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HUMAN RIGHTS COMMITTEE
Sixty-eighth session
13 - 31 March 2000

VIEWS

Communication N° 625/1995

Submitted by: Michael Freemantle
(represented by Mr. Saul Lehrfreund of
the London law firm of Simons, Muirhead
and Burton)

Alleged victim: The author

State party: Jamaica

Date of communication: 16 February 1995 (initial submission)

Documentation references:

- Special Rapporteur's rule 86/91
decision, transmitted to the State party
on 3 March 1995 (not issued in
document form)
- CCPR/C/62/D/625/1995. Decision on
admissibility adopted on 30
March 1998

Date of adoption of Views 24 March 2000

On 24 March 2000 the Human Rights Committee adopted its Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 625/1995. The text of the Views is appended to the present document.

[ANNEX]

*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
- Sixty-eighth session -

concerning

Communication N° 625/1995

Submitted by: Michael Freemantle
(represented by Mr. Saul Lehrfreund of
the London law firm of Simons Muirhead
and Burton)

Alleged victim: The author

State party: Jamaica

Date of communication: 16 February 1995 (initial submission)

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

Meeting on 24 March 2000

Having concluded its consideration of communication No. 625/1995
submitted to the Human Rights Committee by Mr. Michael Freemantle 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 the State party,

Adopts the following:

*The following members of the Committee participated in the examination
of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr.
Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Lord Colville, Ms.
Elizabeth Evatt, Ms. Pilar Gaitán de Pombo, Mr. Louis Henkin, Mr. Eckart
Klein, Mr. David Kretzmer, Mr. Rajsoomer Lallah, Ms. Cecilia Medina Quiroga,
Mr. Martin Scheinin, Mr. Hipólito Solari Yrigoyen, Mr. Roman Wieruszewski,
Mr. Maxwell Yalden and Mr. Abdallah Zakhia.

**An individual opinion by member Eckart Klein is attached to the present
document.

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

1. The author of the communication is Michael Freemantle, who at the time of submission of his communication was awaiting execution at St. Catherine District Prison, Jamaica. He claims to be a victim of violations by Jamaica of articles 7, 9, paragraphs 2 to 4, 10, paragraph 1, and 14, paragraphs 1 and 2, of the International Covenant on Civil and Political Rights. The author is represented by Saul Lehrfreund of the London law firm of Simons Muirhead and Burton. On an unspecified date in 1995, the author's death sentence was commuted to life imprisonment. An earlier communication submitted to the Human Rights Committee by Mr. Freemantle was declared inadmissible on 17 July 1992, on the ground that the author had failed to exhaust available domestic remedies, since he had not petitioned the Judicial Committee of the Privy Council for special leave to appeal.

Facts as submitted by the author:

2.1 On 1 September 1985, the author was arrested and placed in custody; four days later, he was charged with the murder of one Virginia Ramdas. The author was first tried in 1986, together with a co-defendant, E.M.; the jury failed to reach a unanimous verdict in the author's respect, and a re-trial was ordered. On 19 January 1987, the author was found guilty as charged in the Clarendon Circuit Court and sentenced to death; on 21 January 1987, he appealed to the Court of Appeal, which dismissed the appeal on 4 December 1987. The Judicial Committee of the Privy Council dismissed the author's petition for leave to appeal on 27 June 1994. The offence for which the author was convicted was classified as a capital offence under the Offences Against the Persons (Amendment) Act 1992.

2.2 The prosecution contended that on 29 August 1985, at approximately 11:00 p.m., the author fired into a crowd watching a film in Raymonds, parish of Clarendon, injuring several people, among whom was V. Ramdas who died of gunshot wounds the next day. The prosecution relied primarily on the evidence of two witnesses, A.K. and W.C., who were in the cinema at the time of the incident, as well as the evidence of C.C., whose house had been shot at about 15 minutes after the cinema incident.

