

HUMAN RIGHTS COMMITTEE

Morrison v. Jamaica

Communication No. 635/1995**

27 July 1998

CCPR/C/63/D/635/1995*

VIEWS

Submitted by: Everton Morrison (represented by Allen & Overy, a London law firm)

Victim: The author

State party: Jamaica

Date of communication: 14 June 1995 (initial submission)

Date of admissibility decision: 17 October 1996

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

Meeting on 27 July 1998,

Having concluded its consideration of communication No.635/1995 submitted to the Human Rights Committee by Everton Morrison, 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:

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

1. The author of the communication is Everton Morrison, a Jamaican citizen, currently awaiting execution at St. Catherine District Prison, Jamaica. He claims to be a victim of violations by Jamaica of articles 10 and 14 of the International Covenant on Civil and

Political Rights. He is represented by counsel.

The facts as submitted by the author

2.1 The author was arrested on 30 December 1988, in connection with the murder, on 26 December 1988, of one Angella Baugh-Dujon in the Parish of St. Andrew, Kingston. On 25 July 1990 at the Home Circuit Court, Kingston, he was convicted and sentenced to death. The author's appeal to the Jamaican Court of Appeal was dismissed on 20 January 1992, and his petition for special leave to appeal to the Judicial Committee of the Privy Council was dismissed on 25 May 1995. Counsel submits that all domestic remedies have been exhausted for purposes of article 5, paragraph 2(b), of the Optional Protocol.

2.2 The case for the prosecution was that on the evening of 26 December 1988, the author, acting in joint enterprise with a man referred to as "Jacko", shot Angella Baugh-Dujon twice as a result of which she died. Her semi-nude body was found a short distance from her car in the Parish of St. Andrew in Kingston. The prosecution's case was based on circumstantial evidence. There were no eyewitnesses to the incident.

2.3 At trial, the author's girlfriend named Plummer testified that she and the author had a child together, had lived together for five years, and were living together in her parents' house in Gordon Town, Kingston, in December 1988. Plummer testified that at about 5 p.m. on 26 December 1988 she was at home when a friend of the author named "Jacko" arrived, followed at about 6 p.m. by the author. Plummer stated that the two men left together and returned at about 8 p.m., whereupon the author took a black plastic bag from underneath the bed, and the two men left again, returning after about 1 a.m. Plummer stated that when she saw the author, he was wearing only his briefs. She claims that he told her that if anybody asked if he had slept there she must say yes. She stated that she heard the author outside, washing his clothes, although she did not see this. She also stated that "Jacko" was inside the house. Plummer alleged that when she got up at 8 a.m. on the morning of 27 December 1988, both men had left the house, and that she found the brown trousers the author had been wearing the night before in a bucket of water and that they had blood stains on them. She claimed that on the morning of 30 December 1988 both she and the author were at home and were woken up by the sound of police dogs. The author is alleged to have told her to "tell Lloyd Brown to give me one thousand dollars" and "the guns are in the plastic bags on the hill". The author was taken away by the police that morning. Plummer stated that Lloyd Brown was not "Jacko".

2.4 Plummer testified that on 7 January 1989 the police visited her in order to search the house and back garden. In cross-examination she accepted that she had been taken to Constant Spring Police Station on 31 December 1988, that she had given a statement on that date to Mr. Dwyer, and that the same day she was taken to Matilda's Corner Police Station where she was detained for three weeks.

2.5 Another witness, Adolphus Williams, testified that in December 1988 he was living with Plummer's neighbour, and that on the night of 26 December 1988 at about midnight, two men, one of whom he recognized as the author, approached his house. Williams claimed that

the author stated that if Williams were to hear anything the next morning he must not tell anyone that he had seen the author, "for is trouble". Williams alleged that the author had something in his hand that was covered by a rag.

2.6 The investigating officer Detective Superintendent Dwyer, testified that the author was brought to his office and questioned about the murder on 6 January 1989, and that following a caution the author admitted to being at the scene of the murder. He implicated "Jacko", told Dwyer that he had the guns used in the crime, and told Dwyer to ask Plummer, as she knew where they were. Dwyer stated that on 7 January 1989 he and other officers went to Plummer's house, and that she directed them to a place in the back yard, where Dwyer seized a black plastic bag containing two firearms.

2.7 Other prosecution evidence included the testimony of Assistant Commissioner Wray, who stated that on the basis of tests conducted on the firearms recovered from the author's garden, both "could have been fired on the 27 day" of December 1988, and that the bullets recovered from the scene had been fired from said firearms. Also, a witness testified as to the victim's identity, and a pathologist gave evidence as to the two gun shot wounds to the body.

