

HUMAN RIGHTS COMMITTEE

Lewis v. Jamaica

Communication No. 708/1996**

17 July 1997

CCPR/C/60/D/708/1996*

VIEWS

Submitted by: Neville Lewis [represented by S J Berwin & Co, a London law firm]

Victim: The author

State party: Jamaica

Date of communication: 24 May 1996 (initial submission)

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

Meeting on 17 July 1997,

Having concluded its consideration of communication No. 708/1996 submitted to the Human Rights Committee on behalf of Mr. Neville Lewis 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 Neville Lewis, a Jamaican citizen, currently awaiting execution at St. Catherine District Prison in Jamaica. He claims to be a victim of violations of articles 6, 7, 9, 10, and 14 of the International Covenant on Civil and Political Rights. He is represented by Mr. David Stewart, solicitor with S J Berwin & Co in London.

The facts as submitted

2.1 The author and his co-defendant Peter Blaine were convicted of the murder of one Victor Higgs and sentenced to death on 14 October 1994 by the Home Circuit Court in Kingston. Their appeal was dismissed by the Court of Appeal on 31 July 1995, and on 2 May 1996, the author's petition for special leave to appeal to the Judicial Committee of the Privy Council was refused. The author states that all domestic remedies have thus been exhausted. He claims that a constitutional remedy is not available to him because of his indigence, since Jamaica does not provide legal aid for constitutional motions.

2.2 The author was arrested on 11 November 1992, some three weeks after Mr. Higgs had been found dead, and taken into custody at Lionel Town Police Station. During interrogation by the police, the author initially denied any involvement. He claims, however, that he was then severely beaten and as a result agreed to sign blank sheets of paper. He claims that these sheets were later used to forge his caution statement, in which he admitted having been with Blaine at the scene of the murder, accusing Blaine of having carried out the murder. (The veracity of the author's statement was never brought up at trial. Indeed, the author's counsel at trial said that the statement was fully accepted.)

2.3 After he made his statement to the police, the author was transferred to the Central Police Station in Kingston and charged with the murder of Mr. Higgs. He spent a week in a filthy cell together with seven other detainees. The author states that he did not have any contact with his lawyer until he was brought to court, for the first of many preliminary hearings, approximately a week after he was charged. At that hearing, the author met two co-accused, known to him as "Garfield" and Cecil Salmon. The hearing was adjourned.

2.4 Following the adjournment, the author was remanded in custody at St. Catherine District Prison, in a cell with 18 to 25 other prisoners. Eventually, the author's co-accused¹ were released on bail, but the author remained in police custody. On 23 February 1993, a preliminary enquiry was held, and the case was then transferred to the Home Circuit Court in Kingston for trial. The author was remanded in custody at the General Penitentiary in Kingston. The author states that he was kept with convicted prisoners in a cell without basic sanitary facilities.

2.5 On 5 October 1994, the trial against the author and his co-accused Peter Blaine started.
² At trial, the case for the prosecution was that Mr. Higgs, an American businessman travelling in a Honda motor car, stopped at a road junction to ask for directions at about 5 p.m. on 18 October 1992. The author and Blaine entered his car offering to direct him. Mr. Higgs' body was found four days later in a mud lake. His car had been found the previous day, its appearance having been altered by changing the registration plates and tinting the windows. The victim had been strangled with a strip of grey cloth wound around his neck. His hand and feet were bound with the same cloth and an attempt had been made to sink the body by weighting it with a piece of railway line. The prosecution called witnesses who had seen the author and his co-accused enter the victim's car, a witness who had helped the accused in tinting the windows of the car, and a policeman who had stopped the accused while driving in the car on 19 October 1992. Medical evidence was led as to the cause of

death, strangling with a piece of cloth. The caution statements made by the two accused were also led as evidence.

2.6 The author's co-accused Peter Blaine made an unsworn statement from the dock, admitting to taking a ride with Higgs on 18 October 1992, together with the author and two other youths. He blamed the author for having concocted the plan to steal Higgs' car and murder him.

