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HUMAN RIGHTS COMMITTEE
Forty-fifth session

DECISIONS

Communication No. 349/1989

Submitted by :	Clifton Wright [represented by counsel]
Alleged victim :	The author
State party :	Jamaica
Date of communication :	12 January 1989 (initial submission)
Documentation references :	Prior decisions- CCPR/C/WG/35/D/349/1989 (Working Group combined rule 86/rule 91 decision, 17 March 1989) -CCPR/C/40/D/249/1989 (decision on admissibility, dated 17 October 1990)
Date of adoption of Views :	27 July 1992

On 27 July 1992, the Human Rights Committee adopted its Views under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 349/1989. The text of the Views is

annexed to the present document.

[Annex]

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*/ 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
- Forty-fifth session -

concerning

Communication No. 349/1989 **/

Submitted by :	Clifton Wright [represented by counsel]
Alleged victim :	The author
State party :	Jamaica
Date of communication :	12 January 1989
Date of decision on admissibility :	17 October 1990

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

Meeting on 27 July 1992,

Having concluded its consideration of communication No. 349/1989, submitted to the Human Rights Committee on behalf of Mr. Clifton Wright 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 by the State party,

Adopts its Views under article 5, paragraph 4, of the Optional Protocol.

**/ An individual opinion formulated by Committee member

Bertil Wennergren is reproduced in an Appendix to the present document.

The facts as presented by the author :

1. The author of the communication dated 12 January 1989 is Clifton Wright, a Jamaican citizen currently awaiting execution at St. Catherine District Prison, Jamaica. He claims to be a victim of violations by Jamaica of article 14, paragraphs 1 and 3(b) and (e), of the International Covenant on Civil and Political Rights. He is represented by counsel.

2.1 The author was convicted and sentenced to death on 29 March 1983, in the Home Circuit Court of Kingston, for the murder of Louis McDonald. The prosecution's case was that the deceased was last seen by his family in the afternoon of 28 August 1981. That evening, one Silvester Cole, a witness in the case, was trying to obtain a lift at a road junction in Kingston. The author and his co-defendant, Winston Phillips, were similarly waiting for a lift at the same junction. All three were picked up by a yellow Ford Cortina motor car; Mr. Cole and Mr. Phillips stopped after approximately two miles and left the vehicle. In court, Mr. Cole testified that after they left the car, Mr. Phillips remained in the vicinity of the vehicle, looking up and down the road, while the author stayed in the car and held a gun to the driver's neck. Realizing that he was witnessing a hold-up, he first walked casually away from the scene, and only then began running. From a distance, he saw the car driving away with its lights turned off.

2.2 The author was arrested on 29 August 1981 at about 6 p.m., together with Winston Phillips. He had been seen driving Mr. McDonald's car by a friend of the latter; the car had been reported stolen on the same day. Both the author and Mr. Phillips were brought to the Waterford police station, where they were searched and found to be in possession of pieces of jewellery that the wife of the deceased later identified as belonging to her husband. The author submits that when they were arrested, the police could not possibly have known about the murder, since the deceased's body was recovered only in the afternoon of the next day, in a canefield close to where he had dropped off Messrs. Cole and Phillips.

2.3 No identification parade was held after the arrest of the accused on 29 August 1981, allegedly because a mob had sought to attack them at the police station when it became known that the deceased's jewellery had been found on them. The authors were moved to the Spanish Town police station thereafter, and Mr.

Phillips was admitted to the hospital. No identification parade was conducted in Spanish Town, either, as the police officers conducting the investigation felt that because of the events at the Waterford police station, a parade would be unnecessary or even suspect.

2.4 A post-mortem was performed on 1 September 1981 at about 1 p.m. by Dr. Lawrence Richards. According to his evidence during the trial, which remained unchallenged, death had occurred an estimated 47 hours before, at around 2 p.m. on 30 August 1981, as a result of gunshot injuries inflicted no more than 10 to 20 minutes before death. Thus, it is submitted that death occurred only shortly before the body was recovered, and when the author had already been in custody for about 20 hours.

2.5 On 3 September 1981, Mr. Cole was taken to the Spanish Town police station, where the author was then in custody. The author was brought out of a cell and identified by Mr. Cole as the man who had held the gun and threatened the driver of the yellow Cortina. He was not asked to identify Mr. Phillips before the trial and indicated that he would have been unable to identify him; during the trial, he could not identify Mr. Phillips.

