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

VIEWS

Communication Nº 647/1995

Submitted by:	Wilfred Pennant (represented by Mr. S. Lehrfreund from the London Law firm of Simons Muirhead & Burton)
Alleged victim:	The' author
State party:	Jamaica
Date of communication:	8 November 1994 (initial submission)
Date of adoption of Views	20 October 1998

On 20 October 1998, the Human Rights Committee adopted its Views under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 647/1995. The text of the Views is appended to the present document.

[ANNEX]

* Made public by decision of the Human Rights Committee.

ANNEX*

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

concerning

Communication Nº 647/1995*

Submitted by:	Wilfred Pennant (represented by Mr.S. Lehrfreund from the London Law firm of Simons, Muirhead & Burton)
Victim:	The author
State party:	Jamaica
Date of communication:	8 November 1994 (initial submission)
Date of decision on admissibility and Views:	20 October 1998

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

Meeting on 20 October 1998

Having concluded its consideration of communication No.647/1995 submitted to the Human Rights Committee by Mr. Wilfred Pennant, 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. Prafullachandra N. Bhagwati, Mr. Thomas Buergenthal, Lord Colville, Mr. Omar El Shafei, Ms. Elizabeth Evatt, Mr. Eckart Klein, Mr. David Kretzmer, Mr. Rajsoomer Lallah, Ms. Cecilia Medina Quiroga, Mr. Martin Scheinin, Mr. Roman Wieruszewski, Mr. Maxwell Yalden, and Mr. Abdallah Zakhia.

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

1. The author of the communication is Wilfred Pennant, a Jamaican national, serving a life sentence at St. Catherine District Prison, Jamaica. He claims to be a victim of violations by Jamaica of articles 7; 9 paragraphs 2, 3 and 4; 10 paragraph 1; and 14, paragraphs 1 and 3 (a), of the International Covenant on Civil and Political Rights. He is represented by Mr. Saul Lehrfreund of the London Law firm of Simons Muirhead and Burton.

The facts as submitted by the author

2.1 The author was convicted of the murder, on 22 February 1983, of one Ernest Stephens, a police officer. He was sentenced to death on 4 October 1984 by the St Catherine District Court, Kingston, Jamaica. His appeal was dismissed by the Court of Appeal of Jamaica on 15 May 1986. On 15 December 1987, the author's petition for special leave to appeal to the Judicial Committee of the Privy Council was dismissed. On 14 December 1989 the author's sentence was commuted to life imprisonment.

2.2 The author states that, on 1 May 1983, he went to Chapletown Police Station to report the incident. He was transferred to Spanish Town Police Station, on an unspecified date, where he was charged for murder on 4 May 1983. He was not brought before a judicial officer until June 1983, approximately one month after his arrest.

2.3 The prosecution's case was based on evidence given by an eyewitness and a deposition made by a second witness who died before the trial took place. During the trial, Vincent Johnson, an assistant bailiff, testified that on 23 February 1983, he had accompanied officer Stephens and the author's landlord, with a warrant of commitment for non-payment of rent. When they came upon the author in the street, the author claimed to have paid through the landlord's lawyer. Mr Johnson further testified that when officer Stephens requested that the author accompany him to verify with the lawyer that payment had been made, the author refused. The witness testified that Stephens held the author by the waist, whereupon the author took an ice pick from his waist and stabbed the policeman, who fired six shots at the author from a distance of 3 feet but did not hit him. The author then ran away. All these events are said to have taken place outside, on the street.

2.4 A deposition was admitted into evidence during the trial in which the landlord (who had died by the time the trial was held) and witness to the murder corroborated that the events had taken place outside, but claimed that he had only seen one stab, and had not seen where the ice pick had come from. He also said that the deceased did not grab the author by the waist. Counsel claims this is in evident contradiction with the evidence given by the main crown witness.

2.5 The case for the defence was one of self-defence based on the evidence given by the author, who stated that the events had taken place in his room. He claimed that he was listening to the radio when Officer Stephens broke into his room with a gun in his hand. The author testified that he jumped out of bed, grabbed Mr. Stephens by the collar and a fight ensued. Two shots were

fired. The author took the ice pick from the table and stabbed Stephens twice. Mr. Stephens ran out of the house followed by the author. Stephens fired several shots against the author who ran off. On 1 May the author gave himself up to the police when he heard that the policeman had died.

