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HUMAN RIGHTS COMMITTEE
Sixty-eighth session
13 - 31 March 2000

VIEWS

Communication Nº 731/1996

Submitted by:	Michael Robinson (represented by Mr. Graham Huntley of the London law firm of Lovell White Durrant)
Alleged victim:	The author
State party:	Jamaica
Date of communication:	9 December 1996 (initial submission)
Documentation references:	- Special Rapporteur's rule 86/91 decision, transmitted to the State party on 10 December 1996 (not issued in document form)
Date of adoption of Views:	29 March 2000

On 29 March 2000, the Human Rights Committee adopted its Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 731/1996. The text of the Views is appended to the present document.

[ANNEX]

* Made public by decision of the Human Rights Committee.
Views731(g:)

GE.00-41509

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-eighth session -

concerning

Communication Nº 731/1996 **/

Submitted by:	Michael Robinson (represented by Mr. Graham Huntley of the London law firm of Lovell White Durrant)
Alleged victim:	The author
State party:	Jamaica
Date of communication:	9 December 1996 (initial submission)

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

Meeting on 29 March 2000

Having concluded its consideration of communication No. 731/1996 submitted to the Human Rights Committee by Mr. Michael Robinson 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 Natwarlal Bhagwati, Ms. Christine Chanet, Lord Colville, Ms. Elizabeth Evatt, Ms. Pilar Gaitán de Pombo, Mr. Louis Henkin, Mr. Eckart Klein, Mr. David Kretzmer, Mr. Rajsoomer Lallah, Ms. Cecilia Medina Quiroga, Mr. Martin Scheinin, Mr. Hipólito Solari Yrigoyen, Mr. Roman Wieruszewski, Mr. Maxwell Yalden and Mr. Abdallah Zakhia.

**An individual opinion by Member Louis Henkin is attached to the present document.

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

1. The author of the communication is Michael Robinson, a citizen of Jamaica, at the time of submission detained on death row in St Catherine's District Prison. His death sentence has since been commuted to life imprisonment. He claims to be a victim of violations by Jamaica of articles 7, 10, and 14, paragraphs 1, 2, 3(b), 3(d), 3(e) and 5, of the International Covenant on Civil and Political Rights. He is represented by Mr. Graham Huntley of the London law firm of Lovell White Durrant.

The facts as submitted by the author

2.1 The author was convicted for the murder of Chi Pang Chan and sentenced to death in the Home Circuit Court, Kingston, Jamaica on 21 November 1991. His application for leave to appeal against his conviction and sentence to the Court of Appeal in Jamaica was dismissed on 16 May 1994. In its judgment, the Court of Appeal classified his offence as capital murder under section 2(1)(d)(1) of the Offences Against the Person Act of 1992, on the ground that it was a murder committed in the course of a robbery. Thus, the Court of Appeal affirmed the sentence of death. The author's subsequent petition for special leave to appeal to the Judicial Committee of the Privy Council was dismissed on 19 November 1996. On the same day, the Court of Appeal reviewed and reconfirmed the classification of the author's conviction as capital murder. Also on the same day, the author's counsel wrote to the Governor General of Jamaica and requested a commutation of the death sentence, submitting that since the author had spent five years on death row, he had been subject to inhuman and degrading treatment contrary to his rights under section 20 of the Jamaican Constitution. On 5 December 1996, the author was informed that the Governor General would not commute his death sentence. Instead, on the same day, a warrant was issued for the execution to be carried out on 19 December 1996. However, the author's death sentence was subsequently commuted to life imprisonment. A warrant to this effect was read to the author on 4 July 1997[1].

2.2 Chi Pang Chan was stabbed to death during the course of a robbery on the afternoon of Wednesday 27 June 1990 at Sheila Place, Queensborough, in Kingston, Jamaica. The prosecution's case against the author was based on circumstantial and confession evidence.

2.3 The author's aunt, Ruby Campbell, resided in Diana Place, an avenue some four blocks away from Sheila Place, where Mr. Chan was killed. She testified that Mr. Chan, whom she had known and done business with for several years, came to her house on most Wednesday afternoons in connection with her travelling to Miami on business. On these occasions, he would often give her US dollars, either cash in the hand to make purchases in Miami, or in an envelope to give to his uncle there. To questions as to whether Mr. Chan was expected on the Wednesday of the crime, she explained that he came most Wednesdays, but that he was not specifically expected this Wednesday. She further testified that Mr. Robinson had lived in her house for a period of five years

[1] See paras. 5.1, 6.1 and 7.1 below.

until the year before the incident, and that he was well aware of the custom of Mr. Chan stopping by her house on Wednesday afternoons.

2.4 An eye witness to the crime, Victoria Lee, testified that she saw the deceased and a black man struggling together outside her house in Sheila Place, that the black man appeared to be trying to take an envelope from the other man, and that he stabbed him before fleeing into a gully.

