

## HUMAN RIGHTS COMMITTEE

### Currie v. Jamaica

Communication No. 377/1989

29 March 1994

CCPR/C/50/D/377/1989

### VIEWS

*Submitted by: Anthony Currie (represented by counsel)*

*Alleged victim: The author*

*State party: Jamaica*

*Date of communication: 25 October 1989 (initial submission)*

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

Meeting on 29 March 1994,

Having concluded its consideration of communication No. 377/1989, submitted to the Human Rights Committee by Mr. Anthony Currie 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 its

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

The facts as submitted by the author

1. The author of the communication is Anthony Currie, a Jamaican citizen awaiting execution at St. Catherine District Prison, Jamaica. He claims to be the victim of a violation by Jamaica of article 14, paragraphs 1, 3 (c) and 5, juncto article 2, paragraph 3, of the International Covenant on Civil

and Political Rights. He is represented by counsel.

2.1 The author states that he was charged with the murder, on 18 April 1978, of Ezekiel Segree. Prior to the murder, the author and the deceased had been engaged in an argument. The author alleges that the deceased pulled a knife and injured him. During the trial medical evidence was not called for by the author's lawyer in order to determine whether the author's scar could have been the result of a wound inflicted at the time of the murder; the prosecution witnesses testified that the deceased had not been the aggressor.

2.2 On 8 December 1978, the author was sentenced to death. The author appealed the judgement on the ground that the judge had misdirected the jury on the issue of self-defence. The Jamaican Court of Appeal dismissed his appeal on 11 October 1980. The author subsequently filed a petition for special leave to appeal to the Judicial Committee of the Privy Council. On 20 February 1987, his petition was dismissed in the absence of a written judgement of the Jamaican Court of Appeal. Counsel had invited the Judicial Committee to allow the petition on the basis that the failure of the Court of Appeal to issue a written judgement in a capital case was such a serious violation of the principles of natural justice that leave to appeal should be granted, or to remit the case to Jamaica with a direction under section 10 of the Judicial Committee Act 1844 that the Court of Appeal be required to provide written reasons.

2.3 Section 10 of the 1844 Act (as revised on 31 March 1978) stipulates:

"It shall be lawful for the said Judicial Committee to make an order or orders on any court in any colony of foreign settlement, or foreign dominion of the crown, requiring the judge or judges of such court to transmit to the clerk of the Privy Council a copy of the notes of evidence in any case tried before such court, and of the reasons given by the judge or judges for the judgement pronounced in any case brought by appeal or by writ of error before the said Judicial Committee."

2.4 The Judicial Committee did not adopt either of the proposed courses and instead dismissed the application for leave to appeal.

### The complaint

3.1 The author claims that he has been denied the right to have his conviction and sentence reviewed by a higher tribunal because of the Court of Appeal's failure to issue a written judgement and the subsequent failure of the Judicial Committee to exercise its powers under section 10 of the 1844 Act. He states that he failed to win special leave to appeal to the Judicial Committee because, in the absence of written judgement, he was unable to explain the grounds on which he was seeking leave to appeal and to include copies of the Appeal Court's judgement.

3.2 The author further contends that the failure of the Court of Appeal to issue a written judgement, despite repeated requests on his behalf, violates his right to be tried without undue delay, as in the absence of a written judgement he is unable to pursue effectively his right of appeal to the Judicial Committee of the Privy Council.

3.3 The author further submits that by failing to provide him with an accessible legal procedure for

the enforcement of his constitutional rights, the State party denied him the right of access to court to seek redress for the violations of his fundamental rights. The author argues that this failure constitutes a violation of article 14, paragraph 1, juncto article 2, paragraph 3, of the Covenant.

3.4 In support of his allegations the author adduces relevant judicial precedents from the case law of Commonwealth countries, the United States of America, the European Court of Human Rights and the Human Rights Committee. a/

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

4.1 By submission of 11 January 1990, the State party argues that the communication is inadmissible on the ground of failure to exhaust all domestic remedies.

4.2 The State party submits that the author's right to a fair trial without undue delay and the right to access to court for the determination of criminal charges against him are guaranteed in section 20 (1) of the Jamaican Constitution. Under section 25, any person who alleges that a fundamental right guaranteed in the Constitution has been, is being or is likely to be contravened in relation to him may apply to the Supreme (Constitutional) Court for redress. The State party states that the Supreme Court may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the rights to which the person is entitled.

4.3 The State party argues that, since the author has taken no steps to secure his constitutional remedies, he has therefore not exhausted domestic remedies as required by article 5, paragraph 2 (b), of the Optional Protocol.

5.1 In his comments on the State party's observations, the author explains why, in his opinion, his communication meets the requirements of article 5, paragraph 2 (b), of the Optional Protocol. While conceding that he has not sought to exercise his right under section 25 (1) of the Jamaican Constitution to seek redress for the alleged breach of his constitutional rights before the Supreme Court, he argues that, in practical terms, because of lack of means, this right is not available to him and is therefore not an effective domestic remedy. He submits that he cannot be required to exhaust a remedy that is neither available nor effective.