2.7 The author gave sworn evidence, stating that it was Blaine who had attacked Higgs and had forced the author to cooperate, despite his pleas to leave the man alone. One other witness, a policeman, was called on the author's behalf, and testified as to the willingness of the author to cooperate. At the trial, the author was represented by a Queen's counsel, who had been retained for him by an ex-girlfriend. Allegedly he only met his representative 30 minutes before the beginning of the trial and was unable to examine the evidence with him.

2.8 On 15 December 1994, the author wrote to the Ombudsman to complain that he had been forced by the police to sign blank sheets of paper, and that when he arrived at the court on 5 October 1994, his lawyer was not yet there and he was approached by a detective who told him what evidence to give, which he then did.³ The trial transcript further shows that the author gave evidence in the afternoon of 11 October 1994, with his counsel leading him. The Ombudsman, in his reply of 21 March 1995, replied that he should raise these issues on appeal and that allegations of misconduct by the police should be directed to the Police Complaints Department to be investigated.

2.9 On 20 June 1995, the Registrar of the Court of Appeal informed the author that he would be represented on a legal aid basis by a lawyer, who had not earlier been involved with the case. He was also informed that the hearing would be held in the week of 10 July 1995. The author states that he never met his lawyer. The appeal was argued on three grounds of misdirections by the judge to the jury.

The complaint

3.1 As regards the events before the trial, the author claims that he is a victim of a violation of articles 7, 9, 10, and 14, paragraph 2, of the Covenant. He recalls that he was severely beaten upon arrest, that he was forced to sign blank sheets of paper, that he was kept in detention with convicted prisoners, and that he was kept in custody for 23 months until the beginning of the trial. The author claims that the delay in bringing him to trial was due to the fact that without Blaine's testimony, there was not enough evidence against him. In this context, he claims a violation of article 14, paragraph 2. The author further states that the fact that he was kept in detention throughout hindered him in the preparation of his defence, and that he met his privately retained lawyer for the first time only 30 minutes before the beginning of the trial. This is said to constitute a violation of article 14, paragraph 3 (b).

3.2 As regards the trial, the author claims that the extensive media coverage before and during his trial, prejudiced his right to a fair trial and the right to be presumed innocent. In this connection, the author states that he requested the Court at the beginning of the trial to

bar the press from attending, which was refused.⁴ During the trial, an erroneous broadcast stated that the author had admitted to taking part in the murder of Higgs. The author's counsel mentioned this to the trial judge, who then instructed the jury to disregard any media coverage of the case.

3.3 The author further claims that the judge did not adequately instruct the jury as to the evidence the two accused entered against each other. He also claims that he wanted his counsel to call his girlfriend to give evidence on his behalf, but that she was never called, in violation of article 14, paragraph 3 (e).

3.4 The author claims that the delays in the proceedings against him (three and a half months between his arrest and the preliminary enquiry, 16 months between his arrest and the arraignment, and nearly two years between his arrest and the trial) constitute violations of articles 9, paragraph 3, and 14, paragraph 3 (c), of the Covenant.

3.5 As regards the appeal, the author claims that the legal aid lawyer who argued his appeal, failed to properly prepare the appeal, since he never met with the author before the hearing. This is said to constitute a violation of article 14, paragraph 3 (b).

3.6 The author claims that the imposition of the death penalty was in violation of article 6 of the Covenant, because of the previous violations of the Covenant.

3.7 The author claims that the circumstances of his detention on death row at the Gibraltar block at St. Catherine Prison are in violation of article 10 of the Covenant. He claims that the cell block is dirty, smelly and infected with insects. He alleges that he is confined to his cell for 24 hours a day, with the exception of five minutes to slop out. There is no artificial light in the cell and he is only allowed to see visitors once a week for five minutes. The author also claims a violation of article 10, paragraph 3, because the Jamaican Penitentiary System does not in practice aim to achieve the social rehabilitation and reformation of prisoners. In this context, the author refers to the overcrowding of prisons and the imposition of the death penalty as a form of punishment.

3.8 It is stated that the same matter has not been submitted to another procedure of international investigation or settlement.

