HUMAN RIGHTS COMMITTEE

Berry v. Jamaica

Communication No. 330/1988

7 April 1994

CCPR/C/50/D/330/1988*

VIEWS

Submitted by: Albert Berry [represented by counsel]

Victim: The author

State party: Jamaica

Date of communication: 6 May 1988

Date of decision on admissibility: 16 October 1992

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

Meeting on 7 April 1994,

Having concluded its consideration of communication No. 330/1988, submitted to the Human Rights Committee by Mr. Albert Berry 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 its

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

1. The author of the communication is Albert Berry, a Jamaican citizen, born in 1964, awaiting execution at St. Catherine District Prison, Jamaica. He claims to be the victim of violations by Jamaica of articles 6, paragraph 1, 7, 9, paragraphs 3 and 4, 10, paragraphs 1

and 2(a), 14, paragraphs 1, 3(b)(e) and (g) and 5, and 17, of the International Covenant on Civil and Political Rights. He is represented by counsel.

The facts as submitted by the author:

2.1 On 27 March 1984, the author was arrested on a murder charge. The preliminary hearing was held on 15 June 1984. On 30 January 1985, after a three-day trial, the author was convicted and sentenced to death in the St. Ann's Circuit Court. He appealed to the Jamaican Court of Appeal on 5 February 1985. The appeal was dismissed on 21 October 1987. The Court of Appeal produced its written judgement on 11 November 1987. The author subsequently petitioned the Judicial Committee of the Privy Council for special leave to appeal. On 17 May 1990, the Judicial Committee refused leave to appeal. With this, it is submitted, available domestic remedies have been exhausted.

2.2 The author was charged with the murder of one D.G. The case for the prosecution was that, on 23 March 1984, at about 8 p.m., a group of 11 men, including D.G., were walking along the unlit main road at Maider, Parish of St. Ann. One or two of the men carried flashlights, one of which was lit. They suddenly came upon the author and two or three other unidentified men, who blocked the road and opened fire. One shot hit D.G. in the back.

2.3 The prosecution relied solely on identification evidence given by four witnesses who allegedly belonged to a rival gang. The defence was based on alibi.

2.4 According to the prosecution witnesses, the flashlight carried by one member of the group illuminated the other group of men in front of them just prior to the shooting. Each of the witnesses purportedly recognized the author, whom they knew from childhood and who, according to their statements, apparently was not wearing a mask. The witnesses were unable to identify the other men, who were masked. It is stated that the witnesses gave contradictory evidence as to the number of men carrying flashlights; the number of assailants; whether the author carried a gun; the distance which separated the two groups; the lapse of time between the encounter with the assailants and the burst of gunfire; how long the gunfire lasted; the position of the author within the group of assailants; and the number of shots fired. Furthermore, it is stated that no evidence was produced that it was the author who fired the shot(s), and no motive for the shooting, or for the murder of D.G., was adduced.

2.5 The author states that during the preliminary inquiry, N.W., the police officer in charge of the investigation, who came to his cell nearly every day, and another unidentified police officer, forced him to sign a prepared statement, in which he reportedly admitted that he was in the company of the three men who shot the deceased. It appears, however, that the prosecution did not seek to produce as evidence said statement. It was not until N.W. (being the last witness for the prosecution) was called and reexamined that the issue of the alleged admission made by the author came up. Author's counsel did not raise any objection against N.W.'s evidence in this respect.

2.6 It further appears that counsel for the appeal argued that the trial judge had erred in

admitting this evidence which, he submitted, was highly prejudicial to the author and which was of no probative value. The Court of Appeal, however, dismissed this ground of appeal, stating that: "The admission in the instant case provided powerful corroboration of the evidence of visual identification and its probative value could be of telling effect. There was never any suggestion that the statement made by the applicant after caution was other than voluntary, and it ill behoves the applicant to make no objection to the admission of the statement at the trial, and now to rely upon its allegedly prejudicial effect. We hold that the evidence of N.W. as to the admission made by the applicant was relevant and probative and was properly admitted."