2.8 The author made an unsworn statement from the dock. He stated that on 26 December 1988 he was at home. He alleged that he did not tell Dwyer about any gun and that Plummer's evidence had been coerced by the police. He further claimed that he did not have a conversation with Adolphus Williams and he had never had any argument with him. His defence was one of alibi. There were no witnesses called for the defence.

3.1 On 30 June 1995, counsel for the author submitted a further communication, concerning the author's trial and conviction for another murder, on 28 October 1988, of one Joseph Hunter. The author was informed of this murder on 17 January 1989, after he had been already arrested for the murder of Angella Baugh-Dujon, following the discovery of Hunter's gun in the author's garden.

3.2 On 24 July 1991, the author was convicted for the murder of Mr. Hunter. His appeal was upheld by the Court of Appeal on 15 February 1993 and a retrial was ordered. This retrial resulted in a conviction for capital murder on 29 September 1993. The author's appeal was dismissed by the Court of Appeal on 18 July 1994, and his petition for special leave to appeal to the Privy Council was rejected on 25 May 1995.

3.3 At trial, the case for the prosecution was that on 28 October 1988, Joseph Hunter and Doreen McLean sat in a Volkswagen on Hill Road at St. Andres. Two men, one of them the author, approached the car, shot Hunter and killed him. The prosecution relied entirely on circumstantial evidence.

3.4 McLean testified that she was with Hunter that evening around 7 p.m., when she heard a male voice say "don't move", coming from the driver's side of the car, where Hunter was seated. Hunter seized a revolver and started firing. McLean heard an explosion, and realized Hunter was hurt. Hearing footsteps, she slipped out of the van and hid under it. She could

see nothing from her hiding place but heard two male voices, one saying "You get the gun, you find the gun?", the other answering "Yes". After five minutes, she got out from under the van. Hunter was bleeding and did not speak to her.

3.5 The author's girlfriend Plummer again gave evidence that, on 7 January 1989, she showed the police the location of a black plastic bag in which two guns were found. She testified that the author had told her where to find them. She said that the guns, which according to her were in the author's possession since September, were previously kept under her bed, and that she had seen him rubbing one of the guns, to file off the number.

3.6 The police testified that one of the guns found in the author's garden bore the same serial number as Hunter's licensed gun. The ballistic expert gave evidence that two bullets found at the scene of the killing had come from the other gun found in the author's garden.

3.7 The author gave sworn evidence, stating that he knew nothing of the offense, that he had been at Plummer's house all day on 28 October 1988, assisting workmen in fixing the roof of the house. He said that the relationship between him and Plummer was not a good one and that she was telling lies. No witnesses were called on his behalf.

The complaint

4.1 As regards the arrest and trial for the murder of Angella Baugh-Dujon, the author claims that he was detained for three or four weeks without being charged, and alleges that this constitutes a violation of article 14, paragraph 3(a).

4.2 The author claims that he was beaten and verbally abused by two police officers, including a prosecution witness, after being taken into custody. The author complained to his solicitor, who did not take the matter further.

4.3 The author submits that he spent approximately one year and seven months in prison before trial, and that this constitutes a violation of article 14, paragraph 3(c).

4.4 The author also alleges that he was "roughed up" by the legal aid lawyer assigned to his case, who also cursed during his meetings with the author, and who did not accommodate the author's request to visit the scene of the crime. The author claims that he was only able to see his lawyer during the trial proceedings since the latter refused to grant private meetings to discuss the case. Also, the lawyer did not challenge the ballistic evidence, nor the credibility of the main prosecution witness. As such, the author alleges that the defence case was not put by his lawyer, who also did not make enough of an effort in raising a defence. The author also alleges that no defence was raised by the lawyer on appeal. The above is said to constitute a breach of article 14, paragraph 3(b) and (d).

4.5 The author claims further that the guarantee of a fair trial has been violated by the inadequacy of the trial judge's direction to the jury. The trial judge stated that both participants in a joint enterprise are liable "even if unusual consequences arise from the execution of the agreed joint enterprise". The author alleges that the trial judge

fundamentally erred in not mentioning the mental element required in joint enterprise, i.e. that where one of the participants goes beyond what has been tacitly agreed as part of the common enterprise, the other participants are not liable for the consequences of that unauthorized act. Counsel for the author states that in the absence of the prosecution establishing that the author had fired the gun or that there was a joint enterprise to commit an offence that may result in grievous bodily harm being inflicted on another, it is impossible to say whether the jury would have convicted if directed properly. Furthermore, the author claims that the trial judge fundamentally erred in directing the jury that it was "safer and better" to convict on the basis of circumstantial evidence. Counsel also claims that the trial judge's direction on alibi evidence was fundamentally flawed since, by saying the author did not have to prove anything although he may attempt to do so, the judge gave the impression that the author had a duty to discharge. Nor did the trial judge direct the jury as to the standard of proof to be satisfied by the prosecution in proving that the alibi, once raised, is false.