2.5 Detective Acting Corporal McPherson testified that on 28 June 1990, the day after Mr. Chan had been killed, he went to the author's home twice, once alone and once along with Senior Superintendent Hibbert, and found a shirt, a pair of jeans and footwear which appeared to be bloodstained. Underneath the wardrobe in the author's bedroom, they found a plastic bag containing US dollars and Pounds Sterling. One of the US dollar bills appeared to be bloodstained. McPherson testified that the author, when confronted by Senior Superintendent Hibbert with these items, admitted that the clothes and the shoes were his, but that he had no knowledge of the bills. The same testimony was given by Senior Superintendent Hibbert. A Government analyst at the Forensic Laboratory, Ms. Yvonne Cruickshank, testified that on examination, the items were found to be stained with blood of Group B, the same as that of Mr. Chan and about 18% of the Jamaican population.

2.6 The author's sister, Ms. Charmaine Jones, who at the time of the crime was living in the same house as the author, testified that she saw the author on the morning of 27 June 1990 wearing the same clothes that were later seized by the police, and that they were not bloodstained at the time. Furthermore, she testified that the author usually carried a ratchet knife on a keyring, and that he had done so on the morning of 27 June 1990. When the author was taken to Waterford Police Station on 28 June 1990, the ratchet knife was missing from the keyring. Detective Acting Corporal McPherson testified that the author had explained that he usually kept a ratchet knife on his keyring, but that it had been broken three days earlier while he was digging out a coconut.

2.7 Senior Superintendent Hibbert and Sergeant Forrest testified that the author on 29 June 1990, at Bridgeport Police Station, in their and Assistant Superintendent Lawrence's presence, after being duly cautioned, confessed to stabbing Mr. Chan and taking his money. The detailed confession was taken down by Sergeant Forrest in a written statement, and signed by the author. The statement was admitted as evidence and was read to the jury.

2.8 The author gave evidence on oath that he did not know the deceased, nor had he ever met him at his aunt's house. He stated that he had only lived with his aunt for 6 months. On 27 June 1990, he was at Caymanas Park Race Course from noon until 5:30 p.m. He denied owning any of the items produced by the prosecution (clothes, shoes, bank notes) and stated that he had never had a ratchet knife on his keyring. He denied making any of the confessions, oral or written, and denied signing the statement purportedly made by him. He said that on first arriving at Waterford Police Station he was put in a cage and told "it better you stay in there more than get a gun shot". He stated that he was violently assaulted by police officers on 29 June 1990 at the time when Officer Hibbert claimed he made and signed the written confessions[2].

[2] The author does not claim that he was forced to sign the statement. He claims that a confession was never made, and that the statement submitted by the prosecution was forged.

2.9 Counsel argues that all available domestic remedies have been exhausted for the purposes of article 5, paragraph 2(b), of the Optional Protocol. While a constitutional motion might be open to the author in theory, it is not available in practise due to the State party's unwillingness or inability to provide legal aid for such motions and to the extreme difficulty of finding a Jamaican lawyer who would represent an applicant pro bono on a constitutional motion.

The complaint

3.1 Counsel alleges a violation of articles 7 and 10 on the ground that the author has been on death row for a period of over five years. It is submitted that the "agony of suspense resulting from such long awaited and expected death" amounts to cruel, inhuman and degrading treatment. Reference is made to the jurisprudence of the Privy Council.

3.2 Counsel also alleges a violation of articles 7 and 10 on the ground of the conditions of his incarceration at St. Catherine's District Prison. As to the general conditions, reference is made to reports by Americas Watch, Amnesty International and the Jamaican Council for Human Rights. The reports highlight that the prison is holding more than twice the capacity for which it was constructed in the 19th century, that there are no mattresses, other bedding or furniture in the cells, that there is a desperate shortage of soap, toothpaste and toilet paper, that the quality of food and drink is very poor, that there is no integral sanitation in the cells and there are open sewers and piles of refuse, that there is no artificial lighting in the cells and only small air vents through which natural light can enter, that there are almost no employment or recreational opportunities available to inmates, and that there is no doctor attached to the prison, leaving warders with very limited training to treat medical problems. In addition to the NGO reports, counsel makes reference to reports from prisoners, stating that the prison is infested by vermin, in particular rats, cockroaches, mosquitoes and, in rainy periods, maggots. Furthermore, the prisoners have stated that food is being prepared in the kitchen and the bakery despite these having been condemned for many years, that the prison often runs out of medication, that insufficient clothing is given to inmates, that there is no procedure for handling the complaints of inmates and that the organisation of the prison at times breaks down, with the result that the inmates are locked up in their cells for long periods of time, without access to washing facilities and having to ask for food and water to be brought to them. These alleged reports from prisoners are not enclosed.

3.3 Counsel submits that the particular impact of these general conditions upon the author is that he is confined to his cell for 22 hours every day in enforced darkness, isolated from other men and with nothing to keep him occupied. Reference is made to the UN Standard Minimum Rules for the Treatment of Prisoners.

