



**International Covenant
on Civil and Political
Rights**

Distr.
RESTRICTED*

CCPR/C/65/D/614/1995
25 May 1999

Original: ENGLISH

HUMAN RIGHTS COMMITTEE
Sixty-fifth session
22 March - 9 April 1998

VIEWS

Communication N° 614/1995

<u>Submitted by:</u>	Samuel Thomas (Represented by Mr. Jan Cohen of Mishcon de Reya)
<u>Alleged victim:</u>	The author
<u>State party:</u>	Jamaica
<u>Date of communication:</u>	5 January 1995 (initial submission)
<u>Prior decisions:</u>	- Special Rapporteur's rule 91 decision transmitted to the State party on 23 January 1995 - CCPR/C/58/D/614/1995 (Decision on admissibility, adopted on 7 October 1996)
<u>Date of adoption of Views</u>	31 March 1999

On 31 March 1999, the Human Rights Committee adopted its Views under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 614/1995. The text of the Views is appended to the present document.

[ANNEX]

* Made public by decision of the Human Rights Committee.
View614

GE.99-13513

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-fifth session -

concerning

Communication N° 614/1995

<u>Submitted by:</u>	Samuel Thomas (Represented by Mr. Jan Cohen of Mishcon de Reya)
<u>Alleged victim:</u>	The author
<u>State party:</u>	Jamaica
<u>Date of communication:</u>	5 January 1995 (initial submission)
<u>Prior decisions:</u>	- Special Rapporteur's rule 91 decision transmitted to the State party on 23 January 1995 - CCPR/C/58/D/614/1995 (Decision on admissibility, adopted on 7 October 1996)
<u>Date of adoption of Views</u>	31 March 1999

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

Meeting on 31 March 1999,

Having concluded its consideration of communication No.614/1995
submitted to the Human Rights Committee by Samuel Thomas, 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:

* The following members of the Committee participated in the examination
of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr.
Prafullachandra N. Bhagwati, Mr. Thomas Buergenthal, Ms. Christine Chanet,
Lord Colville, Ms. Elizabeth Evatt, Ms. Pilar Gaitan de Pombo, Mr. Eckart
Klein, Mr. Fausto Pocar, Mr. Martin Scheinin, Mr. Hipólito Solari Yrigoyen,
Mr. Roman Wieruszewski and Mr. Maxwell Yalden.

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

1. The author of the communication is Samuel Thomas, a Jamaican citizen, who at 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 6, 7, 9, 10, 14 and 17 of the International Covenant on Civil and Political Rights. He is represented by Jan Cohen of Mishcon de Reya. The author's death sentence has been commuted.

The facts as submitted by the author:

2.1 On 25 April 1990, the author and three co-defendants¹ were convicted for the capital murder of one Elijah McLean, on 24 January 1989, and sentenced to death. The Court of Appeal of Jamaica dismissed their appeals on 16 March 1992. On 6 July 1994, the Judicial Committee of the Privy Council dismissed the author's petition for special leave to appeal. With this, it is submitted, all domestic remedies have been exhausted. Following the enactment of the Offences Against the Persons (Amendment) Act 1992, Jamaica created two categories of murder, capital and non capital, consequently all persons previously convicted of murder had their conviction reviewed and reclassified under the new system. The author's offence was reconfirmed as "capital".

2.2 The case for the prosecution was that the four accused were among seven men who entered the house of the deceased in the early morning of 24 January 1989, dragged him out of his bed, took him outside into the yard, and chopped him several times with their machetes, thereby killing him.

2.3 The prosecution relied upon the evidence of three relatives of the deceased, aged eleven, fourteen and seventeen, who lived at the deceased's house. They testified that they were awakened by sounds emanating from the room where the deceased and his common law wife were sleeping. They went to the doorway and saw one of the co-defendants (Byron Young) with a flashlight in one hand and a gun in the other pointing it at the deceased. Six other men, among whom they recognized the author, all carrying machetes, were standing by the bed of the deceased, and one of the men chopped him on his forehead. All seven men then pulled the deceased off the bed and carried him outside. The deceased held onto the door and was chopped on the hand by one of the men. The witnesses further testified that, in the yard, he was chopped several times by the men, including the author, while co-defendant Young stood in their midst with his gun still in his hand. All seven men then left.

