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on Civil and Political
Rights**

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

VIEWS

Communication N°618/1995

<u>Submitted by:</u>	Barrington Campbell (represented by Mr. George Brown of Nabarro Nathanson, a law firm in London)
<u>Alleged victim:</u>	The author
<u>State party:</u>	Jamaica
<u>Date of communication:</u>	10 January 1995 (initial submission)
<u>Prior decisions:</u>	- Special Rapporteur's rule 86/91 decision, transmitted to the State party on 3 April 1995 (not issued in document form)
<u>Date of adoption of Views</u>	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.618/1995. The text of the Views is appended to the present document.

[ANNEX]

* Made public by decision of the Human Rights Committee.
View618

GE.98-19433

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°618/1995

Submitted by: Barrington Campbell
(represented by Mr. George Brown from
Nabarro Nathanson, a law firm in London)

Victim: The author

State party: Jamaica

Date of communication: 10 January 1995 (initial submission)

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.618/1995
submitted to the Human Rights Committee by Mr. Barrington Campbell, 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. Prafullachandra N. Bhagwati, Mr. Thomas
Buergenthal, Ms. Christine Chanet, Lord Colville, Mr. Omar El Shafei, Ms.
Elizabeth Evatt, Mr. Eckart Klein, Mr. David Kretzmer, Ms. Cecilia Medina
Quiroga, Mr. Julio Prado Vallejo, Mr. Martin Scheinin, Mr. Roman
Wieruszkowski, and Mr. Maxwell Yalden.

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

1. The author of the communication is Barrington Campbell, a Jamaican citizen at the time of submission awaiting execution at St. Catherine District Prison, Jamaica. He claims to be a victim of violations by Jamaica of articles 7, 10, paragraph 1, and 14, paragraphs 3(b)(d) and (e), of the International Covenant on Civil and Political Rights. He is represented by George Brown of Nabarro Nathanson, a law firm in London.

Facts as submitted by the author

2.1 The author was taken into custody on 30 March 1989. On 12 April 1989, he was put on an identification parade and he was subsequently arrested and charged with the murder, on 23 March 1989, of one Paul Vassell. The preliminary enquiry was held in early July 1989. On 8 March 1990, the author was found guilty as charged and sentenced to death in the Kingston Home Circuit Court. On 13 March 1990, he applied for leave to appeal against conviction and sentence. While treating the application for leave to appeal as the hearing of the appeal, the Court of Appeal of Jamaica dismissed the appeal on 27 April 1992; the written judgment was made available on 17 February 1993. A further petition for special leave to appeal to the Judicial Committee of the Privy Council was dismissed on 12 December 1994. With this, it is submitted, all domestic remedies have been exhausted. The author's death sentence was commuted to life imprisonment in 1995.

2.2 The case for the prosecution was that, on 23 March 1989, at approximately 7:00 p.m., after having attended a meeting at the Seventh Day Baptist Church in Kingston, Paul Vassell took a machete out of his car and re-entered the premises of the church together with eye-witness Karl Bowen and two other men. The four men walked along a passage-way to the rear of the church, where they were approached by two men, who ordered them to put their hands up, and asked for their money. Mr. Bowen testified during the trial that he observed a man, whom he later identified as the author, armed with a shotgun. He complied with the order while his two companions ran off. However, Mr. Vassell, who was holding the machete, attacked the gunman alleged to be the author, who retreated in the passage-way. While Mr. Bowen was held at gun point by the author's companion, the author and Mr. Vassell moved out of sight, the latter still chopping at his assailant. Mr. Bowen further testified that he then heard someone screaming, the sound of running feet and of a shotgun, and that the author re-appeared still carrying his shotgun and with his left hand bleeding. Mr. Bowen was told to run and as he made his escape he came across the body of Mr. Vassell, lying at the entrance to the church in a pool of blood.