3.4 Counsel alleges that the trial judge's instructions to the jury and his failure to exclude certain evidence amount to a denial of justice, which, according to the Committee's jurisprudence, constitutes a violation of article 14, paragraphs 1 and 2. As to the trial judge's instructions to the jury, counsel submits that the trial judge prejudiced the author's case in the following respects:
- the judge failed to remind the jury that the fact that no objection was made to the confession statement being admitted into evidence was irrelevant to the issue the jury had to decide, namely whether the statement was forged or not

- the judge failed to direct the jury upon the law regarding self-defence as to the facts allegedly admitted by the author, notwithstanding that the author relied upon a defence of alibi in the trial
- the judge failed to remind the jury of the description of the assailant given by Victoria Lee and Audley Wilson (Victoria Lee testified that the black man who she saw stabbing the deceased was wearing a blue shirt, or at least a shirt with blue in it, whilst the shirt that was seized by the police was white and black. Audley Wilson, another eye witness to the struggle, testified that the assailant was 5'8"-5'9", which is the author's height, but in the cross-examination it was made clear that he at the preliminary hearing had claimed that the assailant was "about 5' and a little".)

3.5 As to the oral and written confession evidence allegedly given by the author in answer to questions from Senior Superintendent Hibbert, counsel submits that this evidence should have been excluded on the ground that the author should have been charged with murder before the questions were put. Further, it is submitted that the judge should have reconsidered the admissibility of the confession evidence having heard the cross-examination of the police officers concerned and the sworn evidence of the author, notwithstanding his earlier ruling on the issue and the fact that defence counsel did not challenge the admissibility of the evidence.

3.6 Counsel alleges a violation of article 14, paragraph 3(e), on the ground that Miss Charmaine Jones and Miss Herma Ritchie, respectively the author's sister and her room-mate, were willing to give evidence as witnesses on the author's behalf before the Court of Appeal, but did not attend the appeal because they were intimidated by the police and told that they would be arrested if they appeared.

3.7 Counsel alleges a violation of article 14, paragraphs 1, 2, 3(b), 3(d) and 5, on the ground that defence counsel on appeal, Lord Gifford, made an erroneous submission that there was no arguable point in the author's case, and, contrary to the author's instructions, stated that the author had accepted this advice[3]. Counsel argues that Lord Gifford thereby failed to make a case as to whether the cautioned statement was forged or not. It is submitted that Lord Gifford failed to inform the Court both that he had advised the author to obtain a handwriting expert to review the signatures on the disputed statement, and that the author wanted to obtain such an expert, but did not have the necessary funds. Furthermore, counsel argues that Lord Gifford failed to ask for an adjournment to enable funds to be raised.

3.8 Counsel also alleges a violation of article 14, paragraph 5, on the ground that the original of the written confession was not available to the author or his counsel before the petition for special leave to the Privy Council, and therefore it could not be properly reviewed by a handwriting expert assigned by counsel. It is submitted that the State party has an obligation to preserve evidence relied upon in a trial at least until appeals have been exhausted, and that this obligation has been breached in this case with the effect that the author was deprived of an opportunity to place new material before the court.

[3]There is nothing in the file which indicates any earlier mention of such contrary instructions from the author.

The State party's submission and the author's comments thereon

4.1 In its submission of 14 February 1997, the State party raises no objections as to the admissibility of the communication, and offers its observations on the merits. The State party denies that any violation of the Covenant has occurred in the author's case.

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 five years spent on death row, the State party submits that a prolonged stay on death row does not per se constitute cruel and inhuman treatment. Reference is made to the jurisprudence of the Committee[4].

4.3 As regards the alleged violation of article 14, paragraphs 1 and 2, on the ground of the trial judge's summing up, the State party submits that this is not a matter to be considered by the Committee. The State party makes reference to the jurisprudence of the Committee where it holds that it can only examine whether such instructions were manifestly arbitrary or amounted to a denial of justice. It is submitted that neither of these exceptions are applicable to the author's case.

4.4 The second alleged violation of article 14 concerns the conduct of the trial judge in regard to allowing the author's oral and written confession into evidence. The State party submits that these matters relate to facts and evidence which according to the Committee's jurisprudence are best left to Appellate courts. It is stated that these issues were in fact examined by the Court of Appeal.

4.5 As regards the alleged violation of article 14, paragraphs 1,2, 3(b), 3(d) and 5, on the ground that the attorney who represented the author on appeal allegedly did not seek an adjournment in order to enable funds to be raised to retain a handwriting expert and that he instead advised the Court of Appeal that he had nothing to argue and that this had been accepted by the author, the State party submits that this allegation is based on assertions of what instructions that were given and how these were carried out. It is submitted that this is not a matter of State responsibility: the State party's obligation is to appoint competent counsel to the accused, but it cannot be held responsible for how he has carried out his instructions when there is no indication that agents of the State party, by act or omission, prevented him from conducting the case as he saw fit.

4.6 With regard to the alleged violation of article 14, paragraph 3(e), because two potential defence witnesses failed to give evidence before the Court of Appeal as they were threatened by the police, the State party notes that "these are very serious allegations which go to the core of the administration of justice and cast serious aspersions on the integrity of members of the police force." The State party is of the view that "these allegations must be supported by the clearest and most unambiguous evidence or be promptly withdrawn."