2.4 The case for the defence was based on alibi. The author made an unsworn statement from the dock, maintaining that he was not present at the locus in quo and that he had no knowledge of the murder. The issue was therefore one of identification and the defence was solely directed at the witnesses' credibility

¹Among the co-defendants were Hixford Morrison and Byron Young, whose cases were decided by the Human Rights Committee. Communication No. 611/1995 (adopted on 31 July 1998) and communication No. 615/1995 (adopted on 4 November 1997), respectively.

and their ability, given the lighting in the room and the yard at the time of the incident, to correctly identify the author.

2.5 At the end of the judge's summing-up, the jury retired at 2:31 p.m. and returned at 3:14 p.m. to announce that they had not arrived at a unanimous verdict. The judge told them that he could not at that stage accept anything but a unanimous verdict, and the jury retired again at 3:16 p.m. They returned at 4:27 p.m. and the foreman again announced that they had not arrived at a unanimous verdict. The judge then stated: "I am afraid that this is not a case in which I can accept a majority verdict, this is a murder case and your verdict must be unanimous one way or the other. [...] None must be false to the oath that he has taken to return a true verdict, but in order to arrive at a collective verdict, a verdict upon which you all agree, there must necessarily be some giving and taking. There will be arguments [...], but at the same time there must be [...] certain adjustment of views. Each of you must listen to the voices of the other and don't be dogmatic about it [...]. None of you should be unwilling to listen to the argument of the other. If any of you have a strong view, or you are in a state of uncertainty, you are not obliged or entitled to sink your view and agree with the majority, but what I tell you to do is to argue out and discuss the matter together and see whether or not you can arrive at a unanimous verdict". The foreman then asked the judge a question relating to the evidence, and after having it explained, the jury retired at 4:41 p.m. They returned at 5:30 p.m. and the foreman announced that they had arrived at a unanimous verdict, finding all four accused guilty as charged.

2.6 Counsel forwards sworn affidavits from Terence Douglas and Daphne Harrison, two members of the jury who sat throughout the course of the trial and were present at the jury's deliberations.

* In his affidavit, dated 3 May 1990, Terence Douglas testifies that: "[...] On the last day of the trial - out of the twelve jurors - only three jurors found the men guilty. Because it was getting late and the foreman was pressuring us, we just told him to do what he wants. The foreman then stood up at 6:10 p.m. and said that he found all four men guilty. [...] After the case was dismissed I went outside and started to cry because I know that the four men are innocent, although the first day of the court was the first time I was seeing them. I would like the [Jamaican] Council [for Human Rights] to get a re-trial for these men because they did not get a fair trial."

* In her affidavit, dated 12 June 1990, Daphne Harrison testifies that: "[...] On our first deliberation, nine of us had come to the decision that the quality of the evidence was so poor and conflicting, that we saw no reason why the men should not be acquitted. After the foreman had informed the court that we could not arrive at a unanimous verdict, we were further addressed by the trial judge. However, on our second deliberation the situation remained the same. On our final deliberation, the nine - eight others and myself - held steadfast to our decision as we genuinely believed that the evidence was poor. However, as it was getting late and we had all wanted to go home, and the fact that we were becoming

frustrated, we all turned to the foreman and two jurors and said: "Alright, you can all do whatever you want to do, but remember, we are not a party to any guilty verdict". The foreman then remarked: "I only hope that when I get out there none of you say anything". Mrs. Harrison further states that: "I am willing to attest to this statement in any court at anytime if I am required to do so".

2.7 The author's lawyer filed the grounds of appeal on 1 May 1990. The appeal of all four co-defendants to the Court of Appeal of Jamaica was based on the trial judge's failure, in his directions to the jury, to highlight certain discrepancies in the evidence of the prosecution witnesses, his direction to the foreman and members of the jury that their verdict must be unanimous one way or the other, the effect of which was said to have cajoled the jury into the verdict of guilty, and his direction to the jury on the issue of the unsworn statements made by all four co-defendants. As stated above, the Court of Appeal dismissed the appeals on 16 March 1992.