2.6 A police officer gave evidence for the prosecution in which he stated that the author's room had been ransacked and the lock on the door forced.

The complaint

3.1 It is submitted that the delay of 1 month between arrest and appearance before a judicial officer and the delay of 3 days between his arrest and his being charged constitute a violation of articles 9, paragraphs 2, 3 and 4; and 14 paragraph 3 (a) of the Covenant. In this respect, counsel refers to the Committee's jurisprudence and General Comments[1].

3.2 Counsel also claims that the author is a victim of a violation of article 14 paragraph 1, because the Court of Appeal failed to remedy the trial judge's misdirections to the jury on the issue of provocation. The withdrawal of the issue of provocation from the jury deprived the accused of a defence which could have led to a conviction under the lesser offence of manslaughter, and amounted to a denial of justice. In this respect reference is made to the Committee's jurisprudence[2].

3.3 Counsel further submits that, when a barrister visited the author in prison in Jamaica the author informed him that he had been ill-treated while in detention, at St Catherine Police Station. The author claims to have been subjected to particularly rough treatment by the police officers upon arrest because he had been arrested for the murder of a police officer. He further claims that he was placed in a wet cell and forced to sleep on the floor. Some weeks after he had arrived some of the officers instructed another prisoner to beat him. Although his left eye was injured, he received no treatment until he appeared in court and the judge ordered the police to take him to a hospital. The author states in a letter to counsel that at some point after his arrest he was removed from his cell and placed in a cell "with the son of the man who in my self defence got killed in the matter between us. The son of the man and his friends thereupon attacked me in the cell immediately as the police officers put me with them". The author was treated at two public hospitals. Mr. Edwards, counsel who had represented the author at the preliminary hearing said that he

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[1] General Comment 8 in respect of article 9.
Communication No 336/1988 Andres Fillastre -v- Bolivia, Views adopted 5 November 1991. Communication No 253/1987 Kelly -v- Jamaica, Views adopted 8 April 1991. Communication No 277/1988 Terán Jijon -v- Ecuador, Views adopted 26 March 1992.

[2] [Communication No 253/1987 Kelly -v- Jamaica, where it was held that: "It is not in principle for the Committee to review specific instructions to the jury by the judge, unless it can be ascertained that the instructions to the jury were clearly arbitrary or amounted to a denial of justice, or that the judge manifestly violated his obligation of impartiality."]

remembered the incident; however, no documentation has been provided by Mr Edwards about the preliminary hearing with respect to this incident. The Jamaica Council for Human Rights also confirmed that the author had been treated, sometime in June 1983, at the Spanish Town Hospital and at the Kingston Public Hospital (Eye Clinic). On 22 February 1994, the author's counsel submitted a request to the Assistant Registrar of the Criminal Section of the Supreme Court in order to obtain the notes of the author's preliminary hearing. On 7 March 1994 he was informed that these could not be found.

3.4 Counsel submits that fundamental and basic requirements of the UN Standard Minimum Rules for the Treatment of Prisoners were not met during the author's detention at the St Catherine Police Station and that the treatment to which he was subjected while in detention, and the inadequate medical treatment he received, amount to violations of articles 7 and 10, paragraph 1, of the Covenant.

3.5 Counsel further submits that though the author did not pursue the matter of ill treatment while in detention this was for fear of reprisals, and stresses the ineffectiveness of the system, at the domestic level, in order to obtain redress. In this context, counsel argues that, since domestic remedies, and in particular the internal prison process and the complaints process of the Office of the Parliamentary Ombudsman, are not effective remedies, the requirements of article 5, paragraph 2 (b), of the Optional Protocol, have been met. In this respect counsel refers to the Committee's jurisprudence[3].

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

3.7 The author further claims a violation of articles 7, and 10, paragraph 1, because he was informed in January of 1987, that he was to be executed and was then placed in a death cell, where he remained for two weeks, before being returned to death row for another two years until his death sentence was commuted.