2.6 During the trial, the author made an unsworn statement from the dock. He asserted that he had borrowed the deceased's car from a friend, to give his girlfriend a ride to Spanish Town. He denied having obtained a lift in this car on 28 August 1981, and affirmed that he was unaware that it had been stolen. He further claimed that he had been working at the garage where he was employed as a battery repairman until about midnight on the day of the crime. Finally, he denied having been in possession of any of the deceased's jewellery.

2.7 The author was tried with Winston Phillips. At the conclusion of the trial, the jury failed to return a unanimous verdict in respect of Mr. Phillips, who was released on bail and ordered to be retried. The author was found guilty as charged, convicted and sentenced to death. He appealed to the Court of Appeal of Jamaica which, on 11 July 1986, dismissed his appeal. On 24 September 1986 the court issued a written judgment. On 8 October 1987, the Judicial Committee of the Privy Council dismissed the author's petition for special leave to appeal.

2.8 On 13 February 1984, the author submitted a complaint to the Inter-American Commission on Human Rights, claiming that he had been the victim of a miscarriage of justice. The Commission registered the case under No. 9260 and held a hearing on 24 March 1988. The State party argued that the author had not exhausted domestic remedies because he had failed to avail himself of constitutional remedies in Jamaica. The Commission requested further information as to whether such remedies were effective

within the meaning of article 46 of the American Convention on Human Rights; the State party did not reply. On 14 September 1988, the Commission approved resolution No. 29/88, declaring "that since the conviction and sentence are undermined by the record in this case, and that the appeals process did not permit for a correction, that the Government of Jamaica has violated the petitioner's fundamental rights" under article 25 of the American Convention on Human Rights. The State party challenged this resolution by submission of 4 November 1988.

The complaint :

3.1 Counsel contends that the State party violated several of the author's rights under the Covenant. First, he claims that the author was subjected to ill-treatment by the police, which allegedly included the squirting of a corrosive liquid (Ajax) into his eyes, and that, as a result, he sustained injuries.

3.2 Counsel further claims that the author was not afforded a fair hearing within the meaning of article 14, paragraph 1, of the Covenant. More specifically, the trial transcript reveals that the pathologist's uncontested evidence, which had been produced by the prosecution, was overlooked by the defence and either overlooked or deliberately glossed over by the trial judge. This meant that the jury was not afforded an opportunity to properly evaluate this evidence which, if properly put, should have resulted in the author's acquittal. In fact, according to the pathologist's report, death occurred on 30 August 1981 at around 2 p.m., whereas Mr. Wright had been in police custody since approximately 6 p.m. on 29 August. It is submitted that no trial in which the significance of such crucial evidence was overlooked or ignored can be deemed to be fair, and that the author has suffered a grave and substantial denial of justice.

3.3 It is further alleged that throughout the trial, the judge displayed a hostile and unfair attitude towards the author as well as his representatives. Thus, the judge's observations are said to have been partial and frequently veined with malice, his directions on identification and on recent possession of stolen property biased. In this context, it is pointed out that no identification parade was held in the case and that the judge, in his summing up, endorsed the prosecution's contention that it was inappropriate to conduct an identification parade in the circumstances of the case. The judge also allegedly made highly

prejudicial comments on the author's previous character and emphatically criticized the way in which the defence conducted the cross-examination of prosecution witnesses. Counsel maintains that the judge's disparaging manner vis-à-vis the defence, coupled with the fact that he refused a brief adjournment of 10 minutes and thereby deprived the defence of the opportunity of calling a potentially important witness, points to a violation of article 14, paragraph 3(e), of the Covenant, in that the author was unable to obtain the examination of defence witnesses under the same conditions as witnesses against him.

3.4 Finally, the author alleges a violation of article 14, paragraph 3(b), because he, or his representative, were denied adequate time for the preparation of the defence. In particular, it is submitted that the trial transcript reveals that the attorney assigned to the case was instructed on the very day on which the trial began. Accordingly, he had less than one day to prepare the case. This, according to counsel, is wholly insufficient to prepare adequately the defence in a capital case. Deficiencies in the author's defence are said to be attributable partly to lack of time for the preparation for the trial, and partly to the lack of experience of one of the author's two court-appointed lawyers.