5.2 The author argues that the State party has rendered his constitutional rights meaningless and nugatory by failing to provide legal aid for constitutional motions. He contends that without the assistance of a lawyer, he is unable to pursue the complex legal procedures that a constitutional motion entails. He states that he has been unsuccessful in finding an attorney willing to represent him on a pro bono basis. He contends that he is therefore being denied effective access to court for the determination of his constitutional rights.

#### The Committee's decision on admissibility

6. At its forty-fourth session, the Committee considered the admissibility of the communication. It noted the State party's contention that the communication was inadmissible because of the author's failure to pursue the constitutional remedies said to be available to him. In this context, the

Committee recalled its constant jurisprudence that domestic remedies within the meaning of the Optional Protocol must be both available and effective; it considered that, in the absence of legal aid for purposes of filing a constitutional motion, the recourse to the Supreme Court under section 25 of the Jamaica Constitution did not constitute a remedy which is both available and effective within the meaning of article 5, paragraph 2 (b), of the Optional Protocol.

7. On 20 March 1992, the Committee therefore declared the communication admissible in so far as it might raise issues under article 14, paragraphs 1, 3 (c) and 5, of the Covenant.

#### Review of admissibility

8. By submission of 16 February 1993, the State party maintains that the communication is inadmissible for failure to exhaust domestic remedies. It challenges the Committee's finding that a constitutional motion does not provide an adequate and effective remedy in the absence of legal aid. In this context, the State party submits that the Covenant does not require States parties to provide legal aid in all cases, but only, under article 14, paragraph 3 (d), to persons charged with a criminal offence where the interests of justice so require.

9. In his comments, dated 21 June 1993, on the State party's submission, the author refers to his earlier comments concerning the admissibility of the communication.

10. The Committee has taken note of the arguments submitted to it by the State party and the author and reiterates that domestic remedies within the meaning of the Optional Protocol must be both available and effective. The Committee considers that, in the absence of legal aid, a constitutional motion does not, in the circumstances of the instant case, constitute an available remedy within the meaning of article 5, paragraph 2 (b), of the Optional Protocol. There is therefore no reason to revise the Committee's earlier decision on admissibility of 20 March 1992.

#### Examination of the merits

11. As to the merits of the communication, the State party argues that the author's allegations do not reveal a violation of the Covenant. With regard to the author's allegation that article 14, paragraph 5, has been violated, the State party submits that the author has had his case reviewed by the Court of Appeal as well as by the Privy Council.

12.1 With regard to his claim under article 14, paragraphs 3 (c) and 5, of the Covenant, that he has been denied the right to have his conviction and sentence reviewed by a higher tribunal without undue delay, the author refers to the Committee's prior jurisprudence, b/ where the Committee found violations of article 14, paragraphs 3 (c) and 5, since the failure of the court to issue a written judgement denied the complainants the possibility of an effective appeal without undue delay. The author points out that it has been 15 years since he was originally charged with murder and nearly 13 years since the Court of Appeal orally dismissed his appeal and that no written judgement has been issued as yet. He challenges the State party's statement that his case had been examined by the Privy Council and states that the Privy Council merely denied him leave to appeal because he was unable to meet the requirements of the Council's rules of procedure, namely, to explain the grounds on which he was seeking special leave to appeal and to include

copies of the Appeal Court's judgement with his petition.

12.2 With regard to his claim under article 14, paragraph 1, of the Covenant, that he has been denied the right of access to court to seek constitutional redress for the violation of his human rights, the author submits that the high legal costs involved in seeking constitutional redress are well beyond his means and that no legal aid is provided for constitutional motions. He moreover claims that the complicated nature of the system of constitutional redress makes it inaccessible to him without legal assistance. He argues that although the Covenant does not oblige States parties to provide legal aid in respect of civil actions, States parties are under an obligation to give effect to the rights and remedies set out in the Covenant. The author argues that the absence of legal aid for constitutional motions and the absence of a simple and accessible procedure for constitutional redress deny him effective access to the constitutional court, so that he cannot enjoy his right under article 14, paragraph 1, to a fair and public hearing for the determination of his rights and obligations.

13.1 The Committee has considered the communication in the light of all information made available to it by the parties, as required under article 5, paragraph 1, of the Optional Protocol.

13.2 The author has claimed that the absence of legal aid for the purpose of filing a constitutional motion itself constitutes a violation of the Covenant. The Committee notes that the Covenant does not contain an express obligation as such for a State to provide legal aid for individuals in all cases but only, in accordance with article 14, paragraph 3 (d), in the determination of a criminal charge where the interests of justice so require.

13.3 The Committee is aware that the role of the Constitutional Court is not to determine the criminal charge itself, but to ensure that applicants receive a fair trial in all cases, whether criminal or civil. The State party has an obligation, under article 2, paragraph 3, of the Covenant, to make the remedies in the Constitutional Court addressing violations of fundamental rights available and effective.

