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

VIEWS

Communication Nº 663/1995

Submitted by:	McCordie Morrison (represented by MacFarlanes, a law firm in London)
Alleged victims:	The author
State party:	Jamaica
Date of communication:	25 November 1994 (initial submission)
Date of adoption of Views	3 November 1998

On 3 November 1998, the Human Rights Committee adopted its Views under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 663/1995. 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

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Submitted by:	McCordie Morrison (represented by MacFarlanes, a law firm in London)
Alleged victims:	The author
State party:	Jamaica
Date of communication:	25 November 1994 (initial submission)

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

Meeting on 3 November 1998,

Having concluded its consideration of communication No. 663/1995 submitted to the Human Rights Committee by Mr. McCordie Morrison, 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:

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* The following members of the Committee participated in the examination of the present communication: Mr. Nisuke Ando, Mr. Prafullachandra N. Bhagwati, Mr. Th. Buergenthal, Lord Colville, Mr. Omran El Shafei, Ms. Elizabeth Evatt, Mr. Eckart Klein, Mr. David Kretzmer, Ms. Cecilia Medina Quiroga, Mr. Fausto Pocar, Mr. Martin Scheinin, Mr. Roman Wieruszewski and Mr. Maxwell Yalden.

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

1. The author of the communication is McCordie Morrison, a Jamaican citizen, at the time of the submission of the communication awaiting execution at St. Catherine District Prison, Jamaica. The author claims to be the victim of a violation by Jamaica of articles 6, paragraph 2; 7; 9, paragraphs 2 and 3; 10, paragraphs 1 and 2; and 14, paragraphs 1, and 3 (b) and (c) and 5, of the International Covenant on Civil and Political Rights. He is represented by Macfarlanes, a law firm in London. The author's death sentence was commuted to life imprisonment, on 16 May 1995.

Facts as presented by the author

2.1 The author was arrested on 29 April 1984 and charged on 7 May 1984 with having murdered one Rudolph Foster on 6 March 1984. On 6 March 1985, the author and his co-accused, Tony Jones,[1] were convicted of murder and sentenced to death by the St. Elizabeth Circuit Court, Jamaica. The Court of Appeal of Jamaica refused the author's application for leave to appeal on 6 July 1987. His application for special leave to appeal to the Judicial Committee of the Privy Council was dismissed on 23 July 1991. With this, it is submitted, all available domestic remedies have been exhausted.

2.2 The prosecution's case was mainly based on the testimony of one Canute Thompson, who gave evidence that in the late evening of 6 March 1984 he had seen three men attack the deceased. He testified that he heard one of the attackers say to the deceased "Stand up, or else a kill you blood clat", and that he had seen one of them firing at Mr. Foster, who was running towards the witness. Furthermore, the witness testified that a bright street light had permitted him to recognize the author from a distance of one chain and three quarters. Mr. Thompson indicated that he had known the author for roughly 16 or 17 years, but that he had last seen him a year before. The only other evidence against the author was a comment he made upon his arrest: "how come ah me alone you arrest?". The prosecution based the case against the author on "common design".

2.3 Other prosecution evidence included that of a forensic expert who described the injuries he witnessed on the deceased and the removal of the plastic and fibre wadding from the wound in the back. A ballistics expert gave evidence that the fatal shot had been fired from a range of within 4 yards of the deceased's back.

2.4 On trial, the defence challenged the credibility of the testimony of Mr. Thompson, on the ground that he had held a grudge against the author's co-accused, Tony Jones. The reason for the hostility had been a dispute over a political issue which had resulted in Thompson, Jones and the author having a fight. The author claimed that the consequence of the fight had been that Thompson had informed the foreman at the work site where they all worked, and that he and Jones had subsequently been dismissed from their employment. Counsel further indicates that the author made an unsworn statement from the dock, denying any knowledge of the crime.

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[1] Tony Jones also submitted his case to the Human Rights Committee; it was registered as communication No. 585/1994. The Committee adopted its Views on the communication at its 62nd session, on 6 April 1998.

