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on Civil and Political
Rights**

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HUMAN RIGHTS COMMITTEE
Sixty-sixth session
12 - 30 July 1999

VIEWS

Communication N° 709/1996

<u>Submitted by:</u>	Everton Bailey (represented by Mr. Anthony Poulton of the London law firm McFarlanes)
<u>Alleged victim:</u>	The author
<u>State party:</u>	Jamaica
<u>Date of communication:</u>	23 April 1996
<u>Documentation references:</u>	Prior decisions: - Special Rapporteur's rule 91 decision, transmitted to the State party on 8 August 1996
<u>Date of adoption of Views</u>	21 July 1999

On 21 July 1999, the Human Rights Committee adopted its Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 709/1996. The text of the Views is appended to the present document.

[ANNEX]

* Made public by decision of the Human Rights Committee.
Views.709

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-sixth session -

concerning

Communication N° 709/1996

Submitted by: Everton Bailey
(represented by Mr. Anthony Poulton of
the London law firm McFarlanes)

Alleged victim: The author

State party: Jamaica

Date of communication: 23 April 1996

Documentation references: Prior decisions:
- Special Rapporteur's rule 91
decision, transmitted to the State party
on 8 August 1996

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

Meeting on 21 July 1999

Having concluded its consideration of communication No. 709/1996
submitted to the Human Rights Committee by Mr. Everton Bailey 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 N. Bhagwati, Ms. Elizabeth Evatt, Ms. Pilar Gaitán de Pombo,
Mr. Eckart Klein, Mr. David Kretzmer, Mr. Rajsoomer Lallah, Ms. Cecilia
Medina Quiroga, Mr. Fausto Pocar, Mr. Martin Scheinin, Mr. Hipólito Solari
Yrigoyen, Mr. Roman Wieruszewski, Mr. Maxwell Yalden and Mr. Abdallah Zakhia.

**The texts of two individual opinions signed by five Committee members
are appended to the present document.

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

1. The author of the communication is Everton Bailey, a Jamaican national, serving a life sentence at St. Catherine's District Prison, Jamaica. He claims to be a victim of violations by Jamaica of articles 7, 10(1), 14(1), 14(3) (b) and (e) and 14(5) of the International Covenant on Civil and Political Rights.¹ He is represented by Mr. Anthony Poulton of the London law firm McFarlanes.

Facts as submitted by the author

2.1 The author was convicted of the murder on 17 March 1979 of Abraham McKenzie, a police officer. He was sentenced to death on 9 November 1979 by the Home Circuit Court in Kingston, Jamaica. His appeal was dismissed by the Court of Appeal on 10 April 1981. Between 1981 and 1992 the author was represented by two law firms, both of which failed to take his case before the Judicial Committee of the Privy Council in London. In 1992, the author's case was transferred to the present counsel, who filed an application for special leave to appeal to the Judicial Committee of the Privy Council. On 20 February 1995, the author's petition for special leave to appeal to the Judicial Committee of the Privy Council was dismissed.

2.2 On 7 January 1993, the author's offence was reclassified as a non-capital crime pursuant to the Offences Against the Person (Amendment) Act 1992 by a single judge of the Court of Appeal of Jamaica. The non-parole period of the author's sentence was set to 20 years from the date of his reclassification. Thus, the earliest possible date of his parole is in the year 2013.

2.3 The author claims that in 1979 he was arrested at home by the local police approximately two weeks after the murder. He claims that his arrest was based on false statements given to the police by his ex-girlfriend and her sister, who told the police of recent arguments between them and falsely stated that the author possessed a gun.² Both women have since retracted their statements.

2.4 The case for the prosecution was one of identification. The Crown alleged that on 17 March 1979, the deceased went to visit a certain shop at 21 Heywood Street. There, a witness saw him struggle with a still unidentified man. Shots were heard and Mr. McKenzie was found dead as the result of multiple gunshot wounds. On 18 April 1979, the author took part in an identification parade, where he was identified by four witnesses as the man they had seen leaving the yard where Mr. McKenzie was found dead, placing a handgun in the waistband of his pants as he left. One witness failed to pick anyone from the identification parade. Some witnesses also claimed to have seen a second man at the gate at the time of the shooting. A handgun was discovered at the scene, but it had only been fired once and the bullet from it was found at the scene. Two other bullets removed from the body of the deceased had been fired by a different type of

¹The author also submitted Communication No. 303/1988 on 25 May 1988, which was deemed inadmissible for non-exhaustion of domestic remedies under article 5, paragraph 2 (b), of the Optional Protocol.