3.8 Finally, reference is made to the findings of a delegation of Amnesty International, which visited St. Catherine District Prison in November 1993. In Amnesty's report it is observed, inter alia, that the prison is holding more than twice the number of inmates for which it was constructed in the nineteenth century, and that the facilities provided by the State are scant: no mattresses, other bedding or furniture in the cells; no integral sanitation in the cells; broken plumbing, piles of refuse and open sewers; no artificial lighting in the cells and only small air vents through which natural light can enter; almost no

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

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

employment opportunities available to inmates; no doctor attached to the prison so that medical problems are generally treated by warders, who lack proper training. It is submitted that the particular impact of these general conditions upon the author were that he was permanently confined to his cell except for an average of fifteen minutes a day and twice to empty out his slops bucket. His cell was infected with ants and other insects, he was only given a sponge with which to clean the cell. He further complained about the quality of the food and the sanitary conditions. The conditions under which the author was detained at St. Catherine District Prison are said to amount to cruel, inhuman and degrading treatment within the meaning of articles 7 and 10, paragraph 1, of the Covenant.

3.9 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 Human Rights Committee's jurisprudence[5]. Counsel submits therefore that all domestic remedies have been exhausted for purposes of article 5, paragraph 2 (b) of the Optional Protocol.

State party's comments on admissibility and merits and counsel's comments thereon:

4.1 In a submission of 3 November 1995, the State party waives the right to address the admissibility of the communication and addresses the merits of the author's claims. On the alleged violation of articles 7 and 10 (1) the State party refers to two incidents. In May 1983, the author was allegedly beaten leaving him with injuries to his left eye for which he received no medical treatment until ordered by the magistrate before whom he first appeared. The State party contends that there is a lack of written evidence to support the author's allegation, since the letter from the author's counsel is somewhat vague. It requested a copy of the letter London counsel had sent to Mr. Noel Edwards in Jamaica in order to ascertain exactly what it was that Mr. Edwards was confirming. It promised to respond to this allegation at a latter date, after investigating the matter. To date 6 July 1998 no further information has been received from the State party.

4.2 The State party also responds to the second claim of a violation of articles 7 and 10 because the author had spent 4 years on death row and was then placed in the death cell reserved for inmates for whom a warrant for execution has been issued. The State party notes that: "the author spent two weeks in the death cell during which he suffered severe stress, and then a stay of execution was issued". It denies that these circumstances constitute a violation of the Covenant. Further, the State party contends that Pratt and Morgan v Attorney General of Jamaica, noted that if there was a delay of more than five years then there would be strong grounds for believing that the delay amounts to cruel and inhuman treatment. The period of four years in the present case does not fall within the time period which constitutes excessive delay. Furthermore, Pratt and Morgan may not be applied retroactively, and cannot therefore be applied to events which occurred in 1987.

[5]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.

4.3 On the issue of the author's stay in the death cell, the State party notes that: "it is natural that in those circumstances, the author would have felt some anxiety. This, however does not make it cruel and inhuman treatment to place him in a particular place, pending his legal execution. Nor does the fact that he spent two weeks there, while efforts were presumably made to have his execution stayed amount to a breach of articles 7 and 10 (1). Once a warrant for an execution has been issued, the Correctional Department Authorities are under a duty to take the relevant steps to carry out the execution. They should do so as humanly as possible, but the process set out for administrating a penalty is not contrary to the Covenant".

4.4 On the alleged violation of article 9, paragraph 2, since the author was arrested and only charged 3 days after his detention, the State party notes that there is no evidence that the author was not made aware of the offence for which he was detained. During this three day period the author was moved from the Chapelton Police Station to the Spanish Town Police Station to the Criminal Investigation Branch in Kingston, where he was formally placed under arrest. The State party notes that the author was placed under arrest formally at the Police Station most prepared to make the case against the author. This does not mean that before this time the author was ignorant, in a general sense, of the charges against him.

4.5 With respect to the allegation that he was not brought promptly before a judicial officer in violation of article 9, paragraphs 3 and 4, the State party claims that he was brought before a magistrate approximately one month after his arrest. It concedes that this period is longer than desirable but rejects that it constitutes a breach of the Covenant.

