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

VIEWS

Communication N° 730/1996

<u>Submitted by:</u>	Clarence Marshall (represented by Mr. R. Shepherd of the London law firm Clifford Chance)
<u>Alleged victims:</u>	The author
<u>State party:</u>	Jamaica
<u>Date of communication:</u>	4 December 1996 (initial submission)
<u>Date of adoption of Views</u>	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. 730/1996. The text of the Views is appended to the present document.

[ANNEX]

* Made public by decision of the Human Rights Committee.
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ANNEX*

VIEWS OF THE HUMAN RIGHTS COMMITTEE UNDER ARTICLE 5, PARAGRAPH 4,
OF THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT
ON CIVIL AND POLITICAL RIGHTS
- Sixty-fourth session -

concerning

Communication N° 730/1996

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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 730/1996 submitted
to the Human Rights Committee by Mr. Clarence Marshall, under the Optional
Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by
the author of the communication, his counsel and the State party,

Adopts the following:

* The following members of the Committee participated in the examination
of the present communication: Mr. 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 Clarence Marshall, a citizen of Jamaica. At the time of submission he was detained on death row in St Catherine's District Prison but his sentence was commuted in March 1997. He claims to be a victim of violations by Jamaica of articles 6, 7, 9, 10, and 14, paragraphs 1, 3 and 5, of the International Covenant on Civil and Political Rights. He is represented by Mr. Robert Shepherd of the London law firm of Clifford Chance.

The facts as submitted by the author:

2.1 On 10 February 1992, the author was convicted for two counts of murder and was sentenced to death in the Westmoreland Circuit Court, Savanna-la-mar. Soon after the verdict, the author began preparing an appeal against the conviction and the sentence on the grounds that the trial had been unfair and that there had been insufficient evidence to warrant a conviction. On 18 April 1994, Supplemental Grounds of Appeal were filed on behalf of the author by Ms. Arlene Harrison-Henry, an attorney-at-law of Kingston who was appointed in the place of the authors's counsel in the trial, Mr. Ronald Paris. The appeal was dismissed by the Court of Appeal of Jamaica on 16 May 1994. The Court of Appeal classified the murder as capital under the Offences against the Persons (Amendment) Act 1992, section 2 (1)(d)(1), and affirmed the sentence of death.

2.2 A petition for special leave to appeal to the Judicial Committee of the Privy Council was subsequently filed by the London law firm of Clifford Chance, contending that the trial Judge in his directions to the jury had erred in law in a number of important respects, and that the Court of Appeal had erred in law by concluding that this was a "case of murder or nothing." The petition was dismissed on 25 May 1995.

2.3 Counsel states that the Jamaican Government at a later stage agreed to perform a reclassification of the author's offence in accordance with section 7 of the Offences Against the Persons (Amendment) Act 1992, which requires that review is first to be performed by a single judge of the Court of Appeal and then, if appealed, by three designated judges, and not by the Court of Appeal as such. In a further submission dated 21 February 1997, counsel states that the author on 18 January 1997 was sent a form, apparently pursuant to section 7 of the Amendment Act, asking whether he wished to appeal the reclassification as capital which had been performed by a single judge to the three judge-panel. No information has been forwarded as to whether these proceedings continued, but the State party has informed the Committee that on 10 March 1997 the author's sentence was commuted to life imprisonment due to the amount of time spent on death row.

2.4 The author was convicted for the murders of Amos Harry and David Barrett, on 25 October 1990 in the parish of Westmoreland. Mr. Harry worked as a salesman for Mr. Wesley Jackson, a businessman of Hartford, Westmoreland. When murdered he was in one of Mr. Jackson's vehicles, accompanied by Mr. Barrett, a security guard employed by Alpha Security Company, the same company as employed the author. They were on a round collecting money for Mr. Jackson and were found shot in Mr. Jackson's car on the road from Montego Bay to Savanna-la-mar at 4:15 p.m.

2.5 Though it is not made clear in counsel's submission, the enclosed trial transcript shows that the prosecution's case was based mainly on a cautioned statement allegedly made in police custody by the author on 30 October 1990, and on the testimony of police constables Jalleth Gayle and Federal Bryant. Ms. Gayle testified that she was a passenger in a car going to Savanna-la-mar when the car was overtaken by another car carrying Mr. Harry and Mr. Barrett and two other men. After overtaking Ms. Gayle's car, it crashed into the iron rail on the side of the road. Ms. Gayle's car was subsequently stopped, and she saw two men running from the car, both carrying something. In the car, she found the two victims shot. Mr. Bryant testified that he was driving towards the scene of the crime when he saw the two men running from the car. He claimed that he recognized the author whom he had known for 8 years, and that he was carrying a gun.