2.3 A police officer testified that the author's left thumb was bandaged when he was taken into custody on 30 March 1989. Furthermore, the investigating officer testified that, after having cautioned him on 10 April 1989, the author admitted that he had shot the deceased. Further evidence against the author was the fact that, at an identification parade held on 12 April 1989, Mr. Bowen picked him out as one of the participants in the robbery.

2.4 The defence was based on alibi and mistaken identity. The author made a sworn statement, testifying that at the time of the incident he was on his way

to his then girlfriend's home at Seaforth, in the parish of St. Thomas, and that he had injured his hand when chopping a coconut.

2.5 In respect of the author's then girlfriend, Norma Lewis, one of the police officers testified during the trial that he had taken a statement from her on 7 April 1989. It appears from the trial transcript that at the preliminary enquiry, Miss Lewis' statement was submitted as part of the prosecution's case, but that the prosecution later decided not to call her. It further appears that on 26 February 1990, the author's attorney requested the judge to adjourn the trial and asked for Norma Lewis to be subpoenaed. The trial was then adjourned and the witness subpoenaed. She appeared late on the first day of the trial, and had left before counsel had a chance to speak to her. On the second and last day of the trial, after the close of the prosecution's case, the attorney again sought an adjournment for 15 minutes because he had not had a chance to interview the witness, and the author had instructed him to do so. The hearing was adjourned from 12:15 p.m. to 1:25 p.m.; upon resumption, the author gave his sworn evidence and no further mention is made of Miss Lewis.

2.6 The trial transcript further reveals that the attorney who represented the author at trial had also assisted him during the identification parade upon the author's request. On appeal, the author was represented by two different attorneys. Although they argued only one ground of appeal on the author's behalf (relating to the issue of provocation), the Court of Appeal, taking into account the nature of the case, also considered the visual identification evidence and the trial judge's directions thereon.

The complaint

3.1 As to a violation of article 7 of the Covenant, counsel points out that Mr. Campbell has been on death row for almost five years. With reference to the decision of the Judicial Committee of the Privy Council in the case of Earl Pratt and Ivan Morgan v. The Attorney-General for Jamaica¹, it is submitted that the "agony of suspense" resulting from such long awaited and expected death amounts to cruel, inhuman and degrading treatment.

3.2 As to a further violation of article 7, and of article 10, paragraph 1, of the Covenant, counsel refers to the reports of non-governmental organisations concerning the conditions of detention at St. Catherine District Prison. In this context, it is submitted that the prison is holding more than twice the capacity for which it was constructed in the 19th century; 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 employment available to inmates; and no doctor attached to the prison so that medical problems are generally treated by warders who receive very limited training. The particular impact of these general conditions upon Mr. Campbell are said to be that he is confined to his cell for twenty-two hours of each and every day; that his cell is very small,

¹Privy Council Appeal No. 10 of 1993, judgment delivered on 2 November 1993.

dirty and infested with rats and cockroaches; that he spends most of his time isolated from other men, with nothing whatsoever to keep him occupied, and that much of his time is spent in enforced darkness.

3.3 Counsel further refers to article 36 of the UN Standard Minimum Rules for the Treatment of Prisoners, and submits that due to the constant fear of reprisals from warders, it is extremely difficult and risky for inmates to complain about ill-treatment. In this context, the author claims in a letter addressed to London counsel, dated 7 March 1994, that "[...] I am not safe at any time [...] over the years they (the warders) have killed a lot of death row inmates. In 1988, they kill one, in 1990 they kill three and last year they kill four at Constant Spring Police Station and seeing that what I saw happen on the 31 October and I gave a written statement to the police so that alone make me more vulnerable to these warders [...] my life is threatened mostly because I am a witness against the warders".

3.4 On 18 April 1994, counsel wrote to the Parliamentary Ombudsman and to the Commissioner of Corrections, requesting an investigation into the author's allegations and an undertaking that he will be protected from such threats and attacks in the future. In spite of a reminder, the Ombudsman never replied, and the Commissioner of Corrections merely informed counsel, by letter of 27 April 1994, that: "It is clear to all correctional officers that excessive force, threats and brutality is not condoned, and if and when this is found, the strongest disciplinary action is taken". On 19 May 1994, counsel requested the Commissioner of Corrections what measures had been taken in respect of Mr. Campbell's case, to which he again received a reply in general terms.

