

## HUMAN RIGHTS COMMITTEE

### Walker and Richards v. Jamaica

Communication N° 639/1995

28 July 1997

CCPR/C/60/D/639/1995\*

### VIEWS

*Submitted by: Trevor Walker and Lawson Richards (represented by Ms. Veronica Byrne of Mishcon de Reya)*

*Victim: The authors*

*State party: Jamaica*

*Date of communication: 24 and 27 February 1995 (initial submission)*

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

Meeting on 28 July 1997,

Having concluded its consideration of communication No.639/1995 submitted to the Human Rights Committee by Messrs. Trevor Walker and Lawson Richards, 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 authors of the communication, their counsel and the State party,

Adopts the following:

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

1. The authors of the communication are Lawson Richards and Trevor Walker, two Jamaican nationals who, at the time of submission, were awaiting execution at St. Catherine's District Prison, Jamaica. They claim to be victims of violations by Jamaica of articles 6;7; 9; 10; and 14 of the International Covenant on Civil and Political Rights. They are represented by the

London law firm of Mishcon de Reya.

The facts as presented by the authors:

2.1 Mr. Walker was arrested on 23 June 1980 and Mr. Richards on 26 June 1980. Both authors were convicted on 17 May 1982 of the murder of one Samuel Anderson and were sentenced to death.<sup>1</sup> They filed an application for leave to appeal against conviction and sentence to the Court of Appeal of Jamaica on 31 May 1982. At the hearing, counsel for Lawson Richards abandoned his original grounds of appeal, but sought and was granted leave to argue supplemental grounds. Counsel for Trevor Walker abandoned his original grounds of appeal and informed the Court that there was nothing he could argue. On 24 October 1984, the Court of Appeal dismissed the authors' appeal. The Judicial Committee of the Privy Council heard and dismissed the part of the authors' appeal relating to their conviction on 3 December 1992, but ordered that the authors be granted special leave to appeal their sentences. On 2 November 1993, the Privy Council dismissed the appeal because it was being asked to decide the constitutional question of delay as a court of first instance, rather than as a court of appeal.

2.2 At the trial, the case for the prosecution was that, on 20 June 1980, Lawson Richards and Trevor Walker robbed and murdered Samuel Anderson. The prosecution's primary evidence was the testimony of one eyewitness to the robbery. The eyewitness testified at trial that he had been helping the deceased sell meat when he noticed the authors approach them in a suspicious manner. He then saw the two men rob the deceased at gunpoint. He was unable to see who fired the fatal shot, however, because he had been trying to hide from the two men. The eyewitness further testified that when he attempted to help the deceased, one of the men fired a shot at him.

2.3 The sole eyewitness attended identification parades on 22 July 1980.<sup>2</sup> The witness identified Mr. Walker at the parade. Mr. Richards stood on parade, but was not identified by the witness. The witness later identified him in the dock at the trial itself.

2.4 The prosecution further relied on caution statements allegedly made to the police by the authors in which they implicated each other. In a *voir dire*, the authors denied that they had made their statements voluntarily and alleged that they were obtained from them by physical force and threats of physical force. The police officers who took the statements testified, at trial, that the statements were given voluntarily, denying that the authors were beaten, threatened or induced into giving their statements. A Justice of the Peace also testified that he witnessed the taking of both statements and that the authors had given the statements voluntarily and had not shown any signs of having been beaten. Additionally, the prosecution relied on medical evidence indicating that the cause of death of the deceased had been shock and haemorrhage caused by the bullet.

2.5 In an unsworn statement from the dock, Mr. Richards stated that he had been in the area at the time of the shooting and that he had run away when he heard an explosion. In addition, he claims that one Delroy Johnson<sup>3</sup> had been beaten by the police until he had made a statement falsely accusing Richards of the murder.

2.6 Mr. Walker made an unsworn statement from the dock saying that he had been with someone in the area at the time of the shooting and that they had both run away when they heard an explosion.

The complaint:

3.1 Counsel argues that the prosecution's case was based on the identification evidence of an eyewitness who was unreliable and contradictory. It is asserted that his identification was based on fleeting, obstructed sightings of the authors, in very bad lighting conditions, and under extreme fear. In addition, it is contended that the eyewitness failed to identify Mr. Richards at the identification parade held one month after the murder and at the committal proceedings at the Gun Court, yet purported to identify him in the dock, at trial, held nearly 2 years later.

3.2 Counsel contends that the unsatisfactory aspects of the trial, in particular, the misdirections by the judge to the jury as to the voluntariness of the authors' caution statements, the failure to give proper directions regarding identification evidence generally and, in the case of Mr. Richards, allowing the dock identification, amount to a violation of articles 14 paragraphs 1 and 3(c). Failure to argue these defects before the Court of Appeal and the delay at the Court of Appeal are said to constitute violations of article 14. It is also asserted that the Court of Appeal erred in accepting the trial court's rulings and denying the appeal.