5.1 In his comments of 9 October 1998, counsel explains that the author was moved off death row on 4 July 1997 and into the main section of the prison. It is stated that the author received no "official confirmation of the reason for his move".

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[4] Communication Nos. 210/1986 & 225/1987, *Pratt and Morgan v. Jamaica*, Views adopted on 6 April 1989.

Furthermore, counsel states that "the author understands that the State party has generally indicated that prisoners who have had their sentences commuted according to the *Pratt & Morgan* decision must serve a minimum non-parole period of 7 years. It is not clear when the 7 years begin to run although in a recent decision in Jamaica, *R v Anthony*, the judge ruled that the non-parole period for a prisoner convicted of non-capital murder should run from a date three months after the date of conviction." Counsel says that the author hopes that the same practice will be followed in all cases, but submits that the lack of clarity in this regard constitutes a "continuing uncertainty" in breach of articles 7 and 10. With regard to the conditions of detention, the author also submits that in the section of the prison to which he was moved on 4 July 1997, AIDS and HIV infections are common among the prisoners.

5.2 In his submission of 9 October 1998, the author also forwards a new claim under articles 7 and 10. It is submitted that on 5 March 1997, the author was beaten and hit in the head by some unnamed warders, sustaining a cut for which he received ten stitches. Furthermore, the author states that upon the instruction of the Prison Director, the warders destroyed all his belongings save for two suits. Allegedly, this occurred with the full knowledge and the authorisation of two named superintendents. The author also claims that his visiting rights were suspended for three months and that the warder working on his section began harassing him. To substantiate this claim, counsel has forwarded a statement from the author dated 16 April 1997, an affidavit dated 14 July 1997 and an article in *The Pen*[5] of May 1997.

5.3 As regards the alleged violations of article 14, paragraphs 1 and 2, on the grounds of the trial judge's directions to the jury on the confession statement and the admission of this evidence, counsel submits that the judge's errors on these points amounted to a denial of justice. Counsel further submits that the judgment of the Court of Appeal does not indicate that these issues were examined by it.

5.4 With regard to the alleged violation of article 14, paragraphs 1,2, 3(b), 3(d) and 5, on the ground of the previously described acts and omissions of the legal aid attorney who represented the author on appeal, counsel makes reference to the jurisprudence of the Committee[6] and submits that a violation did occur as the legal aid attorney told the Court of Appeal that there was no merit in the application without the knowledge or consent of the author.

5.5 Counsel notes that the State party did not respond to the alleged violation of article 14(5) on the ground that the State party failed to preserve the original confession statement. Counsel reiterates the claim and makes reference to *Walker and Richards v Jamaica*[7], in which the authors "had made diligent efforts to obtain documents necessary to the determination of the case by the Privy Council and the lack of availability and delay in locating them was attributed to the State party." Counsel submits that there have been made comparable diligent efforts to obtain the original alleged confession statement. In this regard, counsel points out that on 24 January 1996 he wrote to the Private Secretary to the Governor-General of

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[5] A newsletter for friends of prisoners on death row in the Caribbean

[6] Communication No. 250/1987, *Reid v Jamaica*, Views adopted on 20 July 1990; Communication No. 253/1987, *Kelly v Jamaica*, Views adopted on 8 April 1991; Communication No 356/1989, *Collins v Jamaica*, Views adopted on 25 March 1993.

[7] Communication No. 639/1995, Views adopted on 28 July 1997.

Jamaica, the solicitors for the Director of Public Prosecutions and the Privy Council clerk in Jamaica seeking the document. On 9 April 1996 he was provided with a copy. On 23 May 1996 and 3 June 1996, counsel again wrote to the Director for Public Prosecutions seeking the original. On 5 November 1996, the State party's counsel before the Privy Council stated that "it was accepted that the original document was lost and that this should not have happened... normal procedure was for the return of original documents to the police station of arrest". Still according to counsel, the Privy Council clerk in Jamaica enquired at the police station on 21 November 1996, but obtained no information.

5.6 With regard to the two witnesses who allegedly failed to give evidence before the Court of Appeal because of police threats, counsel states that his agents in Jamaica, without success, have sought to obtain further evidence from these witnesses. According to counsel, contact was made with one of the witnesses but she repeated her unwillingness to give further evidence, suggesting that this was "because of intimidation by/fear of the authorities".

5.7 Counsel also alleges that because of the violations of article 14, also article 6, paragraph 2, was violated, since a death sentence was imposed contrary to the Covenant.

The State party's response and the author's further comments

6.1 In its response of 29 January 1999, the State party firstly contests that the author was not informed of the reason why he was removed from death row and placed in the main section of the prison. The State party claims that on 4 July 1997, the Superintendent of the Saint Catherine Adult Correctional Centre read a copy of the warrant for commutation of the author's death sentence to the author. Therefore, it is submitted, the author was aware that his sentence was commuted as of 4 July 1997.