State party's observations and the author's comments thereon

4.1 By submission of 23 September 1996, the State party notes that the author alleges that he was ill-treated by the police during his initial detention. The State party further notes that the author wrote to the Ombudsman who then replied and directed him to the Police Complaints Authority. The author, however, failed to pursue this course of action, nor did he raise the matter at any stage of his trial. The State party therefore argues that this claim is inadmissible for non-exhaustion of domestic remedies.

4.2 The State party denies a violation of article 9 of the Covenant. As regards his complaint that he was not allowed to see an attorney, the State party indicates that it will investigate

the matter.

4.3 As regards the author's continued pre-trial detention, the State party submits that the refusal to grant bail does not constitute a violation of the Covenant. In the State party's opinion, there are circumstances in which a person should not be granted bail and these circumstances are best determined by a magistrate. The duty of the State is to review regularly the circumstances of the individual's detention in order to determine whether there has been a change in circumstances justifying the release of the individual. This, the State party submits, was done and therefore there was no breach of articles 9 and 14, paragraph 2, of the Covenant.

4.4 As regards the length of the pre-trial detention, the State party explains that during the 23 months, a preliminary enquiry was held and the author appeared in court on several occasions. According to the State party, the delay therefore does not constitute undue delay in violation of the Covenant. As regards the three months' delay between the author's arrest and the preliminary hearing, the State party explains that the author appeared in Court during that period on several occasions and argues that there was no undue delay which would amount to a violation of the Covenant. Nor does the period of 16 months between the author's arrest and arraignment, during which period the author appeared in Court several times and a preliminary inquiry was held, constitute a violation of the Covenant, in the opinion of the State party.

4.5 As regards the author's claim that a violation of article 14, paragraph 1, occurred because of the media coverage of the case, which would have influenced the jurors against him, the State party notes that it was open to the author to raise this issue at trial or on appeal, but that he failed to do so. The State party therefore argues that this aspect of the communication is inadmissible for non-exhaustion of domestic remedies.

4.6 As regards the author's contention that his right to have adequate time and facilities for the preparation of his defence was breached since his continued detention hindered him and he had only minimal contact with his attorney for his trial and none with his appeal attorney, the State party denies that pre-trial detention as such would hinder the preparation of the defence to the extent that it would lead to an unfair trial. As regards the legal representation, the State party maintains that it is its responsibility to appoint competent counsel to represent persons who require legal aid. How counsel conducts the case is not a matter for which the State party can be held accountable under the Covenant.

4.7 The State party notes that the author also complains about the judge's instructions to the jury and points out that the Committee has recognized that this is a matter which falls within the jurisdiction of the appellate courts.

4.8 As regards the author's claim under article 14, paragraph 3 (e), the State party notes that the author fails to indicate why his girlfriend was not called to give evidence. The State party argues that it cannot be held responsible for the failure to call her, unless it can be attributed to some action by the State authorities.

5.1 In his comments on the State party's submission, counsel argues that the communication is admissible and that the State party has failed to address certain issues raised by the communication, which must be taken as an acknowledgement of their admissibility. As regards the merits of the communication, counsel submits that the State party has undertaken to investigate why the author was not able to see an attorney, and moreover, that there are a number of matters which would require further investigation by the State party, before the Committee could determine the merits of the case.

5.2 As regards the State party's argument that the author's claim concerning his ill-treatment at the hands of the police is inadmissible for non-exhaustion of domestic remedies, counsel recalls that the author complained in writing to the Ombudsman on 15 December 1994. He received a reply from the Ombudsman on 21 March 1995, in which he was referred to the Police Complaints Department in Kingston. Counsel points out that at the time, the author was already on death row and in practice it was impossible for the author to lodge a complaint with the Police Complaints Department because of his vulnerable position, exposed to brutality and intimidation by prison guards. Counsel points to the inherent difficulty of a detainee to prove allegations of torture or ill-treatment and, with reference to the Committee's jurisprudence in Ramirez v. Uruguay⁵, argues that where the author has given adequate particulars of the acts concerned, a refutation by the State party in general terms is not sufficient. Counsel contends that the author had no reasonable prospect of a complaint to the Police Complaints Department succeeding, and that, on the contrary, such a complaint would only result in reprisals by the guards. He therefore decided not to write, but to pursue his other legal remedies on appeal and in the international tribunals.

