

## HUMAN RIGHTS COMMITTEE

### Hankle v. Jamaica

Communication N° 710/1996\*\*

28 July 1999

CCPR/C/66/D/710/1996\*

### VIEWS

*Submitted by: Winston Hankle (represented by the London law firm Herbert Smith)*

*Alleged victim: The author*

*State party: Jamaica*

*Date of communication: 11 August 1995*

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,  
Meeting on 28 July 1999

Having concluded its consideration of communication No. 710/1996 submitted to the Human Rights Committee by Mr. Winston Hankle under the Optional Protocol to the International Covenant on Civil and Political Rights,

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

Adopts the following:

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

1. The author of the communication is Winston Hankle, a Jamaican citizen currently incarcerated in the Gun Court Rehabilitation Centre in Jamaica. The author claims to be a victim of violations by Jamaica of articles 7 and 14, paragraphs 1, 3(b) and 3(d), of the International Covenant on Civil and Political Rights. He is represented by the London law firm Herbert Smith.

## The facts as submitted by the author

2.1 The author was arrested on 28 March 1990 for the murder of Clive Wint, which allegedly took place on 10 July 1989, and was detained for seven weeks before he was charged. The author was convicted and sentenced to death on 22 November 1990. His appeal was heard and dismissed on 23 March 1992. Shortly after, the author's crime was re-classified as non-capital and his death sentence was commuted to life imprisonment with a non-parole period of twenty years pursuant to the provisions of the Offences Against the Person (Amendment) Act 1992. The author's petition for special leave to appeal to the Judicial Committee of the Privy Council in London was refused on 4 November 1993.

2.2 The prosecution's case was based mainly on the testimony of three witnesses to Wint's murder. All three gave evidence that in the early morning hours of 10 July 1989, a masked gunman (the killer allegedly had a plastic hairnet, also known as a "jherri bag," over his face) stepped out from behind a streetlight, exchanged a few words with Wint, and proceeded to shoot Wint several times. All three witnesses testified that Wint was shot at close range and that the gunman held the gun in his left hand. Two of the witnesses testified that the author and the deceased had quarrelled earlier in the evening at a dance at a club called "Lovers Hideout", and that their quarrel had ended with the author stating that he was going to get his gun. Upon his death, the deceased allegedly said, "See how Blackie shot me fo nutten" ("Blackie" is the author's commonly used nickname.)

2.3 The author's sole defense was a statement he made from the dock, stating that he was at the dance club on the evening in question, but that he left and went home with his girlfriend, Janet Campbell, at approximately 2:30 a.m., and thus was not present at the shooting. The author also stated that neither was he left-handed, nor had he ever worn a "jherri" bag. No other evidence was called in support of the author's defense, despite the author allegedly telling his counsel that Janet Campbell was willing to testify as an alibi witness.

2.3 The author further states that no identification parade was held in this case, even though the prosecution's case was based mainly on identification. A police officer who testified for the prosecution stated that he did not feel that an identification parade was necessary since all three witnesses had known the author for years and identified him by name.

## The complaint

3.1 The author claims to be a victim of a violation of article 7 of the Covenant. It is submitted that the cumulative effect of the delays in his case, further exacerbated by the fixation of the 20 years non-parole period, amount to a violation of the said provision.<sup>1</sup>

3.2 The author claims to be a victim of a violation of the right to a fair trial as provided for in article 14, paragraph 1. Firstly, it is submitted that there were a number of inconsistencies in the case of the prosecution. Secondly, it is submitted that both the trial judge and the Court of Appeal erred in deciding that it was not necessary to leave the question of legal provocation to the jury. The author states that there was evidence that a third party borrowed a knife from the deceased in order to wound him. It is further submitted that the judge should

have dismissed the jurors after they heard the prosecutor ask for an adjournment on the ground that the prosecution witnesses were afraid to testify because they had been threatened. In his summation, the judge instructed the jury to disregard the fact that the witnesses were afraid to come to court, and not to engage in any type of speculation about why they may have been afraid.

