

## HUMAN RIGHTS COMMITTEE

### Marriott v. Jamaica

Communication No. 519/1992

27 October 1995

CCPR/C/55/D/519/1992

### VIEWS

*Submitted by: Lyndon Marriott [represented by counsel]*

*Victim: The author*

*State party: Jamaica*

*Date of communication: 14 July 1992 (initial submission)*

*Date of decision on admissibility: 30 June 1994*

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

Meeting on 27 October 1995,

Having concluded its consideration of communication No. 519/1992, submitted to the Human Rights Committee by Mr. Lyndon Marriott 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**

1. The author of the communication is Lyndon Marriott, a Jamaican citizen currently serving a sentence of life imprisonment at St. Catherine District Prison. He claims to be a victim of violations by Jamaica of articles 7 and 14 of the International Covenant on Civil and

Political Rights. He is represented by counsel.

The facts as submitted by the author:

2.1 The author was arrested on 12 March 1987 and charged with the murder on the same day of one Aston Nugent. He was tried in the Home Circuit Court, Kingston, found guilty as charged and sentenced to death on 16 December 1987. The Court of Appeal dismissed his appeal on 3 October 1988. A further petition for special leave to appeal was dismissed by the Judicial Committee of the Privy Council on 4 October 1990. According to counsel, the author's case has been reviewed pursuant to the Offences against the Person (Amendment) Act, 1992. The murder for which the author was convicted has been classified as a non-capital murder, consequently, the author's death sentence was commuted to life imprisonment in December 1992; he will be entitled to parole after 15 years.

2.2 During the trial, Rosetta Brown, a former girlfriend of the author and, at the time of the incident, the girlfriend of the deceased, testified that on 12 March 1987, the author arrived at the deceased's house, at which she was staying, and told her to go home. She walked over to a neighbour's yard, followed by the author and the deceased. The two men started a dispute about her. Nugent apparently tried to disengage the author, who had taken hold of Brown's blouse, upon which the author stabbed Nugent with a knife. Rosetta Brown testified that she saw the author take out the knife from his waist, but that she could not see him stab Nugent, since she was standing behind the deceased. Dorette Williams, a neighbour, testified that she saw the author stab the deceased in the chest.

2.3 The third prosecution witness, Rosemarie Barnett, was another friend of both the deceased and the author. She testified that the author had come to her house in the morning of 12 March 1987, threatening to kill Nugent. He returned to her home an hour later, holding a knife with blood on the handle, and telling her that he had stabbed him.

2.4 In an unsworn statement from the dock, the author contended that Nugent had pushed and kicked him; that Nugent had then pulled out a knife from his pocket and raised it in order to stab the author; and that, in the ensuing struggle, Nugent was stabbed.

The complaint:

3.1 The author contends that he was denied a fair hearing by an impartial tribunal, in violation of Section 20<sup>1</sup> of the Jamaican Constitution and article 14 of the Covenant. He claims that the judge failed to direct the jury properly on the issue of provocation and that he withdrew the issue of self-defence from it. Moreover, the trial judge was allegedly biased against the author and made ironical and provocative comments on the sentence, which were later criticized by the Court of Appeal, and which according to the author provide further evidence of the court's bias.

3.2 The author further contends that the foreman of the jury was an acquaintance of the deceased, and that the court was therefore not impartial. It is further submitted that the defence was not informed at the preliminary hearing that the prosecution would call a third

witness at the trial, so that no counter-arguments could be prepared.

3.3 Furthermore, the author submits that before the Court of Appeal, his counsel, who had not represented him at first instance, made no submissions in support of the appeal. Counsel, who was assigned to the case by the Jamaica Council for Human Rights, explains that there were issues which could have been raised at first instance, but, since "the incompetence of counsel is not a ground for appeal", he claimed that it would have been futile to canvass this aspect.

