

**REPORT No. 41/11**  
PETITION 11.215  
DECISION TO ARCHIVE  
JAMAICA  
March 23, 2011

**ALLEGED VICTIMS/ PETITIONERS:** Neville Whyte, Mssrs Barlow Lyde & Gilbert

**INITIATION OF PROCESSING:** July 16, 1993

**ALLEGED VIOLATIONS:** Articles 1.1, 4, 5, 7, 8 and 25 of the American Convention on Human Rights (the "American Convention")

**I. POSITIONS OF THE PARTIES**

**A. THE PETITIONERS**

1. On July 16, 1993, the Inter-American Commission on Human Rights (the "Inter-American Commission" or the "IACHR") received a petition from Mssrs. Barlow Lyde and Gilbert (the "petitioners") on behalf of Neville Whyte (the "alleged victim") against the State of Jamaica (the "State" or "Jamaica"), alleging that Mr. Whyte did not receive a fair and impartial hearing at his trial, at which he was found guilty of a capital murder and condemned to death.

2. According to the petition, the alleged victim was tried jointly with another defendant for murder in 1987 in Jamaica. At the conclusion of that trial, the other defendant was acquitted, and the jury was unable to reach a verdict in respect to Mr. Whyte. He was retried by the state in 1990 before a judge and jury and was found guilty of murder, a crime which carried a sentence of capital punishment. The alleged victim alleged that at his second trial, the judge unfairly conducted the trial, the alleged victim was not given adequate representation, and his conviction for murder was a substantial miscarriage of justice. Both of the alleged victim's appeals were dismissed, exhausting his remedies to have his conviction reviewed.

3. Further, the alleged victim held that he was beaten by a police officer when he was taken in custody and again when he was brought to the police station in order to force a confession, he was beaten in prison and housed in unsanitary and inhumane conditions, and he was held in such conditions though he had not been convicted for the three years between his two trials, which he alleges represents an unjust delay.

4. Correspondence from Mssrs. Barlow Lyde & Gilbert on September 30, 2005 confirmed that the alleged victim's death sentence was commuted in July 1997 to 20 years imprisonment.

**B. THE STATE**

5. In a letter to the IACHR dated February 22, 1995, the State rejected the claim that the alleged victim had exhausted local remedies, as the legislation Offenses Against the Persons (Amendment) Act 1992 created two categories for murder, capital and non-capital, and provided a re-examination of the sentences of death row inmates to determine whether their offenses were to be classified as capital or non-capital. The alleged victim had not yet availed himself of this remedy.

6. The letter further stated that Jamaica was of the view that allegations concerning bias of the judge and the unfairness of the trial, which related to facts and evidence, fell outside the competence of the Commission. Finally, the State claimed the alleged victim had a remedy available to him through a civil action for damages in regards to the physical assaults he alleged.

7. The State informed the Commission on January 13, 1996 that the alleged victim's Special Leave to petition to the Judicial Committee of the Privy Council was not yet heard, and thus urged a stay of his petition at the Commission.

## **II. PROCESSING BEFORE THE INTER-AMERICAN COMMISSION**

8. On July 16, 1993, the Commission received the petition. On July 23, 1993, the IACHR responded, asking for clarification of the status of Mr. Whyte's appeals and whether he had been assigned an execution date. On August 12, 1993, Barlow Lyde & Gilbert responded that while an appeal was pending against Mr. Whyte's sentence, none was pending in regards to his conviction.

9. On November 10, 1993, the IACHR transmitted this information to the State requesting information regarding the petition and notified the petitioners thereof. When a State response was not forthcoming, on February 13, 1995, Barlow Lyde & Gilbert requested from the Commission a protective order to ensure the alleged victim would not be executed while his application at the IACHR was pending. On February 16, 1995, the Commission informed the petitioner that a precautionary measure had been granted and the Government of Jamaica notified accordingly.

10. On February 22, 1995, the Jamaican Ministry of Foreign Affairs and Foreign Trade responded to the Commission, and this was forwarded to the petitioner. The latter replied on April 11, 1995. The Commission was notified by petitioner that the alleged victim's petition for Special Leave to Appeal to the Judicial Committee of the Privy Council in London had been granted. The Commission requested information from petitioners on March 9, 1998, regarding the alleged victim's appeal when no further information was forthcoming. On March 25, 1998, the petitioners informed the IACHR that the appeal before the Privy Council had been dismissed and that the death sentence had been commuted.

11. As the petition had been submitted on the grounds of the unlawfulness of the death sentence and the sentence had been commuted, the Commission requested information from the petitioner on September 1, 2005 as to whether they wished to continue with the petition and under what grounds. The petitioner responded on September 30, 2005 that they were unable to confirm whether or not the petition would be pursued; and that they would be grateful if the IACHR kept the file open until instructions were confirmed. Finally, on April 9, 2009 the Commission reiterated to the petitioner whether the petition would be pursued and whether grounds existed for the petition after the commutation of the alleged victim's sentence. There has been no response from the petitioner to date.

## **III. GROUNDS FOR THE DECISION TO ARCHIVE**

12. Articles 48.1.b of the American Convention and 42 of the Rules of Procedure of the IACHR establish that, prior to determining admissibility, the Inter-American Commission shall ascertain whether the grounds for the petition still exist or subsist; and that if it considers that they do not, it shall order the case to be archived. In addition, Article 42.1.a of the Rules establishes that the IACHR may also decide to archive a case when the information necessary for the adoption of a decision is unavailable.

13. In the present case, it has been over five years since the last communication from the petitioner was received. The IACHR notes that as one of the grounds of the petition, an unlawful death sentence, became moot, there has been no response from the petitioner as to whether there are grounds for the petition to continue as is. The IACHR has tried to obtain information from the petitioner unsuccessfully.

14. Under these circumstances, the IACHR considers that it lacks the necessary elements to make a determination as to whether the grounds underlying the initial petition subsist; to pronounce on admissibility; or to reach a decision on the alleged human rights violations. Therefore, in accordance with Article 48.1.b of the American Convention and Article 42 of its Rules of Procedure, the IACHR decides to archive this petition.

Done and signed in the city of Washington, D.C., on the 23<sup>rd</sup> day of the month of March, 2011.  
(Signed): Dinah Shelton, President; José de Jesús Orozco Henríquez, First Vice-President; Rodrigo Escobar Gil, Second Vice-President; Paulo Sérgio Pinheiro, Felipe González, Luz Patricia Mejía Guerrero and María Silvia Guillén, Commissioners.