

## HUMAN RIGHTS COMMITTEE

### Ricketts v. Jamaica

Communication No. 667/1995

4 April 2002

CCPR/C/74/D/667/1995

### VIEWS

Submitted by: Mr. Hensley Ricketts (represented by Simons Muirhead & Burton, a London law firm)

State party concerned: Jamaica

Date of registered communication: 4 April 1995 (initial submission)

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

Meeting on 4 April 2002,

Having concluded its consideration of communication No. 667/1995, submitted to the Human Rights Committee by Mr. Hensley Ricketts 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 Hensley Ricketts, a Jamaican citizen, at the time of submission detained at South Camp Rehabilitation Centre, in Kingston, Jamaica. He claims to be a victim of violations by Jamaica<sup>a</sup> of articles 6 (1) and (2) and 14 (1), (2) and (3) b) and d) of the International Covenant on Civil and Political Rights. He is represented by counsel.

**Facts as submitted by the author**

2.1 The author was convicted for the murder, on 9 March 1983, of one Clinton Campbell and sentenced to death on 31 October 1983 by the Lucea Circuit Court, Hanover. He applied for leave to appeal against conviction and sentence. The Court of Appeal of Jamaica dismissed his application on 20 December 1984. In spite of the preparation of a draft constitutional motion in June 1986, and several requests from London counsel to the Jamaican lawyer Mr. Daly until March 1994, the constitutional motion was never filed. However, in 1994, the author filed a petition for special leave to appeal to the Judicial Committee of the Privy Council; his petition was dismissed on 15 January 1995. With this, it is submitted, all domestic remedies have been exhausted. In January 1993, the offence for which the author was convicted was classified as a non-capital offence under the Offences against the Person (Amendment) Act 1992, and his sentence was converted to life imprisonment.

2.2 At the trial, a Mr. McKenzie gave evidence to the effect that he saw the author, whom he knew, join a group of three people, Mr. Campbell and two other men, in the night of 9 March 1983. A fight broke out between the author and Mr. Campbell, then Mr. Campbell ran to his house, followed by the other three men. Mr. McKenzie then heard "bawling" and he went to Mr. Campbell's house and saw Mr. Campbell's mother call a car to take Mr. Campbell to the hospital. Mr. McKenzie made a statement to DC Blake, a station officer, about what he had seen. Mrs Campbell gave evidence that her son came into the house wounded and collapsed onto the floor, and that she called a car. Dr. Carlton Jones, who performed the post mortem examination on the body of Mr. Campbell, testified that the victim must have died within half an hour after he had been wounded by a sharp instrument. The arresting officer, DC Blake, gave evidence to the effect that upon his arrest the author admitted to have assaulted Mr. Campbell. The author made an unsworn statement, saying he and the deceased had an argument about drugs and that Mr. Campbell started beating him with a machete. The author fled to the police station, where he was told to come back next day. When he returned to the police station, he was charged with murder by DC Blake. He denied having killed Mr. Campbell.

2.3 On 31 October 1983 the author was convicted of murder and sentenced to death by the Lucea Circuit Court. Although the verdict of the jury had to be unanimous, the author claims that four of the 12 jurors disagreed with the foreman and that the foreman falsely told the Court that the jury was unanimous. On 1 November 1983 four affidavits were presented, which state that they disagreed with the verdict.

## **The complaint**

3.1 The author claims to be a victim of a violation of articles 14 (1) and (2) of the Covenant. Pursuant to section 44 (1) of the Jamaican Jury Law "unanimous verdict of the jury shall be necessary for the conviction or acquittal of any person for murder". The author maintains that contrary to this rule, the jury at the Lucea Circuit Court was not unanimous. However, the foreman of the jury said that they had arrived at an unanimous verdict, and that the jury had found the author guilty. The Jamaican trial lawyer, Mr. Eric Frater received on the day following conviction, 1 November 1983, affidavits, from four of the jurors stating that they had not found the author guilty, and that two of them had protested in Court against the foreman's declaration by shaking their heads, and one by crying, while the foreman read out the verdict. The author was therefore found guilty upon a verdict agreed by only 8 out of 12 jurors. Counsel argues that the Court failed to direct the jury that their

verdict had to be unanimous, and that its failure to acknowledge the visible dissent of the jury denied the author's right to be presumed innocent until proved guilty. In the Court of Appeal, the author was represented by a new counsel, Ms. J. Nosworthy, appointed by Court, whereas before he had been represented by a privately retained lawyer. The unanimity of the jury was not raised because Ms. J. Nosworthy was not aware of this issue.