3.4 The author finally asserts that the time spent on death row, during which he could not avail himself of appellate remedies, constitutes cruel, inhuman or degrading treatment within the meaning of Section 17(1) of the Jamaican Constitution and article 7 of the Covenant.

The State party's observations on admissibility and the author's comments thereon:

4.1 By submission of 22 June 1993, the State party argues that the communication is inadmissible. It refers to Section 25 of its Constitution, which provides that anyone who alleges that any of his constitutional rights have been violated may apply to the Supreme Court for redress. The right to fair trial is protected by Section 20 of the Constitution. Since the author has not filed a constitutional motion, the State party argues that the communication is inadmissible for failure to exhaust domestic remedies.

4.2 The State party further argues that the communication raises issues of facts and evidence which the Committee is not competent to determine. It argues that the communication is inadmissible also on this ground.

5.1 In his comments on the State party's submission, counsel to the author contests that an application to the Supreme Court of Jamaica under Section 25 of the Jamaican Constitution is an available and effective remedy in the circumstances of the author's case. In this connection, he states that no legal aid is available to the author to pursue this remedy. He further argues that, since the author had available to him an appeal to the Court of Appeal and to the Privy Council, the Supreme Court would not have exercised its powers, pursuant to paragraph 2 of Section 25 of the Constitution.

5.2 With regard to his claim under article 7 of the Covenant, counsel claims that a constitutional motion would have been ineffective, since the Supreme Court would have considered itself bound by the decision of the Judicial Committee of the Privy Council in 1981 (*Riley v. Attorney General*) where it was held that whatever the reasons for delay the Privy Council would not allow a ground that an execution contravened Section 17 of the Jamaican Constitution.

5.3 Finally, counsel argues that the author does not request the Human Rights Committee to evaluate the facts of the case and that he does not raise issues of facts and evidence. Counsel emphasizes that the author requests the Committee to determine whether he has received a fair hearing within the meaning of article 14 of the Covenant, and that the facts and issues of the case are relevant bearing in mind that a defendant should not be convicted

of a capital offence except upon clear and incontrovertible evidence.

The Committee's admissibility decision:

6.1 During its 51st session, the Committee considered the admissibility of the communication.

6.2 The Committee recalled its constant jurisprudence that for purposes of article 5, paragraph 2(b), of the Optional Protocol, domestic remedies must be both effective and available. The Committee noted that the Supreme Court of Jamaica had, in recent cases, allowed applications for constitutional redress in respect of breaches of fundamental rights, after the criminal appeals in these cases had been dismissed. However, the Committee also recalled that the State party had indicated on several occasions(1) that no legal aid was made available for constitutional motions. The Committee considered that, in the absence of legal aid, a constitutional motion did not, in the circumstances of the instant case, constitute an available remedy which had to be exhausted for purposes of the Optional Protocol. In this respect, the Committee therefore found that it was not precluded by article 5, paragraph 2(b), from considering the communication.

6.3 As regards the author's allegations relating to the conduct of the trial by the judge, the evaluation of evidence by the court, and the judge's instructions to the jury, the Committee recalled that it was generally for the appellate courts of States parties to the Covenant to evaluate the facts and evidence in a particular case; similarly, it was for the appellate courts and not for the Committee to review specific instructions to the jury by the judge, unless it was clear that the instructions to the jury were arbitrary or amounted to a denial of justice, or that the judge manifestly had violated his obligation of impartiality. The author's allegations did not show that the judge's instructions or the conduct of the trial suffered from such defects. In this respect, therefore, the author's claims did not come within the competence of the Committee. Accordingly, this part of the communication was inadmissible as incompatible with the provisions of the Covenant, under article 3 of the Optional Protocol.

6.4 As regards the author's allegation that the foreman of the jury was a friend of the deceased, the Committee noted that this matter was not raised by the author or his counsel during the trial or at appeal. This part of the communication was therefore inadmissible for failure to exhaust domestic remedies.

