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Represented by: APPLICANT: Alan Green

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HAVING SEEN:

1. Mr. Clifton Wright, a prisoner on death row in Jamaica, presented his case to the Commission in an undated letter which was received at the Commission on February 13, 1984.

Mr. Wright alleged that he had been the victim of a miscarriage of justice since he had been condemned to death, after trial, for a killing he claimed to have no knowledge of. He presented the facts as follows:

I am, sir, presently on death row convicted for the gun slaying of a man whom I learned was murdered when he was held up and robbed of his motor car. The said care I was driving was loaned to me by an associate. Sir, this is how I got involved. On August 29, 1981, my girlfriend who lives in St. Catherine, about ten miles from Kingston, had to get back to work. As a result I asked Desmond, the associate, whom I knew to be a mechanic to assist me by giving me a lift. David said the he was busy but I could drive a Cortina car which he said he was repairing for someone.

Unknown to me the car was stolen. Within a few minutes after I was inside of the premises where my girlfriend works, about 3:15 p.m., the door of the premises was kicked open and Mr. Winston Phillips, who was accompanying me, and myself were set upon and beaten by about three men with guns who later turned out to be policemen who accused us of robbing and killing the owner.

After this beating we were chained and taken to the Police Station where we were again beaten. So severe were the beatings that we were unconscious for several moments. Ajax was thrown in my eyes and we were held up and finger printed. That same night we were taken to the Spanish Town Hospital but did not receive any treatment.

At the police station no statement was taken from me. The court appointed attorney came to see me only a few weeks before the trial. At the trial I was not given the opportunity to state whom I got the car from. The trial judge stopped me in the middle of my statement, saying it was not necessary to go further. Had I known it to be a stolen vehicle I would not have driven it and furthermore, I do not even know why the owner of the car was killed much less to be involved. Yet I am here in the eyes of society as a killer.

2. On May 4, 1984, the pertinent parts of the communication were transmitted to the Government of Jamaica, pursuant to Article 34 of the Commission's Regulations, with a request that the Government supply whatever information it considered appropriate within 90 days.

3. No response was presented by the Jamaican Government, consequently the Commission on August 19, 1985, reiterated its request for information. An additional request for information was sent on June 5, 1986 in the face of the Jamaican Government's continued silence.

4. By note dated December 19, 1986, the Government of Jamaica transmitted to the Commission a copy of the Notes of Evidence in this case from the Home Circuit Court.

5. On November 5, 1987, the Commission received a cable from Mr. Wright's attorney who requested that the case be withdrawn. Following telephone conversations with Mr. Alan Green Esq., Mr. Wright's counsel before the Privy Council in London, the request to withdraw was rescinded.

6. By letter dated November 10, 1987, Mr. Green submitted a revised petition on behalf of Mr. Clifton Wright. The text of that petition was subsequently amplified in a document titled "Full statement of the case and grounds of Application" prepared by Mr. Green and dated November 27, 1987. This 53-page document raises a fundamental issue of fact. That issue of fact, in the words of Mr. Green, is the "unequivocal and uncontested evidence of a pathologist called by the prosecution," which proved that at the time of the alleged murder Clifton Wright was in police custody. This evidence is wholly inconsistent with Clifton Wright's evidence that the significance of this evidence was overlooked by his defense at the trial, and overlooked (or deliberately disregarded by the trial judge.)"

7. The details of this contradiction emerge from the transcript and are set forth by Mr. Green as follows:

The alleged victim, Louis MacDonald failed to return home to his wife as expected at about six o'clock in the afternoon of the 28th August 1981. At about that time it was alleged by the prosecution that he had been seen being held at gunpoint in his car.

Clifton Wright was arrested at about six o'clock in the afternoon on 29th August 1981, and thereafter remained in custody.

Louis MacDonald's body was found at about two o'clock in the afternoon on the 30th August 1981.

Dr. Richards performed his post-mortem at one o'clock in the afternoon on the 1st September 1981. His evidence was that death had taken some forty-seven hours before the post-mortem from a gunshot wound inflicted about twenty minutes before death (transcript, pages 133 to 135).