3.3 In addition, the author states that the judge should have withdrawn the case from the jury because of 1) the failure of the arresting officer to take a statement from the witnesses until a week after the shooting, 2) the fact that the three witnesses did not positively identify the murderer as the author until he was arrested, almost a year after Wint's murder, and 3) because the circumstances of the identification the night of the murder were such that witnesses allegedly were not in a position to identify the masked gunman other than as a man of deep black skin.

3.4 The author also claims to be the victim of a violation of article 14, paragraphs 1, 3(b) and 3(d), on the ground that he did not have adequate legal representation either during the trial or on appeal. On both occasions the author was represented by a privately retained attorney. It is submitted that the author was interviewed by his attorney only briefly on three occasions, twice prior to the commencement of the trial and once prior to his appeal. The author states that no evidence was called to support his alibi, even though the author expressed to his lawyer his wish that Janet Campbell testify.

3.5 The author further claims that his attorney failed to challenge a police officer's testimony that the author told him that he was present at the scene of the shooting and involved in a struggle with the deceased, during the course of which the deceased was shot in the arm. The trial judge proceeded to comment on counsel's failure to cross-examine on this issue, saying that counsel should have first established whether or not the statement had been made, before choosing not to challenge the officer's testimony. In addition, the author claims that he was not given the opportunity to hold a meeting with his lawyer at any time during the trial, nor to read the prosecution witness statements. The author states that his lawyer fell asleep during the trial and that the author had to wake him.

3.6 It is stated that the same matter has not been submitted to another procedure of international investigation or settlement. Counsel also argues that all available domestic remedies have been exhausted for the purposes of article 5, paragraph 2(b), of the Optional Protocol. While a constitutional motion might be open to the author in theory, it is not available in practice due to the State party's unwillingness or inability to provide legal aid for such motions and to the extreme difficulty of finding a Jamaican lawyer who would represent an applicant pro bono on a constitutional motion.

#### The State party's submission and counsel's comments thereon:

4.1 In its submission of 30 September 1996, the State party offers its comments on the merits of the communication and does not challenge the admissibility.

4.2 The State party rejects the author's assertion that there was any breach of article 7

because of delays. It argues that the author was convicted approximately nine months after his arrest and that his appeal and petition to the Privy Council were completed within a further two years. It is submitted that this period does not constitute the type of delay which would amount to a breach of the Covenant.

4.3 The State party notes that the allegation of breaches of article 14 stem from the court's rejection of defense counsel's submission of no case to answer, the manner in which defense counsel conducted the case, the manner in which the trial judge dealt with several questions and the fact that the Court of Appeal upheld the trial judge's decision. It is submitted that the Committee's jurisprudence on the circumstances in which it will review the trial judge's instructions to the jury is clear, and that none of those circumstances are applicable to the present case. With regard to the conduct of defense counsel, the State party argues that he was privately retained and conducted the case according to his own discretion, and denies that his conduct can be attributed to the State in such a manner as to constitute breach of the Covenant.

5. In his letter of 6 November 1996, counsel refers to the claims contained in the original submission, and states that he has no objections to a joint examination of the admissibility and the merits of the communication.

Admissibility considerations and examination of the merits:

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

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

6.3 With regard to the alleged violation of article 7 on the ground of the cumulated effect of the delays in charging and trying the author and the fixation of the non-parole period to twenty years, the Committee finds that this claim, for purposes of admissibility, cannot be considered sufficiently substantiated, and accordingly decides that it is inadmissible under article 2 of the Optional Protocol.

6.4 The author has alleged a violation of article 14 on the ground of inconsistencies in the prosecution's case and that the judge erred in not withdrawing the case from the jury on account of 1) the failure of the arresting officer to take a statement from the witnesses until a week after the shooting, 2) the fact that the three eye witnesses did not positively disclose the identity of the murderer until almost a year after the murder, and 3) that the circumstances on the night of the murder were such that it was not possible to make a precise

identification. It is also submitted that the judge erred in deciding that the question of legal provocation need not be left to the jury, because there was evidence that the deceased had borrowed a knife from a third party to wound the author. The Committee notes that all these allegations relate to the courts' evaluation of the facts and evidence of the criminal case, and reiterates that while article 14 guarantees the right to a fair trial, it is generally for the domestic courts to review the facts and evidence in a particular case. The Committee can, when considering alleged breaches of article 14 in this regard, solely examine whether the conviction was arbitrary or amounted to a denial of justice. However, the material before the Committee and the author's allegations do not show that the courts' evaluation of the evidence suffered from any such defects. Accordingly, this part of the communication is inadmissible as the author has failed to forward a claim within the meaning of article 2 of the Optional Protocol.