6.2 The State party further denies that there is any uncertainty as to when death row prisoners, whose sentences have been commuted, become eligible for parole. The State party submits that the Offences Against the Person (Amendment) Act is abundantly clear as to when commuted prisoners become eligible for parole. Reference is made to sections 5A and 6(4) which read:

> "Section 5A
>
> Where pursuant to section 90 of the Constitution, a sentence of death has been commuted to life imprisonment, the case of the person in respect of whom the sentence was so committed shall be examined by a Judge of the Court of Appeal who shall determine whether the person should serve a period of more than seven years before becoming eligible for parole and if so, shall specify the period so determined.
>
> Section 6(4)
>
> Subject to subsection (5), an inmate -
> (a) who has been sentenced to imprisonment for life; or
> (b) in respect of whom -
> (i) a sentence of death has been commuted to life imprisonment; and

(ii) no period has been specified pursuant to section 5A shall be eligible for parole after having served a period of not less that seven years."

6.3 The State party points out that under these sections "a death row prisoner who has his sentence commuted, would pursuant to section 5A have to serve the period determined by the Judge, or serve a minimum of seven years pursuant to section 6(4), before he becomes eligible for parole." The State party denies that the judgment referred to by the author, *R v Anthony Lewis*, makes it unclear when the parole period starts to run for a commuted prisoner. In that particular case, the crime committed by the applicant was re-classified as non-capital murder and he was sentenced to life imprisonment and to serve 20 years before becoming eligible for parole, starting from a date 3 months after the date of his conviction. In deciding so, the Judge relied on the discretion conferred on him by section 7(2)c of the same act which states that the judge may decide

"whether, and if so to what extent, a specified period should elapse before the grant of parole in a case where murder is classified as non-capital murder."

6.4 With regard to the alleged beatings on 5 March 1997, the State party comments that the author tried to escape on that day and that it will undertake a further investigation of the episode, the results of which will be forwarded to the Committee. As to the conditions of detention in general, the State party states that notwithstanding the contents of the NGO reports referred to by the author, a generalized position cannot be adopted. Rather, the approach to be taken is to deal with the complaints individually and consider each case on its individual merits. In light of this, the State party undertakes to investigate the conditions of the author's detention, and states that the results of the inquiry will be submitted to the Committee.

6.5 With regard to the alleged violations of article 14, paragraphs 1 and 2, on the ground of the trial judge's directions on and admission of the confession statement, the State party reiterated its position that no violation occurred. The State party cites the jurisprudence[8] of the Committee and argues that there has been no denial of justice in the present case. The State party also reiterates its position with regard to the claim that article 14, paragraph 3(e), was violated as two potential defence witnesses allegedly had been threatened, and notes that the author has failed to produce any evidence to substantiate this claim. Furthermore, the State party submits that article 6, paragraph 2, has not been violated since the trial was lawful and in accordance with the Covenant.

6.6 With regard to the alleged violation of article 14, paragraph 5, on the ground of failure to preserve the author's alleged confession statement, the State party argues that the *Walker and Richards* case, to which the author refers, does not support his claim. The State party points to differences between the two cases as there in *Walker and Richards,* in spite of eight separate requests, was a delay of about 5 years before the author's representatives were informed by the Supreme Court of the availability of the authors' trial transcript and Court of Appeal

[8] Communication No. 639/1995, Walker and Richards v Jamaica, Views adopted on 28 July 1997; Communication No. 749/1997, Taggart v Jamaica, Views adopted on 31 March 1998.

judgment, documents that were necessary in the determination of the possibility for appeal to the Privy Council. In the present case, the author was provided with a copy three months after his first request. The State party submits that the failure in providing the original of the author's confession did not deprive him of his right to have his conviction and sentence reviewed in violation of article 14, paragraph 5. The State party points out that the Privy Council decided to dismiss the author's appeal even though one of the grounds of appeal was the State party's failure to preserve the original alleged confession statement.

6.7 With regard to the alleged violation of article 14, paragraphs 1,2, 3(b), 3(d) and 5, on the ground of the conduct of the author's appeal by his attorney, the State party makes reference to *E. Morrison v Jamaica*[9] *and Smart v Jamaica*[10], and submits that the State party can not be held accountable for alleged errors made by a defence lawyer, unless it was or should have been manifest to the court that the lawyer's behaviour was incompatible with the interests of justice. It is submitted that in the present case, counsel's conduct did not deny the author of his right to justice, nor did it amount to a breach of article 14.

7.1 In his comments of 12 April 1999, counsel explains that the author acknowledges that the commutation warrant was read to him on 4 July 1997 and that he did not wish to suggest that he was not aware of the reasons for the move to the main section of the prison. However, he does submit that he has received no official confirmation of the reason for the move.

7.2 As regards the alleged violation of articles 7 and 10, paragraph 1, on the ground of uncertainty as to when the non-parole period begins to run, counsel submits that the position remains unclear also after the State party's submission. From the State party's comment that the ruling in *R v Anthony Lewis* only applies to that particular case, the author infers that the same solution (i.e. that the period commences three months after the date of conviction) will not be applied to other comparable cases, such as the author's own. It is submitted that although the minimum non-parole period is set by the Offences Against the Person (Amendment) Act 1992, "the date on which this period commences has not been set down or clarified in any case."