2.6 In his cautioned statement, the author confessed that he was in the car with the two victims and a Mr. Williams. He claimed, however, that Mr. Williams, a former security guard with the Alpha Security Company, in advance had told the author that he needed money and had proposed that the author show him the route Mr. Harry would be travelling, as the author in his work often accompanied Mr. Harry. It was allegedly with this intention that on 25 October 1990 they had gone to Cornwall Mountain Road to stop, and hitch a ride from, the car driven by Mr. Harry. The author claimed that Mr. Williams, after Mr. Harry had made his last stop, shot both Mr. Harry and Mr. Barrett. The author's cautioned statement was the subject of a voir dire in which the judge decided that the authors's cautioned statement could be heard by the jury, despite his counsel's motion to have it excluded on the grounds that the author was beaten. During the voir dire, the author made a sworn statement in which he testified that he had been beaten in several ways before dictating and signing the cautioned statement. In the regular proceedings, the author gave only an unsworn statement in which he stated that he did not kill anyone, nor had he planned to kill anyone.

The complaint:

3.1 Counsel alleges a violation of article 9, paragraph 3, on the ground that the author was not brought before a judge or other officer authorized by law to exercise judicial power until three weeks after he was arrested in October 1990. Reference is made to the Committee's jurisprudence, to the European Convention for the Protection of Human Rights and Fundamental Freedoms, and to the European Court of Human Rights' jurisprudence.

3.2 Counsel alleges a violation of the right to a fair hearing by a competent, independent and impartial tribunal, as provided for in article 14, paragraph 1, because (i) the trial Judge's directions to the jury were inadequate, and (ii) the Court of Appeal exceeded its powers when classifying the crimes as capital. Accordingly, it is further contended that the imposition of the death sentence was in breach of Article 6, paragraph 2, as the proceedings which led to it were conducted in violation of the Covenant.

3.3 As to the trial judge's instructions to the jury, counsel contends that the judge failed properly to direct the jury to consider the scope of the common design between Mr. Williams and the author, and that he did not point out the possibility that Williams killed the two men but that his actions exceeded the scope of the common design previously agreed with the author, something which,

according to counsel, could have led to an acquittal or a conviction for manslaughter. Furthermore, counsel alleges that the trial judge misdirected the jury by stating that it was sufficient for the Applicant to be convicted of murder if he knew of the likelihood that a firearm would be used either to effect the robbery or to escape apprehension, and that he failed properly to remind the jury of the version of events given by the author in his unsworn statement, and which effect these could have on the issue of common design and especially the scope of the common design.

3.4 As to the Court of Appeal's classification of the crimes as capital under the Offences against the Persons (Amendment) Act 1992, section 2 (1)(d)(1) upon the conclusion of the appeal, counsel submits that this classification was void and of no legal effect as it was made without jurisdiction, and that it therefore also was in breach of article 14 of the Covenant.

3.5 As to the reclassification the Jamaican Government agreed to carry out (see para. 2.3 above), counsel submits that the requirements in section 7 of the Amendment Act have not been met in the author's case, as he was not given the right to have the classification reviewed by three judges of the Court of Appeal designated by the president of the court and to appear or be represented by counsel, nor did he have the opportunity, within 21 days of the date of receipt of a decision by a single judge, to make written representations to the three judge-panel.

3.6 Counsel alleges a violation of the author's right to be represented by counsel as provided for in article 14, paragraph 3(d), and the right to a fair trial as provided for in article 14(1). Firstly, it is submitted that the author's legal aid counsel, Mr. Ronald Paris, was not appointed until one day after the preliminary hearing had begun. Secondly, it is submitted that the author's counsel at two crucial moments of the trial was absent from the courtroom. The first occasion was during the start of the examination-in-chief by the prosecution of Sergeant Bruce Clauchar, and the second was during the summing up by the trial judge.

3.7 Counsel alleges a violation of the right to have adequate time and facilities for the preparation of his defence and to communicate with counsel, as provided for in article 14, paragraph 3(b). It is submitted that after the preliminary hearing the author had no opportunity to consult with his counsel until the first day of the trial, and that during the course of the trial he was able to consult with his attorney only during the time that the court was in session. Counsel states that the author never had the opportunity to consider the prosecution statements. The result of this alleged inability to communicate with the attorney was that no investigations were carried out on his behalf with a view to refuting the prosecution charges. Reference is made to the Committee's jurisprudence¹.