3.3 Counsel further contends that the imposition of the death sentence upon the conclusion of a trial in which the provisions of the Covenant had been breached, and where no further appeal is available, constitutes a violation of article 6, paragraph 2, of the Covenant.

3.4 In addition, counsel submits that the authors were subjected to a delay of nearly two years between arrest and trial and a further delay of nearly two and half years for the Court of Appeal's decision, dismissing their appeal. Additionally, there was a delay of about 5 years before the Jamaican Council of Human Rights was informed by the Supreme Court Office of the availability of the authors' trial transcript and Court of Appeal judgment, documents necessary in the determination of the possibility of appeal to the Privy Council. Counsel argues that these delays in the criminal proceedings against the authors constitute a violation of article 9, paragraphs 3 and 4, of the Covenant.

3.5 It is further asserted that the uncertainty caused by having been confined to death row since May 1982 constitutes cruel, inhuman or degrading treatment or punishment, in violation of article 7 of the Covenant. Reference is made to the Pratt and Morgan judgment of the Privy Council.<sup>4</sup>

3.6 In addition, counsel contends that the appalling conditions suffered by detainees in the death row section of St. Catherine's Prison constitute a further violation of article 7. Reference is made to reports by Human Rights Watch and Amnesty International.

3.7 It is further submitted that Mr. Walker was beaten on 29 May 1990, for which he

required five stitches for one injury, and subjected to other ill-treatment by warders on death row. On 4 May 1993, Mr. Richard's radio was destroyed by warders on death row in a deliberate attempt to intimidate and humiliate him. Counsel contends that the beatings and mistreatment received by the authors at the hands of the police during questioning and prison authorities after conviction amount to a violation of article 10, paragraphe 1.

State party's comments on admissibility and merits:

4.1 In a submission dated 24 October 1995, the State party does not challenge the admissibility of the communication and in order to expedite examination of the complaint offers comments on the merits. On the alleged violation of article 7, the State party argues that twelve years on death row do not constitute cruel and inhuman treatment per se. It further argues that the five year rule in Pratt and Morgan is not directly applicable but rather that each case must be examined on its merits, in accordance with the legal principles applicable to it. It informs the Committee that the authors' death sentences will be commuted.

4.2 Concerning the alleged breach of article 9, paragraphs 3 and 4 and article 14, paragraph 3 (c), because of the delay of nearly two years between the authors' arrest and trial, the nearly 2 and half years between sentence and dismissal of their appeal by the Court of Appeal, and the lapse of 5 years before the Court of Appeal issued a written judgment, the State party rejects that these delays constitute excessive delay, particularly in as much as the two years between arrest and trial are concerned as during that period a preliminary inquiry was held. It also rejects that the 2 and a half years is an excessive delay to hear an appeal. It does concede that five years to produce a written judgment would be excessive if the delay was attributable to the State party, but argues that the authors did not make diligent efforts to obtain the documents and therefore rejects responsibility for the delay.

4.3 With regard to the alleged ill-treatment of the authors in pre-trial detention and later in prison, the State party contends that it has found no evidence that any ill-treatment occurred and categorically denies that the incidents referred to took place at all. With respect to Mr. Walker's complaint of ill-treatment in prison, the State party contends that this occurred during prison riots of May 1990, and promises to investigate this allegation. As of 30 June 1997, no information had been received from the State party in this respect.

4.4 Regarding the alleged violation of article 14, paragraph 1, the State party argues that the way in which the judge gave directions to the jury on how to consider identification parade evidence and on how to interpret common design in murder cases, is a matter which was properly left to the appellate court.

5.1 On 25 May 1996, counsel informed the Committee that the authors' death sentences were commuted following the ruling in Pratt and Morgan and that it follows that the first complaint under article 7, delay in execution of sentence is abandoned, as is the request for interim measures of protection under rule 86. However, she reiterates, that prolonged detention on death row, over thirteen years for both authors' under conditions which were no different to those suffered by Pratt and Morgan, constitutes cruel and inhuman treatment

in violation of article 7.

5.2 Counsel contends that the decision by the Governor-General to substitute the authors' death sentence with life imprisonment raises issues under articles 9 and 14 of the Covenant. Counsel contends that the procedure by which the authors remain incarcerated is unclear and unfair and raises the following contentions:

- "They are not imprisoned in accordance with a procedure established by law as required by article 9 (1) in that no court made a decision to deprive them of their liberty (the sentence of the court was death). Therefore they are incarcerated in accordance with an unknown, imprecise and secret administrative procedure.