2.8 The author's petition for special leave to appeal to the Judicial Committee of the Privy Council was based, inter alia, on the following grounds:

- that the trial judge erred in his direction to the jury by over-stressing the need for unanimity and failed to advise the jury adequately of their right and duty to disagree, thereby causing the jury to be pressured into arriving at a unanimous verdict; and
- that there was a material irregularity in the course of the trial in that although nine of the twelve jurors intended to acquit the author, the foreman wrongly and improperly announced that a unanimous verdict of guilty had been reached against the author.

2.9 It is stated that the grounds concerning the material irregularities during the course of the jury's deliberations and their need to reach a unanimous verdict were raised before the Privy Council.

The Complaint:

3.1 Counsel points out that, since his conviction on 25 April 1990, the author has been held on death row at St. Catherine District Prison. He submits that to execute the author now after this lengthy delay of over six years would be in violation of article 7 of the Covenant, in that the delay would render the execution cruel, inhuman and degrading treatment, as recognised in the cases of Pratt and Morgan v. the Attorney-General of Jamaica², Catholic Commission for Justice and Peace in Zimbabwe v. the Attorney-General of Zimbabwe³, and Soering v. United Kingdom⁴. It is further submitted that the author has already been

²Privy Council Appeal No. 10 of 1993, judgment delivered on 2 November 1993.

³Zimbabwe Supreme Court Judgment No. S.C. 73/93, delivered on 24 June 1993.

⁴1989, II EHRR 439.

subjected to cruel, inhuman and degrading treatment or punishment by being held for such a substantial period of time in the appalling conditions that exist in the death row section of St. Catherine District Prison.

3.2 In respect of article 9, counsel refers to the delays in the judicial proceedings against the author, which are attributable to the State party. He points to the delay of nearly fourteen months between the date of the author's arrest (27 February 1989) and his trial (23 to 25 April 1990), a further delay of nearly twenty-three months between the date of conviction and sentence (25 April 1990) and the dismissal of his appeal (16 March 1992), and a further delay of nearly ten months between London solicitors accepting instructions to act on the author's behalf (13 May 1992) and the date of receipt of the trial transcript and written judgment of the Court of Appeal (8 March 1993), before it was possible to consider whether there were any grounds to appeal to the Judicial Committee of the Privy Council. In this context, counsel refers to his repeated requests to the Jamaican judicial authorities to provide him with the court documents in the author's case.

3.3 It is submitted that the author was held in police detention from the date of his arrest (27 February 1989) to the date of conviction and sentence (25 April 1990), and that, during this period, he was not segregated from convicted prisoners, nor was he subject to separate treatment appropriate to his status as an unconvicted person, in violation of article 10 of the Covenant. Furthermore, the author claims that, whilst in police detention, his right to receive visitors was interfered with, and he was badly beaten by police officers and threatened with further physical violence.

3.4 Counsel claims that the author's right to a fair trial was violated in that there was a material irregularity in the course of the trial because, although nine of the twelve jurors intended to acquit the author, the foreman wrongly and improperly announced that a unanimous verdict of guilty had been reached against the author. In this context, counsel refers to the above-mentioned sworn affidavits of the two jurors. The failure of the Court of Appeal to accept and rectify the errors and omissions relating to the trial judge's direction to the jury that their verdict had to be unanimous one way or the other, is said to amount to grave and substantial injustice, in violation of article 14 of the Covenant.

3.5 It is further submitted that the trial judge violated his obligations of impartiality by over stressing to the jury the need for unanimity, and by failing to advise the jury adequately as to their right and duty to disagree. Counsel reiterates that the trial judge, by stating that under no circumstances would he be prepared to accept a majority verdict (contrary to what he implied when the jury returned for the first time, when he stated that he could not accept anything but a unanimous verdict at that stage), caused the jury to be pressured into accepting the unanimous verdict as read out by the foreman.

3.6 Counsel points out that the author's lawyer filed the grounds of appeal on 1 May 1990, and that it took the Court of Appeal twenty-two months to hear and dismiss the appeal. This is said to amount to a violation of article 14, paragraph 3 (c), of the Covenant.