2.7 The author was represented by legal aid attorneys during the preliminary hearing and on appeal. It appears from the AC Form 2 ("Particulars of Trial") that he was represented by a privately retained lawyer during the trial. A London law firm represented him pro bono before the Judicial Committee of the Privy Council.

The complaint:

3.1 Counsel, in a submission of 22 June 1992, notes that there have been no executions in Jamaica since March 1988; the Jamaican Government also considered abolishing the death penalty in Jamaica as confirmed by solicitors to the State party in 1990. Counsel further contends that under the provisions of "the Bill to amend The Offences Against The Person Act" (which at the time was being considered by the Jamaican Parliament), the author would regain his freedom under the relevant parole provisions since he has served more than seven years and he has not been convicted of a capital crime within the meaning of the Bill.[1] It is stated that, in the light of the above, the author should have a reasonable expectation not only that his sentence will be commuted, but that he will be released. Counsel submits that the author's execution would constitute an arbitrary deprivation of life contrary to article 6, paragraph 1, of the Covenant and that, in the circumstances, the renewed threat of execution could amount to a violation of article 7 of the Covenant.

3.2 Article 7 is further said to have been violated by N.W., who allegedly threatened to shoot the author if no confession statement was forthcoming. Finally, it is submitted that the constant stress and anxiety suffered as a result of prolonged detention on death row, as well as the conditions of the author's imprisonment at St. Catherine District Prison, constitute a separate violation of article 7.3.3 The author alleges that he was not cautioned by the police before his interrogation. Counsel points out that the author was detained for two and a half months before he was brought before an examining magistrate. During that time, the author did not benefit from legal representation. This, coupled with the fact that it took another seven and a half months before the author was tried, is said to amount to a violation of article 9, paragraphs 3 and 4, of the Covenant.

3.4 The author alleges a violation of article 10, paragraphs 1 and 2(a). He claims that, during the ten months of his pretrial detention at Brown's Town Police Station, he was not segregated from convicted persons and was not subject to separate treatment appropriate to his status as an unconvicted person. He further claims that, during that period, he was kept chained. Furthermore, he alleges that he was hit in the face by a policeman on one of the

three days of his trial when he was brought back to his cell, and that he has been exposed to random brutality by the prison guards on death row.

3.5 It is stated that, on the first day of the trial, the author's attorney was not present in court. On that occasion the author was represented by the attorney's assistant, one Mr. S. It is submitted that the author complained to Mr. S. about the foreman of the jury, whom he believed to be prejudiced against him. Mr. S., however, raised no objections. Counsel submits the transcript of a letter, dated 22 January 1988, from the author's mother to the author, from which it would appear that the foreman was bribed to ensure that the author was convicted. Furthermore, it is submitted that the four prosecution witnesses had a grudge against Mr. Berry. They allegedly belonged to a gang who terrorized the community where the author lived, and had tried to kill him more than once.

3.6 Counsel, while conceding that it is not in principle for the Committee to evaluate facts and evidence in a particular case or to review specific instructions by the judge to the jury, contends that the Committee's reservations thereon have so far been confined to instructions by the judge to the jury. Counsel argues that, in the circumstances of the author's case, the presence in the jury of a biased person is a matter that warrants examination by the Committee.

3.7 The author claims that, during the preliminary hearing and on appeal, he was not represented by counsel of his choosing, and that he did not have adequate time and facilities for the preparation of his defence, in breach of article 14, paragraph 3(b) of the Covenant. He indicates that only on the day the preliminary hearing began did the examining magistrate appoint a lawyer. As a result, he had only one hour and forty minutes to communicate with his lawyer. As to his appeal, the author states that he was again assigned a lawyer without his consent; he submits that he only met once with this lawyer, for fifteen minutes, between 21 and 25 February 1988, about four months after losing his appeal. Finally, the author claims that he did not have time and facilities for the preparation of his trial. He affirms that he met with his attorney only three times before the trial, each time for no more than thirty minutes. During the trial, the attorney met with him only a few times.