The complaint

3.1 The author alleges a violation of article 9, paragraphs 2 and 3, of the Covenant, on the ground that he was arrested on 29 April 1984 without having been informed of the reasons for his arrest, and that it was only between 30 January and 13 February 1985, during the preliminary examination, that he became aware that he was charged with murder. It is submitted that, even if he was cautioned on 7 May 1984, as stated by a police officer at trial, that was still more than a week after having been taken in custody. Counsel adds that the author spent more than 10 months in police custody before his trial.

3.2 As the author is indigent, the trial judge assigned a legal aid lawyer to him. According to the author, he received inadequate legal representation. In this respect, he claims that prior to the start of his trial, he had only one brief interview of 10 minutes with his attorney, approximately 7 weeks after his arrest; no written statement was taken from the author. It is unclear if any subsequent meetings took place, but the author maintains that he did not have enough time to discuss the case with his lawyer. Counsel notes that the legal aid lawyer was not present during the preliminary hearing and that the author was represented by his co-accused's lawyer. Counsel submits that the author did not have adequate time to prepare his defence and to communicate with counsel of his own choosing, in violation of article 14, paragraph 3 (b), of the Covenant.

3.3 The author further claims a violation of article 10, paragraphs 1 and 2, of the Covenant, on the grounds that after his arrest he was not permitted to speak to any member of his family for three weeks and that he was badly beaten by police officers in police custody. It is also claimed that during his detention in police custody between 29 April 1984 and the date of the trial, the author was not segregated from convicted prisoners, nor was he subject to separate treatment, as would have been appropriate, given his status as an unconvicted person.

3.4 Counsel claims that the author has been a victim of a violation of article 14, paragraph 1. In this respect, it is submitted that the trial judge violated his obligation of impartiality by the method in which he dealt with the evidence of a possible grudge held by the prosecution's main witness. He alleges that the judge misdirected the jury in that he told them that it had not been suggested to Mr. Thompson in cross-examination that he bore malice towards the author. Counsel also submits that the judge failed to direct the jury properly on the dangers of convicting on identification evidence alone, especially in the case of weaknesses in the quality of the opportunity of observing the assailant and in the absence of corroboration or other support for the identification. Counsel indicates that the identification occurred at night under insufficient lighting conditions, that Mr. Thompson had only a limited opportunity to obtain a view of the assailant and that the author was not placed on an identification parade.

3.5 Counsel further submits that the trial judge should have discharged the jury, which had initially been empanelled, since during the course of the trial, one juror was seen talking to a member of the deceased's family. Counsel adds that the trial judge questioned this juror in the presence of the entire jury; the juror denied that a conversation had taken place.

3.6 The author was convicted on 6 March 1985; his appeal was heard and dismissed on 6 July 1987. Counsel submits that he has had problems securing a copy of the trial transcript in the author's case, and moreover, that the written judgement of the Court of Appeal was not received until 11 July 1990. It is submitted that the delay of 28 months between trial and appeal of conviction and the delay in receiving the Court of Appeal's judgement and the trial transcript amount to a violation of article 14, paragraphs 3 (c) and 5, of the Covenant. Moreover, it is submitted that the author's representative on appeal did not advance any argument on his behalf.

3.7 The author claims to be a victim of a violation of article 7 of the Covenant, since he was detained on death row for over 9 1/2 years. Counsel argues that the length of the detention, in which the author lived under appalling conditions in the death row section of St. Catherine District Prison[2], amounts to cruel, inhuman and degrading treatment within the meaning of article 7. In support of his argument, counsel refers to a recent judgment of the Judicial Committee of the Privy Council[3], to a Zimbabwe Supreme Court judgment[4] as well as to a judgement of the European Court of Human Rights.[5]

3.8 Moreover, it is submitted that the author was ill-treated while in prison. Thus, on 4 May 1993, police officers and warders searched the prison, destroying much of the prisoners legal documents and physically assaulting some of them. As a result, the author and several other prisoners began a hunger strike which lasted three days, until a representative of the Jamaica Council for Human Rights was allowed to visit them. The author further claims that in 1992 he and other prisoners had found large numbers of their letters dumped in an old abandoned cell. In contrast to these allegations that have not been specified, as to which extent they relate to the author personally, counsel adds that the author has developed synovitis, which causes swelling of the joints, whilst in prison; although he so informed the Ombudsman on 10 November 1993, "no treatment" has been administered. Counsel concludes that since domestic remedies, and in particular the internal prison redress process and the complaints procedure of the Office of the Parliamentary Ombudsman, are neither available, nor effective, the requirements of article 5, paragraph 2(b), of the Optional Protocol have been met.