²It appears from the trial transcripts that the alleged statements by the author's ex-girlfriend and her sister were never mentioned in court and were relied on only to arrest the author.

handgun. The Crown alleged that there had been two different gunmen involved in the murder and called evidence that the weapon left at the scene was not of the type carried by police officers.

2.5 The defence was one of alibi. The author claims that he was at home the entire day of the shooting, in the presence of two witnesses, Trevor Francis and Glenden Williams. Both witnesses were subpoenaed to testify on behalf of the defence, but neither of them attended court the day the defence evidence was presented. Upon failure to locate the witnesses the defence motioned for an adjournment, which was granted. Two hours later, when court readjusted, the witnesses had still not been located, and the judge ruled that the defence had rested. The author, who gave sworn evidence, was thus the only one to testify for the defence.

The Complaint

3.1 Counsel alleges that article 14 of the Covenant has been violated on several grounds. Firstly, it is submitted that article 14, paragraph 1, was violated as the judge erred in his instructions to the jury regarding the danger of a conviction based solely on identification evidence, and further that the judge erred by allowing testimony that the defendant remained silent each time he was identified at the parade, thus implying his guilt. The judge in fact questioned the defendant in front of the jury about his silence, allegedly implying that his silence was proof of his guilt.

3.2 Secondly, it is submitted that article 14, paragraph 1, was violated as the identification evidence adduced by the prosecution was seriously deficient. The author claims that the five witnesses to the identification parade, three of whom testified at the trial, were "bogus", and that the evidence could not warrant a conviction. With regard to the alleged wrongful conviction, counsel also makes reference to the statements given in 1987 to the Jamaica Council for Human Rights by the author's ex-girlfriend, her sister and the owner of a shop situated close to the murder scene. In these statements, the ex-girlfriend and her sister claim that they lied to the police when telling them that the author was the owner of a gun. The ex-girlfriend's sister also claims that she wanted to testify but that the police had told her that they were "going to lock us up and charge us for perjury". Furthermore, the ex-girlfriend states that "the people in the neighbourhood ... know that he did not kill the Inspector". The shop owner, one L.N., claims in his statement that he at the time of the murder had heard a gunshot and that he had gone outside where he saw the deceased wrestling with "a tall, slim, dark man" (as opposed to the author who allegedly is short and stout) and that he later found a gun which he handed over to the police. L.N. further states that he attended two preliminary hearings, but that he since this heard nothing before he heard that the author was to be executed. Also with regard to the alleged wrongful conviction, a Jamaican citizen assisting the author on a private basis claims to have spoken to several people who maintain that the author was not present at the scene of the murder.

3.3 Thirdly, counsel alleges a violation of article 14 on the ground that after the prosecution rested its case, the judge allowed a "no case to answer" submission to be heard in front of the jury. After the submission, the judge ruled, "On this evidence, I have ruled that there is a case for the accused to answer," in the presence of the jury. Counsel submits that allowing "no case to

answer" submissions in front of the jury is contrary to established jurisprudence of the Privy Council in London.

3.4 Fourthly, counsel alleges a violation of article 14, paragraphs 1, 3(b) and 3(e), as the author did not have sufficient time to prepare his case with his attorneys before the trial and that the defence offered by the legal aid attorneys therefore was inadequate. It is stated that the author only met his attorneys the day before the trial and that they did not go through the statements made by prosecution witnesses or discuss the nature of the prosecution's case against him. Furthermore, counsel claims that the legal aid lawyers failed to include in the defence important evidence brought to their attention by the author, including the fact that the statements given by his ex-girlfriend and her sister had been precipitated by malicious motives and were subsequently retracted in sworn statements to the Jamaica Council on Human Rights and that the legal aid lawyers refused to call witnesses on the author's behalf even when requested to do so. It is further submitted that the trial attorneys' failure to ensure the attendance of the vital alibi witnesses, Trevor Francis and Glendon Williams, and the fact that the author was convicted notwithstanding their absence, is a breach of article 14, paragraph 3(c).

