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Decided by: Chairman: Professor Robert K. Goldman;
First Vice-Chairman: Dr. Helio Bicudo;
Second-Vice Chairman: Dean Claudio Grossman;
Commissioners: Prof. Carlos Ayala Corao, Dr. Alvaro Tirado Mejia.
Dated: 9 March 1999
Citation: Dixon v. Jamaica, Case 11.884, Inter-Am. C.H.R., Report No. 28/99,
OEA/Ser.L/V/II.106, doc. 6 rev. (1999)
Represented by: APPLICANT: Cameron McKenna
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I. SUMMARY

1. On February 4, 1998, the Inter-American Commission on Human Rights (the "Commission") received a petition from Messrs. Cameron McKenna, Solicitors in London, United Kingdom (the "Petitioners") against the Government of Jamaica (the "State" or "Jamaica"). The petition was presented on behalf of Mr. Whitley Dixon, who is incarcerated in death row at St. Catharine's District Prison, Jamaica. The petition stated that on February 12, 1996, Mr. Dixon was convicted in the Home Circuit Court, Kingston of capital murder in the course of furtherance of an act of robbery and was sentenced to a mandatory penalty of death under the Jamaican Offenses Against the Person (Amendment) Act 1992. The petition stated further that Mr. Dixon applied for leave to appeal against his conviction and sentence to the Court of Appeal of Jamaica, and that the application for leave was dismissed on March 21, 1997. The petition also indicated that Mr. Dixon petitioned the Judicial Committee of the Privy Council for Special Leave to Appeal, and that on January 19, 1998 his petition was dismissed.

2. In their petition, the Petitioners claim that the State has violated Mr. Dixon's rights under Articles 4, 5, 8, 24 and 25 of the American Convention on Human Rights (the "Convention"). The Petitioners first allege that the instructions approved by the Governor General of Jamaica on August 6, 1997 respecting applications to international human rights bodies,[FN1] if implemented so as to result in Mr. Dixon's execution, violate Mr. Dixon's right to life under Article 4(1), his right not to be subjected to torture or to cruel, inhumane, or degrading punishment or treatment under Article 5(2), his right to apply for amnesty, pardon or commutation of sentence under Article 4(6), and his right to judicial protection under Article 25(1). The Petitioners also submit that the mandatory nature of the death penalty under Jamaican law violates Mr. Dixon's right to life under Article 4(1), his right to have the death penalty

imposed only for the most serious crimes under Article 4(2), and his right to a fair trial under Article 8. They further allege that Mr. Dixon's treatment while imprisoned and the conditions under which he is being held violate his right to humane treatment under Article 5. Finally, the Petitioners claim that the absence of legal aid for constitutional motions before Jamaican courts denies Mr. Dixon the right to equal protection under Article 24, as well as the right to judicial protection under Article. 25.

[FN1] On August 6, 1997, the Governor General of Jamaica approved instructions setting time periods applying to and the procedure for applications from or on behalf of prisoners under sentence of death to two International Human Rights bodies, the United Nations Human Rights Committee and the Inter-American Commission on Human Rights, where a petition or an appeal to the Judicial Committee of the Privy Council has been refused, abandoned, withdrawn or dismissed. In particular, where, after a period of six months following despatch of the Government's response to an application made by or on behalf of a prisoner to one of the International Human Rights bodies, no recommendation has been received from that body, the instructions provide that the prisoner's execution will not be further postponed unless intimation in writing is received by the Governor General from the prisoner or on his behalf that he intends to make an application to the other International Human Rights body. See Jamaica Gazette, Vol. CXX, No. 84 (7 August 1997).

3. In a May 28, 1998 response to the State's reply to their petition, the Petitioners allege further that Mr. Dixon suffers from a mental disorder, namely querulant paranoia, and is no longer able to give rational instructions to his solicitor or to take an informed interest in his own case. Should Mr. Dixon be executed while suffering from a mental disorder, the Petitioners claim that this would constitute further cruel, inhuman, or degrading punishment or treatment contrary to Article 5 of the Convention. The Petitioners also state that the Privy Council of Jamaica is scheduled to consider Mr. Dixon's mental condition in deliberations on the prerogative of mercy on March 9, 1999, and allege that Mr. Dixon has no right to make representations to the Privy Council on this matter. The Petitioners submit that this violates Mr. Dixon's right to apply for amnesty, pardon or commutation of sentence under Article 4(6), as well as his right to judicial protection under Article 25 of the Convention.