2.3 At the initial trial, A.K. had identified the author as the man who shot into the crowd; he also identified E.M. and one C.F. as the author's accomplices. At the re-trial, however, he testified that he had identified Mr. Freemantle as the gunman as a result of pressure put on him by the community of Raymonds (mainly consisting of P.N.P. supporters), as the author was a known supporter of the J.L.P. His evidence for the re-trial was that on the evening in question, he had seen some men including "a man looking like Freemantle", E.M. and C.F. going toward the cinema; the man looking "like Freemantle" carried something like a long gun in his hand; this man approached a hole in the wall; an explosion was heard; the man climbed onto a tree and jumped over the wall onto the lawn. A.K. apparently had known the author for 18 years. The trial transcript reveals that when giving evidence at the re-trial, A.K. was himself in custody on charges of illegal possession of firearms and shooting with intent. He conceded that while in custody, he had seen the author and discussed the case with him; he admitted that there were political differences between himself and the author.

2.4 W.C. testified that he had known the author for 15 years, had seen him jumping over the wall after an explosion, firing twice, and then climbing back over the wall. He saw the author for about a minute, recognizing him in the bright moonlight. C.C. testified that on the evening in question at 11:50 p.m., he was at home, half a mile from the cinema, when he heard stones being thrown at the house. Looking out of a window, he recognized E.M., whom he knew. He then saw the author, whom he had known for 8 to 10 years, pointing a gun at one of the windows and firing. According to C.C., he saw the author for about two minutes. W.C. and C.C. testified that they had no interest in politics.

2.5 The arresting officer, Det. Cpl. Davis, testified that he went to search for the author and E.M. on 30 August 1985. He could not find them and had warrants for their arrest issued. On 2 September 1985, he recognized the author at May Pen Police Station, where he arrested him. Being cautioned, the author replied that he wanted to see his lawyer. Another police officer testified that he took the author into custody on 1 September 1985.

2.6 The author made an unsworn statement from the dock, stating that, at the time of the incident, he was at Mineral Heights, watching television with E.M. and several other people. He did not leave the place and went to bed between 12:30 to 1:00 a.m. On 1 September 1985, he was told by a police officer that he was a suspect in a murder case, and was detained at the May Pen Police Station. The following day, he saw Det. Cpl. Davis and asked him why he was being held. Davis ignored him, and charged E. M. with destruction of property. The author claimed that it was not until the afternoon of 4 September 1985 that he was formally arrested and charged with murder; he claims that he was brought before an examining magistrate on 6 September 1985. E.M., also in custody at the time of the re-trial, gave sworn evidence for the defence, corroborating the author's alibi. In cross-examination, he admitted that he had spoken to the author in custody but denied having discussed the case, although they were both arrested and charged in connection with the shooting at Raymonds. He affirmed that, while in custody, he had seen prosecution witness A.K. and added that one Laurel Murray, a cousin of the author, was beaten by inhabitants of Raymonds before the shoot-out.

2.7 In his summing-up, the trial judge admonished the jury not to be influenced by political preferences and suggested that, as far as the author's identification was concerned, they should not rely on the evidence of A.K. He further pointed out that the remaining prosecution witnesses had stated that they were neither involved nor interested in politics (which implies that the credibility of their respective testimonies was considerably greater).

2.8 On appeal, the author's lawyer argued that: (a) the verdict was unreasonable and could not be supported having regard to the evidence and (b) the summing-up on identification was inadequate and failed to emphasize the inherent dangers and possibility of mistakes. In respect of ground (b), the Court of Appeal concluded that "despite the absence of a formal warning there had been no miscarriage of justice". Had the jury been properly directed in the sense that had they been given the necessary warning, they would have come to the same conclusion. Before the Judicial Committee, the main issue to be argued was identification.