5.3 Counsel notes that the State party has not contradicted the author's allegations concerning the conditions of detention on death row, which allegedly constitute in themselves a violation of articles 7 and 10, paragraph 1, of the Covenant.

5.4 As regards the author's pre-trial detention, counsel submits that the author had no prior convictions and was ignorant as how to deal with the police. It is submitted that he was tricked by the police into testifying against himself, something the State party should be held accountable for.

5.5 Counsel submits that the State party has failed to address the author's allegations that the presumption of innocence was not respected in his case, particularly in the light of the fact that his co-accused Peter Blaine was only arrested on or about 12 July 1994, some three months before trial.

5.6 As regards the 23 months delay between arrest and trial, counsel notes that the State party has denied that the delay was unreasonable but has not offered to investigate the reasons for it. Counsel contends that the lengthy incarceration was extremely unjust because the author was unable to meet his defence attorneys to prepare adequately his defence. This breach is said to be a violation of the State party's obligations under article 9, paragraph 3, and ultimately an infringement of the author's right to life protected under article 6 of the Covenant. According to counsel, even though the delay of three months between arrest and preliminary hearing may not be unreasonable because the author appeared in court several

times, this argument cannot be relied upon by the State party to justify the delay of 16 months between the author's arrest and his arraignment on 6 April 1994. It is submitted that the authorities should not have been allowed to hold the author until they arrested Blaine, his co-accused, in July 1984, and that this constituted a violation of article 14, paragraph 3 (c).

5.7 As regards the media coverage and the prejudices this created in respect of the author and his co-accused, counsel states that both the author and his co-accused attempted to have the press excluded from the court room prior to the initial hearing, but this was denied. Further, it is submitted that the police distributed a passport photograph of the author to the press, which was used to implicate him in the murder. The author maintains that the publicity of his involvement in the crime prejudiced his trial and the interests of justice, in contravention of article 14, paragraph 1. As regards the State party's argument that the author did not exhaust domestic remedies, counsel states that he does not know of any Jamaican case where the courts have stayed proceedings because of adverse publicity. He therefore submits that there was no effective remedy available to him, since the trial judge refused the application to exclude the press from the court. According to counsel, the matter could not have been raised as a ground of appeal, neither to the Court of Appeal in Jamaica nor to the Judicial Committee of the Privy Council.

5.8 With regard to the inadequacy of time and facilities for preparation of the author's appeal, counsel recalls that the author was represented on appeal by a legal aid lawyer who did not come to discuss the case with him, despite the fact that the author had written to him to say that he had important information. In general, counsel submits that the State party only provides the most meagre level of legal aid to indigent defendants. As a result, it is often inexperienced counsel who take on death row cases, who, because of the level of remuneration will almost inevitably reduce the time in preparation of the case.

Issues and proceedings before the Committee

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 has ascertained, as required under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 The Committee notes the State party's argument that the author's claim that media coverage prejudiced the jury against him is inadmissible for non-exhaustion of domestic remedies. It notes that this matter was not raised by the author or his counsel during the trial, as it was incumbent upon them to do. Accordingly, the Committee considers that this part of the communication is inadmissible.

6.4 The Committee further notes the State party's argument that the author's claim that he was beaten upon arrest is inadmissible for non-exhaustion of domestic remedies. It notes that

neither the author nor his counsel raised this issue during the trial as it was incumbent upon them, and that the author's defence at trial was partly based on the voluntariness of his statement and his cooperation with the police. The Committee, therefore, considers that this claim is inadmissible.

6.5 As regards the author's claim that the judge's instructions to the jury were inadequate, 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 specific instructions to the jury by the trial judge, unless it can be ascertained that the instructions to the jury were clearly arbitrary or amounted to a denial of justice. The material before the Committee does not show that the trial judge's instructions or the conduct of the trial suffered from such defects. Accordingly, this part of the communication is inadmissible as incompatible with the provisions of the Covenant, pursuant to article 3 of the Optional Protocol.