3.8 Counsel points out that the author filed his application for leave to appeal on 5 February 1985 and that his legal representative filed the supplementary grounds of appeal on 20 October 1987, only one day before the Court of Appeal hearing took place. It is submitted that the lapse of time between the filing of the original grounds and that of the supplementary grounds of appeal is due to the fact that the author did not have the assistance of a lawyer, and that the delay in the hearing of the appeal (more than two and a half years) amounts to a violation of article 14, paragraph 3(c), of the Covenant.

3.9 The author complains that he was excluded from the hearing of his appeal, in breach of article 14, paragraph 3(d), despite the fact that he had expressed his wish to be present in court. Counsel notes that an appellant is not entitled to be present at the hearing of an application for leave to appeal, but that in the author's case the hearing of the application for leave to appeal was treated as the hearing of the appeal, and he would thus have been entitled to be present. Furthermore, counsel submits that as the author did not have the opportunity

to instruct his representative for the appeal prior to the hearing, and as his attorney at the trial failed to raise the issues of the foreman of the jury and the author's illtreatment by the police, the author was denied an effective appeal, in breach of article 14, paragraph 5. Counsel refers to the Committee's Views on communication No. 248/1987 (Glenford Campbell v. Jamaica), [2] where it held that the combined effect of the lawyer's failure to bring the defendant's maltreatment before the court, the consequences that failure had on the conduct of the appeal and the lack of an opportunity to instruct counsel for the appeal or to defend himself in person, amounted to a denial of effective representation in the judicial proceedings and noncompliance with the requirements of article 14, paragraph 3(d), of the Covenant.

3.10 As to article 14, paragraph 3(e), it is submitted that during the trial the author was denied the right to have his mother and three of his sisters examined as witnesses for the defence. It is further submitted that counsel ignored the author's instructions to call witnesses other than his brother-in-law.

3.11 Concerning the allegation that Mr. Berry was forced to sign a confession, in breach of article 14, paragraph 3(g), counsel submits numerous letters addressed to the relevant Jamaican authorities, requesting them to make available copies of the depositions used at, and the transcript of, the author's preliminary hearing. He explains that one of the reasons for doing so has been to identify to what extent statements made by the witnesses at the trial differed from their statements at the preliminary hearing. Counsel complains that all his endeavours to obtain said documents have been futile.

3.12 Finally, the author claims that the warders at St. Catherine District Prison have repeatedly interfered with his correspondence, in violation of article 17, paragraph 1. He contends that books sent to him have been withheld and that his letters sent through the prison office have never reached the addressees. In this context, it is submitted that, in May of 1991, inmates found a room packed with letters and documents from and to death row prisoners. The author reportedly complained to the Parliamentary Ombudsman about this finding but has not received any reply to date. This is said to amount to a violation of article 17, paragraph 2, of the Covenant.3.13 With respect to the requirement of exhaustion of domestic remedies, it is submitted that an application to the Supreme (Constitutional) Court would not be an available and effective remedy in the author's case, as legal aid is not given for this purpose and the author himself does not have the means to secure legal representation in Jamaica to see a constitutional motion argued on his behalf.

The State party's observations:

4. In its submission, dated 18 April 1989, the State party contended that the communication was inadmissible because of nonexhaustion of domestic remedies, since at the time of the submission it was still open to the author to petition the Judicial Committee of the Privy Council. On 1 July 1992, a further submission from author's counsel with fresh allegations was transmitted to the State party, providing it with the opportunity to comment on the admissibility of these new claims. The State party's comments in this respect were only received after the Committee declared the communication admissible (see paragraph 6.1

below).