2.9 As to the claims under article 14, counsel invokes a statement taken from A.K. by an officer of the Criminal Investigation Branch who visited the author in prison on 25 April 1988. In his affidavit, A.K. states that he and the author had been friends but had developed political differences. He also states: "I did not see who fired the shots. Earlier that day Laurel Murray was beaten by citizens [...]. He is the cousin of Michael Freemantle. He told them that I was the person who beat him. The police knew that I was not involved [...] On 1 September 1985, I [...] was taken to Det. Cpl. Davis [...]. [He] told me that he knew that I did not beat Laurel Murray [...]. He said that since they are telling lies on me I should give a statement saying that Freemantle was the one who fired the shots ... He said that W.C. would give a statement supporting me. I was arrested... for the wounding of Laurel Murray. I went to court where I saw Freemantle. He told me that he was going to tell Laurel Murray to send me to prison. The case was tried and I was dismissed. [...]. I went to Davis' office where he wrote a statement I read it and signed it as true and correct. [...]. In this statement I said that I saw Freemantle fired the shots. I gave this evidence at the first trial of Freemantle. [...] In 1986, I was arrested and charged for shooting with intent by Det. Cpl. Davis. In Jan. 1987, I told [Freemantle] that I gave false evidence at the first trial and that I would be telling the truth at the second trial. Davis told me that if I change my evidence he was going to influence the witnesses to give evidence to convict me. As a result of these threats I gave evidence at Freemantle's re-trial and changed a lot of parts to help him [...]. The evidence I gave at both trials are false. I gave it because of fear and threats by Det. Cpl. Davis".

2.10 On the same day, a statement was taken from the author. He states that in his community he is known as a J.L.P. supporter, and that there is constant conflict between J.L.P. and P.N.P. supporters. He claims to be innocent and that he did not go home on the night of 29-30 August 1985, but that he stayed at Mineral Heights. Much of the author's observations coincide with those made by A.K. in his affidavit.

2.11 On 14 June 1988, the Director of Public Prosecutions forwarded to the Governor-General all materials obtained as a result of the police investigation into A.K.'s allegations. According to counsel, no action was taken by the Governor-General in respect of the DPP's letter. On 29 August 1990, the Jamaica Council for Human Rights contacted a Jamaican lawyer on the author's behalf; this lawyer advised to petition the Governor-General to have the matter referred back to the Court of Appeal of Jamaica; he further stated that legal aid would not be provided, but that he was willing to take the case on.

2.12 As to exhaustion of domestic remedies, it is submitted that a constitutional motion is not available to the author in practice because of his lack of funds and the unavailability of legal aid for this purpose. Counsel recalls the difficulties of finding a lawyer in Jamaica to represent applicants in constitutional motions. The State party's unwillingness to provide legal aid for such motions is said to absolve Mr. Freemantle from pursuing constitutional remedies.

The complaint:

3.1 It is submitted that the author did not receive a fair trial within the meaning of article 14, paragraph 1, because the investigating officer who influenced A. K. to implicate the author falsely could have similarly influenced

the other main prosecution witnesses, W.C. and C.C. Counsel refers to the Committee's General Comment No. 13, where the Committee held that it is a duty for all public authorities to refrain from prejudging the outcome of a trial.¹ He submits that Det.Cpl. Davis prejudiced the outcome of the author's trial, in violation of article 14, paragraph 2.

3.2 Counsel invokes another sworn affidavit signed by the author on 27 October 1994, in which he notes that he was arrested and taken to May Pen on 1 September 1985, and that he was held in custody for four days before being charged with murder. During this time, he had no access to a lawyer. Counsel contends that there is no justification for a four day delay between the author's detention and his being informed of the charges against him. With reference to the Committee's General Comment No. 8² and its jurisprudence³, it is submitted that the author's pre-trial detention was contrary to the requirements of article 9, paragraphs 2, 3 and 4.

3.3 As to alleged violations of articles 7 and 10, the author recalls that on 28 May 1990, he and other inmates broke out of their cells because they had not been allowed to exercise and slop up. The disturbances spread to other parts of the prison. Inmates were asked to return to the cells and complied, but subsequently, warders took the author from his cell, took off his clothes, searched him and started to beat him with a piece of metal. He sustained injuries to head, knee, stomach and eyes, having been beaten for about five minutes. He was then left in his cell unattended, without medical attention. Only at midnight was he taken to the hospital for treatment; he received stitches to the head and was discharged. Even after the event, and investigations into the actions of some warders, the author contends that he continued to be subjected to constant verbal intimidation and abuse. On 16 June 1990, the Jamaica Council for Human Rights wrote to London counsel, noting that the author was "badly battered as a result of the disturbances in the prison at the end of last month", and submitted a complaint before the Jamaican authorities on the author's behalf.