4.6 The author also claims that due to the general prison conditions, and due to the limited medical attention he has received despite his asthmatic condition, he is the victim of a breach of article 10.

4.7 It is stated that the case has not been submitted to another procedure of international investigation or settlement.

5.1 As regards the arrest and trial concerning the murder of Mr. Hunter, the author states that, although he was informed by police officers that the weapons found in the grounds of his home connected him to the death of Mr. Hunter, he was not actually charged with murder until appearing before the Gun Court. The author claims that this was in violation of article 14, paragraph 3(a).

5.2 The author further states that he was ill-treated after his arrest, and that he was threatened by the investigating police officers that he would be killed if he did not admit to Mr. Hunter's murder.

5.3 The author emphasizes that it took approximately two and a half years before the original trial against him began, in violation of article 14, paragraph 3(c).

5.4 As regards his defence lawyer, the author states that he found it difficult to give him instructions, since he was clearly not interested, as demonstrated by his aggressive manner. Moreover, his lawyer had already left the Court when the verdict was passed and did not contact the author following his conviction. The author therefore contends that he was not in a position to adequately prepare his defence, in violation of article 14, paragraph 3(b).

5.5 The author also states that, after the Court of Appeal ordered a retrial, he objected to being represented by the same lawyer who had represented him at the original trial, since he felt that the handling of the case by this lawyer had led to his conviction. However, his objection was overruled by the Court.

5.6 The author further states that at the beginning of the retrial, he told the Court through his lawyer that he was not in a position to start the trial, but the trial judge overruled his request. It appears from the trial transcript that the judge was informed that the author had been examined by a medical doctor, who had declared him fit for trial, but that the author disagreed.

5.7 The author claims that article 14, paragraph 3(d), was violated in his case, since he only met his lawyer at the trial, his lawyer did not show him the prosecution statements, failed to challenge the credibility of the main prosecution witness Plummer, who was living with a policeman at the time of the trial, and failed to contact the author's only witness who could have testified that Plummer did not point out where the guns were hidden as she claimed.

5.8 The author also alleges that the judge did not properly instruct the jury with regard to the different factual situations that would arise from the evidence, the issue of recent possession, the value of circumstantial evidence, the evidential value of lies told by an accused, and the defence of alibi. According to the author, this amounts to a violation of article 14 in general.

State party's submissions and counsel's comments

6.1 By submission of 22 August 1995, the State party addresses the author's communication concerning his arrest and trial for the murder of Angella Baugh-Dujon, and states that it will investigate the author's allegation that he was ill-treated upon his arrest in December 1988.

6.2 As regards the author's claim that he was not charged until three to four weeks after his detention, the State party promises to investigate, although it will be difficult because seven years have passed since. Moreover, the State party points out that the right to be promptly informed of the charges is also protected by section 20(6)(a) of the Constitution and that the most appropriate place to raise this issue would have been at trial, which the author failed to do.

6.3 The State party further contends that a period of one year and seven months before bringing the author to trial does not constitute unreasonable delay, since the preliminary inquiry was held during this period.

6.4 As regards the conduct of the author's counsel at trial, the State party submits that once it has provided competent counsel for indigent prisoners it is not responsible for the manner in which counsel conducts the case. Furthermore, the State party points to inconsistencies in the author's allegations, since at one point he says that he saw his counsel before the trial, whereas at another point he states that he only saw his counsel during the trial.

6.5 As regards the author's allegations relating to the judge's instructions to the jury, the State party refers to the Committee's jurisprudence that it is not for the Committee to review them, unless the instructions were clearly arbitrary or amounted to a denial of justice or the judge otherwise violated his obligation of impartiality. The State party notes that there is nothing in this case which would justify an exception from this principle.

6.6 Finally, the State party informs the Committee that according to the records of the Court of Appeal, the author's offence with regard to the murder of Angella Baugh-Dujon was classified as non-capital murder.

6.7 As regards the author's claim that he is not properly treated for his asthma while in prison, the State party contests that this constitutes a violation of article 10 of the Covenant. It states that due to lack of resources in the correctional system medication is not always available. If it is, it is given to the author. The State party points out that the fact that the author can procure medication elsewhere without interference indicates that the difficulty is a regrettable result of lack of resources rather than a deliberate attempt to ill-treat the author.