4. The State denies that the Governor General's instructions are arbitrary or that they breach the Convention. The State argues that the expedited procedures prescribed under the instructions are necessary in order for Jamaica to meet its constitutional and international legal obligations. The State also claims that the constitutionality of a mandatory death sentence can be challenged by bringing a constitutional motion in the courts. The State denies any violations of Articles 24 and 25 of the Convention, for the reason that a new Legal Aid Act in Jamaica, which has not yet entered into force, makes provision for legal assistance for persons pursuing constitutional motions. In addition, the State argues that it is possible for Mr. Dixon to bring a constitutional motion by an attorney on a pro bono basis. Finally, the State indicates that the Petitioners' assertion that Mr. Dixon suffers from a mental disorder will be brought to the attention of the Jamaican Privy Council for its consideration.

5. As set forth in the report that follows, having examined the contentions of the parties on the question of admissibility and precautionary measures, the Commission decided to admit the present petition. The Commission also decided to issue precautionary measures and request that the Government of Jamaica stay the execution of Mr. Dixon until the Commission has had an opportunity to fully investigate the claims raised in this case.

II. PROCEEDINGS BEFORE THE COMMISSION

6. The Commission opened case 11.884 on February 2, 1998, and transmitted the pertinent parts of the petition to the Government of Jamaica by means of a note dated February 18, 1998, with a response requested within 90 days. The petition included a request for precautionary measures under Article 29 of the Commission's Regulations in the form of a direction to the State that no steps be taken to carry out Mr. Dixon's death sentence pending determination of the petition by the Commission. In transmitting the pertinent parts of the petition to the State, the Commission requested that the State stay the execution of Mr. Dixon pending an investigation by the Commission of the alleged facts. The Petitioners were notified that these actions had been taken.

7. The State responded on March 20, 1998, by waiving examination of the issue of the admissibility of the petition and addressing the merits of the case. The pertinent parts of the State's response were transmitted to the Petitioners on April 2, 1998, with observations requested within 30 days. By facsimile transmission dated April 17, 1998, the Petitioners advised the Commission that they had recently received information concerning Mr. Dixon's mental health which caused them concern, and indicated that they might wish to amend their application to reflect this development. They also requested an extension of time to serve their objection. On May 5, 1998, the Commission granted the petitioners an extension to May 29, 1998, to respond to the State's Reply and to amend their petition.

8. On June 1, 1998, the Petitioners delivered a response dated May 28, 1998 to the State's Reply. This included written comments on the State's submissions, the affidavit of Ben Lion Cooper sworn on May 26, 1998, and the affidavit of Saleema Kate Brohie sworn on May 28, 1998 together with Exhibits SKB1, SKB2 and SKB3 thereto. The affidavit evidence suggests that Mr. Dixon may suffer from a mental disorder, querulant paranoia.

9. By note dated July 29, 1998, the Commission transmitted the pertinent portions of the Petitioners' response of May 28, 1998 to the State, with a response requested within 30 days. The Commission also requested that the State stay Mr. Dixon's execution pending an investigation by the Commission of the alleged facts. The Petitioners were notified that this action was taken.

10. The State responded by note dated August 19, 1998, indicating that the Petitioners' assertions that Mr. Dixon was mentally ill would be brought to the attention of the Privy Council for its consideration. Pertinent parts of the response were transmitted to the Petitioners on August 20, 1998, with any information in response requested within 30 days.

11. On November 25, 1998, the Petitioners requested that the Commission confirm a suitable date for a hearing of the petition. The Commission notified the parties on February 2, 1999 that it would convene a hearing during its 102nd period of sessions on the admissibility and merits of the case. By letter dated February 19, 1999, the State advised the Commission that it was of the view that there were no outstanding issues that necessitated the scheduling of such a hearing, and therefore that no State representative would participate in the hearing.