4.6 On the alleged violation of article 14, paragraph 1, because the Court of Appeal failed to remedy the trial Judge's misdirection on provocation and that the test laid down by the Court of Appeal was incorrect or alternately incomplete. The State party notes that it is a well established principle that issues of facts and evidence including the trial Judge's instruction are best left to be reviewed by the Court of Appeal. Only in exceptional cases where injustice is manifest should the Committee review these issues. In this case, the State party contends that there is nothing in it to take it outside this principle, since the review done by the Court of Appeal was quite adequate, and that there has been no breach of article 14.

5.1 By submission of 12 February 1996, counsel provides copy of the letter sent to Mr. Noel Edwards, the author's counsel in Jamaica, in order that the State party may be clear of exactly what it was that Mr. Edwards was agreeing to in his letter to counsel in London, concerning the incident of ill- treatment by police and lack of medical treatment for the author's eye injury.

5.2 Counsel refutes the State party contention that Pratt & Morgan is not a retroactive decision, since the Privy Council recommended that:

> "Rather than waiting for all those prisoners who have been on death row under sentence of death for five years or more to commence proceedings pursuant to Section 25 of the Constitution, the Governor General now refers all such cases to the JPC who, in accordance with the guidance contained in this advice, recommend commutation to life imprisonment, substantial

justice will be achieved swiftly without provoking a flood of applications to the Supreme Court for constitutional relief pursuant to Section 17(1)".

It is therefore submitted that Pratt & Morgan was intended to assist those prisoners who had already served more than five years on death row and who had consequently been subjected to inhuman and degrading treatment. Counsel points out that the author has spent a total of 7 years on death row before his sentence was commuted to life imprisonment.

5.3 Counsel rejects the State party's contention that two weeks in a death cell, is not contrary to the Covenant, and reiterates the agony and stress suffered by the author in that period of time since the warrant of execution was read to him and the stay of his execution[6]. Counsel submits that if the State party is of the opinion that the relevant steps to carry out an execution should be done as humanely as possible then humanity must require that a man be kept in the death cell awaiting his execution for a reasonable period of time only. He reiterates that the two weeks the author spent in the death cell were excessive and in violation of his rights under the Covenant.

5.4 Counsel notes that the State party concedes that the author was only charged 3 days after his arrest and rejects the State party's argument that the author must have been aware of the charges in "a general sense", reiterating that there has been a violation of articles 9(2) and 14 (3)(a).

5.5 Counsel notes that the State party has also conceded that the author was not brought before a magistrate until approximately one month after his arrest and reiterates that this constitutes a violation of article 9, paragraphs 3 and 4 of the Covenant. Reference is made to the Committee's jurisprudence in this respect.[7]

5.6 Counsel reiterates the claims submitted in the original communication regarding unfair trial since the Court of Appeal did not remedy the trial Judge's misdirections to the jury on provocation.

Admissibility consideration and examination of merits:

6.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it its admissible under the Optional Protocol to the Covenant.

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

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[6]Reference is made to the 1988 UN Report from the Special Rapporteur on Torture.

[7]See Communication No 257/1987 Kelly v. Jamaica

6.3 The Committee observes that with the dismissal of the author's petition for special leave to appeal by the Judicial Committee of the Privy Council on 15 December 1987, the author has exhausted domestic remedies for purposes of the Optional Protocol.

6.4 With respect to the author's allegations concerning unfair trial due to improper instructions from the judge to the jury withdrawing the issue of provocation from their consideration, and the failure of the Court of Appeal to remedy these, the Committee reiterates that while article 14 guarantees the right to a fair trial, it is generally for the courts of States parties to the Covenant to review the facts and evidence in a particular case. Similarly, it is for the appellate courts of States parties and not for the Committee to review the judge's instructions to the jury or the conduct of the trial, unless it is clear that the judge's instructions to the jury were arbitrary or amounted to a denial of justice, or that the judge manifestly violated his obligation of impartiality. The author's allegations and the trial transcript made available to the Committee do not reveal that the conduct of Mr. Pennant's trial suffered from such defects. In particular, it is not apparent that the judge's instructions on provocation were in violation of his obligation of impartiality. Accordingly, this part of the communication is inadmissible as incompatible with the provisions of the Covenant, pursuant to article 3 of the Optional Protocol.