- They have no entitlement to take proceedings to challenge their incarceration - either the very fact of incarceration, or, more importantly, the length of incarceration- as required by Article 9 (4).

- There is no procedure for reviewing their sentence (in particular, its length) as required by Article 14 (5).

- The long years spent by the Applicants on death row may well not have been taken into account in determining how long they should serve as a term of imprisonment. If so, they face double punishment.

- if a "tariff" (the period of imprisonment the State party considers they should serve before becoming eligible for release on parole) has been set, they do not know what that period is, have no information about the material forming the basis for setting any such tariff, have had no opportunity to make representations on the tariff and have not been able to challenge a decision upon the tariff."

5.3 These points have not been answered by the State party, but the Committee is cognisant of the Jamaican legislation which governs the authors' case.

5.4 With regard to the ill-treatment suffered by Mr. Richards counsel notes that the State party has failed to address the issue. In respect of Mr. Walker, counsel notes that State party offered to investigate but points out that the events occurred over six years ago and that Mr. Walker's counsel wrote to the Parliamentary Ombudsman in October 1992, raising the same issue, and that the State party had not investigated the matter by October 1995, when the present communication was first transmitted to it.

5.5 On the question of delay in court proceedings, including issuing a written judgement and a copy of the trial transcript, counsel reiterates that the delays were attributable to the State party only and notes that the Jamaican Council for Human Rights wrote to the Registrar of the Court of Appeal on eight occasions between 23 June 1986 and 17 March 1989 (23 June 1986, 10 June and 8 December 1987, 23 March, 14 April, 14 and 16 November 1988 and 17 March 1989). She notes that the authors have made diligent efforts to obtain these documents but were unable to obtain them.

## Admissibility consideration and examination of merits

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

6.2 The Committee observes that, with the dismissal of the author's petition for special leave to appeal by the Judicial Committee of the Privy Council on 2 November 1993, the authors have exhausted available domestic remedies. In this context, it notes that the State party has not raised any objections to the admissibility of the complaint and has forwarded comments on the merits. This enables the Committee to consider both the admissibility and the merits of the present case, pursuant to rule 94, paragraph 1, of the Committee's rules of procedure. 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 As regards the authors' allegations of irregularities in the Court proceedings, in particular improper instructions from the judge to the jury on the evaluation of the identification evidence, the interpretation of common design in capital cases, the Committee recalls that it is generally for the appellate courts of States parties to the Covenant to evaluate the facts and evidence in any particular case; similarly, it is for the appellate courts and not for the Committee to review specific instructions to the jury by the judge in a trial by jury, unless it can be ascertained that the instructions to the jury were clearly arbitrary or amounted to a denial of justice, or that the judge manifestly violated his obligation of impartiality. The authors' allegations do not show that the judge's instructions suffered from such defects. In this respect, therefore, the communication is inadmissible as incompatible with the provisions of the Covenant, pursuant to article 3 of the Optional Protocol.

6.4 In so far as the authors claim that their prolonged detention on death row amounted to a violation of article 7 of the Covenant, the Committee reiterates its prior jurisprudence that a prolonged detention on death row does not per se constitute cruel, inhuman or degrading treatment in violation of article 7 of the Covenant<sup>5</sup>, in the absence of further compelling circumstances. As no such further compelling circumstances have been adduced, this part of the communication is inadmissible under article 2 of the Optional Protocol.

6.5 So far as concerns the claims referred to in paragraph 5.2 above, the Committee notes that the conviction on 17 May 1982 led to mandatory death sentences against the authors; but also that these have been commuted by the Governor-General following the decision of the Privy Council in Pratt and Morgan. Although that commutation took place in June 1995 it was carried out under the prerogative of mercy and not under the detailed provisions in the Offences Against the Person (Amendment) Act 1992 for reclassification of convictions for murder, including, in cases classified as non-capital murder, a procedure for fixing a tariff.

6.6 Counsel alleges a violation of articles 9 and 14 of the Covenant, as she purports that the authors' death sentences were commuted to life imprisonment by virtue of an "unknown imprecise and secret administrative procedure". The material before the Committee shows

that the authors' death sentences were commuted to life imprisonment by the Governor General, who followed the ratio decidendi in the Pratt and Morgan judgment delivered on 2nd November 1993 by the Privy Council. The Committee considers this claim an abuse of the right of submission, under article 3 of the Optional Protocol.