3.9 Counsel submits that article 6, paragraph 2, of the Covenant, has been violated because a sentence of death was passed without the requirements of a fair trial having been met.

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[2]Reference is made to a document entitled "Prison Conditions in Jamaica", May 1990, Human Rights Watch (U.S.A.).

[3]Judgment in Pratt and Morgan v. The Attorney General of Jamaica et al. (1993) (Privy Council) Appeal No. 4 of 1993, Judgment delivered on 2 November 1993.

[4]Judgment No. S.C.73/93 delivered on 24 June 1993 in the case of Catholic Commission for Justice and Peace in Zimbabwe v. The Attorney General for Zimbabwe and the Sheriff for Zimbabwe and the Director of Prisons (1993).

[5]Judgment in the case of Soering v. United Kingdom (1989) 11 EHRR 439.

3.10 Finally 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 judicial precedents of the Judicial Committee of the Privy Council,[6] and to the Human Rights Committee's jurisprudence[7]. Counsel submits that all available domestic remedies have been exhausted.

The State party's submission and counsel's comments

4.1 In its observations, dated 15 January 1996, the State party rejects the author's claim that the length of time he spent on death row constitutes cruel and inhuman treatment.

4.2 With regard to the author's allegation that he was not allowed to speak to his family for three weeks after having been arrested, the State party notes that there is no evidence to support this allegation and denies that this occurred. With regard to his complaint that he was not kept segregated from convicted prisoners during his pre-trial detention, the State party submits that the author has failed to submit detailed information in this respect, such as his place of detention. It states that in general convicted prisoners are not held in exactly the same circumstances as not convicted persons.

4.3 The State party has noted the author's complaint about lack of medical attention for his synovitis and promises to investigate and inform the Committee accordingly.

4.4 As to the author's complaint that he was represented by his co-accused's counsel, not by his own, the State party submits that this is no breach of the Covenant since prejudice does not necessarily arise.

4.5 With regard to the author's claims under article 14, paragraphs 3(c) and 5, the State party notes that the author's appeal was dismissed two years and four months after his conviction, and that the written judgement by the Court of Appeal was issued eighteen months later, on 23 March 1989. The State party is not aware of any delay in producing the trial transcript. According to the State party, since the author had his conviction and sentence reviewed by the Court of Appeal there has been no breach of article 14, paragraph 5. The State party is also of the opinion that the period between the conviction and appeal does not constitute undue delay. It accepts that the delay in producing the written judgement was excessive, but does not accept that it constitutes a breach of the Covenant, since it did not prejudice the author.

4.6 With regard to the author's complaint about the judge's directions to the jury, the State party refers to the Committee's jurisprudence that it will not review the judge's instructions unless it is clear that they were manifestly arbitrary or amounted to a denial of justice. According to the State party, none

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

[7] Communication No 230/1987 (Raphael Henry v Jamaica), Views adopted on 1 November 1991; Communication No 445/1991 (Lynden Champagnie, Delroy Palmer and Oswald Chisholm v Jamaica), Views adopted on 18 July 1994.

of these exceptions apply in the present case, and the matter thus falls outside the Committee's jurisdiction.

5.1 In his comments on the State party's submission, counsel opposes the State party's assessment that prolonged judicial proceedings do not constitute cruel and inhuman treatment. He refers to alleged abuses which the author suffered and submits that these are to be taken into account when deciding the matter.

5.2 With regard to the allegation that the author was not allowed to speak to family members, counsel submits that evidence can be provided. He further states that the author was kept in Santa Cruz police station prior to his conviction. Counsel argues that it is not enough for the State party to simply deny the allegations without having undertaken any inquiries.

5.3 Counsel acknowledges that the author's representation by his co-accused's counsel at the preliminary hearing does not in itself constitute a breach of the Covenant, but submits that the author had not been fully interviewed by his co-accused's counsel and had no time to brief him properly. It is further stated that in preparation for the trial, the author was given his own counsel but that he did not have an opportunity to brief him adequately.