12. The hearing was held on March 3, 1999 in the headquarters of the Organization of American States, with the Petitioners' representative, Ms. Anesta Weekes, present. In the course of the hearing, Ms. Weekes submitted copies of several additional documents relating to the issue of Mr. Dixon's mental condition: 1) a letter dated February 15, 1999 from the Secretary to the Governor General of Jamaica to the Petitioners, indicating that the Jamaican Privy Council on the Prerogative of Mercy was still following up on the matter of Mr. Dixon's mental state, and suggesting that if the mental state does not suffice, the Inter-American Commission on Human Rights may find itself out of time in determining Mr. Dixon's case; 2) a medical report respecting Mr. Dixon dated March 1, 1999 and prepared by Consultant Psychiatrist Dr. Frank Knight; 3) a second affidavit of Gillian Penelope Burnett sworn on March 1, 1999; 4) a second affidavit of Ben Lion Cooper sworn on February 28, 1999.

13. Also during the hearing, Ms. Weekes confirmed that the Constitution of Jamaica does not permit a party to allege, in domestic courts or before the Judicial Committee of the Privy Council, that the mandatory death penalty is unconstitutional as cruel, inhuman, or degrading punishment or treatment. In addition, Ms. Weekes indicated that the petition is not pending in another international proceeding for settlement. Ms. Weekes also advised that the 6 month period under the Governor General's instructions to determine the Petitioners' case expired on February 19, 1999.

14. On March 4, 1999, the Petitioners filed with the Commission a written application for precautionary measures under Article 29(2) of the Commission's Regulations to prevent Mr. Dixon's execution pending the Commission's determination of his case. The Petitioners stated that the Privy Council is due to consider Mr. Dixon's case on Tuesday, March 9, 1999. They also indicated that the 6 month time limit under the Governor General's instructions to determine the Petitioners' case expired on February 19, 1999. Consequently, they stated that the State is entitled to proceed with Mr. Dixon's execution any time after the Privy Council's decision. The Petitioners argued that, should Mr. Dixon be executed prior to the Commission's determination of the merits of his case, he will be denied the protection of effective recourse to the Commission to safeguard his Convention rights, contrary to Articles 4(6), 24 and 25 of the Convention. They also submitted that to execute Mr. Dixon in this manner would be arbitrary and contrary to Articles 4(1) and 5(2) of the Convention.

III. POSITIONS OF THE PARTIES

A. Position of the petitioners

15. The Petitioners claim that Mr. Dixon has exhausted his domestic remedies in Jamaica, as required under Article 46(1) of the Convention and Article 37(1) of the Regulations. The

Petitioners submit that although Mr. Dixon has a constitutional remedy in theory, he is unable to pursue this remedy in the courts in Jamaica because he is indigent and the State does not provide legal aid to obtain legal representation on a constitutional motion. The Petitioners also claim that the Constitution of Jamaica does not permit Mr. Dixon to allege that his execution is unconstitutional as cruel, inhuman, or degrading treatment or punishment. Accordingly, even if legal aid was available for a constitutional motion, the constitutionality of the mandatory death penalty could not be challenged in all respects before domestic courts or before the Judicial Committee of the Privy Council. The Petitioners indicate that the petition is not substantially the same as one outstanding before another international organization.

16. Respecting precautionary measures, the Petitioners claim that the present case is urgent and that Mr. Dixon would suffer irreparable harm should he be executed and the Commission subsequently find in his favor on the merits. Consequently, the Petitioners ask that the Commission request pursuant to Article 29(2) of its Regulations that the State stay Mr. Dixon's execution pending the Commission's determination of his case.

B. Position of the State

17. The State waived examination of the issue of the admissibility of the Petitioners' case[FN2]. The State claims, however, that the constitutionality of a mandatory death sentence can be challenged by bringing a constitutional motion in the courts. The State also suggests that a new Legal Aid Act in Jamaica, which has not yet entered into force, makes provision for legal assistance for persons pursuing constitutional motions. The State also argues that it is possible for Mr. Dixon to bring a constitutional motion by an attorney on a pro bono basis.