Accordingly, the evidence of the pathologist was that death had taken place at about two o'clock in the afternoon of 30th August, 1981, namely at about the time the body had been found, and after Clifton Wright had already been in custody for about twenty hours.

8. Mr. Wright was convicted of murder in the Home Circuit Court in Kingston, Jamaica on March 29, 1983, at which time he was sentenced to death. He appealed against his conviction to the Court of Appeal of Jamaica but his appeal was dismissed on July 11, 1986. Reasons were given by the Court on September 24, 1986. On October 8, 1987, his application for special leave to appeal to the Judicial Committee of the Privy Council in London was rejected. Consequently, Mr. Wright has no further domestic remedies to exhaust.

9. The evidence presented by the pathologist called by the prosecution, which proved that at the time of the alleged murder Clifton Wright was in police custody, and the significance of this evidence, was overlooked by the defense lawyer at the trial stage, and overlooked or disregarded by the trial judge.

10. This evidence was not pointed out or argued before the Jamaican Court of Appeal.

11. The evidence was the basis for Clifton's Wright's Petition to the Privy Council in London and set

forth in paragraph 7 of his Petition. Paragraph 7 stated the following:

That the undisputed evidence for the Crown showed that the chronology of events was as follows:

- (i) Dr. Lawrence Richards performed a post-mortem on Louis McDonald at 1:00 p.m. on the 1st September 1981. He estimated that Mr. McDonald had died forty-seven hours before his examination. Death was stated to be the result of a gunshot wound, and would have occurred ten to twenty minutes after infliction of the wound. (transcript of evidence pages 133 to 135). It follows that Dr. Richards estimated that death had taken place at about 2:00 p.m. on the 30th August 1981.
- (ii) That Mr. McDonald's body had been discovered by the police at some time after 2:00 p.m. on the 30th August 1981 (transcript of evidence at pages 232 and 233).
- (iii) That your Petitioner had been placed under arrest at about 7:00 p.m. on the 29th August 1981 (transcript pages 136 and 140), and thereafter remained in custody until at least late in the night of the same day when he was taken to hospital (transcript pages 193, 194, 206, 210, and 219).

That the date of arrest was the 29th August is evidenced by the testimony of Eric McIntosh (transcript pages 86 to 94); Detective Corporal Andrew Bushell (transcript pages 136 and 140); Jennifer Thomas (transcript pages 172 and 173); Detective Acting Corporal Everel O'Neil (transcript pages 193 and 194); and Detective Corporal Neville Grand (transcript page 140).

Although on being questioned by the learned trial judge Detective Grant makes one reference to the date of arrest being the 30th August (transcript page 265), this is wholly inconsistent with the evidence of all other witnesses who testify as to the date of arrest, his own earlier evidence, and his own evidence of the date when the body was discovered, which was clearly after your Petitioner was arrested.

Although continuity of custody from late at night on the 20th August 1981 to the 3rd September 1981 cannot be traced in the evidence, it is respectfully submitted that the irresistible inference is that there was such continuity. In any event, an allegation that the murder was committed after your Petitioner had been arrested is wholly inconsistent with the prosecution case.

12. The application before the Privy Council was not an appeal hearing, but an application for leave to appeal. The application, as mentioned above, was rejected on October 9, 1987.

According to the petitioners:

The granting of such leave to appeal (and therefore permitting a full hearing) is discretionary. It is settled law that leave will only be granted in the most exceptional cases. The following statements appear in the cases:

"Her Majesty will not review or interfere with the course of criminal proceedings, unless it is shown that, by a disregard of the forms of legal process, or by some violation of the principles of natural justice, or otherwise, substantial and grave injustice has been done." (Re: Abraham Mallory Dillet (1887) 12 App Case 459 at page 467).

