.

The facts as submitted by the author

2.1 On 17 June 1988, the author was convicted of three counts of murder in the Home Circuit Court of Kingston and sentenced to death. His appeal against conviction was rejected by the Court of Appeal on 4 June 1990. On 30 November 1992, he applied for special leave to appeal to the Judicial Committee of the Privy Council. On 10 February 1993, he was granted leave to appeal. On 6 April 1995, his appeal was dismissed. On 21 July 1995, the author's death sentence was commuted to life imprisonment. It is submitted that the author is unable to pursue a constitutional motion, because of his financial situation and the unavailability of legal aid for the purpose.

2.2 The prosecution contended that the author was one of three men who went to the house of the deceased with the intent of robbery. All three were in possession of fire arms. Three persons were shot during the robbery. Two witnesses who knew the author testified that they recognized him. A caution statement by one of the author's co-defendants also identified him. The author denied any participation in the robbery and claimed to have been in a different location when the crime was committed.

2.3 It is submitted that the complaint has not been submitted to any other procedure of international investigation or settlement.

The complaint

3.1 The author alleges that his rights under article 9, paragraph 3, have been violated, since he was arrested on 17 September 1987 and not brought before the Gun Court until 28 September 1987, i.e. eleven days later.

3.2 The author claims that the conditions of his confinement on death row at St. Catherine's District Prison from 17 June 1988 to 20 July 1995 violated articles 7 and 10, paragraph 1, of the Covenant. He invokes the reports of several organizations in support of his argument. These reports are said to show that the conditions are incompatible with the requirements of article 10 of the Covenant, that the provision of medical facilities and health care is lacking, and that prisoners are not provided with education or work programs. Moreover, ill-treatment of inmates by prison guards is said to occur regularly. It is stated that no effective mechanism exists for

dealing with complaints from prisoners. The above is said to constitute violations of articles 7 and 10, paragraph 1, of the Covenant, as well as of the UN Standard Minimum Rules for the Treatment of Prisoners. The author alleges that he was locked up in his cell for up to 23 hours a day, that no mattress or bedding were provided, that no integral sanitation existed, that ventilation was inadequate and that there was no natural light.

3.3 He claims that he was not provided with the necessary medical, dental or psychiatric services, and that the food did not meet his nutritional needs. He claims that he is sleeping on cardboard and newspapers, and that his present conditions of detention at the General Penitentiary, also violate articles 7 and 10, paragraph 1, of the Covenant.

3.4 Finally, the author alleges that the State party has failed to ensure to him an effective domestic remedy and that constitutes a violation of article 2, paragraph 3, of the Covenant. Moreover, he claims that he was denied the right of access to court as no legal aid is being provided. He is thus barred from exercising his constitutional right to seek redress for the violation of his rights. This is said to be in violation of article 14, paragraph 1, of the Covenant.

The State party's submission on the admissibility and merits of the communication

4.1 In its observations dated 25 September 1998, the State party denies that the author was detained for eleven days before being brought before a magistrate. It notes that according to the author's own communication only three days elapsed (September 17 through 20, 1987). For the State party, this does not amount to undue delay and thus does not violate article 9, paragraph 3 (b), of the Covenant.

4.2 The State party denies that there are inadequate medical facilities at St. Catherine District Prison, and observes that the prison now has a doctor, that basic medication can be obtained in medical room, and that prisoners are transported to Spanish Town Hospital whenever the need arises for medical attention.

4.3 In addition, the State party contends that the lack of legal aid for constitutional motions does not constitute a breach of article 14, paragraph 1, of the Covenant. The State party argues that there is no requirement in the Covenant to grant legal aid for constitutional motions. It adds that the absence of legal aid has not proven to be an absolute bar to indigent persons bringing constitutional motions. Moreover, the State party supports its argument by stating that this is illustrated by cases *Pratt & Morgan* and *Neville Lewis v. Attorney General*.

The author's comments on the State party's submissions

5.1 In his comments of 12 April 1999, the author reiterates that the State party violated article 9, paragraph 3 (b), because he was detained for eleven days before being brought before a judge, in the Gun Court (28 September 1987). He notes that there was a typographical error in the paragraph, to which the State party referred.

5.2 The author claims that in 1996, he suffered from ulcers, gastro-enteritis and hemorrhoids, and that he did not receive medical attention for his ailments. On 29 February 1997, his solicitors

wrote to Commissioner of Corrections, seeking medical attention. On 3 April 1998, his solicitors wrote the second letter to Commissioner informing that the author had been referred to the Hospital on 2 October 1997, but was not taken to this appointment. Furthermore, they reiterated the urgency of the author's medical care. On 11 March 1998, the author was taken to hospital but did not see a doctor. He states that he received some medication for his ulcers and gastro enteritis but not for hemorrhoids. His solicitors thereupon wrote a further letter to the Commissioner. On 29 January 1999, the Commissioner responded that every effort would be made to ensure that the author received medical attention.

5.3 The author claims that, in practice, medical care and effective assistance was not made available and that he continually suffered from the same ailments for over 5 years. He argues that despite the numerous responses and referrals, he is yet to see a doctor, and that the State party failed to ensure that he is treated for his medical condition. He claims that the neglect of the prison authorities to adequately deal with his medical problems amounts to a violation of articles 7 and 10, paragraph 1, of the Covenant.