6.6 As regards the author's claim that his lawyer failed to call his girlfriend as a witness at the trial, the Committee considers that the State party cannot be held accountable for alleged errors made by a defence lawyer, unless it was manifest to the judge that the lawyer's behaviour was incompatible with the interests of justice. In the instant case, there is no reason to believe that counsel was not using his best judgement and this part of the communication is therefore inadmissible under article 2 of the Optional Protocol.

6.7 The Committee considers that the author has failed to substantiate, for purposes of admissibility, that he is a victim of a violation of article 10, paragraph 3. This part of the communication is therefore inadmissible under article 2 of the Optional Protocol.

6.8 The Committee notes that the State party has shown a willingness to have the instant communication examined on the merits, insofar as it had no objection to admissibility. The Committee has taken note of counsel's argument that a number of matters would still require investigation by the State party. Nevertheless, the Committee is of the opinion that the information before it is sufficient to allow an examination of the merits of the communication.

7. In the circumstances, the Committee decides that the author's remaining claims are admissible and proceeds to an examination of the substance of those claims in the light of all the information made available to it by the parties, as required by article 5, paragraph 1, of the Optional Protocol.

8.1 The author has argued that the 23 months' delay between his arrest and trial was unduly long and constitutes a violation of articles 9, paragraph 3, and 14, paragraph 3 (c), of the Covenant. Article 9, paragraph 3, entitles an arrested person to trial within a reasonable time or to release. The Committee notes that the arguments forwarded by the State party do not give an adequate explanation why the author, if not released on bail, was not brought to trial for 23 months. The Committee is of the view that in the context of article 9, paragraph 3, and in the absence of any satisfactory explanation for the delay by the State party, a delay of 23 months during which the author was in detention is unreasonable and therefore constitutes a violation of this provision. The Committee does not, in the circumstances, consider it

necessary to consider the question of violation of article 14, paragraph 3 (c).

8.2 In the context of the delay, the author has also argued that his right to presumption of innocence was violated, because the delay was caused by the failure of the police to find his co-accused and that in the absence of his co-accused there was not enough evidence against him. The Committee notes that the author was arraigned before his co-accused was apprehended, which shows that there was sufficient *prima facie* evidence against him to put him to trial. In the circumstances, the Committee finds that the facts before it do not disclose a violation of article 14, paragraph 2.

8.3 The author has also argued that his continued detention hindered him in the preparation of his defence, since he could not freely consult with his counsel. In this context, the Committee notes that the State party has said it would investigate why the author was not allowed to see an attorney. The Committee observes, however, that the author has never claimed that he was not allowed to see an attorney and that he in fact saw an attorney a week after his arrest. In the instant case, the information before the Committee does not show that the restrictions placed on the author hindered the preparation for his defence to such an extent as to constitute a violation of article 14, paragraph 3 (b), of the Covenant. In this context, the Committee notes also that neither the author nor his counsel requested more time for the preparation of the defence at the beginning of the trial.

8.4 As regards the author's argument that he was not effectively represented on appeal, since his legal aid lawyer failed to consult with him, the Committee notes that the author was informed beforehand who would represent him at the appeal, that he was informed of the date of the hearing and that counsel for the author did argue the appeal on his behalf. The Committee recalls its jurisprudence that under article 14, paragraph 3 (d), the court should ensure that the conduct of a case by the lawyer is not incompatible with the interests of justice. In the instant case, nothing in the conduct of the appeal by the author's lawyer shows that he was not using his best judgement in the interests of his client. The Committee concludes therefore that the information before it does not show that article 14, paragraph 3 (d), has been violated.

8.5 The Committee notes that the State party has not contested the author's claims under article 10 of the Covenant (1) that after his arrest he spent a week in a filthy cell with seven other prisoners, (2) that in the General Penitentiary he was kept with convicted prisoners in a cell without basic sanitary facilities and (3) that the cell in which he is held on the death row is dirty, smelly and infected with insects and that he is in there all day, except for five minutes to slop out and during visits, once a week for five minutes. The Committee finds that, in the circumstances, the facts presented by the author constitute a violation of article 10, paragraphs 1 and 2 (a), of the Covenant.