7.3 With regard to the alleged beatings on 5 March 1997 and the State party's claim that the author tried to escape on that day, the author submits, as held in his affidavit of 14 July 1997, that "although he cut the lock on his cell he did not leave his cell as he had changed his mind and decided not to try to escape."

7.4 As regards the alleged violations of article 14, paragraphs 1 and 2, on the grounds of the trial judge's directions to the jury on the confession statement and the admission of this evidence, the author reiterates his claims that the judge's instructions and summing up amounted to a denial of justice. It is further argued that the State party has made no effort to explain why this exception from the principle that the Committee shall not reevaluate facts and evidence and the trial judge's instructions is not applicable in the present case.

7.5 On the issue of the author's appeal, and what instructions that were given and how these were carried out, counsel submits that the cases referred to by the State

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[9] Communication No. 635/1995, Views adopted on 27 July 1998.
[10] Communication No. 672/1995, Views adopted on 29 July 1998.

party are without relevance as they "can be distinguished on their facts." Counsel asserts that in the case of *E. Morrison v Jamaica*, the allegations concerned the handling of the applicant's defence at the trial particularly with regard to failure to challenge the credibility of certain witnesses. In the case of *Smart v Jamaica*, the applicant's counsel on appeal dropped two of the grounds of appeal, but not all, as in the present case. As opposed to these cases, it is submitted that the cases previously referred to by the author, i.e. *Kelly v Jamaica* and *Collins v Jamaica*, were "cases based on the same relevant facts" as in the author's case, because counsel in those cases "informed the Court of Appeal that there was no merit in the prisoners' appeals without the prisoners knowing they were going to do so and without their consent." Accordingly, it is submitted that the Committee should find a violation of article 14 also in this case.

Further submission from the State party, including the results of its investigation

8.1 In its submission of 2 November 1999, the State party again addresses the author's claims under articles 7 and 10, paragraph 1, and forwards the results of its investigations. As regards the claim that articles 7 and 10 were violated on account of the alleged uncertainty concerning the commencement of the non-parole period to be served by the author, the State party offers a further explanation to its position. Under the Offences Against the Person (Amendment) Act 1992, the judge performing the review (the reclassification) shall determine whether, and if so, to what extent, a specified period should elapse before the grant of parole in a case where murder is classifiable as non-capital (i.e. the "non-parole period"). A judge, therefore, has the discretion to decide how long a prisoner, who has had his sentence commuted, must serve before he becomes eligible for parole. It is submitted that this is exactly what happened in the author's case, as it did in *R. V Anthony Lewis* and all other cases where such reclassifications have been made. Consequently, the State party repeats its submission that the Act does not create uncertainty and that there has been no breach of the Covenant in this regard in this case.

8.2 With regard to the alleged beatings, the State party states that on 5 March 1997, the author, along with three other inmates, attempted to escape from the prison. Allegedly, they escaped from their cells by cutting the iron bars and locks on their cell doors, but the plot was foiled when they were caught attempting to leave through the gate to a workshop. Subsequently all the four inmates were placed in cell no. 19. When asked to leave this cell so that it could be searched, the inmates allegedly refused to comply and began acting boisterously, threatening the officers and using foul language. The State party claims that the officers repeated the orders several times during the subsequent 15 minutes, but the inmates still refused to obey and therefore had to be removed with force. After their removal, it was discovered that they had in their possession a piece of cutlass, a piece of iron pipe and two hacksaw blades.

8.3 The State party states that it was during the forced removal of the inmates that they were injured. As a result of the injuries, the inmates received medical attention from the medical doctor at the prison. He referred them to the Spanish Town Hospital where they were examined by a Dr. Donald Neil. In his report, Dr. Neil stated that the author was admitted to the hospital "complaining of sustaining blows all over his body from prison warders at the prison. ... [the] examinations revealed a conscious and alert young man with vital signs. There were multiple contusions to the lower back plus swelling and tenderness to the left posterior chest. There was a 4cm laceration to the right parietal scalp. There were multiple

linear abrasions to the right thigh, the anterior surface of the left leg plus swelling and tenderness to the middle one-third of the right leg. X-ray of the skull revealed no fractures. Treatment consisted of tetanus toxoid, antibiotic injection and suturing of the scalp laceration. He was discharged on antibiotics and painkillers."

8.4 In conclusion, the State party acknowledges that the author was beaten on 5 March 1997 after attempting to escape from the prison. However, it is submitted that the beating could not have been avoided as the author, along with the other inmates, failed to follow instructions issued by prison officers. Consequently, the State party "denies that the occurrence on March 5 constituted a breach of articles 7 and 10, paragraph 1".

8.5 The State party further states that their investigations have shown that the allegations made against the Director of the prison are false: "No instructions were given to clean out and burn the [author's] belongings. The [author's] fellow inmates... substantiate this finding, as they both stated that they did not hear [the] Director give orders to the warders to destroy or burn things." As regards the suspension of the author's privileges, the State party submits that this was ordered pursuant to section 35(1) of the Corrections Act, which lays down clear instructions with regard to punishment for major and minor correctional offences.