7. The Committee accordingly, declares the remaining claims admissible and proceeds, without further delay, to an examination of the substance of these, in the light of all the information made available to it by the parties, as required by article 5, paragraph 1, of the Optional Protocol.

8.1 Article 9, paragraph 2, of the Covenant gives the right to everyone arrested to know the reasons for his arrest and to be promptly informed of the charges against him. The author states that he went to the police station of his own accord on 1 May, 1983 and informed the officer in charge of his involvement in the death of Stephens. He was detained, transferred to another police-station and formally arrested and charged three days later. In these circumstances, when it must have been absolutely clear to the author that his detention and subsequent arrest were for involvement in the death of Stephens, the Committee cannot conclude that the author's right to be informed of the reasons for his arrest was violated. Furthermore, the author was formally charged with the murder of Stephens three days after first being detained, following what must have been an initial investigation. The duty to be promptly informed of the charges against one, as opposed to the reason for one's arrest, cannot arise until such charges have been determined. In the present case, it does not seem that a period of three days from the time of detention until formal charge of the author, amounted to a violation of his right to be promptly informed of the charges against him.

8.2 With regard to the author's claim under articles 9, paragraphs 3 and 4, and 14, paragraph 3 (a), the Committee notes that it is uncontested that the author was only first brought before a judge or other officer authorized by law to exercise judicial power one month after his arrest. It also notes that the State party has conceeded that this period is undesirably long. Accordingly, the Committee concludes that the period between the author's arrest and his being brought before a judge was too long and constitutes a violation of article 9, paragraph 3, of the Covenant and, to the extent that this prevented the author from access to court to have the lawfulness of his detention determined, of article 9, paragraph 4.

8.3 With respect to the author's claim that he was beaten while in police custody and did not receive medical treatment until the committing magistrate ordered the police to take him to hospital, the State party has alleged that this complaint was vague and requested that counsel provide a copy of the letter sent to the author's counsel in Jamaica, requesting confirmation of the said incident. The Committee notes that despite having sent this letter to the State party on 15 March 1996 and the State party's promise to investigate the incident once it was clear which event counsel had confirmed, no information has been received. The Committee consequently considers that due weight must be given to the author's complaint to the extent to which it has been substantiated and accordingly, finds that the treatment the author received at the hands of the police while in detention is in violation of articles 7 and 10, paragraph 1, of the Covenant.

8.4 With regard to the conditions of detention at St. Catherine's District Prison, the Committee notes that the author has made specific allegations, about the deplorable conditions of his detention. He claims that he was permanently confined to his cell except for an average of 15 minutes twice everyday to empty his slops bucket. That his cell was infested with ants and other insects, that he only has a sponge with which to clean the cell. He also complained of the abysmal quality of the food and the sanitary conditions. The State party has not refuted these specific allegations. In these conditions, the Committee finds that confining the author under such circumstances constitutes a violation of article 10, paragraph 1, of the Covenant.

8.5 With regard to the author's claim that his prolonged detention on death row amounted to a violation of articles 7, and 10 paragraph 1, of the Covenant, the Committee reiterates its prior jurisprudence that prolonged detention on death row does not per se constitute cruel, inhuman or degrading treatment in violation of article 7 of the Covenant[8], in the absence of further compelling circumstances.

8.6 With regard to the claim made by counsel that the author was placed in a death cell for two weeks after a warrant of execution was read to him. The Committee notes the State party's contention that it is to be expected that this would cause the author "some anxiety", and that the time spent there was because efforts were "presumably" being made to have his execution stayed. The Committee considers that in the absence of a detailed explanation by the State party as to the reasons for the author's two weeks stay in a death cell, this cannot be deemed to be compatible with the provisions of the Covenant, to be treated with humanity. Consequently, the Committee finds that article 7 of the Covenant has been breached.

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 3 and 4, 10, paragraph 1, of the Covenant.

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[8] See Committee's Views on communication No. 588/1994 (Errol Johnson v. Jamaica) adopted on 22 March 1996.

10. Pursuant to article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide Mr. Pennant with an effective remedy, entailing compensation for the ill-treatment received and early release, especially in view of the fact that the author was already eligible for parol in December of 1996.

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 accordance with article 12(2) of the Optional Protocol it continues to be subject to the application of the Optional Protocol. Pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals with 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 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.]