No. 18-50

In The Supreme Court of the United States

LINDA ANITA CARTY,

Petitioner,

v.

THE STATE OF TEXAS,

Respondent.

On Petition For Writ Of Certiorari To The Court Of Criminal Appeals Of Texas

BRIEF OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER LINDA ANITA CARTY

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CAPITAL CASE
QUESTIONS PRESENTED

The Petitioner has presented the following questions:

(1) Whether the Constitution requires a court on *habeas* review in a capital punishment case to assess cumulatively the prejudice caused by multiple constitutional errors at a criminal trial.

(2) Whether the State's intentional suppression of evidence prejudiced the Petitioner by itself, or in combination with the objectively unreasonable performance of her trial counsel.

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INTEREST OF THE *AMICUS CURIAE*

The United Kingdom of Great Britain and Northern Ireland (hereinafter "the United Kingdom") respectfully submits this brief as *amicus curiae*[1] in support of the Petitioner with a view to bringing to the attention of the U.S. Supreme Court (hereinafter "the Court") the United States' obligations under international law with respect to the right to a fair trial, including in particular the right to a review and whether that right requires a cumulative error review.

The Petitioner, Ms. Linda Anita Carty, is a dual citizen of the United Kingdom and the Federation of Saint Kitts and Nevis. In February 2002, she was sentenced to death by a Harris County District Court. For the last 16 years, she has been incarcerated on death row in the Mountain View Unit of the Texas Department of Criminal Justice in Gatesville, Texas.

The United Kingdom is committed to the rule of law, including the promotion of human rights and efforts to protect against violations of the same. It is the longstanding view of the United Kingdom that a State must protect the human rights of those within its

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[1] This brief is submitted pursuant to Supreme Court Rule 37. Counsel of record for all parties have received timely notice of intent to file this brief and it has been submitted with the consent of the Petitioner and Respondent. No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus curiae*, its members, or its counsel made a monetary contribution to its preparation or submission.

jurisdiction and must provide appropriate remedies for violations of those rights. The United Kingdom fully accepts that it cannot interfere in the internal legal affairs of another State. The United Kingdom considers that it is entitled to intervene where human rights issues arise in relation to its nationals arrested, detained or incarcerated overseas. This includes cases where British nationals face the death penalty.

The United Kingdom provides consular assistance to its nationals, with their consent, who have been arrested, detained or incarcerated overseas. For this reason, the United Kingdom takes very seriously the denial of consular access to its nationals who are in these circumstances.

The Petitioner was not informed of her right to consular assistance at her questioning and subsequent arrest on 16 May 2001. The United Kingdom was informed of the Petitioner's arrest and detention in August 2002, six months after she had been sentenced to death. In failing to inform the United Kingdom, the Texas authorities failed to comply with their obligation to provide notification to appropriate consular officials, in violation of Article 16(1) of the Convention on Consular Officers between the U.S. and the U.K., June 6, 1951, 3 U.S.T. 3426 and Article 36 of the Vienna Convention on Consular Relations, April 24, 1963, 21 U.S.T. 77, 596 U.N.T.S. 261.

To date, the United Kingdom has submitted two *amicus* briefs in support of the Petitioner's case. In 2004, a Motion was filed to suspend proceedings for

consular assistance to supplement post-conviction writ of habeas corpus. In *Carty v. Thaler*, 2010 (09-900) an *amicus curiae* brief was filed into this Court for the petition of certiorari, and then *In re Linda Anita Carty*, WR-61, 055-02 (2014) an *amicus curiae* brief was filed in the Court of Criminal Appeals of Texas presenting the international law arguments concerning prosecutorial misconduct and the right to a fair trial.

STATEMENT OF THE CASE

Amicus adopts the opinions below, jurisdiction, constitutional provisions involved, and the Statement of Facts in the Petition for writ of certiorari filed by the Petitioner, and files this *amicus* brief in her support.