3.4 It is submitted that the treatment to which the author was subjected on 28 May 1990, and the inadequate medical treatment he subsequently received, as well as the continuing fear of reprisals by warders, amount to a violation of articles 7 and 10, of the Covenant. Furthermore, the above is said to be in breach of articles 21, 30 and 32 of the UN Standard Minimum Rules for the Treatment of Prisoners.

3.5 Counsel claims a violation of articles 7 and 10 on account of the prolonged detention of the author on death row, under harsh conditions, noting that the author was held on death row for well over eight years. Referring to the

¹ General Comment 13 [21] (article 14), paragraph 7.

² General Comment 8 [16] (article 9); CCPR/C/21/Rev.1, page 7; see paras. 2 and 3, where the Committee noted that delays under article 9, paragraph 3, must not exceed a few days.

³ Communications Nos. 257/1987 (Kelly v. Jamaica), 277/1988 (Jijon v. Ecuador), and 336/1988 (Andre Fillastre v. Bolivia).

judgment of the Judicial Committee in Pratt and Morgan v. Attorney-General of Jamaica, it is submitted that the agony resulting from such long awaited death amounts to cruel, inhuman and degrading treatment. As to conditions of detention on death row, counsel invokes the reports of two non-governmental organisations on the matter. The author himself was confined to a tiny cell for twenty-two hours every day, spending most of his waking hours isolated from other men, with nothing to keep him occupied. Much of his time is spent in enforced darkness. To counsel, these factors are sufficient in themselves to justify findings of violations of articles 7 and 10.

3.6 Counsel affirms that the author made reasonable efforts to seek domestic redress for the treatment he was subjected to on death row. By December 1993, the Office of the Director of Public Prosecutions had not confirmed that charges were pending against the warders responsible for the beatings and the death of three inmates in May 1990. For counsel, the domestic complaints process is wholly inadequate.

The Committee's admissibility decision:

4.1 During its 62nd session the Committee considered the admissibility of the communication.

4.2 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.

4.3 The present communication was transmitted to the State party in March 1995, with a request to provide information and observations in respect of the admissibility of the author's claims. No information was received from the State party, in spite of a reminder addressed to it in October 1997. The Committee regretted the absence of cooperation on the part of the State party. In the circumstances, due weight was given to the author's allegations, to the extent that they had been sufficiently substantiated for purposes of admissibility.

4.4 As to the allegations under article 14 of the Covenant, the Committee noted that they related to the evaluation of facts and evidence in the case by the trial judge and the jury. The Committee recalled that it was generally for the appellate courts of States parties to the Covenant and not for the Committee to evaluate the facts and evidence in a particular case, unless it could be ascertained that the evaluation of evidence and the instructions to the jury were clearly arbitrary or otherwise amounted to a denial of justice. The Committee noted that the author's submissions in relation to his claim did not indicate that the trial was manifestly tainted by arbitrariness or amounted to a denial of justice. Accordingly, he had failed to substantiate his claim, for purposes of admissibility, and this part of the communication was inadmissible under article 2 of the Optional Protocol.

4.5 The Committee considered that the author had sufficiently substantiated the remaining claims relating to the circumstances of his pre-trial detention (article 9, paragraphs 2 to 4), to beatings and intimidation he allegedly was subjected to while on death row and to the circumstances of his detention on death row. In the absence of any State party information on the availability of effective remedies which might still be available to the author in respect of

these claims, the Committee considered that they warranted consideration on the merits.

States party's merits observations and the counsel's comments:

5.1 In a submission dated 3 June 1998, the State party states that the author's allegation concerning articles 7 and 10 are twofold, the first being the assertion that during the disturbances of 28 May 1990 the author was badly beaten by wardens and then denied medical attention for several hours. In this respect, the State party informed the Committee: " that a Coroner's inquest was held in relation to the deaths of the three prisoners who were killed in the 1990 disturbances and that the author gave evidence at the inquest. The results thereof will be obtained and sent to the Committee."

5.2 With regard to the second allegation of violation of article 7 and 10 due to the author's prologued detention on death row, the State party denies that there has been a breach of the Covenant and refers to the Committee's decision in Pratt and Morgan.⁴ Therefore a specific period on death row does not constitute a violation of the Covenant. The commutation of the author's death sentence was done in accordance with the requirements of domestic law.