The Committee's admissibility decision:

5.1 During its forty-sixth session, the Committee considered the admissibility of the communication. It noted that the author's petition for special leave to appeal to the Judicial Committee of the Privy Council had been dismissed, and that the State party had not, at that time, raised any further objections in respect of the admissibility of the communication.

5.2 With regard to the author's claims under article 17, the Committee considered that they had not been substantiated, for purposes of admissibility, and that, in this respect, the author had no claim within the meaning of article 2 of the Optional Protocol.

5.3 On 16 October 1992, the Committee declared the communication admissible in so far as it appeared to raise issues under articles 6, 7, 9, paragraphs 3 and 4, 10 and 14 of the Covenant.

The State party's request for review of admissibility and information on the merits of the communication:

6.1 In its submission dated 26 October 1992 (received only after the Committee declared the communication admissible), the State party argues that the communication is inadmissible because of nonexhaustion of domestic remedies. It states that the rights under the Covenant which allegedly are violated in the author's case are similar to those contained in the Jamaican Constitution. Under section 25 of the Constitution, it would be open to the author to seek redress for the alleged violations of his constitutional rights before the Supreme (Constitutional) Court of Jamaica.

6.2 Moreover, with regard to the alleged violations of article 9, paragraphs 3 and 4, of the Covenant, the State party argues that, at all times during his detention, the author could have applied to the courts for a writ of habeas corpus to have the reasonableness of his detention tested. It is submitted that the author's failure to avail himself of this remedy cannot be attributed to the State party.

6.3 The State party notes that "the author's complaints under article 14, paragraph 1, relate to the conduct of the trial including jury selection and bias of prosecution witnesses". It further contends that "the alleged breach of article 14, paragraph 3(g), relates to the authenticity of a confession statement, which is a matter of evidence". With reference to the Committee's jurisprudence, the State party submits that these claims fall outside the scope of the Committee's competence.

7.1 In its submission of 1 July 1993, the State party reiterates that the communication should be considered inadmissible because of nonexhaustion of domestic remedies and requests the Committee to review its decision of 16 October 1992 accordingly. With regard to the substance of the matter under consideration, it provides the following comments: As to the author's claims under article 14, paragraph 3(b) of the Covenant, the State party submits that

the material presented to the Committee does not disclose that at any time during the proceedings either counsel or the author complained to the trial judge or the Court of Appeal that the time or facilities allowed for the preparation of the defence were inadequate.

7.2 With regard to the adequacy of the author's representation, the State party argues that the facts relied upon by the author are all attributable to his legal representative who determined, according to his professional skills, what issues were important in the conduct of the defence.

7.3 In so far as the allegation of denial of the right to be present in court is concerned, the State party asserts that at no time did the author or his counsel indicate to the Court of Appeal that he wished to be present at the hearing of the appeal.

7.4 Finally, with regard to the author's allegation that he was denied the right to have his conviction and sentence reviewed by a higher tribunal, the State party contends that Mr. Berry is estopped from making this assertion, as he exercised this right by appealing to the Court of Appeal and to the Judicial Committee of the Privy Council.

Counsel's comments:

8.1 In a submission of 16 September 1993, counsel states that Mr. Berry was notified in December 1992 that his case had been reviewed by a judge of the Court of Appeal pursuant to Section 7(2) of the Offences against the Person (Amendment) Act 1992, and that his case had been classified as a capital murder case pursuant to Section 2(1)(f) of the Act. Section 2(1)(f) states that: "Any murder committed by a person in the cause or furtherance of an act of terrorism, that is to say, an act involving the use of violence by that person which, by reason of its nature and extent, is calculated to create a state of fear in the public or anysection of the public ... shall be a capital murder". Counsel points out that his client was indicted for murder only and subsequently convicted thereof, and that the issue of terrorism was never raised during the judicial proceedings; he argues that a subsequent addition of a charge of terrorism to his client's murder charge violates the principle of due process of law. Counsel adds that, on 8 January 1993, he applied to the Court of Appeal for review of the classification in Mr. Berry's case; the application is currently pending before the Court of Appeal.[3] Counsel submits that the above is further evidence in substantiation of the claims that the author is the victim of violations by the State party of articles 6 and 7.

