

## HUMAN RIGHTS COMMITTEE

### **Brown v. Jamaica**

Communication N° 775/1997\*\*

23 March 1999

CCPR/C/65/D/775/1997\*

### **VIEWS**

*Submitted by: Christopher Brown (represented by Allen & Overy, a law firm in London)*

*Victim: The author*

*State party: Jamaica*

*Date of communication: 17 November 1997 (initial submission)*

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

Meeting on 23 March 1999

Having concluded its consideration of communication No.775/1997 submitted to the Human Rights Committee by Mr. Christopher Brown, under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication, his counsel and the State party,

Adopts the following:

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

1. The author of the communication is Christopher Brown, a Jamaican citizen, currently awaiting execution at St. Catherine District Prison, Jamaica. He claims to be a victim of violations by Jamaica of articles 7; 9, paragraphs 2 and 3; 10, paragraph 1; and 14, paragraphs 3 (a), (b), (c), (d) and (e) and 5, of the International Covenant on Civil and Political Rights. He is represented by counsel from the London law firm of Allen & Overy.

## The facts as submitted by the author

2.1 On 28 October 1993, the author was convicted for the murder, on 16 October 1991, of one Alvin Smith and sentenced to death. His appeal against conviction was upheld by the Court of Appeal of Jamaica and a re-trial was ordered, on 18 July 1994. On 23 February 1996 he was convicted of capital murder after a re-trial. On 19 November 1996 his appeal against conviction was heard by the Court of Appeal of Jamaica and dismissed on 16 December 1996. On 23 October 1997, the author's petition for Special Leave to Appeal to the Judicial Committee of the Privy Council was dismissed.

2.2 It is stated by counsel that, in practice, constitutional remedies are not available 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.

2.3 It appears from the trial documents that the case for the prosecution was based on various testimonies, including a statement made by the author when he was arrested. At trial, a neighbour of the deceased, Mrs Sion Walters, stated that she heard the old lady who lived with the deceased "bawl out for murder". She stated that she and her tenant went to the deceased's premises and saw there the author, who spoke to them.

2.4 At trial, the deposition of Mr. Peter Williams was allowed into evidence. In the statement, Mr. Williams, who rented a room from the deceased, stated that he had found the deceased laying in a pool of blood in a passage between the main house and an out-kitchen. Williams had looked into the deceased's bedroom, found it ransacked, and noticed an inhaler on the bed. He found, in the deceased's wardrobe, a pair of shoes and some pants he had seen on the author the previous Sunday evening. He also saw another pair of pants and shoes which were covered in blood.

2.5 One John Wiles testified that he had bought a video recorder (VCR) from the author and another man in October 1991 for \$ 2000. Peter Williams identified the VCR as belonging to the deceased. When the police enquired after the VCR, Wiles accompanied them to the police station where he identified the author as the person who together with another man had sold it to him. He said he recognized the author from the neighbourhood but did not know his name.

2.6 Detective Sergeant Davis, the investigating officer testified that, on 16 October 1991, he had visited the scene of the crime, spoken to the two ladies next door and arranged for the body of the deceased, the crime scene and the motorcar parked outside the house to be photographed and dusted for finger prints. He took various exhibits to be examined by the forensic laboratory. On 15 November 1991 he saw the author at Patrick Garden Police Station where he informed him that he was investigating the murder of Alvin Smith and that he had a warrant for his arrest. Once cautioned the author responded: "yes, sah, a true but a Gary and Rohan mek and me do it. Sorry, sah, because his did good to me and me will give you a statement in how whole thing go".

2.7 According to Sergeant Davis' evidence, he asked the author In the presence of a Justice of the Peace, Mr. Thompson Beckford, if he wished to make a written statement or if he wanted someone to write it for him. Detective Davis wrote the words of caution, explained them to the author and wrote down his statement. In the statement the author admitted that he was part of a plan to rob the deceased, who was his former landlord. However, he denied killing Smith and implicated Rohan and Gray. He admitted to aiding in the murder by holding the deceased while he was assaulted and by giving Gray the machete with which the deceased was killed. He also admitted preventing the deceased from escaping. He further admitted that he had robbed two rings from the deceased's fingers, that he and Gray returned to the house to change their clothes, and that they had sold the video recorder to a youth for \$ 2000.