(The Privy Council) "Is not prepared, or required, to re-try a criminal case, and does not concern itself with the weight of evidence, or the conflict of evidence or with inferences drawn from evidence, or with questions as to corroboration or contradiction of testimony, or whether there was sufficient evidence to satisfy the burden of proof." *Muhammed Nawaz v The King Emperor* (1941) LR 68 Ind App 126 P.C.

ii. It is not possible to find a settled statement of principle as to how the Privy Council approaches points not raised before at trial or on appeal. However, it is clear that by their practice the Privy Council are very reluctant to entertain such points.

iii. Given the difficulties raised by the approach of the Privy Council in general, and in particular to points being raised for the first time, Clifton Wright's advisors restricted his application for leave to those points which were believed to be most likely to succeed before that forum on a relatively brief interlocutory hearing.

iv. In refusing Clifton Wright's application for leave the Privy Council did not give reasons. Most of the argument concerned the significance of the evidence as to the time of death. During the course of argument it was clear that they considered:the argument deriving from the overlooked significance of time of death had considerable force; however, it was inappropriate for the point to be raised for the first time on application to the Privy Council, and raised a difficult hypothesis consistent with innocence (that the victim was a prisoner after the 29th August).They also considered the evidence of recent possession to have considerable force.

13. Consequently, petitioners allege that "the circumstances of the case as a whole clearly show that there was gross unfairness and injustice in the conduct of Clifton Wright's trial; that there is a substantial probability that he is innocent of the crime of which he was convicted; and that there is a grave risk that his conviction for murder amounts to a substantial miscarriage of justice."

14. The information presented by Clifton Wright's counsel, Mr. Alan Green was transmitted to the Government of Jamaica by note dated November 25, 1987 with a request that the Government submit whatever observations it considered appropriate within 60 days.

15. On December 10, 1987 the Commission requested that Mr. Wright's death sentence be commuted for humanitarian reasons and to avoid irreparable damage.

16. By note dated February 29, 1988 the Government of Jamaica responded to the Commission's request of December 10, 1987 and advised the Commission that, in the opinion of the Jamaican Government, Mr. Wright's petition should be declared inadmissible on the ground "that domestic remedies under domestic law have not been pursued and exhausted."

17. By cable dated March 8, 1988 the Commission requested of the Jamaican "urgent further clarification regarding the domestic remedies available to this individual whose case has been rejected for leave to appeal before the Privy Council."

18. During its 72nd period of sessions the Commission held a hearing on this case. The hearing was held on March 24, 1988.Mr. Alan Green, who presented Mr. Wright's petition to the Privy Council, represented Mr. Wright and Ms Evadne Coye of the Jamaican Foreign Ministry, represented the Jamaican Government.

19. The Government of Jamaica informed the Commission that under Jamaican law Mr. Wright had the recourse of an appeal to the Jamaican Supreme Court and that he had not "availed himself of this Constitutional provision" and consequently his petition should be considered inadmissible by virtue of Article 46 of the American Convention, Mr. Green, representing the petitioner, argued that Mr. Wright had no access to this recourse, pursuant to Article 46 (2) (b), since legal aid was not available in Jamaica for such appeals and the petitioner was both indigent and incarcerated on death's row. Furthermore, Mr. Green stated, the issue had already been presented to the Privy Council in London with no success and it was unreasonable to expect the petitioner to pursue this remedy in Jamaica if he had no funds to pay counsel and no hope of winning the appeal.

20. The Jamaican Government expressed the intent to re-examine the case and the Commission decided to suspend consideration of this case until its next regular period of sessions, scheduled for September 1988.The Commission agreed to suspend consideration of the case pursuant to the understanding that until the review process undertaken by the Government of Jamaica is completed, and its results considered by the Commission, no action would be taken to execute the sentence of death pending against Mr. Wright.

21. The Commission requested that the Government of Jamaica respond to the issue raised by the petitioner's counsel "that this [Supreme Court] remedy is an effective remedy within the terms of Article 46 of the American Convention on Human Rights, given the fact that legal aid is not available for such actions and that Mr. Wright is incarcerated, not to mention indigent."