3.5 Fifthly, counsel alleges a violation of article 14, paragraphs 3(b) and 5, in the proceedings before the Court of Appeal, as the author was deprived of the opportunity to adequately prepare his appeal with counsel, that his new legal aid lawyer failed to file appropriate grounds of appeal and that his lawyer inexplicably abandoned four of the five grounds which in fact were filed.

3.6 In his first communication to the Committee (No. 303/1988), the author also complained that the Court of Appeal had addressed his appeal in an oral judgement, and that his representatives had merely been provided with the notes of this judgement. The author expressed fear that in the absence of a duly reasoned judgement, his petition for special leave to appeal to the Judicial Committee of the Privy Council would inevitably fail. Counsel in the present communication requests, in general terms, that the Committee examines also the claims set forth in the previous communication.

3.7 Finally, counsel claims that the author's rights under article 14, paragraph 1, were violated in the reclassification procedure in which the author's offence was classified as non-capital under section 7 of the Offences Against the Persons (Amendment) Act 1992 and the non-parole period was set to 20 years from that time. Counsel submits that the author "was in effect convicted of a new offence and therefore should have been afforded the rights of a full trial hearing". In this regard, counsel claims that the author was not provided with any reasons for his classification as a non-capital offender or for the length of the non-parole period, and that he was not given an opportunity to make any contribution to the procedure before the single judge.

3.8 Counsel submits that when setting the non-parole period of the author's sentence, the 14 years that he had already spent on death row were not taken into account, and that this amounts to a violation of articles 7 and 10(1) of the Covenant because being held as a condemned man for such a substantial period must be deemed as cruel, inhuman or degrading treatment.

3.9 The author also claims that because of the appalling conditions at St. Catherine's District Prison he has been a victim of cruel, inhuman and degrading

treatment in violation of articles 7 and 10(1). Reference is made to Amnesty International's report from a visit at the prison in November 1993 and a report denoted as Prison Conditions in Jamaica, 1990, Human Rights. Counsel also alleges, in general terms, that the author has been ill-treated and brutalized since his arrest.

3.10 Counsel contends that, in practice, constitutional remedies are unavailable to the author because he is indigent and Jamaica does not make legal aid available for constitutional motions. Counsel submits therefore that all domestic remedies have been exhausted for purposes of article 5, paragraph 2(b) of the Optional Protocol. It is stated that the case has not been submitted to another procedure of international investigation or settlement.

State party's submission and counsel's comments

4.1 In its submission of 16 December 1996, the State party, "in the interest of expediting the processing", offers its comments also on the merits of the communication.

4.2 As to the alleged violations of article 14, paragraphs 3(b) and 5, because of inadequate time for preparation of the defence and the manner in which the legal aid lawyers conducted the trial and the appeal, the State party claims that these are not breaches of the Covenant for which it can be held responsible. It submits that its duty is to provide competent legal counsel, but that it is not responsible for the manner in which he conducts the case, e.g. in deciding which grounds of appeal to argue.

4.3 With regard to the alleged violation of article 14, paragraph 3(e), on the ground that the two defence witnesses did not appear at the trial, the State party comments that it is not clear whether they were subpoenaed or if they were made aware that they should attend court and chose not to do so. The State party argues that, nevertheless, the witnesses' non-attendance is not a breach which can be attributed to the State unless it can be shown that the State by act or omission prevented them from giving evidence.

4.4 With reference to the alleged violation of articles 7 and 10 on the ground that the time the author had spent on death row was not taken into consideration when his non-parole period was set under the Offences Against the Persons (Amendment) Act 1992, the State party replies that the Act allows judges to decide that a prisoner must serve a particular period of time before being eligible for parole and that the judge in making this determination takes all relevant circumstances into account. This exercise of judicial authority is entirely appropriate and does not constitute any breach of the Covenant.