13.4 The determination of rights in proceedings in the Constitutional Court must conform with the requirements of a fair hearing in accordance with article 14, paragraph 1. In this particular case, the Constitutional Court would be called on to determine whether the author's conviction in a criminal trial has violated the guarantees of a fair trial. In such cases, the application of the requirement of a fair hearing in the Constitutional Court should be consistent with the principles in paragraph 3 (d) of article 14. It follows that where a convicted person seeking constitutional review of irregularities in a criminal trial has not sufficient means to meet the costs of legal assistance in order to pursue his constitutional remedy and where the interests of justice so require, legal assistance should be provided by the State. In the present case the absence of legal aid has denied to the author the opportunity to test the regularities of his criminal trial in the Constitutional Court in a fair hearing, and is thus a violation of article 14, paragraph 1, juncto article 2, paragraph 3.

13.5 The author also claims that the failure of the Court of Appeal to issue a written judgement violates his right under article 14, paragraph 3 (c), to be tried without undue delay, and his right under article 14, paragraph 5, to have his conviction and sentence reviewed. The State party had not provided any information to show that the Judicial Committee of the Privy Council dismissed the author's petition for special leave to appeal on any grounds other than the absence of a written

judgement of the Court of Appeal. In the circumstances, the Committee finds that the author has been barred from making effective use of the remedy of petitioning the Judicial Committee of the Privy Council for special leave to appeal. The Committee recalls that article 14, paragraph 3 (c), and article 14, paragraph 5, are to be read together, so that the right to review of conviction and sentence must be made available without undue delay. c/ In this connection, the Committee refers to its earlier jurisprudence b/ and reaffirms that under article 14, paragraph 5, a convicted person is entitled to have, within reasonable time, access to written judgements, duly reasoned, for all instances of appeal in order to enjoy the effective exercise of the right to have conviction and sentence reviewed by a higher tribunal according to law. The Committee is of the opinion that the failure of the Court of Appeal to issue a written judgement, 13 years after the dismissal of the appeal, constitutes a violation of article 14, paragraphs 3 (c) and 5.

13.6 The Committee is of the opinion 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, if no further appeal against the sentence is possible, a violation of article 6 of the Covenant. As the Committee noted in its general comment 6 (16), the provision that a sentence of death may be imposed only in accordance with the law and not contrary to the provisions of the Covenant implies that "the procedural guarantees therein prescribed must be observed, including the right to a fair hearing by an independent tribunal, the presumption of innocence, the minimum guarantees for the defence and the right to review by a higher tribunal." d/ In the present case, since the final sentence of death was passed without due respect for the requirements for a fair trial set out in article 14, paragraphs 3 (c) and 5, there has accordingly also been a violation of article 6 of the Covenant.

14. 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, paragraph 1, juncto article 2, paragraph 3, article 14, paragraphs 3 (c) and 5, and consequently article 6 of the International Covenant on Civil and Political Rights.

15. In capital punishment cases, the obligation of States parties to observe rigorously all the guarantees for a fair trial set out in article 14 of the Covenant admits of no exception. The failure to provide Mr. Currie an effective right to appeal without undue delay in accordance with article 14, paragraphs 3 (c) and 5, of the Covenant, means that he did not receive a fair trial within the meaning of the Covenant. Consequently, he is entitled, under article 2, paragraph 3 (a), of the Covenant, to an effective remedy. The Committee is of the view that in the circumstances of the case, this entails his release. The State party is under an obligation to ensure that similar violations do not occur in the future.

16. The Committee would wish to receive information, within ninety days, on any relevant measures taken by the State party in respect of the Committee's views.

[Adopted in English, French and Spanish, the English text being the original version.]

Notes

a/ The author refers, inter alia, to the Committee's views in *Earl Pratt and Ivan Morgan v. Jamaica*, communications Nos. 210/1986 and 225/1987, adopted on 6 April 1989 (see Official Records of the General Assembly, Forty-fourth Session, Supplement No. 40 (A/44/40), annex X.F).

b/ Official Records of the General Assembly, Forty-eighth Session, Supplement No. 40 (A/48/40), annex XII.K, communication No. 320/1988 (*Victor Francis v. Jamaica*), views adopted on 24 March 1993; *ibid.*, Forty-seventh Session, Supplement No. 40 (A/47/40), annex IX.J, communication No. 283/1988 (*Aston Little v. Jamaica*), views adopted on 1 November 1991; and *ibid.*, annex IX.B, communication No. 230/1987 (*Raphael Henry v. Jamaica*), views adopted on 1 November 1991.

c/ *Ibid.*, Forty-fourth Session, Supplement No. 40 (A/44/40), annex X.F, communications Nos. 210/1986 and 225/1987 (*Earl Pratt and Ivan Morgan v. Jamaica*), views adopted on 6 April 1989, paras. 13.3 to 13.5.

d/ *Ibid.*, Thirty-seventh Session, Supplement No. 40 (A/37/40), annex V, general comment 6 (16), para. 7.