3.5 Counsel submits that he and the author made all reasonable efforts to seek redress in respect of the ill-treatment suffered by the author, and that the domestic complaints process, and in particular the internal prison process, is not an available nor an effective remedy in the author's case.

3.6 As to the preparation of the author's defence at trial, it is stated that the attorney was assigned to the author through legal aid. According to counsel, it is clear that the attorney had not seen the author in conference before the start of the trial, had taken no instructions on the statements of the prosecution witness, and failed to interview an alibi witness.

3.7 In this context, it is submitted that the evidence Miss Norma Lewis could have given would have confirmed the author's alibi, i.e. that he was in Seaforth, a town some seven to eight miles away from Kingston, and that he was there from 8:00 p.m. onwards, whereas the shooting took place around 7:00 p.m. The attorney's failure or refusal to call Miss Lewis as a witness, in spite of the relevance and importance of her evidence, is said to amount to a violation of article 14, paragraphs 3(b) and (e).

3.8 In respect of violations of article 14, paragraph 3(d), the author claims that prior to the identification parade he was taken to the CID office on two occasions with the possibility that he was seen by Mr. Bowen. It is submitted that his attorney failed to cross-examine properly the officer who conducted the identification parade as to the author's movements prior to the parade, and failed to cross-examine Mr. Bowen adequately or at all on this point. Counsel concludes that the way in which the identification parade was conducted was not

in accordance with the Jamaica Constabulary Force Act 1939 and its 1977 amendment.

3.9 It is further submitted that the author's attorney failed to cross-examine the investigating officers adequately or consistently as to whether the alleged admission by the author was ever made or whether it was made as a result of oppression.

3.10 Finally, it is submitted that the attorney failed to examine in chief the author about the alleged admission and the circumstances that gave rise to it. The author's rights under article 14, paragraph 3(d), are further said to have been violated by the two legal aid attorneys who represented him on appeal, since they allegedly failed to discuss the case with him prior to the hearing, and therefore did not take his instructions. In this context, reference is made to the Committee's findings in communication No. 356/1989 (Trevor Collins v. Jamaica)², and to the case of R. v. Clinton, where counsel's decision not to call the defendant or witnesses to rebut identification evidence resulted in the conviction being quashed.³

State party's submission and counsel's comments

4.1 In its observations, the State party does not raise any objection to admissibility and offers comments on the merits of the communication, in order to expedite the consideration of the case.

4.2 With regard to the claim that there is a violation of article 7 of the Covenant, because of the length of time spent on death row, the State party points out that a reasonable length of time must be allowed for the exhaustion of domestic remedies by a convicted person, including the hearing of appeals as well as hearings by international human rights bodies. The State party takes the view that the time spent on death row while the author was exhausting his appeals is not unreasonable, and argues that it should not be held in violation of article 7 because it allows a convicted person to exhaust all available remedies before the sentence of death is carried out.

4.3 Concerning the conditions of detention in St. Catherine District Prison, the State party asserts that efforts are being made to improve the conditions. It refers to a report by the Inter-American Commission on Human Rights following a visit to Jamaican prisons in December 1994.

4.4 In respect of the way the author's attorney conducted the defence, the State party points out that all issues relating to the preparation and handling of a case fall within the ambit of the relationship between an attorney and his client. The State does not interfere in the conduct of the defence by counsel for the accused. A decision on whether or not to call a witness is a matter of judgement for counsel and decisions made by counsel in his best judgement cannot

² Views adopted on 25 March 1993, at the Committee's 47th session; para. 8.2.

³ (1993) 2 ALL ER.

engage the responsibility of the State. Likewise, in respect of the allegation that the author had no time to prepare his defence, the State party asserts that there was no act or omission on its part to prevent him and his counsel from preparing the case adequately. The State party therefore denies any breaches of article 14 (3)(b) and (e).