SUMMARY OF THE ARGUMENT

On 1 September 2016, the 177th Judicial District Court, Harris County, Texas held that the State of Texas failed to disclose key exculpatory witness statements to the defense, in violation of *Brady v. Maryland*, 373 U.S. 83 (1963) (*Ex Parte Linda Carty*, No. 877592-B, September 1, 2016). That determination was upheld by the Texas Court of Criminal Appeals in its decision that is the subject of this appeal. On 15 October 2009, the Court of Appeals for the Fifth Circuit determined that the quality of the representation provided to the Petitioner by defense counsel fell below the objective

standard of reasonableness in *Strickland v. Washington*, 466 U.S. 668 (1984). The cumulative impact of these errors on the fairness of the Petitioner's trial has not been considered.

Amicus submits this brief in support of the Petitioner's request for the Court to grant Certiorari on the above Questions Presented. The right to a fair trial is protected under U.S. law. It is also enshrined in multiple treaties and international legal instruments. *Amicus* respectfully submits that the right to a fair trial under international law requires a cumulative error review to determine the fundamental fairness of the proceedings that resulted in Petitioner's sentence of death.

ARGUMENT

I. THE RIGHT TO A FAIR TRIAL

The right to a fair trial is a well-established fundamental right in any legal system that purports to uphold the rule of law. It protects an individual's access to justice in criminal proceedings and in doing so ensures compliance with principles of due process. The right to a fair trial extends to the appeal process.

The fundamental importance of due process has long been recognized by the United Kingdom and the United States. The concept is over 800 years old and first enshrined in the Magna Carta: "No free man shall be seized, or imprisoned, or disseised, or outlawed, or

exiled, or in any way ruined, nor will we send against him, except by lawful judgment of his peers or by the law of the land" (Magna Carta, Clause 39 (1215)).

In the United States, due process was imported into statutes of North American colonies, drawn upon by the founding fathers, and is guaranteed in the Fourteenth Amendment to the U.S. Constitution (U.S. Const. amend. XIV). The American Declaration of the Rights and Duties of Man 1948 provides, in Article XVIII – Right to a fair trial, that "Every person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights."

Internationally, the fundamental importance of the right to a fair trial is recognized by almost all countries. 169 countries are party to the International Covenant on Civil and Political Rights, Dec. 19 1966, 999 U.N.T.S. 171 (hereinafter "ICCPR"), including the United States.[2] Art. 14 ICCPR protects the right to a fair trial:

> "In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent,

[2] As of January 12, 2018, there are 74 signatories and 169 parties to the ICCPR. Some parties have expressed reservations in respect of article 14 which limit its scope but the majority limit legal aid provisions due to financial constraints. The United States ratified the ICCPR on 8 September 1992.

> independent and impartial tribunal established by law."

Significantly, the right to a fair trial under Art. 14 ICCPR is not limited to citizens of States parties. The Human Rights Committee's (hereinafter "HRC") General Comment No. 32, paragraph 9, concludes that the right applies to:

> "all individuals, regardless of nationality or statelessness, or whatever their status, whether asylum seekers, refugees, migrant workers, unaccompanied children, or other persons who may find themselves in the territory, or subject to the jurisdiction, of the State party."

In respect of the HRC, the U.S. courts have stated that: "The Human Rights Committee's General Comments and decisions in individual cases are recognized as a major source for interpretation of the ICCPR" (U.S. Court of Appeals, Eleventh Circuit, in *United States v. Duarte-Acero*, No. 98-5756, April 13, 2000, part IIIC; *Maria v. McElroy*, August 27, 1999, 68 F. Supp. 2d 206, 232 (E.D.N.Y. 1999), part IIID5a).

The International Court of Justice has held that "it believes that it should ascribe great weight to the interpretation adopted by this independent body [HRC] that was established specifically to supervise the application of that treaty [ICCPR]." (*Ahmadou Sadio Diallo* (*Republic of Guinea v. Democratic Republic of Congo*) *Merits, Judgment* [2010] ICJ Rep 639, 179, paragraph 66)

II. THE SPECIAL IMPORTANCE OF THE RIGHT TO A FAIR TRIAL IN CAPITAL CASES

The right to a fair trial is of the utmost importance in capital cases. Under the ICCPR, failure to respect that right in capital cases will be a violation of the right to life. HRC General Comment No. 32, paragraph 59, states that:

> "In cases of trials leading to the imposition of the death penalty scrupulous respect of the guarantees of fair trial is particularly important. The imposition of a sentence of death upon conclusion of a trial, in which the provisions of article 14 of the Covenant have not been respected, constitutes a violation of the right to life (article 6 of the Covenant)." (See also *Shukurova v. Tajikistan*, Communication No. 1044/2002, paragraphs 8.5, 8.6; *Rayos v. Philippines*, Communication No. 1167/2003, paragraph 7.3)

The HRC has emphasized that "the right of appeal is of particular importance in death penalty cases." (*Mwamba v. Zambia*, Communication No. 1520/2006, U.N. Doc. CCPR/C/98/D/1520/2006 (2010), paragraph 6.6; HRC General Comment No. 32, paragraph 51).

Safeguards guaranteeing protection of the rights of those facing the death penalty, approved by the U.N. Economic and Social Council resolution 1984/50 of 25 May 1984, paragraph 4 states that capital punishment "may be imposed only when the guilt of the person charged is based upon clear and convincing evidence

leaving no room for an alternative explanation of the facts."

III. THE RIGHT TO ADEQUATE FACILITIES FOR THE PREPARATION OF DEFENSE AND THE RIGHT TO EFFECTIVE COUNSEL

Art. 14(1) ICCPR expressly guarantees equality before the courts. HRC General Comment No. 32, paragraph 13, provides that this right to equality "also ensures equality of arms. This means that the same procedural rights are to be provided to all parties unless distinctions are based on law and can be justified on objective and reasonable grounds, not entailing actual disadvantage or other unfairness to the defendant."

Art. 14(3)(b) ICCPR provides that an individual, in the determination of any criminal charge against him, shall " . . . have adequate time and facilities for the preparation of his defence".[3] The phrase "adequate facilities for the preparation of his defence" is broad and will require in every case, *inter alia*, the disclosure

[3] Manfred Nowak, in *U.N. Covenant on Civil and Political Rights, CCPR Commentary*, 2nd revised edition, in his section on Article 14, Minimum Guarantees of the Accused in Criminal Trials, Preparation of the Defence (para. 3(b)), states, "Art. 14(3)(b) contains several rights, which on occasion overlap with those in subparas. a and d. The accused's *right to have adequate time and facilities for the preparation of his or her defence* . . . stems from a British draft in the HRComm in 1952 and is apparently based on Art. 6(3)(b) of the ECHR", citing U.N. documents E/CN.4/L.142 and E/CN.4/SR.323, and BOSSUYT 296.

of relevant material. That is confirmed in HRC General Comment No. 32, paragraph 33:

> "'Adequate facilities' must include access to documents and other evidence; this access must include *all materials* that the prosecution plans to offer in court against the accused *or that are exculpatory*. Exculpatory material should be understood as including not only material establishing innocence but also other evidence that could assist the defence. . . ." (emphasis added)

There is consensus between States that it is " . . . the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time." (*Basic Principles on the Role of Lawyers*, adopted by the Eighth U.N. Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, paragraph 21)

It is essential that prosecutors provide access to appropriate information to defendants and defense counsel. *Amicus* draws the Court's attention to obligations on prosecutors addressed in *Guidelines on the Role of Prosecutors*, adopted by the Eighth U.N. Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, paragraphs 2(b), 14 and 20:

> "States shall ensure that: . . . Prosecutors have appropriate education and training and should be made aware of the ideals and ethical duties of their office, of the constitutional and statutory protections of the rights of the suspect and the victim, and of human rights and fundamental freedoms recognized by national and international law. . . .
>
> "Prosecutors shall not initiate or continue prosecution, or shall make every effort to stay proceedings, when an impartial investigation shows the charge to be unfounded. . . .
>
> "In order to ensure the fairness and effectiveness of prosecution, prosecutors shall strive to cooperate with the police, the courts, the legal profession, *public defenders* and other government agencies or institutions." (emphasis added)

As a separate matter, Art. 14(3)(d) ICCPR provides that an individual, in the determination of any criminal charge against him, shall be able to " . . . defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require . . . ".

HRC General Comment No. 32, paragraph 10 notes more broadly that: "The availability of legal assistance often determines whether or not a person can access the relevant proceedings or participate in them in a meaningful way."