8.2 With reference to the alleged breach of article 14, paragraph 3(g) (see paragraph 3.11 above), counsel forwards a letter, dated 7 May 1993, from the Registrar of the Supreme Court, informing him that the authorities of the Magistrate's Court are unable to locate the depositions made at the preliminary hearing in the author's case. It is submitted that, because of the State party's failure to produce the requested documents, it is impossible for the author further to substantiate his claims that the prosecution witnesses were biased and that he was forced by the police to sign a statement.

Review of admissibility:

9.1 The Committee has taken note of the State party's arguments on admissibility, and of counsel's information regarding the classification review procedure in Mr. Berry's case, both submitted after the Committee's decision declaring the communication admissible.

9.2 With regard to the State party's contention that constitutional remedies are still open to the author, the Committee recalls that domestic remedies within the meaning of the Optional Protocol must be both available and effective. The Committee considers that, in the absence of legal aid, a constitutional motion does not, in the specific circumstances of the instant case, constitute an available remedy within the meaning of article 5, paragraph 2(b), of the Optional Protocol, which the author must exhaust. [4]

9.3 As to counsel's claim that the author's execution would constitute an arbitrary deprivation of life contrary to article 6, paragraph 1, and that the "renewed threat of execution" would be in violation of article 7, the Committee notes that these issues are related to the classification of the author's case under the Offences against the Person (Amendment) Act 1992. The Committee further notes that an application for review of the classification in the case remains pending before the Court of Appeal of Jamaica. On the basis of this new information, the Committee decides not to proceed with the consideration of this part of the communication.

9.4 The Committee, therefore, revises its decision on admissibility in part and considers this part of the communication (see paragraph 3.1 above) to be inadmissible under article 5, paragraph 2(b), of the Optional Protocol.

Examination of the merits:

10. In the light of the above, the Committee decides to proceed with its examination of the merits of the communication in so far as it relates to the remaining allegations under article 7 and in so far as it raises issues under articles 9, paragraphs 3 and 4, 10 and 14 of the Covenant.

11.1 In respect of the allegations pertaining to article 9, paragraphs 3 and 4, the State party has not contested that the author was detained for two and a half months before he was brought before a judge or judicial officer authorized to decide on the lawfulness of his detention. Instead, the State party has confined itself to the contention that, during his detention, the author could have applied to the courts for a writ of habeas corpus. The Committee notes, however, the author's claim, which remains unchallenged, that throughout this period he had no access to legal representation. The Committee considers that a delay of over two months violates the requirement, in article 9, paragraph 3, that anyone arrested on a criminal charge shall be brought "promptly" before a judge or other officer authorized by law to exercise judicial power. In the circumstances, the Committee concludes that the author's right under article 9, paragraph 4, was also violated, since he was not, in due time, afforded the opportunity to obtain, on his own initiative, a decision by a court on the lawfulness of his detention.

11.2 The Committee notes that the author's claims under article 10 of the Covenant, in

respect of his treatment in pretrial detention and in respect of his treatment on death row (see paragraph 3.4 above) have not been contested by the State party. In the absence of a response from the State party, the Committee will give appropriate weight to the author's allegations that, during the 10 months of his pre-trial detention at Brown's Town Police Station, he was not segregated from convicted persons, was not subject to separate treatment appropriate to his status as an unconvicted person, and was kept chained. Furthermore, he was hit in the face by a policeman on one of the days of his trial when he was brought back to his cell. In the opinion of the Committee, therefore, he was not treated in accordance with article 10, paragraphs 1 and 2(a), of the Covenant. As to the author's claim that he has been exposed to random brutality on death row, the Committee notes that no further details have been offered on this claim. It therefore finds no violation of article 10 in this respect.