3.8 In this regard, counsel also alleges a violation of article 14, paragraph 3(e), as the alleged lack of opportunity for the author and his counsel to consult each other sufficiently before and during the trial resulted in

¹ Communication No. 282/1988, Leaford Smith v. Jamaica; Communication No. 283/1988, Aston Little v. Jamaica.

- the incomplete cross-examination of important witnesses
- the failure to call witnesses on behalf of the author
- the failure to extract all the information necessary to hold a proper examination in chief of the author in relation to the voir dire
- the failure to call any medical evidence in regard of the voir dire
- the failure to call any ballistic evidence in respect of discrepancy between the calibre of the bullet found in the victim's body and the calibre of the alleged murder weapon

3.9 Counsel alleges that both the right to review of the conviction as set forth in article 14, paragraph 5, and the right to communicate with and to be represented by counsel as set forth in article 14, paragraph 3(b) and 3(d), were violated in the procedures before the Court of Appeal. Counsel submits that the author only spent 15 minutes with his counsel, Miss Arlene Harrison-Henry, before the application to the Court of Appeal and argues that the author lacked opportunity to instruct his attorney, in particular on the grounds of appeal that were abandoned by Miss Harrison-Henry. The file shows that Miss Harrison-Henry in her written submission to the Court of Appeal argued 7 grounds of appeal. The court refused to grant leave to submission of the first two grounds, which both concerned the judge's failure to direct the issue of manslaughter to the jury's attention. Leave to submission of the other five grounds was granted. However, only two of these were assessed by the Court of Appeal, as Miss Harrison-Henry either conceded that the others were without substance or chose not to pursue them. The two grounds which were assessed by the court both concerned the judge's explanations to the jury on the principle of common design. The three grounds that were not pursued were that the judge failed to direct the jury on how to deal with the cautioned statement, that the judge failed to explain the meaning of the mistakes made by the witness Federal Bryant, and that the offences were not capital murder. Counsel makes reference to the Committee's jurisprudence², and submits that these concessions or failures to pursue grounds of appeal should not have been accepted by the Court of Appeal. It is implied that when accepting these omissions by Miss Harrison-Henry, the court left the author effectively without representation.

3.10 Counsel alleges violations of articles 7 and 10 both on the grounds of the treatment the author received and the circumstances in which he was held after his arrest on 25 October 1990, and on the grounds of the conditions in St Catherine's District Prison, where he has been held since 10 February 1992.

3.11 As to the first of these grounds, the author claims that when arrested on 25 October 1990 he was forcibly pushed into the police car and struck on several occasions with the butt of a pistol, and that he was kicked in the stomach and testicles. He claims to have been taken to Frome Police Station, and that, before being placed in a police cell, he was punched in the face, beaten with a belt, verbally abused and accused of being a murderer. Later the same evening and night, he claims to have been spat in the face, threatened to his life, severely beaten with both a belt and a baton, at one time by ten police officers

² Communication No. 253/1987, Paul Kelly v. Jamaica; Communication No. 356/1989, Trevor Collins vs. Jamaica; Communication No. 353/1988, Lloyd Grant vs. Jamaica; Communication No. 250/1987, Carlton Reid v. Jamaica.

simultaneously, including some who gave evidence against the author during the court proceedings. The author states that he gave and signed the cautioned statement only after having been beaten severely, partly with an electric wire, throughout these two days, and after having been promised that he would be allowed to go home after signing. The author also claims to have been beaten before being taken to court in November 1990 by named detectives who at the Circuit Court trial gave testimony against him. He claims to have been punched and kicked until he fell to the ground and to have been struck in the right ear with a large stone. Allegedly his entire face became swollen, his right eye was closed, he was unable to open his mouth and feared that his jaw was broken. On the way to court, one of the officers is said to have threatened to kill the author, but the other officer persuaded him not to do this. It is stated that the author complained to the judge about the beatings he had received on the same day, but that the judge said that the author was lying, and although the author offered to show his wounds, the judge declined. The author claims that as a result of the beatings he developed an ear infection which has caused him considerable pain. Several requests to see a doctor have allegedly been refused, and the author claims that the infection at the time of the submission had lasted for five years during which he has had no other medication or attention than occasional pain-killing tablets. Counsel has not submitted any medical evidence in regard of these claims.