3.2 Furthermore, the author claims to be a victim of a violation of articles 14 (3) b) and d) of the Covenant. The author's right to a defence was not respected, in that the legal aid lawyer, who represented him before the Jamaican Court of Appeal never met him before the hearing, never contacted the former lawyer and therefore, did not provide the author with effective and adequate representation.

3.3 The author also claims to be a victim of a violation of article 6 (1) and (2) of the Covenant. In this context, he notes that the author spent more than 9 years on death row, before his sentence was re-classified. It is submitted that had the sentence been carried out, this would have led to arbitrary deprivation of life as a result of the circumstances surrounding the return of the jury's verdict at his trial for murder. Moreover, the author's right to life was not protected by the law throughout this entire period.

3.4 London Counsel explains that, when he was seized of the author's case in January 1986, he tried to have a constitutional motion filed on the author's behalf through Jamaican counsel Mr. Daly. However, despite repeated requests from counsel until March 1994, the constitutional motion was never filed. It is therefore argued that the constitutional remedy, which exists in theory, is not available to the author in practice, because of his lack of funds and the unavailability of legal aid. Reference is made to the Committee's jurisprudence in this matter.

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

### **The State party's submission**

4.1 By submission of 11 January 1996, the State party rejects the allegation that article 6 (1) and (2) was breached in the author's case because of the nine years he spent on death row before the commutation of his sentence to life imprisonment with the recommendation that he serve fifteen years before being eligible for parole.

4.2 With regard to the alleged breach of article 14 (1) and (2) of the Covenant, because four jury members disagreed with the verdict, the State party noted: "that the four jurors in question gave sworn affidavits stating that they objected to the decision to the author's defence counsel on the day the trial ended, November 30, 1983. The Ministry considers these allegations to be of an extremely serious nature, warranting thorough investigation. The matter will be investigated and the Committee informed on the result".

4.3 With regard to the alleged violation of article 14 (3) b) and d), because the author's legal counsel on appeal did not argue the lack of unanimity of the jury as a ground of appeal, the State

party rejects responsibility. It states that its duty is to provide competent counsel but that it is not responsible for the handling of the case by counsel.

### **The author's comments**

5.1 In his comments dated 13 February 1996, the petitioner argues that the execution of the death sentence against the author would have constituted an arbitrary deprivation of life as a result of the circumstances surrounding the jury's verdict. The author agrees with the State party that the lack of unanimity of the jury is a serious matter warranting thorough investigation.

5.2 With regard to the author's representation on appeal, counsel argues that effective representation should be provided in all capital cases. Since the State party has a duty to provide competent counsel it must mean that the State party is responsible for the manner in which counsel conducts the case to ensure that it constitutes effective representation.

### **Decision on admissibility**

6. At its sixty fifth session in March 1999, the Committee declared the communication admissible in so far it may raise issues under articles 6 and 14 of the Covenant. The Committee also decided that the State party should be requested, under article 4 (2) of the Optional Protocol, to submit to the Committee, within six months of the date of transmittal to it of the decision, written explanations or statements clarifying the matter and the measures, if any, that it may have taken. In particular, the State party was requested to provide the Committee with the outcome of its investigations and to furnish a copy of the original grounds of appeal filed on behalf of the author.

### **Issues and proceedings before the Committee**

7.1 The Human Rights Committee has considered this communication in the light of all the written information submitted to it by the parties, in accordance with the provisions of article 5(1) of the Optional Protocol. The Committee regrets the absence of cooperation of the State party in failing to provide the results of the investigations referred to in its submission of January 1996 (para. 4.2). In spite of two reminders sent to the State party, no further information has been received by the Committee.