7. In a second submission, the State party addresses the author's communication with respect to the conviction for the murder of Mr. Hunter. The State party notes that the allegations in the two cases are almost identical and refers therefore to its first submission. As regards the author's allegation that he was not informed of the charges against him concerning the murder of Mr. Hunter, the State party notes that the time period of not having been informed is different from the first case, but that the same principle applies.

8.1 In her comments on the State party's submission, counsel submits that the fact that the issue of the delay in charging the author was not raised at the preliminary inquiry or at trial is another illustration of the inadequacy of the author's defence.

8.2 Counsel clarifies that the author did see his counsel before the trial, and that his allegations that he only saw his counsel during the trial relate to the fact that, although he asked for time with his counsel, counsel did not grant him a private meeting but only saw him at the hearings.

8.3 Counsel submits that the author's allegations in respect of the judge's instructions amount to clear evidence that the judge was arbitrary, denied the author justice and violated the obligation of impartiality. As a result, the jury was never able to consider matters of law which were of fundamental importance in the case.

9.1 Counsel specifies that the author was actually never charged with the murder of Mr. Hunter, but simply told at the preliminary hearing that he had been charged with this murder.

9.2 Counsel submits that the misdirections by the trial judge in the trial concerning the murder of Mr. Hunter were so fundamental that they clearly amounted to a denial of justice.

The Committee's admissibility decision

10. At its 58th session, the Committee considered the admissibility of the communication.

11.1 As regards the author's claim relating to his arrest and trial for the murder of Angella Baugh-Dujon, the Committee ascertained, as required under article 5, paragraph 2(a), of the Optional Protocol, that the same matter was not being examined under another procedure of

international investigation or settlement.

11.2 The Committee noted that the State party had not objected to the admissibility of the communication for failure to exhaust domestic remedies. In the circumstances, the Committee considered that it was not precluded by article 5, paragraph 2(b), of the Optional Protocol from examining the claims on their merits.

11.3 The Committee noted that part of the author's allegations related to the evaluation of evidence, to the instructions given by the judge to the jury and to the conduct of the trial. The Committee referred to its prior jurisprudence and reiterated that it was generally for the appellate courts of States parties to the Covenant to evaluate facts and evidence in a particular case. Similarly, it was not for the Committee to review specific instructions to the jury by the trial judge, unless it could be ascertained that the instructions to the jury were clearly arbitrary or amounted to a denial of justice. The material before the Committee did not show that the trial judge's instructions or the conduct of the trial suffered from such defects. Accordingly, this part of the communication was inadmissible as incompatible with the provisions of the Covenant, pursuant to article 3 of the Optional Protocol.

11.4 As regards the author's allegation with respect to the conduct of the defence by his legal aid lawyer, the Committee recalled its jurisprudence¹ that the State party could not 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. In the instant case, nothing in the file showed that this was so and therefore this part of the communication was inadmissible under article 2 of the Optional Protocol.

11.5 The Committee noted the State party's undertaking to investigate the author's complaint that he was ill-treated by police officers upon arrest after being taken into custody, as well as his claim that he was not informed promptly of the charges against him. The Committee considered that these claims might raise issues under articles 7 and 10, and articles 9, paragraph 2, and 14, paragraph 3(a), respectively, which needed to be considered on the merits.

11.6 The Committee noted the State party's statement that the delay between the author's arrest and the beginning of the trials against him was not unduly long, since the preliminary inquiry was held during this period. The Committee considered however that the question of whether or not the delay was in violation of articles 9, paragraph 3, and 14, paragraph 3(c), was a matter to be considered on the merits. It invited the State party to provide more precise information as to the investigations carried out during the period between arrest and the preliminary enquiry and to inform the Committee of the exact dates of the preliminary hearings.

12.1 As regards the author's claim relating to his arrest and trial for the murder of Mr. Hunter, the Committee ascertained, as required under article 5, paragraph 2(a), of the Optional Protocol, that the same matter was not being examined under another procedure of international investigation or settlement.

12.2 The Committee noted that the State party had not objected to the admissibility of the communication for failure to exhaust domestic remedies. In the circumstances, the Committee considered that it was not precluded by article 5, paragraph 2(b), of the Optional Protocol from examining the claims on their merits.