3.12 As to the conditions in St Catherine's District Prison, counsel makes reference to a report by Amnesty International of December 1993, a report prepared by the Jamaican Council for Human Rights in summer 1994, and to the Report of the Government Appointed Task Force on Correctional Services of March 1989. The author claims that the prison conditions are insanitary, with waste sewage and a constant smell pervading the prison. He complains of the degrading and unhygienic practice of using slop buckets which are filled with human waste and stagnant water and only are emptied in the morning. In this regard, reference is made to the United Kingdom's commitment of 1991 to end the practice of slopping in all British prisons. The author also contends that the running water in the prison is polluted with insects and human excrement, and that the inmates are required to share utensils which are not cleaned properly. He also claims that at one time in December 1994 he was hit in the side by a warden to such an extent that he was taken before the prison surgeon. The author contends that the conditions have caused serious detriment to his health, and that he has never received any treatment despite repeated requests. However, counsel has not submitted any medical evidence which could enlighten these claims.

3.13 Counsel also alleges a violation of articles 7 and 10 on the grounds of mental anguish and anxiety suffered as a result of incarceration on Death Row since 1992. Reference is made to the jurisprudence of the European Court of Human Rights and to the jurisprudence of the Privy Council.

The State party's submission

4.1 In its submission of 3 February 1997, the State party states that it will not pursue the issue of admissibility, and instead, in order "to expedite the examination of the communication", offers its comments on the merits.

4.2 As to the alleged violations of article 14, paragraphs 3(b), 3(d) and 3(e), the State party in general terms denies that there was a breach of the Covenant. It is submitted that the the allegations relate to the manner in which the legal

aid counsel conducted the trial, and that the State party's duty is to appoint competent counsel and thereafter not to prevent him from effectively conducting the case. With reference specifically to the alleged violation of article 14, paragraph 3(d), on the ground that the legal aid counsel twice was absent during the trial, the State party notes that this was regrettable, but that it could not have been so detrimental to the author that it amounts to a breach of the Covenant. As to the alleged violation of article 14, paragraph 5, the State party merely states that the case "was looked at by the court and therefore there was no breach."

4.3 The State party states that it will investigate the author's claim that he was denied medical attention, and that the results of the investigation will be forwarded to the Committee as soon as they are received.

Admissibility considerations and examination of merits

5.1 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.

5.2 The Committee notes that the State party in its submission, in order to expedite the examination, 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.

5.3 With regard to the author's allegation of a violation of article 14 on the ground of improper instructions from the trial judge to the jury on the issues of identification and reasonable doubt, the Committee reiterates that while article 14 guarantees the right to a fair trial, it is generally for the domestic courts to review the facts and evidence in a particular case. Similarly, it is for the appellate courts of States parties to review whether the judge's instructions to the jury and the conduct of the trial were in compliance with domestic law. 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. However, 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.

5.4 As to the alleged violations of article 14, paragraphs 1, 3(b) and 3(d), on the grounds of irregularities in the classification and the reclassification of the author's offence pursuant to section 7 of the Amendment Act, the Committee notes that the State party itself agreed that the initial classification was made in excess of the Court of Appeal's powers and that the State party therefore announced that it would carry out a reclassification.

Thus, any violations in the original classification by the Court of Appeal would have been remedied. However, it appears that the reclassification procedure in this case was never completed as the author's sentence in the meantime was commuted by the Governor-General of Jamaica on the ground of time spent on death row. The Committee notes that the reclassification procedure at the most could have led to a finding that the author's offence was of non-capital character, with the result that the author would have been taken off death row. The same result was reached by the commutation of the author's sentence, and therefore the Committee finds that the author has failed to show that he is a victim of a violation in this respect and that his claims as to irregularities in the classification or reclassification procedure are inadmissible under article 1 of the Optional Protocol.

5.5 Concerning the author's claim that he was beaten by police officers upon his arrest in October 1990, the Committee notes that although the allegations have not been refuted by the State party, the trial transcript reveals that the author's allegations were thoroughly examined by the court in a voir dire concerning the admissibility of his confession statement as evidence. The confession statement was subsequently admitted by the judge after weighing of the evidence, and the allegations of beatings were also put before the jury in the cross-examination of one of the police officers. In the absence of a clear showing of partiality or misconduct by the judge, the Committee is not in a position to question the court's evaluation of the evidence, and the Committee finds that this claim is inadmissible under article 2 of the Optional Protocol.