2.8 At the trial, a voir dire was conducted in order to establish the admissibility of the statement into evidence. Mr. Beckford corroborated the Sergeant's testimony and said that he witnessed the author dictating his statement and that he did not witness any ill-treatment.

2.9 The case for the defence was based on alibi. In an unsworn statement from the dock the author claimed to have left the neighbourhood on 13 October 1991 going to his sister's house at St Thomas and returning in November. He said that he was arrested and taken to Almond Town Police Station where his fingerprints were taken and where he allegedly refused to give a statement since he knew nothing of the murder. He stated that he was beaten into signing the statement; that he never saw the Justice of Peace and that he was identified by someone he did not know in respect of the sale of the video recorder.

### The complaint

3.1 The author alleges violations of article 9, paragraph 2, and article 14, paragraph 3(a), of the Covenant, on the ground that he was arrested on 15 November 1991 and was held in custody for over two weeks before being charged. It is stated that during this period he was denied access to relatives or friends, nor was he given access to a lawyer.

3.2 The author claims that after having been detained at Almond Town police station for over two weeks, he was taken to Patrick Gardens Police Station for one day, where he was beaten, after which he suffered an asthma attack. He claims that he was induced into signing the caution statement with promises of medical attention. He further complains about the conditions of pre-trial detention in the different prisons. It is alleged that despite suffering from asthma he was made to sleep, in some instances on a cold concrete floor without a mattress, in others in an extremely hot cell where his asthma worsened. At the General Penitentiary, he was remanded at the hospital section of the prison.

3.3 Counsel invokes article 14, paragraph 3 (b) and (d), of the Covenant and submits that the author did not receive legal advice or representation from the date of his arrest, on 15 November 1991, to the preliminary examination on 8 June 1992. He did not realise he had the right to ask for a lawyer and accordingly did not request one. It is submitted that the author's representative at the preliminary hearing was absent for much of the hearing and that the author only met with his lawyer at the first trial once his trial had started. At the

retrial the author was represented by a new attorney, who only visited him once in prison. It is stated that an application for an adjournment was refused by the trial judge. The author never met with the attorney who represented him on the second appeal. Counsel submits that even on the scarce occasions when the author met his lawyers he was hindered in his communication with them as prison officers were always present.

3.4 Counsel further alleges that defence counsel's behaviour was so incompetent as to constitute a denial of the author's right to have adequate legal representation, in violation of article 14, paragraph 3 (d). In this context, it is submitted that counsel failed to obtain crucial evidence and did not cross-examine the prosecution witnesses properly, failed to call defence witnesses and was absent during most of the judge's summing-up.

3.5 The trial judge is further said to have erred in dealing with the non disclosure of fingerprint evidence. Finally, it is argued that the judge's directions to the jury, with regard to the voluntariness of the author's caution statement and with regard to his alibi defence, were improper.

3.6 The author complains that his retrial took place late in February of 1996, some 4 years and 3 months after his arrest on 15 November 1991. His appeal to the Jamaican Court of Appeal was heard in November of 1996 and dismissed in December. His petition for leave to appeal to the Privy Council was dismissed on 23 October 1997. The process from arrest to the final dismissal of his application for leave to appeal has taken almost 6 years. Counsel claims that this is a violation of articles 9, paragraph 3, and 14, paragraphs 3 (c) and 5.

3.7 At the time of submission, the author had spent 9 months on death row following his first conviction, and one year and nine months following the conviction after his retrial. This is said to constitute a violation of articles 7 and 10, paragraph 1, of the Covenant. In this respect, counsel states that this period cannot be disassociated from the full period of time the author has spent in prison, since from the day he was charged for murder, he has suffered the agony of knowing that if convicted he could be executed.