12.3 The Committee noted that part of the author's allegations related to the evaluation of evidence, to the instructions given by the judge to the jury and to the conduct of the trial. The Committee referred to its prior jurisprudence and reiterated that it was generally for the appellate courts of States parties to the Covenant to evaluate facts and evidence in a particular case. Similarly, it was not for the Committee to review specific instructions to the jury by the trial judge, unless it could be ascertained that the instructions to the jury were clearly arbitrary or amounted to a denial of justice. The material before the Committee did not show that the trial judge's instructions or the conduct of the trial suffered from such defects. In particular in respect to the author's condition to stand trial, the Committee noted that the judge based his decision on a medical examination of the author, and his denial of the author's request thus could not be said to have been arbitrary. Accordingly, this part of the communication was inadmissible as incompatible with the provisions of the Covenant, pursuant to article 3 of the Optional Protocol.

12.4 The Committee considered that the author's claim that the police officers threatened to kill him should he not confess to Mr. Hunter's murder might raise an issue under articles 7 and 14, paragraph 3(g), of the Covenant which needed to be considered on the merits.

12.5 As regards the author's claim that he was never actually charged with the murder of Mr. Hunter, but told at the preliminary enquiry that he had been charged, the Committee considered that this might raise an issue under article 9, paragraph 2, of the Covenant which needed to be considered on the merits.

12.6 The Committee noted the State party's statement that the delay between the author's arrest and the beginning of the trial against him was not unduly long, since the preliminary inquiry was held during this period. The Committee considered however that the question whether or not the delay was in violation of articles 9, paragraph 3, and 14, paragraph 3(c), was a matter to be considered on the merits. It invited the State party to provide more precise information as to the investigations carried out during the period between arrest and trial and the preliminary hearings held.

12.7 The author claimed that he had objected to being represented at the retrial by the same lawyer who represented him at the first trial for the murder of Mr. Hunter because of alleged errors made by this lawyer, but that this objection was overruled by the Court. The Committee considered that this claim might raise an issue under article 14, paragraph 3(d), of the Covenant which needed to be examined on the merits. The Committee invited counsel to present more precise information concerning this claim, in particular when the objection was made, before which Court, and on what basis it was rejected.

13. The Committee further considered that the question whether the circumstances of the author's detention, as aggravated by his asthmatic condition, constituted a violation of article

10, paragraph 1, should be considered on the merits.

14. Accordingly, on 17 October 1996, the Human Rights Committee decided that the communication was admissible:

- as regards the author's arrest and trial for the murder of Angella Baugh-Dujon, insofar as it relates to the author's alleged ill-treatment upon and following his arrest, the alleged delay in charging him and the alleged delay in bringing him to trial,

- as regards the author's arrest and trial for the murder of Mr. Hunter, insofar as it relates to the alleged threats from police officers to kill him, the alleged failure to charge him, the alleged delay in bringing him to trial and the author's objection to being represented by his lawyer at the retrial,

- insofar as it relates to the author's conditions of detention.

State party's submissions on the merits and counsel's comments thereon

15.1 By notes of 20 March and 18 April 1997, the State party replies to the Committee's decision on admissibility. It informs the Committee that its investigations have not found any evidence in support of the allegation that the author was verbally abused and beaten by police officers after having been taken into custody. The State party further notes that these allegations were not made either at the preliminary inquiry or the trial. In conclusion, the State party denies that the ill-treatment ever took place.

15.2 The State party also submits that its investigations have found no evidence to substantiate the author's claim that he was not charged until four weeks after his arrest, and concludes that there has been no violation of the Covenant.

15.3 The State party reiterates its view that a delay of one year and seven months between arrest and trial does not constitute undue delay within the meaning of the Covenant. It states that the fact that a preliminary hearing was held during this time means that the criminal trial process had begun and therefore there was no breach of the Covenant.

16.4 In respect of the Hunter murder charge, the State party submits that investigations have yielded no proof in support of the allegation that police officers threatened to kill him.

16.5 Further, the State party notes that it is clear from the author's own statements that he was informed that he had been detained in connection with Mr. Hunter's murder and that evidence had been found at his home to connect him to the crime. The author's claim that he was not charged until he appeared in Gun court therefore must relate to the formal arraignment. The Ministry denies that there was a breach of the Covenant.

16.6 In respect of the delay between arrest and trial, the State party refers to its observations above.

16.7 In respect of the allegation that the author's request for a new counsel was rejected, the State party states that it would need more information from the author in order to comment on the allegation. It notes that the trial transcript does not show that the author objected to being represented by the same counsel.

17.1 In his comments on the State party's submission, counsel notes that the State party does not give details about its investigations into the author's complaint that he was beaten by the police upon arrest and that its results are thus not persuasive. The author wished to make a complaint, but did not know how and thought it would be too difficult.