A violation of Art. 14 ICCPR will occur where legal representation provided to an accused is not "effective". The HRC has concluded that "measures must be taken to ensure that counsel, once assigned, provides effective representation, in the interests of justice." (*Kelly v. Jamaica*, Communication No. 253/87, paragraph 5.10; see also *Khuseynova and Butaeva v. Tajikistan*, Communication No. 1263-1264/2004, U.N. Doc. CCPR/C/94/D/1263-1264/2004, 20 October 2008, paragraph 8.4).

HRC General Comment No. 32, paragraph 38 states, with respect to Art. 14(3)(d) that:

> "In cases involving capital punishment, it is axiomatic that the accused must be effectively assisted by a lawyer at all stages of proceedings. Counsel provided by the competent authorities on the basis of this provision must be effective in the representation of the accused. . . . There is also a violation of this provision if the court or other relevant authorities hinder appointed lawyers from fulfilling their tasks effectively." (See also *Chikunova v. Uzbekistan*, Communication No. 1043/2002, paragraph 7.4; *Idieva v. Tajikistan*, Communication No. 1276/2004, paragraph 9.5)

In Concluding Observations on the United States, the HRC stated: " . . . The Committee . . . notes the lack of effective measures to ensure that indigent defendants in serious criminal proceedings, particularly in state courts, are represented by competent counsel."

Human Rights Committee Comments on Reports Submitted by States Under Article 40 of the U.N. International Covenant on Civil and Political Rights, 53rd Session, CCPR/C/79/Add.50 (7 April 1995).

Consensus among states on the importance of the right to effective assistance by counsel is also reflected in *Basic Principles on the Role of Lawyers*, paragraph 6, which sets out that in all cases in which the interests of justice so require, persons who do not have a lawyer "shall be entitled to have a lawyer of experience and competence commensurate with the nature of the offence assigned to them in order to provide effective legal assistance". Additionally, paragraph 1(a) of the *Implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty*, No. 1(a), ECOSOC Res. 1989/64, sets out that States should:

> "further the protection of the rights of those facing the death penalty, where applicable by: (a) Affording special protection to persons facing charges for which the death penalty is provided by allowing time and facilities for the preparation of their defence, including the adequate assistance of counsel at every stage of the proceedings, above and beyond the protection afforded in non-capital cases . . . ".

IV. THE NECESSITY OF CUMULATIVE ERROR REVIEW

In light of these basic principles of international law, *amicus* respectfully submits that the right to a

fair trial under international law requires that the impact of multiple errors or procedural deficiencies on the fairness of a trial be assessed cumulatively, as well as separately. Absent such an approach, any review is inadequate. The effects of this in a capital case could be severe in the extreme.

Under the ICCPR, Art. 14(1) provides that "In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a *fair* and public *hearing* . . . " (emphasis added). Art. XXVI American Declaration – Right to due process of law, similarly provides that " . . . Every person accused of an offense has the right to be given an *impartial* and public *hearing* . . . " (emphasis added)

Pursuant to the well-established rule of customary international law codified in Article 31(1) of the Vienna Convention on the Law of Treaties, "A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose".[4] The ordinary meaning of the phrases "fair

[4] Although the United States is not a party to the Convention, it accepts that the Convention generally reflects international practice concerning treaties and that many of its provisions are binding as a matter of customary international law (See, e.g., Letter of Submittal from William P. Rogers, U.S. Secretary of State to President Richard M. Nixon (Oct. 18, 1971), in Message from the President of the United States Transmitting the Vienna Convention on the Law of Treaties, 92d Cong., 1st Sess. at 1 (Nov. 22, 1971) (noting that the Convention 'sets forth a generally agreed body of rules'). For authority for the proposition that

hearing" and "impartial hearing" is that it is the hearing as *a whole* that must be fair and impartial. If the Contracting States to the ICCPR had intended to exclude cumulative error review, they could have done so expressly. There is no basis in the ICCPR to support the contrary interpretation. Excluding cumulative error review is contrary to the object and purpose of the ICCPR.

More specifically, the content of the right to appeal must also be considered. Art. 14(5) ICCPR provides that: "Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law." Pursuant to the ordinary meaning of these words, the entirety of the conviction and sentence must be subject to review.