5.3 With regard to the alleged breach of article 9, paragraphs 2, 3 and 4, due to the author having been detained for four days before being informed of the charges against him, the State party denies this, since it claims that according to its investigations the author was made aware of the nature of the charges against him at the time of his arrest. The formal charge of murder may have been laid at a later stage, however this was not detrimental to the application or constituted a violation of the author's rights.

5.4 In a further submission dated 24 August 1999 the State party, informs the Committee that with regard to the alleged beating of the author by warders on 28 May 1990, when the author was interviewed by the Ministry he could not recall the names of the warders who were involved in the beatings incident. He said he could only recall that one of the warders was called "Big Six". On enquiry it was ascertained that "Big Six" no longer works with the prison. Furthermore the Superintendent at the time (nine years ago) has since retired. In the absence of names the Ministry was unable to conduct a meaningful investigation.

5.5 In the same submission the State party contends that the author during his interview with the Ministry, admitted that he was the main architect behind the riots of 1990 and that on reflection if the warders had not used force to subdue the inmates, the result would have been far worse.

5.6 The State party also contends that the author was not denied medical treatment in 1990, as he alleged in his petition . He was seen on several different occasions by the Prison medical officer and received medical attention from the Spanish Town Hospital and Health Clinic. The State party consequently

⁴See communication No. 210/1986 and 225/1987, paragraph 13.6, it was said "... In principle prolonged judicial proceedings do not per se constitute cruel, inhuman or degrading treatment even if they can be a source of mental strain for convicted prisoner".

denies that there has been any breach of article 7 and 10 in respect to medical treatment.

5.7 With respect to the allegations of violation of the Covenant due to the conditions of detention while on death row including counsel's allegation that the author spent 22 hours in enforced darkness etc (see para.3.5 supra) the State party refers to the Committee's jurisprudence⁵ to deny any violation of the Covenant.

6.1 By submission dated 4 November 1998, counsel states that the State party has in no way negated the author's allegation that he was subjected to ill-treatment on 28 May 1990 and was subsequently denied adequate treatment; and that he continually feared reprisals from the wardens. Counsel contends that the State party has failed to provide any evidence to rebut the author's allegations as contained in the compliant of 15 February 1995, and consequently maintains that a violation of articles 7 and 10 of the Covenant has occurred.

6.2 With regard to the allegation of a violation of articles 7 and 10 of the Covenant since the author has been held on death row for over eight years, counsel contends that the State party has not appreciated the Committee's jurisprudence when stating that a specific period on death row does not constitute a violation of the Covenant. He submits that a period of detention on death row in excess of eight years can amount to a violation of articles 7 and 10 paragraph 1, if the author can show further compelling circumstances, reference is made to communication number 588/1994 para.8.1. Counsel respectfully reminds the Committee that during his detention on death row the author, was confined to a tiny cell for 22 hours everyday, most of his waking hours isolated from other men with nothing whatsoever to keep him occupied. To add to his humiliation and the insult to his dignity as a human being, the author spent most of his time in enforced darkness. Counsel contends that the State party has not denied the continued presence of these factors during the author's incarceration on death row and merely asserted that prolonged judicial proceedings do not per se constitute cruel, inhuman or degrading treatment.

6.3 With regard to the State party's challenge of a violation of article 9, paragraphs 2 , 3 and 4, in that the author was not promptly informed of the charges against him counsel reiterates that the author was not aware at the time of his arrest of the charges against him. He claims that the State party has failed to provide any particulars as to the nature of the investigations conducted nor has it disclosed either to the Committee or to the author the results of the investigation. Counsel maintains that the author was held in custody for four days incommunicado before being told that he was being charged for murder. He contends that the State party does not deny the allegations but merely says that it was not to the detriment of the author as he was aware of the nature of the charges against him at the time of his arrest. Counsel further contends that no compelling evidence was called at trial or has subsequently been provided by the State party to explain the delay of four days between the author's detention and the investigating officer managing to speak to him. Counsel reiterates that such a delay constitutes a violation of the Covenant.