3.8 Counsel claims that the conditions of the author's detention on death row render his execution unlawful, and his execution would amount to a violation of articles 5 and 6 of the Covenant. In this context, he submits that detention may become unlawful through executive action, although it may initially have been lawful. This may occur if either the detention is too prolonged (i.e violation of article 9, paragraph 3, or 14 paragraph 3 (c) ) or if the conditions of detention fall below minimum standards (i.e violation of articles 7 and 10, paragraph 1). In this respect, counsel refers to Pratt and Morgan as an authority for the proposition that carrying out a sentence of death can be rendered unlawful where the subsequent conditions in which a condemned man is held, either in terms of time or in terms of physical discomfort, constitute inhuman and degrading treatment or punishment.

3.9 In March of 1997, while on death row at St. Catherine's District Prison, the author's belongings were destroyed by the wardens in the contexts of a search exercise carried out following an escape bid made by other prisoners. The author's asthma pump and other medication were destroyed, and despite numerous complaints to the prison authorities these

have not been replaced. Moreover, the author states that he has suffered repeated asthma attacks since his arrival at St. Catherine's prison and he complains that the warders have been slow in responding to his requests for assistance, have refused to take him to hospital and on some occasions have denied medication. In particular, it is alleged that the author has not received an inhaler and a pump, despite a prescription by the prison doctor. The above is said to constitute a violation of articles 7 and 10 paragraph 1 of the Covenant.

3.10 Counsel refers to the documentary evidence provided by non governmental sources, in respect of the general conditions of detention at St. Catherine's District Prison. The author's specific conditions of detention are said to be that he spends 23 hours per day locked up in his cell; with no mattress or other bedding, having to sleep on a concrete block; no adequate sanitation or ventilation; no electric lighting; he is denied exercise, association and activity as well as medical treatment and medication and appropriate psychiatric treatment as well as adequate nutrition and clean drinking water. Furthermore, there are no adequate procedures to address prisoners' complaints. The author has had no response to his complaint to the Jamaican Prisons Ombudsman. The conditions under which the author is detained at St. Catherine District Prison are said to amount to cruel, inhuman and degrading treatment within the meaning of articles 7 and 10, paragraph 1, of the Covenant.

3.11 It is further argued that a mandatory sentence of death for capital murder, which does not allow for any discretion on the part of the judge in evaluating possible mitigating circumstances is arbitrary and a disproportionate punishment which cannot be justified in law and contrary to articles 6, paragraph 1, 7, 10 and 14, paragraph 1, of the Covenant.

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

#### The State party's observations and the author's comments

4.1 By submission of 13 January 1998, the State party responds to the merits of the communication.

4.2 The State party denies that the author was kept in detention for over two weeks before being charged. It asserts that the author was informed about the reasons for his arrest, at the time he was detained.

4.3 With regard to the author's complaints about his representation at trial, appeal, re-trial and appeal, the State party notes that he was represented by different counsel on each occasion. The State party maintains that it is its obligation under the Covenant to ensure that competent counsel is appointed to represent accused persons, and that it should not by act or omission obstruct counsel in the conduct of the case. The State party denies, however, that it is responsible for the way counsel conducts the case.

4.4 With respect to the author's complaint about the judge's directions to the jury, the State party recalls the Committee's jurisprudence that this is a matter for the appellate courts. According to the State party, the issue has been effectively examined by the Court of Appeal

and it is thus not a matter suitable for the Committee's consideration.

4.5 With regard to the author's claim that there has been undue delay, since his retrial took place four years and three months after his arrest, the State party explains that this period encompasses the author's first trial, the hearing of his appeal and the ordering of the retrial. The State party notes that the first trial against the author began one year and eleven months after his arrest and that a preliminary enquiry was held in that period. The period between the author's conviction and the hearing of his appeal was nine months, and the retrial against the author began one year and seven months after the Court of Appeal's decision. The author's appeal against his conviction after the retrial was heard after nine months. In the circumstances, the State party denies that the delays are undue and constitute a violation of the Covenant.

4.6 With regard to the author's claim that the time he has spent on death row constitutes a violation of articles 7 and 10 of the Covenant, the State party argues that a delay of two years and six months on death row while the judicial process runs its course cannot be said to amount to cruel and inhuman treatment contrary to the Covenant.