3.5 With regard to the issue of domestic remedies, counsel rebuts the State party's contention that the communication is inadmissible on the ground of non-exhaustion of domestic remedies on grounds of a presumed right to apply for constitutional redress to the Supreme (Constitutional) Court. He adds that this argument is advanced without detailed consideration of the Constitution. He points out that chapter III of the Jamaican Constitution deals with individual rights, and section 20(5) deals with the right to a fair trial. In particular, section 25 makes provision for enforcement; section 25(2) stipulates that the Supreme Court has jurisdiction to "hear and determine applications", but adds the qualification that the Court shall not exercise its jurisdiction if it is satisfied that adequate means of redress have been available under any other law. The author's case is said to fall within the scope of the qualification of section 25(2) of the Jamaican Constitution: if it were not covered by this proviso, every convicted criminal in Jamaica alleging an unfair trial would have the right to pursue parallel or sequential remedies to the Court of Appeal and the Privy Council, both under criminal law and under the Constitution.

3.6 Counsel finally notes that the State party has failed to show that legal aid is available to the author for the purpose of constitutional motions. If the State party were correct in asserting that a constitutional remedy was indeed available, at least in theory, it would not be available to the author in practice because of his lack of financial means and the unavailability of legal aid. Counsel concludes that a remedy which cannot be pursued in practice is not an available remedy.

The State party's information and observations :

4. The State party contends that the communication is inadmissible under article 5, paragraph 2(b), of the Optional Protocol. It argues that the author's rights under article 14 of the Covenant are coterminous with the fundamental rights guaranteed by section 20 of the Jamaican Constitution. Accordingly, under the Constitution, anyone who alleges that a fundamental right has been, is being or is likely to be infringed in relation to him may apply to the Supreme Constitutional Court for redress. Since the author failed to take any action to pursue his constitutional remedies in the Supreme Court, the communication is deemed inadmissible.

The Committee's admissibility considerations and decision :

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 During its fortieth session, in October 1990, the Committee considered the admissibility of the communication. With regard to article 5, paragraph 2(a), of the Optional Protocol, the Committee ascertained that the case submitted by the author to the Inter-American Commission on Human Rights was no longer under examination by that body.

5.3 The Committee took note of the State party's contention that the communication was inadmissible because of the author's failure to pursue constitutional remedies available to him under the Jamaican Constitution. It observed that section 20, paragraph 1, of the Jamaican Constitution guarantees the right to a fair trial, while section 25 provides for the implementation of the provisions guaranteeing the rights of the individual. Section 25, paragraph 2, stipulates that the Supreme (Constitutional) Court may "hear and determine" applications with regard to the alleged non-observance of constitutional guarantees, but limits its jurisdiction to such cases where the applicants have not already been afforded "adequate means of redress for the contraventions alleged" (section 25, paragraph 2, in fine). The Committee further noted that the State party had been requested to clarify, in several interlocutory decisions, whether the Supreme (Constitutional) Court had had an opportunity to determine the

question whether an appeal to the Court of Appeal and the Judicial Committee of the Privy Council constitute "adequate means of redress" within the meaning of section 25, paragraph 2, of the Jamaican Constitution. The State party had replied that the Supreme Court had not had said opportunity. In the circumstances, the Committee found that recourse to the Constitutional Court under section 25 of the Jamaican Constitution was not a remedy available to the author within the meaning of article 5, paragraph 2(b), of the Optional Protocol.

5.4 The Committee also noted that part of the author's allegations concerned claims of bias on the part of the judge, as well as the alleged inadequacy of the judge's instructions to the jury. The Committee reaffirmed that it is generally beyond its competence to evaluate the adequacy of the judge's instructions to the jury, unless it can be ascertained that these instructions were clearly arbitrary or amounted to a denial of justice, or unless it can be demonstrated that the judge manifestly violated his obligation of impartiality. In the case under consideration, the Committee considered that the circumstances which led to the author's conviction merited further examination in respect of his claims relating to article 14, paragraphs 1 and 3(b) and (e), of the Covenant.

5.5 The Committee finally noted the author's allegation concerning ill-treatment by the police, and observed that the State party had remained silent on the issue whether this part of the communication should be deemed admissible.

5.6 On 17 October 1990, the Committee declared the communication admissible in so far as it appeared to raise issues under articles 10 and 14, paragraphs 1 and 3(b) and (e), of the Covenant.