7.2 With regard to the author's claim that he is a victim of a violation of articles 14 (1) and (2) of the Covenant, because he was convicted and sentenced by a non-unanimous jury, the Committee notes that after the trial four members of the Lucea Circuit Court jury submitted affidavits stating that they had not agreed to the verdict, though they conceded that they had not given oral expression to their differing view when the jury foreman announced that the verdict was accepted by all jurors. The Committee observes that the question presented by the jurors' affidavits was raised on appeal before the Judicial Committee of the Privy Council, which dismissed the petition. The Committee further notes that the alleged lack of unanimity was not raised before the trial judge nor before the Court of Appeal. In these circumstances, the Committee cannot conclude that article 14 , paragraphs 1 and 2 of the Covenant has been violated.

7.3 In respect of the author's claim that he was not adequately represented during the hearing of his appeal, the Committee notes that the legal aid lawyer who represented the author for his appeal, did not contact the author or the privately retained lawyer who represented him at the first instance court, before the hearing of the appeal. Nevertheless, although it is incumbent on the State party to provide effective legal aid representation, it is not for the Committee to determine how this should have been ensured, unless it is apparent that there has been a miscarriage of justice. In the circumstances, the Committee is not able to find a violation of article 14, 3 (b) and (d).

7.4 The Committee therefore considers that there is also no violation of article 6 of the Covenant.

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol, is of the view that the facts before it do not disclose a violation 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, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Ahmed Tawfik Khalil, Mr. Eckart Klein, Mr. David Kretzmer, Mr. Rajsoomer Lallah, Ms. Cecilia Medina Quiroga, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Martin Scheinin, Mr. Ivan Shearer, Mr. Hipolito Solari Yrigoyen, Mr. Patrick Vella and Mr. Maxwell Yalden.

The texts of a dissenting opinion co-signed by Committee members Ms. Cecilia Medina Quirogo and Mr. Martin Scheinin and a dissenting opinion by Mr. Hipolito Solari Yrigoyen are appended to the present document.

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

## Notes

<sup>a</sup> The Optional Protocol entered into force for Jamaica on 23 March 1976, and Jamaica's denunciation of the Optional Protocol became effective on 23 January 1998.

## **Individual opinion by Committee members Ms. Cecilia Medina Quiroga and Mr. Martin Scheinin (dissenting)**

In our view the Committee should have found a violation of article 14, paragraph 1, and, consequently, of article 6 in the case. In its only submission to the Committee the State party has described the author's allegation of the jury having been in fact and visibly divided (see para. 3.1) as "extremely serious" and promised a "thorough investigation". No further information has been received from the State party.

Due to the circumstances reflected in para. 3.2 and the fact that the Judicial Committee of the Privy Council did not give any reasons for its decision to dismiss the author's appeal, there is no material before the Committee that would show that the question whether there was "visible dissent" within the jury was ever addressed by a judicial body, nor any information on whether the problem could have been posed before another body.

In the absence of any explanations from the State party, particularly after its promise to investigate the matter and inform the Committee, the Committee must give due weight to the allegations of the author.

[Signed] Cecilia Medina Quiroga

[Signed] Martin Scheinin

[Done in English, French and Spanish, the English 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.]

#### **Individual opinion by Committee member Mr. Hipólito Solari Yrigoyen (dissenting)**

I disagree with regard to the present communication on the grounds set forth below.

7.2 With regard to the author's claim that he is a victim of a violation of article 14, paragraphs 1 and 2, of the Covenant, the Committee, given the absence of information from the State party, must give due weight to the author's statements, which are corroborated by other evidence. The Committee notes with concern that the day after the foreman of the jury presented the verdict as a unanimous verdict, four members of the jury submitted affidavits stating that they had dissented, and two of them gave convincing evidence in public of their dissenting view at the time the verdict was announced. In addition, the Committee has not received the results of the investigation that the State party indicated that it would conduct in view of the seriousness of the subject matter of the affidavits of the dissenting members, as application of the death penalty requires a unanimous decision. Accordingly, the Committee finds that article 14, paragraphs 1 and 2, of the Covenant has been violated.

7.3 In respect of the author's claim that he was not adequately represented during the hearing of his appeal, the Committee notes with concern that the legal aid lawyer that represented the author for his appeal did not contact the author; neither did the privately retained lawyer that represented him in the first instance court, before the hearing of the appeal. This effectively prevented the author from giving his lawyer essential information and instructions for the appeal, in particular concerning the dissent among the jury. Communication between counsel and defendant is one of the minimum guarantees which, under article 14, paragraphs 1 and 3, of the Covenant

[Signed] Hipólito Solari Yrigoyen

[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.]