5.6 As to the claim by the author that he was assaulted by two named police officers on his way to the preliminary inquiry in November 1990, even if the magistrate refused to believe the author or to inspect him to see if he was injured, the author was represented by counsel on the second day of that hearing. No action was taken by counsel to substantiate the assault either at that hearing or at any other time; the author made no complaint and there is no medical corroboration of the alleged injuries. The Committee therefore finds that this claim is inadmissible under article 2 of the Optional Protocol as being unsubstantiated.

5.7 As to the claim that the author's detention on death row since 1992 constitutes cruel, inhuman or degrading treatment, the Committee reiterates its constant jurisprudence³ that detention on death row for any specific period of time does not constitute a violation of articles 7 and 10, paragraph 1, of the Covenant in absence of further compelling circumstances. The Committee has in its jurisprudence⁴ held that deplorable conditions of detention may on their own constitute a violation of articles 7 and 10 of the Covenant, but they cannot be regarded as "further compelling circumstances" in relation to the "death row phenomenon". Consequently, no relevant circumstances have been adduced by counsel or the author, and the Committee finds this part of the communication inadmissible under article 2 of the Optional Protocol. On the other hand, the

³See, inter alia, the Committee's Views on communication No 588/1994, Errol Johnson v. Jamaica, adopted on 22 March 1996.

⁴See, inter alia, the Committee's Views on communication No. 705/1996, Desmond Taylor v. Jamaica, adopted on 2 April 1998.

author's claims of violations of the same provisions on the ground of conditions of detention in St. Catherine's District Prison, including lack of medical treatment, are, in the view of the Committee, sufficiently substantiated to be considered on the merits, and are therefore deemed admissible.

5.8 The Committee also declares the remaining claims 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.

6.1 The author claims to be a victim of article 9, paragraph 3, of the Covenant as he was not brought before a judge or other authorized official until three weeks after his arrest in October 1990. The Committee notes that the State party does not address this claim, and in the circumstances it finds that to detain the author for a period of three weeks without bringing him before a judge was a violation of article 9, paragraph 3, of the Covenant.

6.2 The author claims to be a victim of a violation of article 14, paragraph 3(d), because he was not represented on the first day of the preliminary hearing. In its jurisprudence⁵, the Committee has held that legal assistance must be made available to an accused faced with a capital crime not only to the trial and relevant appeals, but also to any preliminary hearing relating to the case. In the present case, the Committee notes that it is not disputed that the author was unrepresented on the first day of the preliminary hearing, and, notwithstanding that it is unclear whether the author explicitly requested legal aid, it finds that the facts disclose a violation of the Covenant. As previously held by the Committee⁶, it is axiomatic that legal assistance be available at all stages of the proceedings in capital cases. The Committee therefore finds that article 14, paragraph 3(d), was violated when the court commenced and proceeded through a whole day of the preliminary hearing without informing the author of his right to legal representation.

6.3 With regard to the alleged violation of article 14, paragraphs 1 and 3(d), on the ground that the author's counsel on two occasions during the trial was absent from the courtroom, the Committee again reiterates the importance of adequate, legal representation at all stages of the legal proceedings in capital cases. However, the Committee is of the opinion that the mere absence of defence counsel at some limited time during the proceedings does not in itself constitute a violation of the Covenant, but that it must be assessed on a case-by-case basis whether counsel's absence was incompatible with the interests of justice. With regard to the first occasion counsel was missing, the Committee notes from the trial transcripts that counsel was not present at the beginning of the prosecution's examination of Sergeant Clauchar (who had arrested the author on the day after the murders, and merely testified as to the circumstances of arrest) at 1.20 p.m. on 6 February 1992, but that he was

⁵See the Committee's Views on communication No. 459/1991, Osbourne Wright and Eric Harvey v. Jamaica, adopted on 27 October 1995.

⁶See, inter alia, the Committee's Views on communication No. 223/1987, Frank Robinson v. Jamaica, adopted on 30 March 1989.

present at 1.25 p.m. and that he at that time in fact performed a cross-examination. With regard to the second incident, the transcript shows that the judge started his summing up on 7 February 1992 with defence counsel present, but that he was absent when the proceedings resumed on 10 February 1992. Although defence counsel's absence during the summing up is a matter of some concern, the Committee notes that all the major legal issues had been dealt with on 7 February and that the judge during counsel's absence merely summarized the facts. Moreover, counsel conveyed a message to the court that he had no objections to the judge's continuing. The Committee therefore holds that the facts before it do not reveal a violation of the Covenant on this ground.