4.5 With regard to the author's claim under article 14 (3) (d), because he did not see his counsel before the hearing of the appeal, the State party submits that there is no evidence that counsel withdrew any grounds or argued that the appeal had no merit. According to the State party, the conduct of the appeal is a matter between counsel and his client. The State party denies that there has been a breach of article 14 (3)(d).

5.1 In his comments on the State party's submission, counsel argues that the Privy Council's ruling in Pratt & Morgan applies to the author, since the author has been on death row for over 5 years.

5.2 In respect of the conditions of detention, counsel notes that the State party has not challenged the author's description of the conditions.

5.3 With regard to counsel's conduct of the defence at trial or on appeal, it is argued that the State party must bear the responsibility for the conduct of counsel, since it provides legal aid at such a low rate of remuneration that the defence is inadequately resourced and counsel who accept instructions in capital cases are under such intense pressure of work that they cannot properly or adequately represent their clients.

5.4 Counsel has no objection to the Committee considering both admissibility and merits at this stage.

Issues and proceedings before the Committee

6.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with article 87 of its rules of procedure, decide whether or not it is 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.

6.3 The Committee notes that the State party has forwarded comments on the merits of the communication and that it has not challenged the admissibility of the communication. The Committee considers the communication admissible and proceeds, without further delay, to an examination of the substance of the claims 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.

7.1 The author has claimed that his continued detention on death row in itself, as well the conditions of this detention, constitute a violation of articles 7 and 10, paragraph 1, of the Covenant. The Committee reaffirms its constant jurisprudence that detention on death row for a specific period - in this case for about five years before the sentence was commuted - does not violate the Covenant in the absence of further compelling circumstances.

7.2 Mr. Campbell also alleges that he is detained in particularly bad and insalubrious conditions on death row. There is lack of sanitation, light, ventilation and bedding. He is in his cell 22 hours a day, his cell is infested with rats and cockroaches, and he is isolated from others. Furthermore, the author has claimed that he has been threatened by warders and that the State party has taken no measures to protect him. The author's claims have not been refuted by the State party. The Committee considers that the conditions of detention described by the author and his counsel are such as to violate Mr. Campbell's right to be treated with humanity and respect for the inherent dignity of his person, and are thus contrary to article 10, paragraph 1.

7.3 The author has claimed that the bad quality of the defence put forward by his counsel at trial resulted in depriving him of a fair trial. Reference has been made in particular to counsel's alleged failure to interview the author's girlfriend, and to his alleged failure to cross-examine properly the prosecution witnesses in relation to the conduct of the identification parade and in relation to the author's alleged oral statement. The Committee recalls its jurisprudence that the State party cannot be held accountable for alleged errors made by a defence lawyer, unless it was or should have been manifest to the judge that the lawyer's behaviour was incompatible with the interests of justice. The material before the Committee does not show that this was so in the instant case and consequently, there is no basis for a finding of a violation of article 14, paragraph 3(b) (d) and (e), in this respect.

7.4 With regard to counsel's claim that the author was not effectively represented on appeal, the Committee notes that the author's legal representatives on appeal argued grounds for appeal. The Committee recalls its jurisprudence that under article 14, paragraph 3(d), the court should ensure that the conduct of a case by a lawyer is not incompatible with the interests of justice. In the instant case, nothing in the conduct of the appeal by the author's representatives shows that they were exercising other than their professional judgement, in the interest of their client. Accordingly, the Committee concludes that the information before it does not show a violation of article 14, paragraph 3(d), in respect to the author's appeal.

8. 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 a violation of article 10, paragraph 1, of the Covenant.

9. Under article 2, paragraph 3(a), of the Covenant, the State party is under an obligation to provide Barrington Campbell with an effective remedy, including compensation. The State party is under an obligation to take measures that similar violations not occur.

10. 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 is subject to the continued application of the Optional Protocol. Pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its

territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established. The Committee wishes to receive from the State party, within 90 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the Committee's Views.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]