11.3 As to the author's claim that he did not receive a fair trial, under article 14 of the Covenant, because of the presence in the jury of an allegedly biased person, and the use of evidence against him which was allegedly obtained under duress, the Committee observes that these issues were not raised during the trial. Furthermore, the written judgement of the Court of Appeal reveals that the issue of self-incrimination without prior cautioning by the police was raised during the trial, when N.W. testified that the author had made his statement after police cautioning. Neither counsel nor the author contended at the trial that he had not been cautioned. The Committee is of the opinion that the failure of the author's representative to bring these issues to the attention of the trial judge, which purportedly resulted in the negative outcome of the trial, cannot be attributed to the State party, since the lawyer was privately retained. The Committee, therefore, finds no violation of article 14, paragraph 1, of the Covenant in this respect.

11.4 The right of an accused person to have adequate time and facilities for the preparation of his defence at trial is an important element of the guarantee of a fair trial and an important aspect of the principle of equality of arms. In cases in which 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 defence for the trial. The determination of what constitutes "adequate time" requires an assessment of the individual circumstances of each case. The author also contends that he was unable to obtain the attendance of witnesses other than his brotherinlaw. The Committee notes, however, that the material before it does not reveal that either counsel or the author himself complained to the trial judge that the time or facilities for the preparation of the defence had been inadequate. If counsel or the author felt that they were not properly prepared, it was incumbent upon them to request an adjournment. Furthermore, there is no indication that counsel's decision not to call other witnesses was not based on the exercise of his professional judgement, or that, if a request to call the author's mother and sisters to testify had been made, the judge would have disallowed it. Accordingly, there is no basis for a finding of a violation of article 14, paragraphs 3(b) and (e), in respect of the trial.

11.5 As to the author's claim in respect of the delay in the hearing of his appeal, the Committee notes that the author's application for leave to appeal to the Court of Appeal, dated 5 February 1985, indicates that he wished the Court to assign legal aid to him. However, it also appears from the application that the author answered the question whether

he had any means to obtain a legal representative himself in the affirmative. On the basis of the information before it, the Committee is unable to ascertain whether or not the delay in the filing of the supplementary grounds of appeal was attributable to the author himself. In this context, the Committee notes that the author has not indicated when he informed the judicial authorities that he did not have the means to privately retain a lawyer, and when he learned that legal aid counsel had been assigned to him.

11.6 As to the author's claims under article 14, paragraphs 3(b), (d) and 5, concerning the conduct of his appeal, the Committee begins by noting that a lawyer was assigned to the author for purposes of his appeal, and that article 14, paragraph 3(d), does not entitle an accused to choose counsel provided to him free of charge. The Committee further notes that the author's claim that he did not have the opportunity to instruct counsel for the appeal prior to the hearing has not been contested by the State party. In communication No. 248/1987 (Glenford Campbell v. Jamaica), [5] the Committee held that the combined effect of the lawyer's failure to raise objections at the trial in respect of the confessional evidence allegedly obtained through maltreatment, the consequences this failure had on the conduct of the appeal and the lack of an opportunity to instruct counsel for the appeal or to defend himself in person,amounted to a denial of effective representation in the judicial proceedings and non-compliance with the requirements of article 14, paragraph 3(d), of the Covenant. The Committee notes, however, that in the present case the author would not have been allowed, unless special circumstances could be shown, to raise issues on appeal that had not previously been raised by counsel in the course of the trial. In the circumstances, and taking into account that the author's appeal was in fact heard by the Court of Appeal, the Committee finds no violation of article 14, paragraphs 3(b), (d) and 5, of the Covenant.