4.7 With regard to the author's complaint about the lack of medical treatment for his asthma, the State party notes that the author has received treatment for his condition, but states that it will investigate this allegation further.

5.1 In his comments on the State party's submission, counsel notes that the State party has not made any investigation into the circumstances surrounding the author's detention and that it has offered no evidence to refute the author's submission as to the period of time he was detained without being formally charged after his arrest. In respect of the State party's affirmation that the author was informed of the reasons for his arrest at the time of his detention, counsel states that he will verify this with the author, but argues that the requirement that a person is promptly informed of any charges against him requires more than that a person is simply informed of the reasons for his arrest. Counsel refers to the Committee's jurisprudence and argues that it is the period of detention and formal charging which should be considered. Counsel claims that a period of two weeks without being formally charged is excessive and a clear breach of article 9, paragraph 2. He moreover draws to the Committee's attention the fact that the author was denied access to a lawyer and contact with his family in the period following his arrest.

5.2 With regard to the State party's argument that it cannot be held responsible for the manner in which counsel conducted the case for the author, the author notes that according to the Committee's jurisprudence the State party is under obligation to take measures to ensure that counsel, once appointed, provide effective representation in the interests of justice. Counsel claims that the State party has failed to demonstrate that it has taken any measures to ensure effective representation. He further refers to the trial transcript and claims that it is clear that his counsel was flagrantly incompetent, preventing a meaningful defence being put forward to the jury.

5.3 Counsel maintains that the judge's directions to the jury and the holding of the voir dire

show that the trial suffered from irregularities prejudicing the author's right to a fair trial, in violation of article 14, paragraph 3(b) and (d).

5.4 As to the delay in proceedings, counsel submits that the period between arrest and trial should be taken as a whole and that a period of four years and three months is excessive and in violation of articles 9, paragraph 3, and 14, paragraphs 3(c) and 5. Furthermore, counsel argues that the delay of 23 months between the author's arrest and the first trial in itself constitutes undue delay, in the absence of a satisfactory explanation by the State party.

5.5 With regard to the period of detention on death row, counsel notes that the author first spent nine months on death row after his first conviction, and then was removed after the Court of Appeal ordered a retrial. He was subsequently returned to death row, after his retrial. Counsel claims that this alternation between hope and despair has imposed extreme mental suffering on the author.

5.6 Counsel notes that the State party has not addressed the author's complaint about the conditions of his detention.

#### Issues and proceedings before the Committee

6.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 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 has not raised any objections to the admissibility of the communication, and that it has addressed the merits of the case. In the circumstances, the Committee finds that no obstacles to admissibility exist and proceeds immediately to the examination of the merits of the communication, in the light of all the written information made available to it by the parties.

6.3 The author has claimed that he was kept in detention for over two weeks before he was formally charged, whereas the State party has stated that the author was informed immediately upon arrest of the reasons for his arrest. The Committee notes that it appears from the trial transcript that the author was informed about the charges against him shortly after his arrest. Accordingly, the facts before the Committee do not show a violation of the Covenant in this respect. It is not clear from the information before the Committee when the author was first brought before a judge or other officer authorized by law to exercise judicial power. In the absence of any concrete claim in this respect, the Committee is not in a position to make a finding whether or not article 9, paragraph 3, of the Covenant was complied with in the author's case.

6.4 With respect to the alleged violation of articles 7 and 10, paragraph 1, of the Covenant, because the author was maltreated by the police upon his arrest, the Committee notes that the issue was subject of a voir dire and that it was before the jury during the trial, that the jury rejected the author's allegations, and that the matter was not raised on appeal. The Committee finds that the information before it does not justify the finding of a violation of

articles 7 and 10, paragraph 1, of the Covenant in this respect.

6.5 On the other hand, the author has made specific complaints about the circumstances of his pre-trial detention which have not been addressed by the State party. In the circumstances, due weight must be given to the author's allegations to the extent that they are substantiated. The Committee finds that the circumstances of the author's pre-trial detention, as described by the author and taking into account that he suffered an asthmatic condition, constitute a violation of article 10, paragraph 1, of the Covenant.