6.7 With regard to the authors' allegations that they were ill-treated and forced to confess, the Committee notes that this issue was the subject of a trial within a trial, to determine whether the authors' statements were admissible in evidence. In this connection the Committee refers to its prior jurisprudence and reiterates that it is generally for the courts of States parties to the Covenant to evaluate facts and evidence in a particular case; it notes that the Jamaican courts examined the authors' allegations and found that the statements had not been procured under duress. In the absence of clear evidence of bias or misconduct by the judge, the Committee cannot reevaluate the facts and evidence underlying the judge's findings. Accordingly this part of the communication is inadmissible as incompatible with the provisions of the Covenant, pursuant to article 3 of the Optional Protocol.

6.8 In the course of the authors' continued detention under these life sentences, the Committee notes that no issue arises on a period set for tariff, or any reasons for that. If the authors have cause to believe that the State party has failed, in due time, to provide for a system of reviewing their eligibility for release on license, or the licensing system or criteria for adjudication on these issues, it is a matter which should first be raised in the domestic courts, and these circumstances have not yet arisen.

7. In the circumstances of the case the Committee decides that the other claims of the authors' 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 With regard to the alleged a violation of article 10, paragraph 1, of the Covenant for ill-treatment in detention on death row, the Committee notes that in respect of Mr. Walker's complaint that he was beaten in May of 1990, which required five stitches for his injury, the State party admitted that these injuries occurred during the prison riots in May 1990 riots and that it would investigate the matter and inform the Committee. The Committee further notes that 20 months after the communication was brought to the attention of the State party and over 7 years after the events, no information has been received to explain the matter. In the circumstances and in the absence of information from the State party, the Committee finds that the treatment received by Mr. Walker on death row constitutes a violation of article 10, paragraph 1, of the Covenant.

8.2 The authors have argued that a delay of nearly two years between arrest and trial and a further delay of 30 months between trial and appeal, 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 address the question why the authors, if not released on bail, were not brought to trial for nearly two years. 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 nearly two years during which the authors were in detention, is unreasonable and therefore constitutes a violation of this provision. With respect to the delay in hearing the authors' appeal and bearing in mind that this is a capital case, the Committee notes that a delay of 30 months between the conclusion of the trial and the dismissal of the authors' appeal is incompatible with the provisions of the Covenant, in the absence of any explanation from the State party justifying the delay; the mere affirmation that the delay was not excessive does not suffice. The Committee accordingly concludes that there has been a violation of articles 9, paragraph 3 and 14, paragraph 3 (c), of the Covenant.

8.3 The authors claim a violation of article 14 paragraphs 3 (c) and 5 for the delay of almost 5 years before the Jamaican Council of Human Rights was informed by the Supreme Court Office of the availability of the authors' trial transcript and Court of Appeal judgment. The State party has conceded that if this delay had been totally attributable to the State party, this would constitute a violation of the Covenant, but that in the present case, the authors had made no diligent effort to obtain the relevant documents. requested. Counsel has submitted, however, that the Jamaican Council for Human Rights requested such documents on eight occasions between 23 June 1986 and 17 March 1989. The Committee considers that, in these circumstances, the authors have made diligent efforts to obtain the documents and that the delays must be attributed to the State party. Accordingly, the Committee concludes that there has been a violation of article 14, paragraphs 3 (c), 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 articles 10, paragraph 1, in respect of Mr. Walker and 14, paragraphs 3 (c), of the Covenant in respect of both authors.

10. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide Messrs. Walker and Richards with an effective remedy, entailing compensation for the delay in issuing a written judgment and providing the trial transcripts and in Mr. Walker's case for the ill-treatment suffered. 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 90 days, information about the measures taken in connection with the Committee's Views.

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\*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. Chritine Chanet, Lord Colville, Ms. Elizabeth Evatt, Ms. Pilar Gaitan de Pombo, Mr. Eckart Klein, Mr. David Kretzmer, Ms. Cecilia Medina Quiroga, Mr. Fausto Pocar, Mr. Julio Prado Vallejo, Mr. Martin Scheinin, Mr. Danilo Türk and Mr. Maxwell Yalden.

1/ In June 1995 the authors' death sentence had been commuted to life imprisonment.

2/ There is some discrepancy as to when the identification parade took place. The eyewitness at trial and the deposition of the officer who conducted the parade both stated that the parade took place on 2 July 1980 (the deposition was allowed in as evidence because the officer was out of the country during the trial). The arresting officers, on the other hand, testified that it took place on 22 July 1980.

3/ Delroy Johnson is also referred to as Delroy Jackson and Delroy Campbell in various parts of the proceedings.

4/ Earl Pratt and Ivan Morgan v. Attorney-General of Jamaica, P.C. Appeal No. 10 of 1993, judgment delivered on 2 November 1993.

5/ See Committee's Views on communication No. 588/1994 (Errol Johnson v. Jamaica) adopted 22 March 1996.

[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.]