11.7 As to the claim under article 14, paragraph 3(g), juncto article 7, the Committee recalls that the wording of article 14, paragraph 3(g), i.e., that no one shall "be compelled to testify against himself or to confess guilt", must be understood in terms of the absence of any direct or indirect physical or psychological pressure from the investigating authorities on the accused with a view to obtaining a confession of guilt. A fortiori, it is unacceptable to treat an accused person in a manner contrary to article 7 of the Covenant in order to extract a confession. The Committee notes that, in the present case, the author claims that the investigating officer, N.W., threatened to shoot him and forced him to sign a prepared statement; this claim has not been contested by the State party. On the other hand, the Committee notes that N.W. testified during the trial that the author had made his statement after police cautioning. The Committee observes that, in order to reconcile these different versions, the written depositions made and used during the preliminary hearing were required. The Committee further observes that counsel has requested the State party, on several occasions, to make available to him the transcript of the author's preliminary hearing, including the depositions of witnesses, and that finally, after several reminders, he was informed by the judicial authorities that they were unable to locate them. These allegations have not been denied by the State party and therefore due weight must be given to the author's claims. In this respect, therefore, the Committee finds a violation of article 14, paragraph 3(g), juncto article 7, of the Covenant.

11.8 With regard to the claim that Mr. Berry's prolonged stay and the conditions of detention

on death row constitute cruel, inhuman or degrading treatment, the Committee notes that these issues have not been further substantiated. The Committee recalls its jurisprudence that authors must substantiate allegations of violations of their Covenant rights under the Optional Protocol; mere affirmations unbuttressed by substantiating evidence do not suffice. In this case, the author has failed to show that he is the victim of a violation by the State party of article 7 of the Covenant on account of his prolonged detention on death row.

12. The Committee is of the opinion that the imposition of a sentence of death upon the conclusion of judicial proceedings in which the provisions of the Covenant have not been respected constitutes, if no further appeal against the sentence is available, a violation of article 6 of the Covenant. In the instant case, while a constitutional motion to the Supreme (Constitutional) Court might in theory still be available, it would not be an available remedy within the meaning of article 5, paragraph 2(b), of the Optional Protocol, for the reasons set out in paragraph 9.2 above. As the Committee observed in its General Comment 6(16), the provision that a death sentence 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 toreview by a higher tribunal". Accordingly, it may be concluded that the final sentence of death was passed without having met the requirements of article 14, and that as a result the right protected by article 6 of the Covenant has been violated.

13. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, finds that the facts before it disclose violations of articles 6, 9, paragraphs 3 and 4, 10, paragraphs 1 and 2(a), and 14, paragraph 3(g) juncto article 7, of the Covenant.

14. The Committee is of the view that Mr. Albert Berry is entitled to an appropriate remedy entailing his release. It requests the State party to provide information, within 90 days, on any relevant measures taken by the State party in compliance with 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.]

Footnotes

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

1/ On 25 September 1992, "The Offences against the Person (Amendment) Act 1992" was passed in the Senate. The Act provides for the classification of the cases of persons under sentence of death for murder into "capital" or "non-capital" murder. Classification as "capital" makes the death penalty mandatory; classification as "non-capital" will commute the death sentence to life imprisonment. In the latter case the court may decide to grant parole after a period not less than seven years. In December 1992, the classification (by a

single judge of the Court of Appeal) procedure began; contrary to counsel's expectations, the offence for which Mr. Berry was convicted was classified as a capital offence.

2/ Views adopted on 30 March 1992, at the forty-fourth session, paragraph 6.6.

3/ The review process under the Act is currently stayed pending the outcome of a constitutional motion in another case, which challenges the constitutionality of the classification procedure established by the Act.

4/ See also the Committee's Views in communications Nos. 230/1987 (Raphael Henry v. Jamaica) and 283/1988 (Aston Little v. Jamaica), adopted on 1 November 1991, paragraphs 7.1 et seq .

5/ Views adopted on 30 March 1992, at the forty-fourth session, paragraph 6.6.