3.7 Reference is made to the findings of the Committee that the imposition of a sentence of death upon the conclusion of a trial in which the provisions of the Covenant have been breached constitutes, if no further appeal against sentence is available, a violation of article 6 of the Covenant. It is submitted that no further remedies are available to the author, and that, since the final sentence of death was passed without having met the requirements of the Covenant, article 6 has been violated in his case.

3.8 Finally, as to a violation of article 17, the author claims that his correspondence is repeatedly and unlawfully interfered with by the prison warders. In this respect, he claims that letters he has sent to the prison office have not reached the correct addressee.

State party's observations and Counsel's comments thereon:

4. By submission of 18 May 1995, the State party submitted comments on the merits of the communication in order to expedite the consideration of the case. However, the State party promised information regarding investigations to be carried out into several of the author's allegations, which have not been forthcoming.

5. On 28 July 1995, the author's counsel objected to the joint consideration of the admissibility and merits of the communication, as the State party had failed to address all the issues raised in the communication. However counsel forwarded comments on the State party's submission on those issues that had been addressed.

The Committee's decision on admissibility:

6.1 During the 58th session, the Human Rights Committee considered the admissibility of the communication.

6.2 The Committee had 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.

6.3 As to the requirement in article 5, paragraph 2 (b), of the Optional Protocol that domestic remedies be exhausted, the Committee noted that the Court of Appeal dismissed the author's appeal and that the Privy Council dismissed his application for leave to appeal. Therefore, with regard to the author's allegation that his trial was unfair because of the material irregularities in the deliberations of the jury, the way in which the verdict was reached and the trial judge's instructions to the jury telling them that they had to reach a unanimous verdict, the Committee was satisfied that domestic remedies had been exhausted for purposes of the Optional Protocol. The Committee further, considered that the allegations might raise issues under article 14 and consequently, of article 6, of the Covenant which needed to be examined on the merits.

6.4 With regard to the author's claim that his detention on death row amounts to a violation of articles 7 and 10 of the Covenant, the Committee referred to its prior jurisprudence that detention on death row does not per se constitute cruel, inhuman or degrading treatment in violation of articles 7 and 10 paragraph 1, of the Covenant, in the absence of some further compelling

circumstances. The Committee observed that the author had not shown in what particular ways he was so treated as to raise an issue under articles 7 and 10 of the Covenant. This part of the communication was therefore inadmissible under article 2 of the Optional Protocol.

6.5 As to the claim of undue prolongation in the appeal proceedings, the Committee considered that the author and his counsel had sufficiently substantiated, for the purposes of admissibility, that the delay of twenty three months between his conviction and the dismissal of his appeal, might raise issues under article 14, paragraphs 3 (c) and 5 of the Covenant, which should be examined on the merits.

6.6 With regards to the author's allegation of ill-treatment while in pre-trial detention and his non-separation from convicted prisoners during this period, the Committee considered that the author's claim regarding his pre-trial detention might raise issues under article 10 of the Covenant, pending the outcome of the State party's investigations.

6.7 With regard to counsel's allegation that there has been an arbitrary interference with the author's mail, in violation of article 17, paragraph 1, the Committee considered that neither the author nor his counsel had sufficiently substantiated this claim for purposes of admissibility under article 2 of the Optional Protocol.

6.8 Consequently, on 17 October 1996 the Human Rights Committee declared that the communication was admissible in so far as it might raise issues under articles 6; 9, paragraph 3; 10; 14 paragraphs 1, 3 (c) and 5.

State party's merits observations and counsel's comments thereon:

7.1 In a submission dated 6 June 1997, the State party informed the Committee it had been unable to investigate the author's allegation that he was beaten by a police officer, in the absence of additional information, such as the place where the author was held, the time at which the incidents allegedly occurred and if possible the name(s) of the officers involved. Until this information was received the State party would be unable to investigate the allegations.

7.2 With respect to the allegation that the author was not segregated from convicted prisoners while detained, the State party contends that since the author refers to "police detention" it must refer to a police station or remand facility for persons awaiting trial. Convicted offenders are not held in these facilities unless there has been a short delay in transferring them to a correctional institution. The committee is asked to note that in the parish in which the author was tried, Clarendon, there is no institution in which convicted persons can be detained without creating major security risks.