5.4 The author invoking the Committee's decision in *Henry v. Trinidad and Tobago*¹, alleges that the State party is wrong to assert that there is no requirement under the Covenant to grant legal aid for Constitutional Motions. The author states that article 14, paragraph 1, create an obligation for States to ensure to all persons equal access to Courts and Tribunals. In Jamaica, there is a dearth of lawyers who are prepared to take Constitutional Motions on a bro bono basis and the cases *Pratt* and *Neville Lewis*, to which the State party referred, are truly exceptional.

Additional observations by the State party

6.1 By additional submission of 13 July 1999, the State party informs that it will investigate the exact length of the author's detention before being brought before a judge.

6.2 The State party invokes the Committee's decision *Deidrick v. Jamaica*², where the complainant was held on death row for over eight years, was confined to his cell for 22 hours a day, spent most of his time in enforced darkness, and where the Committee held that the complainant had not substantiated specific circumstances that could raise an issue under articles 7 and 10, paragraph 1, of the Covenant, and that this part of his complaint was inadmissible.

6.3 The State party reaffirms that St. Catherine District Prison has adequate medical facilities: the prison now houses a Medical Center with two medical practitioners, a dentist, and their assistants. The State party denies the breach of articles 7 and 10, paragraph 1.

6.4 The State party reaffirms that it has no responsibility to provide legal aid for Constitutional Motions, and that this responsibility only arises in criminal proceedings.

6.5 On 11 February 2000, the State party submitted the results of its investigation, claiming that the author's medical records indicate that he was treated for stomach pains and hemorrhoids and

¹ Communication No. 752/1997, Views adopted on 17 July 1996.

² Communication No. 619/1995, Views adopted on 9 April 1998.

that he received regular medical treatment by the Medical Center and Kingston Public Hospital personnel from January 1997 onwards. It adds that the author was provided with adequate sleeping facilities, which are the norm within Jamaican Correctional Institutions. Moreover, it states that, during the investigation, the author admitted that he has a comfortable mattress at his disposal.

6.6 The State party argues that the author receives a diet, which is prescribed by a dietician and limited by the budget of the Institution. The author allegedly admitted that the meals system at the Institution provides him with nutritious foods, and that he is comfortable with the system.

Issues and proceedings before the Committee

Consideration of admissibility

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

7.2 The Committee has ascertained, as required under article 5, paragraph 2(a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

7.3 With regard to the author's claim under articles 14, paragraph 1 and 2, paragraph 3, the Committee notes that the author did not seek legal assistance to submit a constitutional motion. This claim therefore is inadmissible under article 2 of the Optional Protocol, as it has not been sufficiently substantiated for purposes of admissibility.

7.4 For the remaining claims under articles 7, 10, paragraph 1, and 9, paragraph 3, the Committee considers that there are no other obstacles to the admissibility and thus declares the claims under these articles admissible. It proceeds without further delay with the examination of the merits of the communication, in the light of all information made available to it by the parties, as required by article 5, paragraph 1, of the Optional Protocol.

Consideration of the merits

8.1 The author has claimed a violation of articles 7 and 10, paragraph 1, on the ground of the conditions of detention to which he was subjected while detained on death row at St. Catherine's District Prison. In substantiation of his claim, the author has invoked reports of several non-governmental organizations. The Committee notes that the author refers to the inhuman and degrading prison conditions in general, such as the complete lack of mattresses and very poor quality of food and drink, the lack of integral sanitation in the cells and open sewers and piles of refuse, as well as the absence of a doctor. In addition, he has made specific allegations, stating that he is detained 23 hours a day in a cell with no mattress, other bedding or furniture, that his cell has no natural light, that sanitation is inadequate, and that his food is poor. He is not permitted to work or to undertake education. In addition, he claims that there is a general lack of

medical assistance, and that from 1996 he suffered from ulcers, gastro-enteritis, and hemorrhoids, for which he received no treatment.

8.2 The Committee notes that with regard to these allegations, the State party has disputed only that there are inadequate medical facilities, that the author received regular medical treatment from 1997 and that now he has a mattress, receives nutritious food, and that the sewage disposal system works satisfactorily. The Committee notes, however, that the author was detained in 1987 and transferred to death row in June 1988, and from there to the General Penitentiary after commutation of his death sentence, and that it does not transpire from the State party's submission that his conditions of detention were compatible with article 10 prior to January 1997. The rest of the author's allegations stand undisputed and, in these circumstances, the Committee finds that article 10, paragraph 1, has been violated. In light of this finding, in respect of article 10, a provision of the Covenant dealing specifically with the situation of persons deprived of their liberty and encompassing for such persons the elements set out generally in article 7, it is not necessary separately to consider the claims under article 7 of the Covenant.

8.3 The author has claimed a violation of article 9, paragraph 3, of the Covenant, on account of a delay of eleven days between the time of his arrest and the time when he was brought before a judge or judicial officers. After its investigation, the State party did not refute that the author was detained for eleven days, though denying that this delay constitutes a violation of the Covenant. In the absence of any plausible justification for a delay of eleven days between arrest and production of the author before a judge or judicial officer, the Committee finds that this delay constituted a violation of article 9, paragraph 3, of the Covenant.

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 as found by the Committee reveal violations by Jamaica of article 9, paragraph 3, and article 10, paragraph 1.

10. Pursuant to an article 2, paragraph 3(a), of the Covenant, the Committee considers that the author is entitled to an appropriate remedy, which should include compensation. The State party is under an obligation to ensure that similar violations do not occur in the future.

11. 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. 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 the communication is subject to the continued 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 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 by the Committee. 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. 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 in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]