17.2 In an affidavit given by the author on 9 September 1997, the author affirms that he was beaten in December 1988 by two police officers, whom he mentions by name, in Constant Spring Police Station. As a consequence, he suffered swellings to his head and bruising to his ribs and shoulders. He did not receive any medical treatment and the injuries took three weeks to heal.

17.3 With regard to the author's claim that he was not charged until four weeks after his arrest, counsel notes that the State party has offered no evidence to refute this claim.

17.4 With regard to the delay in bringing the author to trial, counsel notes that the State party has not furnished the precise information requested by the Committee in its decision on admissibility. In the light of this failure, counsel argues that the State party has not been able to justify the delay. With regard to the State party's argument that the criminal trial process had started with the preliminary enquiry and that thus no violation occurred, counsel notes that such an interpretation is open to abuse in that an early preliminary hearing could be heard and then the trial delayed for an indefinite time thereafter.

18.1 In his affidavit of 9 September 1997, the author states that during the initial interrogation by the police, he was told that if he refused to cooperate by admitting to the murder of Mr. Hunter he would be taken away and killed. Later, he was informed that he would be taken outside, forced to run and then shot as an escapee if he did not cooperate. In this regard, counsel refers to his remarks reflected in paragraph 17.1 above.

18.2 With regard to the author's claim that he was not charged with Mr. Hunter's murder until his appearance in Gun court, counsel notes that even if the author was informed of the information linking him to the murder of Mr. Hunter, this is not the same as actually charging the author with the murder. In the absence of evidence that the author was indeed charged, counsel argues that there has been a violation of article 9 of the Covenant.

18.3 Counsel notes that the delay between the author's arrest and his first trial in the murder of Mr. Hunter was thirty months. Counsel refers to its comments in paragraph 16.5 above, and submits that such a delay is in violation of articles 9(3) and 14(3)(c).

18.4 Counsel acknowledges that the trial transcript does not reflect that the author objected to being represented by the lawyer who had represented him at the first trial, but submits that the transcript does not record everything said in Court. Counsel submits that the author's

objection was made on 27 September 1993, and that in reply to his objection the trial judge stated that the lawyer did not get paid much to defend legal aid cases, so the author had to go on with him. Counsel also refers to pages 2 to 5 of the trial transcript from which it transpires that the author refused to plea, and argues that this was because he tried to communicate with the judge that he did not want to be represented by his lawyer.

18.5 In his affidavit of 9 September 1997, the author explains that because of his unpleasant experiences with his lawyer, he protested strongly, but that the judge told him that he had to go on with him. He states that he does not know why this conversation is not reflected in the trial transcript. According to the author, when he objected again, the judge did not allow him to speak, but told him to speak to his lawyer.

19.1 With regard to the conditions of detention, the author states that the block in which he is detained was searched on 5 March 1997. He was ordered to come out of his cell and beaten. His possessions were burned. He complained to the superintendent, but apparently nothing was done about it. The author also claims that one warder took \$1,600 away from him, and he was told it was confiscated. It is submitted that the author was locked up in his cell on 12 August 1997 without food or water for the whole day, and was allegedly threatened when he asked for some water.

19.2 Counsel submits that the author has suffered eye problems caused by the darkness in his cell. He attended the eye clinic in Kingston on 25 May 1994, but did not receive a prescription apparently until one year later. The glasses he then received proved too strong for him. Requests for a re-examination were delayed, and when other glasses were finally obtained, they were destroyed in the incident on 5 March 1997.

Issues and proceedings before the Committee

20. The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol.

Claims relating to the charge for the murder of Baugh-Dujon

21.1 With respect to the author's claim that he was beaten by police officers in December 1988, after his arrest, the Committee notes that the officers named by the author as being responsible for the beatings, gave evidence at the trial against him. At no point during the cross-examination of these witnesses, did counsel for the author put the claim to them that they had beaten the author. Nor did the author mention the beatings in his unsworn statement at the trial. In the circumstances, the Committee finds that the author's claim that he was beaten by the police officers upon his arrest is unsubstantiated.

21.2 The author has alleged that he was not informed of the charges against him until three or four weeks after his arrest. The Committee notes that the State party has replied that there is no evidence in substantiation of the complaint. The Committee finds that this general refutation by the State party is not sufficient to disprove the author's claim. In the absence

of any specific information from the State party on which date the author was charged with the offence, the Committee considers that the author's allegation is substantiated. The Committee finds that a delay of three or four weeks in charging the author is in violation of article 9, paragraphs 2 and 3, of the Covenant.