7.3 The State party denies any breach of the Covenant in respect of the 23 months delay between conviction and the dismissal of the appeal in violation of articles 14, paragraph 3 (c), and 14 paragraph 5, although it concedes that this period is longer than desirable.

7.4 With regard to the author's allegation that his trial was unfair because of the material irregularities in the deliberations of the jury, the way in which the verdict was reached and the trial judge's instructions to the jury telling them that they had to reach a unanimous verdict. The State party contends that with respect to the issue of the judge's instructions to the jury this has been received by two appellate courts. The State party further submits that the Committee's own jurisprudence on this subject is that it is for appellate courts to review such instructions, and only in particular circumstances will the Committee conduct a review. The State party considers that these particular circumstances as defined by the Committee do not arise in this case and therefore it asserts that this issue is not one over which the Committee should assume jurisdiction.

7.5 As to the question of jury deliberation and the manner in which the verdict was arrived at, the State party denies that this is a breach for which the State party can be held accountable. The jury members were clearly aware of their duty and obviously understood correctly the judge's instruction; they chose to disregard those instructions. They knew they were entitled to disagree if they felt strongly on the issue, but chose not to do so. To say that the State party is responsible because some jurors were tired and wanted to go home and therefore did not insist that they had reasonable doubts, is uncalled for. The jurors, were aware that a man was on trial and if convicted could lose his life. Their failure to discharge their duties according to their conscience and beliefs, having heard the evidence, cannot be laid at the door of the State. The State party further contends that the jury system is based on the presumption that having heard all the evidence with an open mind, those called on to do so will render a verdict in good faith according to their view of the evidence. Where persons choose not to do so for their own reasons, the fault does not lie with the State.

8. By submission dated 14 January 1998, counsel addressed several questions to the State party in respect of the observations he had submitted to the State party's admissibility submission. He requested confirmation that a preliminary enquiry had taken place, additional information in respect of when Mr. Thomas was brought before a judge and the establishment of a prima facie case against the author. He also requested information in respect of the investigations the State party claimed it was carrying out in respect of the author's allegations of beatings and having been held in detention with convicted prisoners while awaiting his own trial. He also requested clarification in respect of what the State party's means when it states that in the parish where the author was kept there is no facility for keeping convicted persons.

Examination on the merits:

9.1 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.

9.2 The author has put forward two complaints in respect article 10 of the Covenant, a) ill-treatment while in police detention and, b) non segregation from convicted prisoners while in police detention. The Committee notes that the author's allegations in respect of the treatment he was subjected to

while in police detention are very vague (see paragraph 3.3 supra), and considers that it is incumbent upon an alleged victim to provide sufficient information, in order that a State party may investigate an allegation. In this respect, the Committee also notes that the State party did in fact request additional information in order to investigate the claims. In the Committee's opinion, the information provided by the author and his counsel in respect of the conditions described in para 3.3. are insufficient for a State party to be able to adequately investigate the matter. Consequently, the Committee considers that neither the author nor his counsel have sufficiently substantiated a claim under article 3 of the Covenant in respect to the alleged violation of article 10 paragraph 1.

9.3 The author has claimed that he was not separated from convicted prisoners while in police detention, however no further substantiation has been provided in this respect. The Committee notes the State party's information that in the parish in which the author was tried there is no institution capable of holding convicted prisoners. The Committee considers that the author's claim has not been sufficiently substantiated and given the State party's denial, and on the basis of the information before it. The Committee is unable to find that there has been a violation of article 10, paragraph 2.

9.4 The issue before the Committee in respect to article 14 is whether the judge's insistence that the jury must reach a unanimous verdict and the alleged material irregularities in the jury's deliberations constituted a violation of the Covenant. The Committee observes that the issue of the judge's summing up to the jury and his emphasis that the jury reach a unanimous verdict was examined by the Court of Appeal of Jamaica and the Judicial Committee of the Privy Council, and that both instances found the instructions to be acceptable. It is not for the Committee to review the findings of these bodies in the absence of any indication that their conclusions were arbitrary or otherwise amounted to a denial of justice. Consequently, there has been no violation of article 14 of the Covenant.