⁵See communication No. 619/1995 (F. Diedrick v. Jamaica)

Examination of the merits:

7.1 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 for in article 5, paragraph 1, of the Optional Protocol.

7.2 With regard to the author's complaints of ill-treatment while in detention at St. Catherine's District Prison, the Committee notes that the author has made very precise allegations, relating to the incidents where he was beaten (paragraph 3.3 supra). The Committee notes the State party's information, that an enquiry had taken place to investigate the 1990 disturbances in which three prisoners had died, and that the author gave evidence at that enquiry. It also notes the information provided in the further submission whereby the State party contended that at the interview with the author, carried out by the Ministry, he had been unable to provide sufficient information on the names of the persons who had beaten him and those names that he had provided were of persons who either no longer worked in the prison or had retired. The State party, consequently, considered that no meaningful investigation could be carried out. The Committee considers that the fact that the perpetrators no longer work in the prison, in no way absolves the State party from its obligations to ensure the enjoyment of Covenant rights. The Committee notes that no investigation was undertaken by the State party in 1990 after the Jamaica Council for Human Rights had submitted a complaint, to the authorities on the author's behalf. In the absence of any refutation by the State party due weight should be given to the author's allegations. In these circumstances the author's right not to be subjected to degrading treatment but to be treated with humanity and with respect for the inherent dignity of the human person, were not respected in violation of articles 7 and 10, paragraph 1.

7.3 With regard to the conditions of detention on death row at St. Catherine's District Prison, the Committee notes that the author has made specific allegations, about the deplorable conditions of his detention. He claims that he is confined to a 2 metre square cell for twenty-two hours each day, and remains isolated from other men for most of the day. He spends most of his waking hours in enforced darkness and has little to keep him occupied. He is not permitted to work or to undertake education. The State party has not refuted these specific allegations. In these circumstances, the Committee finds that confining the author under such circumstances constitutes a violation of article 10, paragraph 1, of the Covenant.

7.4 The author has claimed a violation of article 9, paragraph 3, of the Covenant since there was a delay of 4 days between the time of his arrest and the time when he was brought before a judicial authority. The committee notes that the State party has not addressed this issue specifically but has simply pointed out in general terms that the author was aware of the reasons for his arrest. The Committee reiterates its position that the delay between the arrest of an accused and the time before he is brought before a judicial authority should not exceed a few days. In the absence of a justification for a delay of four days before bringing the author to a judicial authority the Committee finds that this delay constitutes a violation of article 9, paragraph 3, of the Covenant.

7.5 The author also has claimed a violation of article 9, paragraphs 2 and 4, since he was not promptly informed of the charges against him at the time of his arrest. Article 9, paragraph 2, of the Covenant gives the right to everyone arrested to know the reasons for his arrest and to be promptly informed of the charges against him. Counsel contends that the author was not informed of the charges against him until four days after his arrest. The Committee notes the State party's contention that the author was aware of the reasons for his arrest in general terms even if the formal charges for murder were only laid against him four days after his arrest. It also notes information provided by counsel where in an affidavit signed by the author on 4 May 1988, he states he was arrested and charged with murder on 1 September 1985. Furthermore, the Committee notes that this issue was not brought to the attention of the Courts in Jamaica. On the basis of the information before it the Committee concludes that the author was aware of the reasons for his arrest and consequently there has been no violation of the Covenant in this respect. The Committee has not found any facts that substantiate a violation of article 9 paragraph 4.

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose a violation of article 7, 10, paragraph 1, and 9 paragraph 3, of the Covenant.

9. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide Mr. Freemantle with an appropriate and effective remedy. The State party is under an obligation to ensure that similar violations do not occur in the future.

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

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

Individual opinion by member Eckart Klein

I think the Committee should have expressly spelled out that the author is entitled, apart from other possible appropriate remedies, to compensation according to article 9, paragraph 5, of the covenant. A person like the author who has been arrested, but not promptly brought before a judge according to article 9, paragraph, 3 of the Covenant (see paragraph 7.4 of the present Views), is unlawfully detained. His right to compensation is therefore a consequence of the violation of his right under article 9.

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