22. No information on this case was received from the Jamaican Government prior to the 74th period of sessions which was held in Washington, D.C. at the Commission's headquarters from September 6-16, 1988.

CONSIDERING:

1. That the American Convention on Human Rights guarantees the right to judicial protection to all persons who come within its jurisdiction. Article 25 of the American Convention provides that everyone has the right to a simple and prompt recourse for protection against acts which violate one's fundamental rights. Article 25 reads as follows:

1. Everyone has the right to a simple and prompt recourse, or any other effective recourse, before a competent court or tribunal for protection against acts that violate one's fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

2. The States Parties undertake:

a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state.

b. to develop the possibilities of judicial remedy; and

c. to ensure that the competent authorities shall enforce such remedies when granted.

2. That the Government of Jamaica is a State party to the American Convention, having signed that Convention on September 16, 1977 at the OAS General Secretariat and having deposited its instrument of ratification dated July 19, 1978 on August 7, 1978. The American Convention on Human Rights is in force among the State parties, having entered into force on July 18, 1978.

3. That in the transcript of the trial of Mr. Clifton Wright, at the first instance, in the Home Circuit court, the evidence in the record, if true, presents the issue of the physical impossibility of Mr. Wright's having committed the crime for which he has been condemned to death since he was already in custody at the time the crime was committed. This contradiction in the record had not been discovered until the case was being prepared for appeal to the Privy Council in London. It was not raised before the Jamaican Court of Appeal. There is no reason to believe that the evidence is untrue since it forms part of the prosecution's own case.

4. The Privy Council in London did not grant leave for this case to be appealed; consequently all domestic remedies have been exhausted. Since the Government of Jamaica chose not to respond to the document submitted to it by the Commission by note dated November 25, 1987, which set for the problem raised by the overlooked or disregarded evidence, the Commission finds that the friendly settlement procedure set forth in Article 48 (1) (f) of the American Convention is not applicable in this case.

5. That it is not the function of the Inter-American Commission on Human Rights to act as a quasi-judicial fourth instance and to review the holdings of the domestic courts of the OAS member states. It is the function of the Inter-American Commission on Human Rights to act on petitions presented to it pursuant to Articles 44 to 51 of the American Convention as regards those States that have become parties to the Convention (Article 19 of the Statute of the IACHR, approved by Res. No. 447 of the Ninth OAS

General Assembly, 1979).

6. That Articles 48 through 51 of the American Convention on Human Rights set forth the procedure to be followed by the Commission when it receives a petition alleging violation of a right protected by the Convention. The Commission's role is to investigate whether a government action violated a right of the petitioner's which is protected by the American Convention.

7. That in the instant case a prima facie case has been made by the petitioner's counsel that based on the evidence presented by the prosecution and, in the trial record, that Mr. Clifton Wright could not have committed the crime for which he was convicted.

**THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLVES:**

1. To presume true the facts set forth by Mr. Alan Green, Esq., Counsel for Mr. Clifton Wright, regarding the physical impossibility that Mr. Wright committed the crime for which he was convicted and has been sentenced to death, since they form part of the prosecution's case and form part of the record of this case on which the conviction and has been sentenced to death, since they form part of the prosecution's case and part of the record of this case on which conviction is based.

2. To declare that since the conviction and sentence are undermined by the record in this case, and that the appeals process did not permit for a correction, that the Government of Jamaica has violated the petitioner's right to judicial protection against acts that violate the petitioner's fundamental rights.(Article 25 of the American Convention on Human Rights).

3. To recommend to the Government of Jamaica that, in the shortest time possible, it order an investigation of this matter, and afford Mr. Wright a judicial remedy to have this inconsistency corrected.

4. To include this resolution in its Annual Report to the General Assembly of the OAS, in accordance with Article 63 (g) of the Commission's Regulations in light of the fact that the Government of Jamaica had six months within which to inform the Commission of the effectiveness of the constitutional remedy available to Mr. Wright and chose not to do so.

5. To transmit the text of this resolution to the Government of Jamaica and to the petitioner.