9.5 The author has claimed that the period of 23 months from his conviction to the hearing of his appeal constitutes a breach of article 14, paragraph 3 (c), and 5, of the Covenant. The Committee reiterates that all guarantees under article 14 of the Covenant should be strictly observed in any criminal procedure, particularly in capital cases, and notes with regard to the period of 23 months between trial and appeal that the State party has conceded that such a delay is undesirable, but that it has not offered any further explanation. In the absence of any circumstances justifying the delay, the Committee finds that with regard to this period there has been a violation of article 14, paragraph 3 (c), in conjunction with paragraph 5, of the Covenant.

9.6 However, with regard to the period of nearly fourteen months which lapsed from the author's arrest (27 February 1989) to his trial (23 to 25 April 1999), the Committee notes that the State party has not addressed the issue, nonetheless it considers that this delay does not in the overall circumstances of the case constitute a violation of article 9, paragraph 3.

10. 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 3 (c), and 5, of the Covenant.

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

12. 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 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.

[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 of Committee member Hipólito Solari Yrigoyen
(dissenting)

The following is the Committee member version of how paragraphs 6.4 and 9.4 of the decision should have read.

6.4 The author's lawyer has maintained that his detention on death row in St. Catherine District Prison constitutes cruel and inhuman treatment, both because of the time spent there and because of the general conditions of detention, which he describes as "frightful" in paragraph 3.1. In this connection it should be pointed out that although, in accordance with the Committee's jurisprudence, time is not a factor which causes the detention to constitute a violation of the Covenant, this is not the case with conditions of detention. In the present case the State has not refuted the specific allegations about the treatment received by the author in breach of article 7 and article 10, paragraph 1, of the Covenant and it has not provided any information on this point, despite the obligation imposed on it by article 4, paragraph 2, of the Optional Protocol. Moreover, in the present case the State party has not fulfilled its obligation to indicate whether the prison regime and the treatment of the detainee are in conformity with the provisions of article 10 of the Covenant. Because of these significant circumstances the complaint should be upheld. The Committee considers that the author has been the victim of cruel treatment denying him the respect due to the inherent dignity of a human being, in breach of the provisions of the International Covenant on Civil and Political Rights already mentioned in this paragraph.

9.4 The author's counsel considers that his right to a fair trial was violated, in contravention of article 14 of the Covenant. He claims in paragraph 3.4 that the jury foreman committed a "material irregularity" by announcing a unanimous guilty verdict when no such verdict had been reached, and in paragraph 3.5 he argues that the trial judge violated his obligation of impartiality by overstressing to the jury the need for unanimity, without advising the members of the jury about their right and duty to disagree, and by stating that under no circumstances would he be prepared to accept a majority verdict. The State party points out that it could not be held responsible if the members of the jury did not do their duty in accordance with their conscience and beliefs, having heard the evidence and accordingly denies that there was a violation attributable to it. It contends that if, for their own personal reasons, the members of the jury do not render a verdict in good faith in accordance with their view of the evidence the fault does not lie with the State. Notwithstanding these arguments, it must be pointed out that it is the State's responsibility to provide for competent, independent and impartial courts of justice established by law to produce a determination of any criminal charge, in accordance with article 14 of the Covenant.

The sworn statements of jury members Terence Douglas and Daphne Harrison, brought to the Committee's attention by the author's counsel and not rebutted by the State party, show that the foreman acted irregularly by pressuring the members of the jury to deliver a unanimous verdict, when nine of them believed that the author was not guilty and only three believed the opposite, and that moreover the change made in the

announcement of the verdict shows that the author did not enjoy the due process accorded to defendants in criminal cases by article 14 of the Covenant. This circumstance is particularly serious in view of the fact that the verdict announced as having been reached by the jury amounts to a death sentence for the convicted person. The confirmation of the verdict by the Appeal Court supports the view that the accused did not have a fair trial. In the Committee's opinion, the irregularities described above constitute a violation of the rights contained in article 14 of the Covenant.

[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.]