HRC General Comment No. 32, paragraph 48, states that Art. 14(5) "imposes on the State party a duty *substantially* to review, both on the basis of sufficiency of the evidence and of the law, the conviction and sentence, such that the procedure allows for due consideration of the nature of the case" (emphasis added). (See also *Khalilov v. Tajikistan*, Communication No. 973/2001, U.N. Doc. CCPR/83/D/973/2001, 30 March 2005, paragraph 7.5; *Saidova v. Tajikistan*, Communication No. 964/2001, U.N. Doc. CCPR/C/81/D/964/2001, 8 July 2004, paragraph 6.5; *Domukovsy et al. v. Georgia*, Communication Nos. 623, 624, 626, 627/1995,

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Articles 31 and 32 VCLT reflect customary international law, see, e.g., *Avena and Other Mexican Nationals (Mexico v. USA) Judgment* [2004] ICJ Rep 12, p. 48, paragraph 83.

paragraph 18.11, noting a requirement for "a full evaluation of the evidence and the conduct of the trial"; *Gayoso Martínez v. Spain*, Communication No. 1363/2005, paragraph 9.3, stating that "the court conducting the review should be able to examine the facts of the case" not just questions of law; *Gomes Vásquez v. Spain*, Communication No. 701/1996, paragraph 11.1, concluding that it was insufficient to limit review only to the "formal or legal aspects of the conviction".)

A fortiori, if review is limited to one set of evidence, one question of law, or one set of facts, in isolation from others, the review is not adequate.

In respect of the death penalty, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions has stated that: "The death penalty is only lawful if imposed after a trial conducted in accordance with fair trial guarantees, including . . . an *effective* right to appeal . . . " (emphasis added) (Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, 28 May 2010, A/HRC/14/24/Add.6).

The Inter-American Commission on Human Rights (IACHR) in *Teleguz v. United States*, IACHR Report No. 53/13, Case 12.864, Merits (Publication), July 15, 2013, held that the applicant had not had a thorough review of his conviction and the State had violated the rights in Articles XVIII and XXVI of the American Declaration. The IACHR's reasoning included the following:

> "[T]he right to appeal a judgment is a basic guarantee of due process to prevent consolidation of a situation of injustice . . . the aim of the right to appeal is to protect the right of defense by creating a remedy to prevent a flawed ruling, containing errors prejudicial to a person's interests, from becoming final. Due process of law would lack efficacy without the right of defense at trial and the opportunity to defend oneself against a sentence by means of a proper review. (paragraph 101)
>
> " . . . the Commission must underscore that it has an enhanced obligation to ensure that any deprivation of life which may occur through the application of the death penalty is in strict compliance with the right to a timely, effective and accessible appeal. (paragraph 106)
>
> "Every convicted person has the right to request a review of various questions and to have them effectively analyzed by the higher court in order to correct possible errors of interpretation, weighting of evidence, or analysis." (paragraph 112)

The Inter-American Court of Human Rights has held that a State "may not establish restrictions or requirements that infringe on the very essence of the right to appeal a judgment" and "The possibility of 'appealing the judgment' must be accessible, without allowing for the kind of complex formalities that would render this right illusory" (*Vélez Loor v. Panama*, IACtHR, Judgment, 23 November 2010, paragraph 179; see also *Herrera-Ulloa v. Costa Rica*, Judgment, 2

July 2004, paragraphs 161 to 168: the higher court must be permitted to do a "thorough analysis or examination of all the issues debated and analyzed in the lower court").

The IACtHR has found that the right to appeal requires a "comprehensive examination of the judgment being challenged" and that "the primary purpose of the right to challenge the judgment is to protect the right of defense, inasmuch as it affords the possibility of a remedy to prevent a flawed ruling, containing errors that are unduly prejudicial to a person's interests, from becoming final" (*Liakat Ali Alibux v. Surinam*, IACtHR, Judgment, 30 January 2014, paragraph 85). Courts need to "analyze all the contested factual, probative and legal aspects on which the guilty verdict [is] based" (*Norín Catríman et al.* (*Leaders, Members and Activist of the Mapuche Indigenous People*) *v. Chile*, IACtHR, Judgment, 29 May 2014, paragraphs 279 to 280, 287).