9. 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 9, paragraph 3, and article 10, paragraph 1, of the Covenant.

10. The Committee is of the view that Mr. Neville Lewis is entitled, under article 2, paragraph 3 (a), of the Covenant, to an effective remedy, including compensation. The State party is under an obligation to ensure that similar violations do not occur in the future.

11. Bearing in mind that, by becoming a State party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, 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 ninety days, information about the measures taken to give effect to the Committee's Views.

*/ The following members of the Committee participated in the examination of the present communication: 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. David Kretzmer, Mr. Rajsoomer Lallah, Ms. Cecilia Medina Quiroga, Mr. Julio Prado Vallejo, Mr. Martin Scheinin, Mr. Danilo Türk and Mr. Maxwell Yalden.

**/ The texts of four individual opinions by Committee members Nisuke Ando, Lord Colville, Rajsoomer Lallah and Martin Scheinin are appended to the present document.

1/ It appears from the trial transcript that at the time of the trial against the author the two co-accused were in detention on charges of being accessory after the fact.

2/ It appears that Blaine was arrested only on 12 July 1994.

3/ This seems to contradict the statement that the author saw his counsel half an hour before the beginning of the trial.

4/ No support for this claim is found in the trial transcript.

5/ Communication No. 4/1977, Views adopted by the Committee at its tenth session, on 23 July 1980.

[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 annual report to the General Assembly.]

Appendix

A. Individual opinion by Committee member Lord Colville (*dissenting*)

1. I am unable to agree that the delay of 23 months which elapsed between the author's arrest and trial constitutes a violation, on the facts of this case, of articles 9, paragraph 3, of the Covenant. The crucial matter is that concerning his statement, which in paragraphs 2.2 and 3.1 of the Views he complains was falsely obtained after his being beaten by the police.

2. This statement, which contained his confession to an involvement in the killing of the victim, was central to the author's defence at his trial, and was always so intended. Contrary to his claim, a study of the trial transcript shows that the statement was taken voluntarily, in the presence of a Magistrate who attended for this purpose at the request of the police officer in charge of his case. It was confirmed at the trial, by his counsel (p. 92) and by the author in the course of his sworn evidence, to be true: he never complained that it had been extracted from him in the manner now claimed. To the contrary, it was an essential part of his defence, in his attempt to ensure that his conviction (which was virtually certain) was for non-capital murder under section 2(2) of the Offences against the Person (Amendment) Act 1992, in that, he claimed, he had "not himself used violence on that person in the course or furtherance of an attack" on him - see Court of Appeal judgement, 31 July 1995, p. 17 & 18. The author's defence was, and had always been, to transfer the blame for all application of violence to his co-defendant, Peter Blaine. Such a line of defence (colloquially known to common lawyers as a "cut-throat" defence) would have stood very little chance of success unless the same jury was also engaged in the decision whether they could convict Peter Blaine, in accordance with the proper rules of procedure, exemplified in article 14, paragraph 2, of the Covenant.

3. In the event the author's defence on these lines was not successful, possibly because of major inconsistencies between what he had said in the statement before the Magistrate and the evidence he gave during the trial. Nevertheless it was sufficiently important to him to give sworn evidence, and to subject himself to cross-examination by the prosecution and also counsel for his co-defendant (which did occur), in order to seek to obtain a non-capital verdict.

4. The author's co-defendant, Peter Blaine, had gone into hiding after the murder and there was a police block on Jamaican ports to prevent his leaving the jurisdiction. It was not open to the author to assist in his apprehension but it was essential to the author that he should not be tried alone, by a jury not also seized of the case of Peter Blaine. No complaint is made that the author sought release on bail, whatever the probabilities of such an application being successful, and he gives no information in that respect.