6.5 The Committee noted that the author also claimed that his defence counsel had not been informed that the prosecution would call a third witness, that the matter was brought to the attention of the judge, but that the judge failed to adjourn the hearing to give counsel time to prepare for the cross-examination. The Committee considered that this claim might raise issues under article 14, paragraph 3(b) and (e), of the Covenant, that needed to be examined on the merits.

6.6 As regards the author's claim concerning his legal representation at the appeal proceedings, the Committee noted that the author's lawyer was provided by the Jamaica

Council for Human Rights, a non-governmental organization. The Committee considered therefore that the alleged failure to properly represent the author could not be attributed to the State party. This part of the communication was therefore inadmissible under article 3 of the Optional Protocol.

6.7 With regard to the author's claim under article 7, the Committee considered that the author had failed to show what steps he had taken to bring this complaint to the attention of the authorities in Jamaica. In this respect, the author had failed to fulfil the requirement of exhaustion of domestic remedies, set out in article 5, paragraph 2(b), of the Optional Protocol.

7. Accordingly, the Human Rights Committee therefore decided that the communication was admissible in so far as it appeared to raise issues under article 14, paragraph 3(b) and (e) of the Covenant.

State party's submission on the merits and counsel's comments:

8. By submission of 27 January 1995, the State party points out that the allegations relating to article 14, paragraph 3(b) and (e), declared admissible by the Committee, relate to an issue which should have been raised as a ground for appeal. The State party cannot be held responsible for counsel's failure to do so. Since the author thus failed to avail himself of a remedy which was available to him, the State party denies that a violation has taken place.

9.1 In his comments on the State party's submission, counsel contends that the issue arising under article 14, paragraph 3(b) and (e), involves the responsibility of the State party in that article 14 of the Covenant is embodied in the Jamaican Constitution, whereas constitutional redress is not available to the author because of the lack of legal aid.

9.2 Counsel further claims that the issues were in fact raised on appeal, since the appeal filed by the author was based on inter alia the ground of unfair trial. Even though counsel for the author did not argue the grounds for appeal, the Court should have considered the grounds ex officio. In this connection, counsel notes that the Court did review the evidence against the author proprio motu.

9.3 Counsel states that, had the author had time to consider his position in the light of the additional witness giving evidence for the prosecution, he might have decided to give sworn evidence to strengthen his position; alternatively, he might have amended his statement from the dock, addressing the third witness' evidence, or have abandoned the defence of self defence and accident and relied solely on provocation. As it was, the combination of the new evidence together with the author's failure to give evidence enabled the judge effectively to withdraw provocation and self defence from the jury.

9.4 Counsel further notes that the application for leave to appeal to the Judicial Committee of the Privy Council was based on the grounds of failure by the trial judge to give correct directions in respect of self defence and provocation and argues that these issues are not to be divorced from the effect of the failure by the trial judge to allow time to consider the

further evidence.

Consideration of the merits:

10.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol.

10.2 The Human Rights Committee notes that the trial transcript shows that counsel informed the judge that he had been unaware that the prosecution was going to call a third witness until the morning of the hearing, when a summary of the evidence was given to the defence; he did not request an adjournment. The record further shows that, immediately after the third witness was sworn, the judge adjourned the trial, at 3:38 pm., for other reasons. The trial resumed the next day at 10:00 a.m. with the examination of the third witness and then counsel proceeded to cross-examine her, without requesting a further adjournment. The author himself gave his statement from the dock later that day. In the circumstances, the Committee finds that the facts before it do not show that the author's right to adequate time and facilities for the preparation of his defence and his right to have examined the witnesses against him have been violated.

11. 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 reveal a breach of any of the provisions of the Covenant.

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1/ See, for example, communications No. 283/1988 (*Aston Little v. Jamaica*), Views adopted on 1 November 1991, No. 321/1988 (*Maurice Thomas v. Jamaica*), Views adopted on 19 October 1993, and No. 352/1989 (*Douglas, Gentles and Kerr v. Jamaica*), Views adopted on 19 October 1993.

[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.]