6.6 With regard to the author's representation at the preliminary hearing, the Committee notes that it appears from the trial transcript that the author's representative was absent during the deposition of two prosecution witnesses at the preliminary hearing on 8 June 1992, and that the magistrate continued the hearing of the witnesses and only adjourned when the author indicated that he did not wish to cross-examine the witnesses himself. The cross-examination was then adjourned to 17 June 1992, and, in the absence of the lawyer, again to 7 July 1992. After the adjournment of 17 June 1992, the judge appointed new counsel for the author, who however declined to cross-examine the witnesses. The Committee refers to its jurisprudence that it is axiomatic that legal assistance be available at all stages of criminal proceedings, particularly in capital cases.<sup>1</sup> In the present case, the Committee is of the opinion that the magistrate, when aware of the absence of the author's defence counsel, should not have proceeded with the deposition of the witnesses without allowing the author an opportunity to ensure the presence of his counsel. The Committee is of the opinion that the facts before it disclose a violation of article 14, paragraph 3 (d), of the Covenant.

6.7 The author has further claimed that he did not have enough time in order to prepare for his defence at the retrial and that an adjournment was refused by the trial judge. It appears from the transcript of the trial, that an adjournment was granted by the judge on 12 February 1996, in order to give counsel the opportunity to interview his client. However, on 13 February 1996, counsel requested a further adjournment since he had not met yet with the author. It further appears that counsel was assigned to the author's defence in October 1994, and that he had requested an adjournment of the trial on several occasions, apparently because he was seeking copies of certain documents in possession of the Prosecution. He met with his client for the first time in May 1995. In the circumstances, the Committee finds that the facts before it do not show that the State party has violated the author's right, pursuant to article 14, paragraph 3(b), of the Covenant to have adequate facilities for the preparation of his defence.

6.8 Nevertheless, the Committee recalls its jurisprudence that the State party should ensure that counsel once assigned, provide effective representation of the accused. The Committee considers that it should have been apparent to the trial judge that counsel was not providing effective representation of the accused, at the latest when he noticed that counsel was absent when he started his summing-up. Consequently, article 14, paragraph 3(d), has been violated in the author's case.

6.9 With regard to the author's claim that his appeal counsel never consulted with him before



the hearing of the appeal, the Committee notes that a legal representative was assigned by the State party to represent the author, that counsel did argue grounds for appeal and that the Court of Appeal heard the appeal. The Committee refers to its jurisprudence that a State party cannot be held responsible for the conduct of a defence lawyer, unless it was or should have been manifest to the judge that the lawyer's behaviour was incompatible with the interests of justice.<sup>2</sup> In the circumstances, the Committee finds that the facts before it do not reveal a violation of the Covenant in this respect.

6.10 Counsel has also claimed that the judge's instructions to the jury amounted to a denial of justice, in violation of article 14, paragraph 1, of the Covenant. The Committee refers to its prior jurisprudence and reiterates that it is generally not for the Committee, but for the appellate Courts of States parties, to review the instructions to the jury by the trial judge, unless it can be ascertained that they were manifestly arbitrary or amounted to a denial of justice. The material before the Committee does not show that the trial suffered from such defects. Accordingly, the Committee concludes that there has been no violation of the Covenant in this respect.

6.11 The author has complained about the length of the criminal procedure in his case, and the State party has explained that the delay was caused by the ordering of a retrial. The Committee notes that the author was arrested on 15 November 1991, and that the first trial against him occurred in October 1993, 23 months after his arrest. The Committee finds that, in the absence of a satisfactory explanation by the State party, a delay of 23 months in bringing the author to trial, considering that he was kept in detention, constitutes, in the circumstances of the instant case, a violation of the right contained in article 9, paragraph 3, of the Covenant to be entitled to trial within reasonable time or release, as well as of article 14, paragraph 3 (c). In respect to the alleged other delays in the criminal process, the Committee notes that the author's retrial was scheduled to begin on 23 November 1994, four months after the Court of Appeal's judgement, but that it was adjourned on several occasions upon request of the defence. In the circumstances, the Committee finds that the delay of one year and nine months between the Court of Appeal's judgement and the beginning of the retrial cannot be solely attributed to the State party and that it does not disclose a violation of the Covenant.