5.1 In his submission of 4 March 1997, counsel states that, on the author's behalf, he has no objections to a combined examination of the admissibility and the merits of the communication.

5.2 Counsel notes that the State party admitted that it was under an obligation to provide competent legal counsel, and submits that it clearly failed to do this in the author's case. Counsel argues that the liability for defence counsel's failures must fall to the State in circumstances where the State's failure to provide adequate support and remuneration for legal aid

representation can only result in representation of a standard which falls below the level of acceptable competence.

5.3 In relation to the failure of the two defence witnesses to appear in court, counsel submits that it has been demonstrated that the State, by its omission in the failure by the police force to arrange transportation, prevented the defence witnesses from giving evidence.

5.4 Finally, counsel notes that the State party does not deny that no written judgement of the Court of Appeal was delivered in the author's case. It is submitted that this is in breach of article 14, paragraph 5, of the Covenant. Reference is made to the Committee's jurisprudence.³

Admissibility consideration and examination of the merits

6.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with article 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 The Committee notes that the State party in its submission, in order to expedite the examination, has addressed the merits of the communication. This enables the Committee to consider both the admissibility and merits of the case at this stage, pursuant to rule 94, paragraph 1, of the rules of procedure. However, pursuant to rule 94, paragraph 2, of the rules of procedure, the Committee shall not decide on the merits of a communication without having considered the applicability of any of the grounds of admissibility referred to in the Optional Protocol.

6.3 With regard to the alleged violation of article 14 on the ground that the identification evidence was seriously deficient and the conviction wrongful, the Committee reiterates that while article 14 guarantees the right to a fair trial, it is generally for the domestic courts to review the facts and evidence in a particular case. The Committee can, when considering alleged breaches of article 14 in this regard, solely examine whether the conviction was arbitrary or amounted to a denial of justice. However, the material before the Committee and the author's allegations do not show that the courts' evaluation of the evidence suffered from any such defects. Accordingly, this part of the communication is inadmissible as the author has failed to forward a claim within the meaning of article 2 of the Optional Protocol.

6.4 Similarly, it is for the appellate courts of States parties to review whether the judge's instructions to the jury and the conduct of the trial were in compliance with domestic law. With regard to the alleged violations of article 14 on the ground of improper instructions from the trial judge on the issue of identification evidence and on the ground that he allowed a "no case to answer" submission to be heard in front of the jury, the Committee can therefore only examine whether the judge's instructions to the jury were arbitrary or amounted to a denial of justice, or if the judge manifestly violated his obligation of impartiality. However, the material before the

³Communication 230/1987, Raphael Henry v. Jamaica, Views adopted on 1 November 1991.

Committee and the author's allegations do not show that the trial judge's instructions or the conduct of the trial suffered from any such defects either. Accordingly, this part of the communication is also inadmissible as the author has failed to forward a claim within the meaning of article 2 of the Optional Protocol.

6.5 The author has claimed that he has been held on death row in appalling conditions in violation of articles 7 and 10, paragraph 1. The Committee notes that the State party has not addressed this issue. However, the author has neither provided any details in relation to the conditions of detention he is subjected to, nor has he ever complained about this to the relevant authorities. In the circumstances of the case, the Committee recalls the general requirement that an author must substantiate that he is a victim of the alleged violation. In the instant case, the Committee therefore finds that the communication is inadmissible for non-substantiation under article 2 of the Optional Protocol. Similarly, the Committee finds that the author's claim that he has been ill-treated and brutalized since his arrest, is inadmissible under the same provision for lack of substantiation.

6.6 The Committee declares the remaining claims admissible, and proceeds with the examination of the merits of all admissible claims, in the light of the information made available to it by the parties, as required by article 5, paragraph 1, of the Optional Protocol.