8.6 As regards the author's claim that after being taken off death row on 4 July 1997 he was moved to a section of the prison where AIDS and HIV are common among the prisoners, the State party notes that when interviewed[11], the author stated that at no time during his prison sentence was he placed in a section where AIDS and HIV were common. Furthermore, the State party claims that according to the author's prison record, he was moved from St. Catherine's District Prison to Tower Street Adult Correctional Centre shortly after the commutation of his death sentence.

8.7 In relation to the allegation that the author's conditions of detention at St. Catherine's District Prison violated articles 7 and 10, paragraph 1, of the Covenant, and in particular the allegation that the prison has inadequate medical service, the State party claims that the Prison "houses a Medical Centre that is staffed by two registered medical practitioners, a general practitioner and a psychiatrist. There is also a registered dentist. A matron who is a registered nurse, a qualified social worker and several medical orderlies assists these doctors. The general practitioner attends at the Medical Centre daily and when he is not on duty, he is on call; whilst the dentist attends at the Medical Centre three days every week. Additionally, when a prisoner makes a complaint of a medical nature, arrangements are made with a medical orderly for that prisoner to be taken to see the doctor at the very earliest opportunity. If the complaint is of a serious nature and a doctor is not on duty at the time or cannot be located, the prisoner is immediately dispatched to the Spanish Town General Hospital." The State party therefore denies that the prison has no or inadequate medical services in breach of articles 7 and 10. Furthermore, the State party denies that the prison, as alleged by the author, has no integral sanitation in the cells and that it is infested with vermin and that the kitchen and bakery have been condemned.

[11] There is no mention of by who or in which context the interview was done.

Issues and proceedings before the Committee

9.1 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.

9.2 The Committee notes that the State party in its submissions has addressed the merits of the communication. This enables the Committee to consider both the admissibility and merits of the case at this stage, pursuant to rule 94, paragraph 1, of the rules of procedure. However, pursuant to rule 94, paragraph 2, of the rules of procedure, the Committee shall not decide on the merits of a communication without having considered the applicability of any of the grounds of admissibility referred to in the Optional Protocol.

9.3 As to the claim that the author's detention on death row from 1992 to 1997 constitutes cruel, inhuman or degrading treatment, the Committee reiterates its constant jurisprudence[12] that detention on death row for any specific period of time does not *per se* constitute a violation of articles 7 and 10, paragraph 1, of the Covenant, in absence of further compelling circumstances. As neither the author nor his counsel have adduced any such circumstances, the Committee finds this part of the communication inadmissible under article 2 of the Optional Protocol. On the other hand, the author's claims of violations of the same provisions both on the ground of the alleged beatings on 5 March 1997 and on the ground of deplorable conditions of the author's detention in general are, in the view of the Committee, sufficiently substantiated to be considered on the merits, and are therefore deemed admissible.

9.4 With regard to the author's allegation of violations of article 14, paragraphs 1 and 2, on the ground of improper instructions from the trial judge to the jury on the issues set out in para. 3.4 supra, and the admission of the confession statement and the police officers' testimony into evidence, 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 both parties also have pointed out, 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 any 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.

9.5 With regard to the alleged violation of article 14, paragraph 3(e), on the ground that two named witnesses were willing to give evidence before the Court of Appeal but declined because of police intimidation,the Committee notes that the State party has disputed the author's allegations and that the author has not adduced any evidence in support of them, nor has he made any claims as to what new

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

evidence these witnesses would provide. Furthermore, the material before the Committee shows that the author's counsel before the Court of Appeal, Lord Gifford, was granted an adjournment of 10 months in order to interview one of the potential witnesses and to obtain any other new evidence. However, at the hearing, Lord Gifford did not mention any police intimidation of defence witnesses. In the circumstances, the Committee finds that the claim is inadmissible under article 2 of the Optional Protocol for lack of substantiation.

9.6 The Committee declares the remaining claims under article 14 admissible, and proceeds with the examination of the merits of all admissible claims, in the light of the information made available to it by the parties, as required by article 5, paragraph 1, of the Optional Protocol.

10.1 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 at St. Catherine's District Prison. To substantiate his claim, the author has invoked three NGO reports specified in para. 3.2 supra. The Committee notes that the author refers to the inhuman and degrading prison conditions in general, such as the complete lack of mattresses, other bedding and furniture in the cells; that there is a desperate shortage of soap, toothpaste and toilet paper; that the quality of food and drink is very poor; that there is no integral sanitation in the cells and open sewers and piles of refuse; that there is no doctor, leaving warders with very limited training to treat medical problems. In addition to the NGO reports, counsel makes reference to reports from prisoners, stating that the prison is infested by vermin, and that the kitchen and the bakery despite having been condemned for many years are still in regular use. In addition to these claims, the author has also made specific allegations that he is confined to his cell for 22 hours every day in enforced darkness, isolated from other men, without anything to keep him occupied.