The State party's objections to the admissibility decision:

6.1 The State party, in a submission dated 12 February 1991, challenges the Committee's findings on admissibility and objects to the reasoning described in paragraph 5.3 above. It argues, in particular, that the Committee's reasoning reflects a "grave misunderstanding" of the relevant Jamaican law, especially the operation of section 25, paragraphs 1 and 2, of the Jamaican Constitution. The right to apply for redress under section 25(1) is, in the terms of the provision itself, "without prejudice to

any other action with respect to the same matter which is lawfully available". The only limitation is to be found in section 25(2) which, in the State party's opinion, does not apply in the case, since the alleged breach of the right to a fair trial was not at issue in the criminal law appeal to the Court of Appeal and the Judicial Committee:

> "... If the contravention alleged was not the subject of criminal law appeals, ex hypothesi , those appeals could hardly constitute an adequate remedy for that contravention. The decision of the Committee would render meaningless and nugatory the hard-earned constitutional rights of Jamaicans ..., by its failure to distinguish between the right to appeal against the verdict and sentence of the Court in a criminal case, and the "brand new rights" to apply for constitutional redress granted in 1962".

6.2 The State party submits that the admissibility decision attaches undue significance to the fact that the Jamaican courts have not yet had occasion to rule on the application of the proviso to section 25(2) of the Constitution in circumstances where the appellant has already exhausted his criminal law appellate remedies. It notes that in the case of Noel Riley and others v. the Queen [A.G. (1982) 3 AER 469], Mr. Riley was able to apply, after the dismissal of his criminal appeal to the Court of Appeal and the Judicial Committee, to the Supreme (Constitutional) Court and thereafter to the Court of Appeal and the Privy Council, albeit unsuccessfully. In the State party's opinion, this precedent illustrates that recourse to criminal law appellate remedies does not render the proviso of section 25(2) applicable in situations where, following criminal law appeals, an individual files for constitutional redress.

6.3 As to the absence of legal aid for the filing of constitutional motions, the State party submits that nothing in the Optional Protocol or in customary international law supports the contention that an individual is relieved of the obligation to exhaust domestic remedies on the mere ground that there is no provision for legal aid and that his indigence has prevented him from resorting to an available remedy. It is submitted that the Covenant only imposes a duty to provide legal aid in respect of criminal offences (article 14, paragraph 3(d)). Moreover, international conventions dealing with economic, social and cultural rights do not impose an unqualified obligation on States to implement such rights: article 2 of the International Covenant on Economic, Social and Cultural Rights provides for the progressive realization of economic rights and relates to the "capacity of implementation of States". In the circumstances, the State party argues that it is incorrect to infer from the author's indigence and the absence of legal aid in respect of the right to apply for constitutional redress that the remedy is necessarily non-existent or unavailable.

6.4 As to the author's claim of ill-treatment by the police, the State party observes that this issue was not brought to its attention in the initial submission, and that the Committee should not have declared the communication admissible in respect of article 10 without previously having apprised the State party of this claim. It adds that, in any event, the communication is also inadmissible in this respect, as the author did not avail himself of the constitutional remedies available to him under sections 17(1) and 25(1) of the Jamaican Constitution: any person alleging torture or inhuman and degrading treatment or other punishment may apply to the Supreme Court for constitutional redress.

6.5 In the light of the above, the State party requests the Committee to review its decision on admissibility.

Post-admissibility considerations and examination of merits:

7.1 The Committee has taken note of the State party's request, dated 12 February 1991, to review its decision on admissibility, as well as its criticism of the reasoning leading to the decision of 17 October 1990.

7.2 The same issues concerning admissibility have already been examined by the Committee in its Views on communications Nos. 230/1987 (Raphael Henry v. Jamaica) and 283/1988 (Aston Little v. Jamaica). In the circumstances of those cases, the Committee concluded that a constitutional motion was not an available and effective remedy within the meaning of article 5, paragraph 2(b), of the Optional Protocol, and that, accordingly, the Committee was not precluded from examining the merits.

7.3 The Committee has taken due note of the fact that subsequent to its decision on admissibility the Supreme (Constitutional) Court of Jamaica has had an opportunity to determine the question whether an appeal to the Court of Appeal of Jamaica and the Judicial Committee of the Privy Council constitute "adequate means of redress" within the meaning of section 25, paragraph 2, of the Jamaican Constitution. The Supreme (Constitutional) Court has since replied to this question in the negative by accepting to consider the constitutional motion of Earl Pratt and Ivan Morgan (judgment entered on 14 June 1991). The Committee observes that whereas the issue is settled under Jamaican constitutional law, different considerations govern the application of article 5, paragraph 2(b), of the Optional Protocol, such as the length

of the judicial proceedings and the availability of legal aid.