6.5 With regard to the alleged violation of article 14 on the ground of the judge's decision not to dismiss the jurors after they heard the prosecutor ask for an adjournment as the prosecution witnesses allegedly had been threatened and the subsequent instructions from the judge to the jury on this point, the Committee reiterates that it is generally for the appellate courts of States parties to review whether the judge's instructions to the jury and the conduct of the trial were in compliance with domestic law. The Committee can therefore only examine whether the judge's decision and instructions were arbitrary or amounted to a denial of justice, or if the judge manifestly violated his obligation of impartiality. However, the material before the Committee and the author's allegations do not show that the trial judge's instructions or the conduct of the trial suffered from any such defects either. Accordingly, also this part of the communication is inadmissible as the author has failed to forward a claim within the meaning of article 2 of the Optional Protocol.

6.6 The Committee declares the remaining claim under article 14 admissible, and proceeds with the examination of the merits of the admissible claim, in the light of the information made available to it by the parties, as required by article 5, paragraph 1, of the Optional Protocol.

7. The author claims that he is a victim of a violation of article 14, paragraphs 3(b) and 3(d), as he was not afforded adequate time and facilities for the preparation of his defence and that he was inadequately represented both at the trial and on appeal (paras. 3.4 and 3.5 supra). In this context, the Committee recalls that sufficient time must be granted to the accused and his counsel to prepare the defense, but that the State party cannot be held accountable for lack of preparation or alleged errors made by defense lawyers unless it has denied the author and his counsel time to prepare the defense or it should have been manifest to the court that the lawyer's conduct was incompatible with the interests of justice. The Committee notes that neither the author nor his counsel requested an adjournment and that counsel, according to the author himself, explained to the author that calling Ms. Janet Campbell "would not be necessary". It is not for the Committee to second-guess the professional judgment of defense counsel, and, in the circumstances, the Committee finds that the facts before it do not show a violation of article 14 on these grounds.

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional

Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it do not disclose any violations of the International Covenant on Civil and Political Rights.

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\*/ The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Ms. Christine Chanet, Lord Colville, Ms. Elizabeth Evatt, Mr. Eckart Klein, Mr. David Kretzmer, Mr. Rajsoomer Lallah, Ms. Cecilia Medina Quiroga, Mr. Fausto Pocar, Mr. Martin Scheinin, Mr. Hipolito Solari Yrigoyen, Mr. Roman Wieruszewski, and Mr. Maxwell Yalden.

\*\*/ The text of an individual opinion by Ms. Christine Chanet is appended to the present document.

1/ No claim has been made either under article 9, paragraphs 2 and 3, or article 14, paragraph 3(c), with regard to the alleged delays. Nor has any claim been made under article 14 with regard to the decision stipulating the non-parole period.

[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 Christine Chanet

My reservations apply solely to paragraph 6.3, in which the Committee rules the communication inadmissible for want of sufficient prima facie substantiation concerning the fixation of the non-parole period at 20 years.

If article 7 had not been invoked on this point, article 10, paragraph 3, which states "The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation ...", should have prompted the Committee to admit the communication and examine on its merits the compatibility of a mandatory penalty of 20 years with a text stipulating that the aim of that penalty is to rehabilitate the offender.

The question to be argued should have been the following: does not the inability to modify the penalty for such a long period constitute an obstacle to the social rehabilitation of the prisoner?

The Committee did not in fact require much evidence to uphold the author's complaint, since the length of the sentence and its mandatory nature were facts the State party did not contest.

(Signed): Christine Chanet

31 August 1999

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