5.4 Counsel reiterates that the delay in issuing the written judgement of the Court of Appeal constitutes excessive delay in violation of article 14, paragraphs 3 (c) and 5.

5.5 With regard to his claim under article 14, paragraph 1, of the Covenant, counsel refers to the Committee's jurisprudence that a fair hearing necessarily entails that justice be rendered without undue delay[8]. Counsel further argues that the judge's instructions were clearly arbitrary and amounted to a denial of justice.

Facts 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 As to the author's claim that he was not allowed to see his relatives during the first three weeks of his detention, the Committee notes that the author has not shown what steps, if any, he has taken to bring these matters to the attention of the Jamaican authorities. In this respect, the requirements of article 5, paragraph 2 (b), of the Optional Protocol have not been met and this part of the communication is therefore inadmissible.

6.3 With regard to the author's claim that there was not sufficient time to prepare his defence, since his lawyer came to see him only once before the trial, the Committee notes that it would have been for the author's representative or the author himself to request an adjournment at the beginning of the trial, if he felt that he did not have enough time to prepare the defence. It appears from the trial transcript that no adjournment was sought

[8]Communication No. 203/1986, Muñoz Hermoza v. Peru, Views adopted on 4 November 1988, para. 11.3.

during the trial. The Committee considers therefore that this claim is inadmissible under article 2 of the Optional Protocol.

6.4 With regard to the author's claim pertaining to the conduct of the trial and the judge's instructions to the jury, the Committee refers to its prior jurisprudence and reiterates that it is generally not for the Committee, but for the appellate courts of States parties, to evaluate the facts and the evidence in any given case. Similarly, it is not for the Committee to review specific instructions to the jury by the trial judge, unless it can be ascertained that the instructions to the jury were manifestly arbitrary or amounted to a denial of justice. 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.

6.5 The Committee is further of the opinion that the author has failed to substantiate, for purposes of admissibility, his claim that he was denied a fair hearing because the judge failed to discharge the jury after one juror was seen talking with a member of the family of the deceased. The Committee notes that the judge did in fact examine this matter, and that the trial transcript does not contain any information which corroborates the author's claim. This claim is therefore inadmissible under article 2 of the Optional Protocol.

6.6 With regard to the author's claim under article 7 of the Covenant, on account of prolonged detention on death row, the Committee reaffirms its jurisprudence according to which detention on death row for prolonged periods of time does not constitute a violation of article 7 in the absence of some further compelling circumstances. The author has not substantiated any further specific circumstances, over and above the length of confinement on death row, and the claim is therefore inadmissible under article 2 of the Optional Protocol.

6.7 With regard to the author's claim that he found correspondence of prisoners in an abandoned cell, the Committee notes that the author has not specifically claimed that he found letters or documents written by or addressed to himself. This part of the communication is thus inadmissible under article 2 of the Optional Protocol, since the author has failed to forward a claim.

7. The Committee considers the author's remaining claims admissible. It notes that both the State party and the author have commented on the merits of the claims. The Committee therefore proceeds without further delay to an examination of the merits of the admissible claims.

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

8.2 The author has claimed that he was not informed of the reasons for his arrest, and that he only learnt about the charge against him when he first appeared before the judge at the preliminary hearing. From the trial transcript it appears that the police testified that he was cautioned on 7 May 1984, nine days after having been taken into custody. The State party has not addressed the

author's claim. It is also undisputed that the author was not brought before a judge or judicial officer until some date after 7 May 1984. The Committee considers that a delay of nine days before informing a person who is arrested of the charges against him constitutes a violation of article 9, paragraph 2. The Committee further considers that the delay in bringing the author before a judge or judicial officer constitutes a violation of the requirement of article 9, paragraph 3.

8.3 As to the author's claims that he was beaten by the police and that he was not kept segregated from convicted prisoners during his pre-trial detention between 29 April 1984 and the trial, the Committee notes that the State party has not denied the allegation but has pointed to the author's duty to provide specific details, including the place of detention. Although such information was provided in counsel's submission of 21 February 1996, communicated to the State party on 19 March 1996, no additional comments have been received from the State party. In the circumstances, due weight must be given to the author's allegations. The Committee finds that the beatings constituted a violation of the author's rights under article 7 and that the lack of segregation from convicted prisoners violated article 10, paragraph 2(a).