7.1 The author has claimed that the standard of his defence "fell below the level of acceptable competence" because he was not afforded sufficient time with his legal aid lawyers to prepare for his trial. In particular, it is submitted that the legal aid lawyers failed to include in the defence important evidence brought to their attention by the author, including the fact that the statements made by his ex-girlfriend and her sister had been precipitated by malicious motives. It is also submitted that the legal aid lawyers refused to call witnesses on the author's behalf even when requested to do so. In this context, the Committee recalls that sufficient time must be granted to the accused and his counsel to prepare the defence, but that the State party cannot be held accountable for lack of preparation or alleged errors made by defence lawyers unless it has denied the author and his counsel time to prepare the defence or it should have been manifest to the court that the lawyer's conduct was incompatible with the interests of justice. The Committee notes that neither the author nor his counsel requested an adjournment and that witnesses on behalf of the author in fact were subpoenaed. As regards the statements given by the author's ex-girlfriend, her sister and the shop-owner, one L.N., the Committee notes that none of these were given until some eight years after the trial and that L.N., as opposed to what is held forth in his statement, in fact did give testimony at the trial. In the circumstances, the Committee finds that the facts before it do not show a violation of article 14 on these grounds.

7.2 Similarly, as to the alleged violation of article 14, paragraphs 3(d) and 5, on the ground that the author was not effectively represented on appeal, the Committee notes that the new counsel in fact argued grounds of appeal on the author's behalf before the Court of Appeal. There is nothing in the file which suggests that counsel was exercising other than his professional judgement when choosing not to pursue certain grounds. Nor is there anything in the file to suggest that the State party denied the author and his counsel time to prepare the appeal or that it should have been manifest to the court that the lawyer's

conduct was incompatible with the interests of justice. With reference to its prior jurisprudence, the Committee notes that it has found violations of the provisions in question in situations where counsel has abandoned all grounds of appeal and the court has not ascertained that this was in compliance with the wishes of the client. This jurisprudence does not, however, apply to this case, in which counsel argued the appeal, but chose not to pursue certain grounds. The Committee concludes, therefore, that there has been no violation of article 14, paragraphs 3(d) and 5, on this ground.

7.3 With regard to the claim that the failure of the two subpoenaed witnesses to appear before the court should be attributed to the State party as a violation of article 14, paragraph 3(e), the Committee finds that the author has not substantiated his claim that the authorities, by failure to secure adequate arrangements for transportation, de facto denied the author an opportunity to obtain witnesses. In this context, the Committee also notes that this was not made a ground of appeal before the Court of Appeal. On the basis of the material before it, the Committee therefore concludes that there has been no violation of the Covenant in this regard.

7.4 With regard to the alleged violation of article 14, paragraph 5, on the ground that the Court of Appeal did not issue a duly reasoned judgement, the Committee recalls its prior jurisprudence⁴ where it has held that in order to enjoy the right to have his conviction and sentence reviewed by a higher tribunal according to law, a convicted person is entitled to have, within a reasonable time, access to duly reasoned, written judgements. Even though article 14, paragraph 5, itself merely guarantees one instance of appeal, the Committee has interpreted the words "according to law" to mean that the right to duly reasoned, written judgements must apply to all instances of appeal provided in the domestic law.⁵ Consequently, the Committee has found violations in cases where no written judgement has been provided within a reasonable time. In the present case, the Committee notes that the author and his representatives were provided with the notes of the oral judgement delivered by the Court of Appeal on 20 March 1981, and finds that these notes, even if less elaborate than desirable, were sufficient to form the basis of a further appeal. Consequently, the Committee finds that article 14, paragraph 5, was not violated on this ground.

7.5 The author further claims that his rights under article 14, paragraph 1, were violated in the reclassification procedure in which the author's offence was classified as non-capital under section 7 of the Offences Against the Person (Amendment) Act 1992 and the non-parole period was set to 20 years. It is submitted that the author was not provided with any reasons for the length of the non-parole period and was not given the opportunity to make any contribution to the procedure before the single judge. Even though a life sentence is prescribed by law for offences reclassified as non-capital, the Committee notes that the judge when fixing the non-parole period exercises discretionary power

⁴Communication No. 230/1987, *Henry v. Jamaica*, Views adopted on 1 November 1991; Communication No. 283/1988, *Little v. Jamaica*, Views adopted on 1 November 1991.