10.2 The Committee notes that with regard to these allegations, the State party has disputed only that there is inadequate medical facilities, that the prison is infested with vermin and that the kitchen and bakery have been condemned. The rest of the allegations put forward by the author stand undisputed and, in the circumstances, the Committee finds that article 10, paragraph 1, has been violated.

10.3 With regard to the author's claim that, on 5 March 1997, he was beaten by several warders at St. Catherine's District Prison, the Committee notes that the State party in its investigations of the allegations found that the beating was unavoidable as the author and three inmates had failed to follow repeated instructions to leave a particular cell. However, the Committee also notes the medical report provided by the State party which reveals that the author sustained injuries to his head, back, chest and legs which appear to go beyond that which is necessary to forcefully remove someone from a cell. The Committee therefore concludes that excessive force was used, in violation of articles 7 and 10, paragraph 1, of the Covenant.

10.4 The author has alleged that articles 7 and 10, paragraph 1, were violated also because of "continuing uncertainty" with regard to the non-parole period to be served by the author. The Committee notes that there appears to be agreement between the parties that upon the commutation of the author's sentence, he is subject to a non-parole period of seven years. Neither of the parties have, however, provided the Committee with a copy of a decision to this effect. The Committee notes that the State party claims that there is no uncertainty as to when

this period begins to run, but that it does not in fact explicitly state on which date the period began to run in the author's case. However, based on the cited legislation and the State party's explanation, it does seem clear that when it is not otherwise decided, the non-parole period does not start to run any later than on the date of his commutation. The Committee cannot see that any uncertainty the author may experience as to whether the period started to run on that date or at any time prior to that, can constitute cruel, inhuman or degrading treatment or punishment in violation of the Covenant.

10.5 With regard to the alleged violation of article 14, paragraphs 1, 2, 3(b), 3(d) and 5, on the ground that the author was not effectively represented on appeal, the Committee notes that it is correct as stated by counsel that the Committee in its prior jurisprudence has found violations of article 14, paragraphs 3(d) and 5, in situations where counsel has abandoned all grounds of appeal and the court has not ascertained that this was in compliance with the wishes of the client. This jurisprudence does not, however, apply to this case, in which the Court of Appeal, according to the material before the Committee, did ascertain that the applicant had been informed and accepted that there were no arguments to be made on his behalf. In this regard, the Court of Appeal states:

> "Lord Gifford, QC informed the court that notwithstanding his best efforts he was still firmly of the view that there was nothing he could urge on behalf of the applicant and that he had further informed the applicant accordingly and that he had accepted the advice of counsel."

10.6 The Committee also notes that a letter of 27 December 1995 from Lord Gifford to the author's present counsel, which is appended to the author's original submission, implies that the Court of Appeal's judgment gave a correct account of the events, as he states that he, over a period of about a year, on several occasions discussed the case with the author and informed him that he could see no merit in the appeal unless they came up with new evidence. He also invited the author to get a second opinion. However, even if the situation, as alleged by the author, was that he had not accepted his counsel's advice, this cannot be attributed to the State party. Nor can the Committee find anything else in the material before it to suggest that the lawyer's conduct was incompatible with the interests of justice. In this regard, the Committee notes, as opposed to what has been claimed by the author, that a 10 month adjournment was given in order to obtain new evidence, but that the counsel failed to secure any new evidence in that period. In the view of the Committee, this again cannot be attributed to the State party, and it concludes that there has been no violation of article 14, paragraphs 3(d) and 5, on this ground.

10.7 While recognizing that in order for the right to review of one's conviction to be effective, the State party must be under an obligation to preserve sufficient evidential material to allow for such a review, the Committee cannot see, as implied by counsel, that any failure to preserve evidential material until the completion of the appeals procedure constitutes a violation of article 14, paragraph 5. Article 14, paragraph 5, will, in the view of the Committee, only be violated where such failure prejudices the convict's right to a review, i.e. in situations where the evidence in question is indispensable to perform such a review. It follows that this is an issue which it is primarily for the appellate courts to consider.

10.8 In the present case, the State party's failure to preserve the original confession statement was made one of the grounds of appeal before the Judicial Committee of the Privy Council which, nevertheless, found that there was no merit in the appeal and dismissed it without giving further reasons. The Human Rights Committee is not in a position to reevaluate the Judicial Committee's finding on this point, and finds that there was no violation of article 14, paragraph 5, in this respect.

11. 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 and 10, paragraph 1, of the International Covenant on Civil and Political Rights.

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

13. 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 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 and 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 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]

Individual opinion by member Louis Henkin

I concur in the conclusion of the Committee (paragraph 9.3) that, according to the jurisprudence of the Committee as formulated in previous cases, the circumstances of this case do not constitute a violation by the State party of article 7 of the Covenant.

Like several of my colleagues, I continue to be troubled by the Committee's formulation of the relevant principles, but do not consider the present case to be an appropriate vehicle for reexamining and reformulating them.

Louis Henkin (signed)

[Done 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.]