8.4 With regard to the author's claim that he did not have sufficient time to brief his co-accused's lawyer during the preliminary hearing, the Committee notes that the defence is not presented at the preliminary hearing. Consequently, the Committee finds that the facts before it do not constitute a violation of article 14, paragraph 3 (b) and (d).

8.5 The Committee notes that the author's appeal was heard on 6 July 1987, two years and four months after his conviction, that, according to the State party, the written judgement was issued on 23 March 1989, and that the author did not receive a copy until 11 July 1990, almost three years after the hearing of the appeal. The Committee refers to its prior jurisprudence[9] and reaffirms that under article 14, paragraph 5, a convicted person is entitled to have, within reasonable time, access to written judgements, duly reasoned, for all instances of appeal in order to enjoy the effective exercise of the right to have conviction and sentence reviewed by a higher tribunal according to law and without undue delay. The Committee is of the opinion that the delay in hearing the appeal and in issuing a written judgement by the Court of Appeal and in providing the author with a copy, constitutes a violation of article 14, paragraphs 3(c) and 5.

8.6 With regard to the author's claim that he was not effectively represented on appeal, the Committee notes that the author's legal representative on appeal conceded that there was no merit in the appeal. The Committee recalls its jurisprudence that under article 14, paragraph 3 (d), the court should ensure that the conduct of a case by a lawyer is not incompatible with the interests of justice. While it is not for the Committee to question counsel's professional judgement, the Committee considers that in a capital case, when counsel for the accused concedes that there is no merit in the appeal, the Court should

[9]See for example, the Committee's Views in communications Nos. 230/1987, Raphael Henry v. Jamaica, and 283/1988, Aston Little v. Jamaica, both Views adopted at the Committee's 43rd session.

ascertain whether counsel has consulted with the accused and informed him accordingly. If not, the Court must ensure that the accused is so informed and given an opportunity to engage other counsel. The Committee is of the opinion that in the instant case, the author should have been informed that legal aid counsel was not going to argue any grounds in support of the appeal, so that he could have considered any remaining options open to him[10]. The Committee concludes that there has been a violation of article 14, paragraph 3 (d).

8.7 The Committee considers that the imposition of a sentence of death upon conclusion of a trial in which the provisions of the Covenant have not been respected, constitutes a violation of article 6 of the Covenant if no further appeal against the death sentence is possible. In Mr. Morrison's case, the final sentence of death was passed without having met the requirements of a fair trial as set out in article 14 of the Covenant. It must therefore be concluded that the right protected under article 6, paragraph 2, has also been violated.

8.8 The author has claimed a violation of article 10 of the Covenant, because he has not received any medical treatment for his synovitis. The State party has promised to investigate the claim about the lack of medical treatment. The Committee recalls that a State party is under an obligation to investigate seriously allegations of violations of the Covenant made under the Optional Protocol procedure[11]. This entails forwarding the outcome of the investigations to the Committee, in detail and without undue delay. The Committee finds that in spite of its promise of 19 January 1996 to investigate the claim of lack of medical treatment, the State party has failed to provide any additional information. Consequently, due weight must be given to the author's allegation that he was denied medical treatment, and the Committee finds that the lack of medical treatment to the author constitutes a violation of article 10 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 before it disclose violations of articles 7, 9, paragraphs 2 and 3, 10, paragraphs 1 and 2 (a), 14, paragraphs 3 (c) (d) and 5, and consequently article 6, paragraph 2, of the Covenant.

10. Under article 2, paragraph 3(a), of the Covenant, the State party is under the obligation to provide Mr. McCordie Morrison with an effective remedy, including release and compensation. The State party is under an obligation to take measures to prevent similar violations 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

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[10]See inter alia the Committee's Views on communications Nos. 461/1991 (Morrison and Graham v. Jamaica), adopted on 25 March 1996, paragraph 10.5, and 537/1993 (Kelly v. Jamaica), adopted on 17 July 1996, paragraph 9.5.

[11]See inter alia the Committee's Views in case No. 161/1983, Herrera Rubio v. Colombia, Views adopted on 2 November 1987.

accordance with article 12(2) of the Optional Protocol it 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. 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 also in Arabic, Chinese and Russian as part of the Committee’s annual report to the General Assembly.]