⁵Communication No. 230/1987, *Henry v. Jamaica*, Views adopted on 1 November 1991, para. 8.4.

conferred on him by the Amendment Act 1992 and makes a decision which is separate from the decision on pardon and forms an essential part of the determination of a criminal charge. The Committee notes that the State party has not contested that the author was not afforded the opportunity to make any submissions prior to the decision of the judge. In the circumstances, the Committee finds that article 14, paragraphs 1 and 3(d), were violated.

7.6 With regard to the alleged violation of articles 7 and 10, paragraph 1, on the ground that the time the author spent on death row (14 years) and the non-parole period of 20 years set by the judge together amount to cruel and inhuman punishment, the Committee recalls its constant jurisprudence that the period of time spent on death row does not per se constitute a violation of article 7. As to whether the combined effect of the 14 years on death row and the non-parole period of 20 years amounts to cruel and inhuman punishment, bearing in mind the nature of the offence, the Committee finds that there has been no violation of article 7 or 10 in this regard.

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 14, paragraphs 1 and 3(d) of the International Covenant on Civil and Political Rights.

9. In accordance with article 2, paragraph 3(a), of the Covenant, the State party is under an obligation to provide Mr. Bailey with an effective remedy, including re-evaluating the non-parole period in a procedure guaranteeing the enjoyment of the author's rights under article 14 or some other appropriate procedure. 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 the communication is subject to the continued 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. 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.]

APPENDIX

Individual opinion by Committee member Hipólito Solari Yrigoyen
(partly dissenting)

I hold a dissenting opinion on paragraph 6.5. The author has alleged that he was held on death row in appalling conditions, in breach of articles 7 and 10, paragraph 1, of the Covenant. He has also specifically alleged that after being detained he was beaten and brutalized, implying that he suffered cruel, inhuman and degrading treatment during the 14 years he spent on death row. Although advised of this accusation, the State party has remained silent on the subject and has not indicated whether any investigation was mounted. It has thus not honoured its obligation under article 4, paragraph 2, of the Optional Protocol.

In support of his accusation, but without appending the documents cited, the author refers to reports by Amnesty International on treatment at St. Catherine's Prison and on prisons in Jamaica which overlap with the period of his detention. I consider that the author's accusation is admissible as regards the claimed violation of article 10, paragraph 1, of the Covenant.

I also maintain a dissenting opinion on paragraph 7.6. The author alleges a violation of articles 7 and 10, paragraph 1, of the Covenant, on the grounds that he spent 14 years on death row. While the Committee holds that in the case of individuals facing the death penalty the length of time spent on death row does not of itself constitute a breach of article 7, this jurisprudence does not apply here for two reasons: first, because of the ill-treatment suffered, as mentioned in paragraph 6.5, and second, because the offence, by virtue of its reclassification, is not punishable by death, and the 14 years spent by the author on death row thus constitute a disproportionate term which justifies admissibility of the claimed violation of articles 7 and 10, paragraph 1.

Hipólito Solari Yrigoyen
(signed)

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

Individual opinion by Ms. Elizabeth Evatt, co-signed by Ms. Pilar Gaitán de Pombo, Ms. Cecilia Medina Quiroga and Mr. Maxwell Yalden (partly dissenting)

In this case, the Committee found inadmissible the author's claim that he has been a victim of inhuman and degrading treatment in violation of article 10(1) of the Covenant because of the appalling conditions in which he was detained at St. Catherine's District Prison. The author has not given specific details of this claim, other than to refer in his submission to a report from Amnesty International based on a 1993 visit and a report called Prison Conditions in Jamaica, 1990. These reports, which are not annexed, cover a period during which the author was held in St. Catherine's District Prison. Having regard to the Committee's earlier views in which it has found the conditions on death row in St. Catherine's District Prison to violate article 10(1) of the Covenant, and to the failure of the State party to respond to the author's allegations, I am of the view that the author's claim under article 10(1) is sufficiently substantiated for the purpose of admissibility and to support a finding of a violation of this provision.

Elizabeth Evatt (signed)
Pilar Gaitán de Pombo (signed)
Cecilia Medina Quiroga (signed)
Maxwell Yalden (signed)

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