[FN2] Specifically, in its March 20, 1998 Reply to the Petitioners' petition, Jamaica stated that "[w]ith respect to the question of admissibility, the Ministry waives examination of that issue and will proceed to address the merits of the communication."

18. The State has not provided submissions on the issuance of precautionary measures. The State indicated by letter to the Petitioners dated February 15, 1999, however, that the Privy Council was still following up on the matter of Mr. Dixon's mental state, and suggested that if the mental state does not suffice the Commission may find itself "out of time" to issue a definitive recommendation in Mr. Dixon's case.

IV. ANALYSIS

A. Competence of the Commission

19. The Petitioners claim that the State has violated Mr. Dixon's rights under Articles 4, 5, 8, 24 and 25 of the Convention. The State ratified the Convention on August 7, 1978. The events that relate to the claim before the Commission occurred subsequent to the State's ratification of the Convention. The petition was brought by Solicitors from London, who have standing to present petitions to the Commission pursuant to Article 44 of the Convention. Therefore the

Commission is competent to examine this petition pursuant to Article 44 of the Convention and Articles 18 and 19 of the Statute of the Inter-American Commission on Human Rights.

B. Admissibility of petition

1. Duplication of procedures

20. According to the record, this petition is not pending in another international proceeding for settlement pursuant to Article 46(1)(c) of the Convention, nor is the petition substantially the same as one previously studied by the Commission or by another international organization under Article 47(d) of the Convention. The State has not contested the issue of duplication of procedures. The Commission therefore finds that there is no duplication of procedures in this case.

2. Exhaustion of Domestic Remedies

21. Article 46 of the Convention specifies that, in order for a case to be admitted, "remedies under domestic law [must] have been pursued and exhausted in accordance with generally accepted principles of international law." When domestic remedies are unavailable as a matter of fact or law, however, the requirement that they be exhausted may be excused. Article 46(2) of the Convention specifies that this exception applies if the legislation of the state concerned fails to afford due process for the protection of the right allegedly violated, if the party alleging the violation has been hindered in his or her access to domestic remedies, or if there has been an unwarranted delay in the issuance of a final judgment. Consequently, when, as in the present case, the petitioner alleges that he or she is unable to prove exhaustion, Article 37 of the Commission's Regulations establishes that the burden then shifts to the Government to demonstrate that the remedies under domestic law have not previously been exhausted.[FN3] Moreover, the Inter-American Court has suggested that if it can be shown that an indigent needs legal counsel to effectively protect a right which the Convention guarantees and his lack of resources prevents him from obtaining such counsel, he does not have to exhaust the relevant domestic remedies.[FN4]

[FN3] Inter-Am. Ct. Hum. Rts., Velásquez Rodríguez Case, Merits, Judgment of July 29, 1988, Ser. C No. 4, para. 59.

[FN4] Inter-Am. Ct. Hum. Rts., Advisory Opinion, Articles 46(1)(a) and 46(2) of the American Convention on Human Rights, OC 11/90 (10 August 1990).

22. The record indicates that Mr. Dixon sought leave to appeal his conviction and sentence to the Court of Appeal in Jamaica, sought Special Leave to Appeal to the Judicial Committee of the Privy Council in London, and was denied leave in both instances. The Petitioners have indicated that the Constitution of Jamaica does not permit a party, by constitutional motion or otherwise, to allege that his or her execution is unconstitutional as cruel, inhuman, or degrading punishment or treatment. The Petitioners have also indicated that Mr. Dixon lacks the resources necessary to pursue any constitutional remedies that may be available to him. The State waived the issue of

admissibility, and in any event has not demonstrated that the constitutionality of the mandatory death penalty can be effectively challenged in the domestic court system, or that Mr. Dixon otherwise has the resources necessary to protect his rights under the Convention in domestic courts. The Commission therefore finds that the requirement of exhaustion of domestic remedies does not apply to the Petitioners pursuant to Article 46(2) of the Convention, for the reason that the State does not afford effective remedies for the rights that have allegedly been violated.