6.12 With regard to counsel's argument that the author's detention on death row constitutes cruel and inhuman treatment, in particular because he was moved away from death row after nine months, only to be returned after a year and nine months, after his retrial, the Committee refers to its jurisprudence<sup>3</sup> that detention on death row for a specific period of time does not per se violate the Covenant, in the absence of further compelling circumstances. The Committee does not consider the fact that the author was placed back on death row after his retrial a compelling circumstance which would render the detention on death row cruel or inhuman. The Committee is thus of the opinion that the period of the author's detention on death row as of itself does not constitute a violation of the Covenant.

6.13 The author has, however, also complained about the circumstances of his detention at St. Catherine's District Prison, which have not been addressed by the State party. In particular, he has stated that he is locked up in his cell for 23 hours a day, that he has no

mattress or other bedding, no adequate sanitation, ventilation or electric lighting, and that he is denied exercise as well as medical treatment, adequate nutrition and clean drinking water. The author has also claimed that his belongings, including an asthma pump and other medication, were destroyed by the warders in March 1997, and that he has been denied prompt assistance in case of an asthma-attack. Although the State party has promised to investigate certain of these claims, the Committee notes with concern that the results of the State party's investigation have never been communicated. In the circumstances, due weight must be given to the author's uncontested allegations to the extent that they are substantiated. The Committee finds that the above constitute violations of articles 7 and 10, paragraph 1, of the Covenant.

6.14 With regard to counsel's argument that the mandatory death sentence for capital murder is an arbitrary and disproportionate punishment, and in violation of the Covenant, the Committee notes that Jamaican law distinguishes between non-capital and capital murder, and that capital murder is murder committed under aggravated circumstances. The Committee is therefore of the opinion that counsel's argument is without foundation, and that the facts before it do not reveal any violation of the Covenant in this respect. Moreover, the Committee considers that counsel has failed to advance any arguments which mitigating circumstances might have been taken into account by the judge when sentencing the author, and how the author would therefore have been affected by the alleged violation.

6.15 The Committee considers that the imposition of a sentence of death upon conclusion of a trial in which the provisions of the Covenant have not been respected, constitutes a violation of article 6 of the Covenant if no further appeal against the death sentence is possible. In Mr. Brown's case, the final sentence of death was passed without having met the requirements for a fair trial as set out in article 14 of the Covenant. It must therefore be concluded that the right protected under article 6 has also been violated.

7. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political rights, is of the view that the facts before it disclose violations of articles 7, 9, paragraph 3, 10, paragraph 1, 14, paragraph 3 (c) and (d), and consequently 6, of the Covenant.

8. Under article 2, paragraph 3(a), of the Covenant, the State party is under the obligation to provide Mr. Christopher Brown with an effective remedy, including either a retrial in compliance with all guarantees under article 14 or release, as well as immediate commutation and compensation. The State party is under an obligation to take measures to prevent similar violations in the future.

9. 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 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 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 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.

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\* 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 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 text of an individual opinion by one Committee member is appended to the present document.

1/ See inter alia, the Committee's Views in respect of communication No. 730/1996 (Clarence Marshall v. Jamaica), adopted on 3 November 1998.

2/ See inter alia, the Committee's decision in communication No. 536/1993, Perera v. Australia, declared inadmissible on 28 March 1995.

3/ See communication No. 558/1994 (Errol Johnson v. Jamaica), Views adopted on 22 March 1996.

[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 member Hipólito Solari Yrigoyen (partly dissenting)**

I hold a dissenting opinion on paragraph 6.12, which in my opinion should read as follows:

6.12 The author's lawyer has maintained that his detention on death row constitutes cruel and inhuman treatment, both because of the time spent there and because of the general conditions of detention, which he has spelled out in paragraph 3.10. 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 party has not refuted the specific allegations about the treatment received by the author in breach of articles 7 and 10,

paragraph 1, of the Covenant; it has simply ignored 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 imposed on 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.

[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.]