The language of Art. 14(1) ICCPR is materially similar to Article 6 of the European Convention on Human Rights.[5] In *Moiseyev v. Russia*, 9 October 2008, the

[5] See also Manfred Nowak, in *U.N. Covenant on Civil and Political Rights, CCPR Commentary*, 2nd revised edition, in which he notes, in his section on Article 14, the Right to a Fair and Public Hearing (para. 1), Rights and Obligations in Suits at Law, that: "Because the French wording of Art. 14(1) and Art. 6(1) of the ECHR are equivalent in this regard (the English version of Art. 6 of the ECHR uses the words 'civil rights and obligations') it seems justified to describe in brief the most important results of this case law." Nowak notes that the "Committee of Experts of the Council of Europe likewise assumed that the two provisions had the same meaning", citing CE Doc. H(70)7, 37.

European Court of Human Rights (hereinafter ECtHR), in finding a violation of the right to fair trial, held, at paragraphs 222 to 224:

> "The *cumulative effect* of the above-mentioned conditions [of detention] and inadequacy of the available facilities excluded any possibility for the advance preparation of the defence by the applicant, especially taking into account that he could not consult the case file or his notes in his cell. (emphasis added)
>
> "The Court therefore holds that the applicant was not afforded adequate facilities for the preparation of his defence, which undermined the requirements of a fair trial and equality of arms.
>
> "In sum, the Court finds that the applicant's trial was unfair for the following reasons: the prosecuting authority had unrestricted discretion in the matter of visits by counsel and exchanges of documents, access by the applicant and his defence team to the case file and their own notes were severely limited, and, lastly, the applicant did not enjoy adequate conditions for the preparation of his defence. The *overall effect of these difficulties, taken as a whole*, so restricted the rights of the defence that the principle of a fair trial, as set out in Article 6, was contravened." (emphasis added)

The Grand Chamber of the ECtHR in *Taxquet v. Belgium*, 16 November 2010, at paragraph 84, held that it must determine "whether the proceedings as a whole were fair". The Grand Chamber cited *Edwards*

v. The United Kingdom, ECtHR, Judgment, 16 December 1992, paragraph 34 and *Stanford v. The United Kingdom*, ECtHR, Judgment, 23 February 1994, paragraph 24, which both held that the Court "must consider the proceedings as a whole including the decision(s) of the appellate court(s)" and that the Court's task "is to ascertain whether the proceedings in their entirety, including the way in which evidence was taken, were fair".

The Grand Chamber in *Al-Khawaja and Tahery v. The United Kingdom*, ECtHR, Judgment, 15 December 2011, paragraph 118 stated that the Court's "primary concern" is to evaluate "the overall fairness of the criminal proceedings" and "In making this assessment the Court will look at the proceedings as a whole . . . ".

The Judicial Committee of the Privy Council had applied the same approach in *Dookran and Another v. The State* (Trinidad and Tobago) [2007] UKPC 15 (7 March 2007), noting that "a number of features give rise to concern . . . having considered all the circumstances, their Lordships cannot avoid a residual feeling of unease about whether justice [had] been done . . . and so about the safety of [the appellant's] conviction" (paragraphs 30 and 36). The Privy Council quashed the appellant's murder conviction (paragraph 36).

Amicus respectfully submits that the requisite standard of review under international law – whether "substantial" or "effective" – will only be satisfied where the higher court is competent to assess the

separate and cumulative effect on the fairness of the trial of *all* errors and deficiencies in the trial and appellate processes. Thus, it is the position of *amicus* that a review of criminal proceedings must include a cumulative error review.

In the present case, it is of paramount importance to the United Kingdom that fairness of the Petitioner's trial and death sentence be reviewed by a tribunal which is competent to assess the impact, both separately and cumulatively, on the fairness of those proceedings of the multiple errors found by the appellate courts.

CONCLUSION

Amicus curiae respectfully invites the Court to adopt the approach of cumulative error review. That approach is required under international law and is of particular importance in capital cases.

Amicus respectfully submits that, as a matter of international law, a proceeding cannot be fair in circumstances where the defendant is not provided with effective representation at trial and where prosecutors

withheld or failed to disclose impeachment and exculpatory evidence.

August 8th, 2018

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