3. Timeliness of the Petition

23. In accordance with Article 46(1)(b) of the Convention, a petition must be presented in a timely manner, namely within six months from the date on which the complaining party was notified of the final judgment at the domestic level.

24. The Commission received the Petitioners' petition on February 4, 1998, 16 days after the Judicial Committee of the Privy Council dismissed Mr. Dixon's application for Special Leave to Appeal. The State has not contested the timeliness of the petition. Accordingly, the Commission finds that the petition was timely filed pursuant to Article 46(1)(b) of the Convention.

4. Factual Foundation

25. Article 47(b) and (c) of the Convention require a petition to state facts that tend to establish a violation of the rights guaranteed by the Convention, and that the statements of the petitioner are not manifestly groundless or obviously out of order.

26. The Petitioners allege that the State has violated Mr. Dixon's rights under Articles 4, 5, 8, 24 and 25 of the Convention. They have provided in support factual allegations that, if referred, tend to establish that the alleged violations may be well founded. The State has not challenged the sufficiency of the Petitioners' factual allegations. The Commission therefore finds, without prejudging the merits of the matter, that the Petitioners have presented colorable claims of violations of Mr. Dixon's rights under the Convention.

C. Precautionary measures

27. Article 29(2) of the Commission's Regulations provides that in urgent cases, the Commission may issue precautionary measures necessary to avoid irreparable damage to persons. The record indicates that the Jamaican Privy Council is scheduled to consider Mr. Dixon's mental condition on Tuesday, March 9, 1999. It also indicates that the Commission's 6 month period under the Governor General's instructions to determine the Petitioners' case expired on February 19, 1999. Consequently, should the Privy Council's determination not be in Mr. Dixon's favor, his execution may be imminent. The State has not contested this state of affairs, but rather has suggested that the Commission may be out of time to determine Mr. Dixon's case once the Privy Council considers his mental condition.

28. The Commission finds that this is an urgent case and that irreparable damage will be caused to Mr. Dixon should he be executed before the Commission addresses the merits of his case, including and in particular the question of whether the mandatory death penalty in Jamaica

contravenes the Convention. Accordingly, the Commission issues precautionary measures pursuant to Article 29(2) of its Regulations in the form of a request that the Government of Jamaica stay the execution of Mr. Dixon until the Commission has had an opportunity to determine the merits of the claims raised in this case.

V. CONCLUSIONS

29. In accordance with the foregoing analysis of the requirements of Articles 46 and 47 of the Convention and the applicable provisions of the Commission's Regulations, the Commission considers that it has the competence to examine the case and that the petition is admissible.

30. The Commission also finds that precautionary measures under Article 29(2) of the Regulations are necessary to avoid irreparable damage to Mr. Dixon, and requests that the State of Jamaica stay the imminent execution of Mr. Dixon until the Commission has had an opportunity to determine the merits of the claims raised in this case.

31. On the basis of the findings of fact and law set forth above, and without prejudging the merits of the matter,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES TO:

1. To declare the present case admissible.
2. To issue precautionary measures pursuant to Article 29(2) of its Regulations in respect of Mr. Whitley Dixon, and request that the State of Jamaica stay the execution of Mr. Dixon until the Commission has had an opportunity to determine the merits of the claims raised in this case concerning allegations of fundamental violations of Mr. Dixon's rights under the American Convention.
3. To transmit this Report to the State of Jamaica and the Petitioner.
4. To continue with the analysis of the merits of the case.
5. To place itself at the disposal of the parties with a view to reaching a friendly settlement of the matter.
6. Publish this Report and include it in its Annual Report to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C., on the 9th day of the month of March, 1999. (Signed): Robert K. Goldman, Chairman; Hélio Bicudo, First Vice-Chairman; Claudio Grossman, Second Vice-Chairman; Commissioners: Alvaro Tirado Mejía and Carlos Ayala Corao.