5. As for the author's claim, in paragraph 3.1 of the Views, that there was insufficient evidence, without that of Peter Blaine, to bring him to trial, this is wholly inconsistent with (i) his initial statement, (ii) his sworn evidence at the trial and (iii) his own adopted line of defence which was to transfer any liability for capital (as opposed to non-capital) murder on to his co-defendant, Peter Blaine.

6. Accordingly I am of the opinion that the author's substantive rights under the Covenant

were neither invoked nor violated in the respect set out above.

Lord Colville [signed]

[Original: English]

B. Individual opinion by Committee member Nisuke Ando (*dissenting*)

After carefully reading the individual opinion of Lord Colville, I am unable to concur with the Views of the Committee that the delay of 23 months in this case between the author's arrest and trial constitutes a violation of article 9, paragraph 3, of the Covenant (paragraph 8.1).

In this connection, the Committee notes that "the arguments put forward by the State party do not address the question of why the author, if not released on bail, was not brought to trial for 23 months" (*ibid*). However, according to the State party, "during the 23 months, a preliminary enquiry was held and the author appeared in court on several occasions" (paragraph 4.4). Furthermore, Lord Colville's opinion makes clear that "it was essential to the author that he should not be tried alone, by a jury not also seized of the case of Peter Blaine" (individual opinion, paragraph 4), the co-accused of the same murder charge who was arrested probably early in July 1994, some 20 months after the author was arrested (Views in communication No. 696/1996, paragraphs 2.1 and 3.4). In fact, Lord Colville notes that "[n]o complaint is made that the author sought release on bail" and that "he gives no information in that respect" (individual opinion, paragraph 4).

All the above indicates to me that the delay of 23 months between the author's arrest and trial was not necessarily caused by the State party's inaction but was essentially caused by the convenience of the author himself. Since it is an established jurisprudence of the Committee that the prolongation of judicial proceedings caused by an author should not be attributable to the State party concerned, I am unable to concur with the Views in this case that the 23 months' delay between the author's arrest and trial constitutes a violation of article 9, paragraph 3, of the Covenant.

Nisuke Ando [signed]

[Original: English]

C. Individual opinion by Committee member Rajsoomer Lallah (*dissenting*)

I am unable to agree with the Committee's view that there has been a violation of article 9, paragraph 3, in the present case. The grounds relied upon by the Committee are, first, that the period of 23 months which had elapsed between the arrest of the author and his trial was unreasonable and, secondly, that the State party had not given any satisfactory explanation

which would account for the length of this period.

The State party did provide some explanations which, in my view, were quite relevant. These could legitimately be considered in the context of other relevant factors shown in the case record. Those explanations and the record indicate the following: the police first conducted an enquiry; on the basis of that enquiry, a preliminary enquiry was held before a court and the author appeared several times in court; at the close of the committal proceedings, the author was committed by the court for eventual trial; the trial did not take place in the normal course since the police then succeeded in arresting a co-accused, and it must be assumed that a preliminary enquiry had to be held with regard to the participation of the co-accused, so that there could be a joint trial of the author and his co-accused in respect of a joint offence. It would seem to me that, in these circumstances, it could not be said that the time that elapsed between the committal of the author and beginning of his trial, though ex facie somewhat long, was unreasonable.

It is worthy of note that there does not appear to have been any attempt by the author to seek any order from the court to be tried within a reasonable time, if it appeared to him that proceedings were dragging on.

Rajsoomer Lallah [signed]

[Original: English]

D. Individual opinion by Committee member Martin Scheinin (*partly dissenting*)

I share the Views of the Committee with respect of the issues where a violation of the Covenant has been established.

In addition the author has complained of a violation of article 9, paragraph 3, of the Covenant and counsel's presentation of the facts refer to a delay of one week before the author was first brought before a judge after being taken into custody by the police. As the State party has failed to address this issue or to present any information of the author in fact being brought before a judicial authority during the first week of his detention, I believe the right of a person detained on a criminal charge to be promptly brought before a judge or other judicial authority, as secured in the first part of article 9, paragraph 3, also has been violated.

After a finding of a multiple violation of the Covenant the commutation of the death sentence is, in my opinion, the only appropriate remedy to be recommended.

Martin Scheinin [signed]

[Original: English]