21.3 The Committee notes that the author was arrested on 30 December 1988 and that the trial against him began on 23 July 1990, a year and a half later. The Committee finds that such a delay in bringing an accused to trial is a matter of concern, but is of the opinion that it does not amount to a violation of articles 9, paragraph 3, since he was detained on a murder charge, and 14, paragraph 3(c), because the preliminary enquiry took place during that period.

Claims relating to the charge for the murder of Hunter

22.1 With respect to the author's claim that he was threatened by police officers if he were not to admit to the murder of Mr. Hunter, the Committee notes that the officers named by the author as being responsible for the threats, gave evidence at the trial against him. At no point during the cross-examination of these witnesses, did counsel for the author put the claim to them that they had threatened the author. Nor did the author give evidence to this effect at the trial. In the circumstances, the Committee finds that the author's claim that he was threatened by the police officers is unsubstantiated.

22.2 The Committee notes that the author's claim that he was not formally charged with the murder of Mr. Hunter until he appeared before the Gun Court is unchallenged by the State party. The Committee regrets that the State party has failed to provide the date of the hearing before the Gun Court. In the circumstances, the Committee considers that the State party has failed to provide sufficient information which would show that the author was promptly charged and brought before a judge or judicial officer in relation to the Hunter murder charge. The facts before the Committee thus reveal a violation of article 9, paragraphs 2 and 3, of the Covenant.

22.3 When the author was first informed of the charges against him concerning the murder of Mr. Hunter, he was in detention in connection with the murder of Ms. Baugh-Dujon. He was subsequently convicted of this later murder, before his trial in the Hunter case began. As the author was lawfully being detained in the Baugh-Dujon case, he had no right to be released in the Hunter case. Article 9 was therefore not violated. However, the trial in the Hunter case did not take place for two and a half years after he was first charged with the Hunter murder. In the absence of an explanation by the State party for this delay, the Committee finds that the delay amounted to a violation of the author's right under article 14, paragraph 3 (c) of the Covenant, to be tried without undue delay.

22.4 With regard to the author's claim that he objected to being represented by the same defence counsel at the beginning of the retrial in the Hunter murder, the Committee notes that in the absence of any written record of such protest, the facts before it do not substantiate a violation of article 14 of the Covenant.

Circumstances of detention

23.1 The Committee notes that the author has not provided any further information in respect to his initial complaint that the prison conditions affected his asthma. The Committee therefore finds no violation in this respect.

23.2 In recent submissions, the author has claimed that his deteriorating eyesight has not been properly treated. However, the Committee finds that he has not substantiated that the difficulties in obtaining proper treatment amount to a violation of article 10, paragraph 1, of the Covenant.

23.3 The author has also referred to two specific incidents, on 5 March and 12 August 1997, during which he claims he was ill-treated by the warders and on one occasion, all his belongings were destroyed. The State party has not replied to these allegations, although it had an opportunity to do so. In the circumstances, the Committee concludes that the author was subjected to treatment in violation of articles 7 and 10, paragraph 1, of the Covenant.

Conclusion

24. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose violations of articles 7, 9, paragraphs 2 and 3, 10 and 14, paragraph 3 (c), of the Covenant.

25. Under article 2, paragraph 3(a), of the Covenant, the State party is under the obligation to provide Everton Morrison with an effective remedy, including compensation and commutation. The State party is under an obligation to ensure that similar violations do not occur in the future.

26. On becoming a State party to the Optional Protocol, Jamaica recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not. This case was submitted for consideration before Jamaica's denunciation of the Optional Protocol became effective on 23 January 1998; in accordance with article 12(2) of the Optional Protocol it continues to be subject to the application of the Optional Protocol. Pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established. The Committee wishes to receive from the State party, within 90 days, information about the measures taken to give effect to the Committee's Views.

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

*/ The following members of the Committee participated in the examination of the present communication: Mr. Nisuke Ando, Mr. Prafullachandra N. Bhagwati, Mr. Th. Buergenthal,

Mrs. C. Chanet, Lord Colville, Mr. Omran El Shafei, Ms. Elizabeth Evatt, Mr. Eckart Klein, Mr. David Kretzmer, Mr. Rajsoomer Lallah, Ms. Cecilia Medina Quiroga, Mr. Fausto Pocar, Mr. Julio Prado Vallejo, Mr. Martin Scheinin, Mr. Maxwell Yalden and Mr. Abdallah Zakhia.