6.4 The author also alleges a violation of article 14, paragraphs 3(b), 3(d) and 3(e), on the ground of lack of opportunity to communicate with his counsel before and during the trial, with the result that no investigation was initiated on his behalf, that no witnesses were called and no depositions were taken on behalf of the author, and that counsel was not in a position to adequately cross-examine the prosecution's witnesses. In this context, the Committee reiterates its jurisprudence that where a capital sentence may be pronounced on the accused, it is axiomatic that sufficient time must be granted to the accused and his counsel to prepare the defense. The Committee notes that the author's legal aid counsel was assigned in due time for the trial. Furthermore, neither counsel nor the author actively requested an adjournment, and there is nothing else in the trial transcript which can suggest that the State party denied the author and his counsel opportunities to prepare for the trial or that it should have been manifest to the court that the defence team was inadequately prepared. Similarly, as to counsel's failure to call witnesses and to provide medical and ballistic evidence on behalf of the author, the Committee recalls its prior jurisprudence that it is not for the Committee to question counsel's professional judgement, unless it was clear or should have been manifest to the court that the lawyer's conduct was incompatible with the interests of justice. In the circumstances, the Committee finds that the facts before it do not show a violation of article 14 on these grounds.

6.5 Similarly, as to the alleged violation of article 14, paragraphs 3(d) and 5, on the ground that the author was not effectively represented on appeal, the Committee notes that the new counsel met with the author before the appeal hearing, and that she argued grounds of appeal on his behalf. There is nothing in the file which suggests that counsel was exercising other than her professional judgement when choosing not to pursue certain grounds. Nor is there anything in the file to suggest that the State party denied the author and his counsel time to prepare the appeal or that it should have been manifest to the court that the lawyer's conduct was incompatible with the interests of justice. With reference to its prior jurisprudence, as cited by counsel, the Committee notes that it has found violations of the provisions in question in situations where counsel has abandoned all grounds of appeal and the court has not reassured that this was in compliance with the wishes of the client. This jurisprudence does not, however, apply to this case, in which counsel argued the appeal, but chose not to pursue certain grounds. The Committee concludes, therefore, that there has been no violation of article 14, paragraphs 3(d) and 5, on this ground.

6.6 With regard to the author's claim to be a victim of article 6, paragraph 2, of the Covenant, the Committee notes its General Comment 6[16], where it held that the provision that a sentence of death may be imposed only in accordance

with the law and not contrary to the provisions of the Covenant implies that "the procedural guarantees therein prescribed must be observed, including the right to a fair hearing by an independent tribunal, the presumption of innocence, the minimum guarantees for the defence and the right to review of the conviction and sentence by a higher tribunal". In the present case, the preliminary hearing was conducted without meeting the requirements of article 14, and as a consequence the Committee finds that also article 6, paragraph 2, was violated as the death sentence was imposed upon conclusion of a procedure in which the provisions of the Covenant were not respected.

6.7 As to the allegation of a violation of articles 7 and 10, paragraph 1, of the Covenant on the ground of the conditions of detention, including lack of medical treatment, at St. Catherine's District Prison, the Committee notes that the author has made specific allegations. He states that the prison conditions are insanitary, with waste sewage and a constant smell pervading the prison, and complains of the degrading and unhygienic practice of using slop buckets which are filled with human waste and stagnant water and only are emptied in the morning. The author also contends that the running water in the prison is polluted with insects and human excrement, and that the inmates are required to share utensils which are not cleaned properly. He also claims that in December 1994 he was hit in the side by a warden to such an extent that he was taken before the prison surgeon. The author contends that the conditions have caused serious detriment to his health, and that he has never received any treatment despite repeated requests. The State party has not refuted these specific allegations, and has not forwarded any results of the announced investigation into the author's allegations that he has been denied necessary medical attention. The Committee finds that these circumstances disclose a violation of article 10, paragraph 1, of the Covenant.

7. 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 article 9, paragraph 3, article 10, paragraph 1, article 14, paragraph 3(d), and consequently, article 6, paragraph 2.

8. In accordance with article 2, paragraph 3(a), of the Covenant, the State party is under an obligation to provide Mr. Marshall with an effective remedy, including compensation.

9. 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 also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]