7.4 In the absence of legal aid for constitutional motions and bearing in mind that the author was arrested in August 1981, convicted in March 1983, and that his appeals were dismissed in July 1986 by the Court of Appeal of Jamaica and in October 1987 by the Judicial Committee of the Privy Council, the Committee finds that recourse to the Supreme (Constitutional) Court is not required under article 5, paragraph 2(b), of the Optional Protocol in this case, and that there is no reason to reverse the Committee's decision on admissibility of 17 October 1990.

7.5 As to the allegation concerning the author's ill-treatment by the police, the Committee notes that this claim was reproduced in resolution 29/88 approved by the Inter-American Commission on Human Rights, a copy of which was transmitted by the Committee to the State party on 28 April 1989. Furthermore, while the allegation of a violation of article 10 does not expressly figure under the header "Alleged Breaches of the International Covenant on Civil and Political Rights" (page 8 of the author's initial communication), reference to ill-treatment by the police is made on pages 51 and 52 of this communication, which was integrally transmitted to the Government of Jamaica a year and a half before the Committee's decision on admissibility. In the circumstances, the State party cannot claim that it was not apprised of the allegation of ill-treatment; nor is the Committee barred from considering the author's submission in its integrity, or from proceeding with its own evaluation as to whether the facts as presented may raise issues under certain provisions of the Covenant, even if these provisions have not been specifically invoked.

8.1 With respect to the alleged violations of the Covenant, four issues are before the Committee: (a) whether the judge showed bias in his evaluation of the evidence or in his instructions to the jury; (b) whether the overlooking of the significance of the time of death amounted to a violation of the author's right to a fair trial; (c) whether the author was afforded adequate time for the preparation of his defence and could secure the examination of witnesses on his behalf under the same conditions as witnesses against him; and (d) whether the alleged ill-treatment by the police violated his rights under article 10.

8.2 With respect to the first issue, the Committee reaffirms its established jurisprudence that it is generally for the appellate courts of States parties to the Covenant to evaluate facts and evidence in a particular case. It is not in principle for the

Committee to make such an evaluation or 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. In the present case, the Committee has been requested to examine matters belonging in the latter category.

8.3 In respect of the issue of the significance of the time of death of the victim, the Committee begins by noting that the post-mortem on the deceased was performed on 1 September 1981 at approximately 1 p.m., and that the expert concluded that death had occurred forty-seven hours before. His conclusion, which was not challenged, implied that the author was already in police custody when the deceased was shot. The information was available to the Court; given the seriousness of its implications, the Court should have brought it to the attention of the jury, even though it was not mentioned by counsel. Furthermore, even if the Judicial Committee of the Privy Council had chosen to rely on the facts relating to the post-mortem evidence, it could not have addressed the matter as it was introduced for the first time at that stage. In all the circumstances, and especially given that the trial of the author was for a capital offence, this omission must, in the Committee's view, be deemed a denial of justice and as such constitutes a violation of article 14, paragraph 1, of the Covenant. This remains so even if the placing of this evidence before the jury might not, in the event, have changed their verdict and the outcome of the case.

8.4 The right of an accused person to have adequate time and facilities for the preparation of his or her defence is an important element of the guarantee of a fair trial and a corollary of the principle of equality of arms. In cases in which a capital sentence may be pronounced, it is axiomatic that sufficient time must be granted to the accused and his or her counsel to prepare the defence for the trial; this requirement applies to all the stages of the judicial proceedings. The determination of what constitutes "adequate time" requires an assessment of the individual circumstances of each case. There was considerable pressure to start the trial as scheduled on 17 March 1983, particularly because of the return of the deceased's wife from the United States to give evidence; moreover, it is uncontested that Mr. Wright's counsel was instructed only on the very morning the trial was scheduled to start and, accordingly, had less than one day to prepare Mr. Wright's defence and the cross-examination of witnesses. However, it is equally

uncontested that no adjournment of the trial was requested by either of Mr. Wright's counsel. The Committee therefore does not consider that the inadequate preparation of the defence may be attributed to the judicial authorities of the State party; if counsel had felt that they were not properly prepared, it was incumbent upon them to request the adjournment of the trial. Accordingly, the Committee finds no violation of article 14, paragraph 3(b).

8.5 With respect to the alleged violation of article 14, paragraph 3(e), it is uncontested that the trial judge refused a request from counsel to call a witness on Mr. Wright's behalf. It is not apparent, however, that the testimony sought from this witness would have buttressed the defence in respect of the charge of murder, as it merely concerned the nature of the injuries allegedly inflicted on the author by a mob outside the Waterford police station. In the circumstances, the Committee finds no violation of this provision.