**/ The text of individual opinions by Committee members N. Ando, P. N. Bhagwati, T. Buerghenthal, C. Medina Quiroga and M. Yalden is appended to the present document.

1/ See decision declaring communication No. 536/1993 inadmissible, CCPR/C/53/D/536/1993 - paragraph 6.3.

Appendix

Individual opinion by Ms. Cecilia Medina Quiroga (dissenting)

1. I regret to dissent from the majority decision with regard to paragraphs 21.3 and 22.3 of these Views.

2. In paragraph 21.3 the Committee finds that a delay of a year and half to bring an accused to trial for the murder of Baugh-Dujon is a matter of concern but does not amount to a violation of article 9, paragraph 3. In my opinion, if a delay is a matter of concern, the Committee cannot conclude that there is no violation unless the State has given an explanation about the reasons for the delay. This was the Committee's position when deciding on the admissibility of the complaint, since it stated that the question of the delay should be considered on the merits and invited the State party "to provide more precise information as to the investigations carried out during the period between arrest and the preliminary inquiry and to inform the Committee of the exact dates of the preliminary hearings" (para 11.6). The State responded to this invitation by repeating the explanation given at the admissibility stage, namely that "the fact that a preliminary hearing was held during this time means that the criminal trial process had begun" (paras 6.3 and 15.3). In my opinion, given this answer, there is no other possibility than finding that the State violated article 9.3 for not having brought the complainant to trial for the murder of Baugh-Dujon without undue delay.

3. In paragraph 22.3 the Committee finds that there is no violation of article 9.3 with respect to the alleged undue delay in bringing the complainant to trial for the murder of Hunter, because "[a]s the author was lawfully being detained in the Baugh Dujon case, he had no right to be released in the Hunter case". I cannot agree with this conclusion. In the first place, I am of the opinion that each detention has to comply with, and be examined in, the light of article 9.3. In the instant case, the Committee should have examined whether the State could either have released the complainant or have submitted him to trial sooner, since that is the alternative which article 9.3 offers, instead of considering that as the complainant was already in lawful detention there was no point in examining the possible violation of article 9.3. Secondly, even if the Committee considered that examining the situation of the

complainant as to his detention for the murder of Hunter would amount to an academic exercise, I think it was the Committee's duty to carry out this exercise, if only to send the appropriate message to all States parties to the Covenant as to the independent character of each detention for the purposes of article 9.3. Furthermore, examination of the delay to bring the complainant to trial for the murder of Hunter brings me to the conclusion that, again in this regard, there is a violation of article 9.3, because there is no reasonable explanation for the long delay during which the complainant was kept in detention and without trial. I do not dissent from the conclusion reached by the Committee in this paragraph that a violation of article 14, paragraph 3 (c) has also occurred.

Cecilia Medina Quiroga (signed)

[done in English]

Dissenting opinion by Mr. Justice P.N. Bhagwati, co-signed by Mr. Nisuke Ando, Mr. Th. Buergenthal and Mr. Maxwell Yalden.

We have gone through the majority opinion of the Human Rights Committee in the case of *Everton Morrison v. Jamaica*. We agree with the view expressed in the majority opinion, save and except in regard to violation of Article 14, paragraph 3(c) of the Covenant.

The majority members have taken the view that there was undue delay in bringing the author to trial after he was charged and that this delay constituted a violation of the author's right under Article 14, paragraph 3(c) of the Covenant. When the author was first charged for the murder of Hunter, he was in detention in connection with the murder of Ms. Baugh-Dujon. Since the author was lawfully detained in connection with the murder of Ms. Baugh-Dujon, he had no right to be released in Hunter's case and there was accordingly no violation of Article 9, paragraph 3 of the Covenant. He was then tried and convicted of the murder of Ms. Baugh-Dujon on 25 July 1990 and consequently his detention continued. It is true that there was a delay of two and a half years between the date the author was charged for the murder of Hunter on 17 January 1989 and the date, namely 24 July 1991, when he was brought to trial and convicted of the murder of Hunter. But it must be remembered that during this period he was tried and convicted for the murder of Ms. Baugh-Dujon on 25 July 1990 and there was therefore effectively only a delay of 12 months before he was brought to trial and convicted for the murder of Hunter on 24 July 1991. The delay in bringing the author to trial for the murder of Hunter cannot, therefore, be regarded as undue delay, and there was accordingly no violation of Article 14, paragraph 3(c), of the Covenant.

Mr. Justice P. N. Bhagwati (signed)

Mr. Nisuke Ando (signed) Mr. Th. Buergenthal (signed)

Mr. M. Yalden (signed)

[done in English]