8.6 Finally, the Committee has considered the author's allegation that he was ill-treated by the police. While this claim has only been contested by the State party in so far as its admissibility is concerned, the Committee is of the view that the author has not corroborated his claim, by either documentary or medical evidence. Indeed, the matter appears to have been raised in the court of first instance, which was unable to make a finding, and brought to the attention of the Court of Appeal. In the circumstances and in the absence of further information, the Committee is unable to find that article 10 has been violated.

8.7 The Committee is of the opinion that the imposition of a sentence of death upon conclusion of a trial in which the provisions of the Covenant have not been respected constitutes, if no further appeal against the sentence is possible, a violation of article 6 of the Covenant. As the Committee noted in its General Comment 6(16), 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 conviction and sentence by a higher tribunal. [1] In the present case, since the final sentence of death was passed without having met the requirements for a fair trial set out in article 14, it must be concluded that the right protected by article 6 of the Covenant has been violated.

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 the Committee disclose a violation of article 14,

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[1] See CCPR/C/21/Rev.1, page 7, paragraph 7.

paragraph 1, and consequently of article 6 of the Covenant.

10. In capital punishment cases, the obligation of States parties to observe rigorously all the guarantees for a fair trial set out in article 14 of the Covenant admits of no exception. The Committee is of the view that Mr. Clifton Wright, a victim of violations of article 14 and consequently of article 6, is entitled, according to article 2, paragraph 3(a), of the Covenant to an effective remedy, in this case entailing his release, as so many years have elapsed since his conviction.

11. The Committee would wish to receive information, within 90 days, on any relevant measures taken by the State party in respect of the Committee's Views.

APPENDIX

Individual opinion of Mr. Bertil Wennergren, submitted pursuant to rule 94, paragraph 3, of the Committee's rules of procedure, concerning the Committee's Views on communication No. 349/1989 (Clifton Wright v. Jamaica)

I agree with the Committee to the extent that the trial judge should have brought the implications of the pathologist's estimation that the victim's death had occurred forty-seven hours before the post-mortem to the attention of the jury. I do not, however, consider that these implications were such that they could have influenced either verdict or sentence. I therefore disagree with the finding that said omission must be deemed a denial of justice and that this remains so even if the placing of this evidence before the jury might not, in the event, have changed the verdict and the outcome of the case. In my opinion, the omission was a minor irregularity that did not affect the conduct of the trial in as much as article 14 of the Covenant is concerned. My reasons are the following:

The pathologist testified both in respect of how and when death of the victim occurred. In the latter respect, he first stated that the "post-mortem examination was performed at the Spanish Town hospital morgue forty-seven hours after death". Upon the judge's question "When you [said] the examination was forty-seven hours after death you are estimating it?", he replied "That is my estimation". This estimation was not questioned during the trial, although death must have occurred ninety-one, and not forty-seven, hours before the post-mortem examination, namely when the victim's wife began to search him. The discrepancy was also not addressed before or by the Court of Appeal. The first to raise the point was counsel before the Judicial Committee of the Privy Council, who made the point the central issue of the author's petition for special leave to appeal, although as a matter of law the Judicial Committee could not consider it. The Human Rights Committee thus is the first instance to consider this point on its merits.

I believe that an explanation for the situation described above is easy to find. The pathologist's testimony contained no more than a mere estimation, and it is known that it is impossible to determine the time of death with exactitude in a case such as the present one. Pathologist's estimations must allow for a broad margin of uncertainty. This implies that the

pathologist's estimation did not really conflict with the remainder of the evidence against the author. I would on the contrary say that it was consistent with it. However, I believe, as the Committee, that the judge should have told the jury not only about how they must evaluate the testimony of the pathologist in respect of the cause of death but also in respect of the time of death. He could not reasonably assume that what he knew about margins of uncertainty and errors of appreciation was also known to the members of the jury. However, I do not think that this omission affected the deliberations of the jury negatively. As the estimation was not in conflict with the other evidence, and this other evidence was indeed convincing, there is in my view no reason to conclude that there has been a denial of justice. I note in this context that the Court of Appeal, when dismissing the author's appeal, stated that "this was in fact one of the strongest cases against an accused that we have seen".

[Done in English, French, Russian and Spanish, the English text being the original version.]

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