

HUMAN RIGHTS COMMITTEE

L. C. et al. v. Jamaica

Communication No. 257/1987

26 July 1988

ADMISSIBILITY

Submitted by: L. C. et al. [names deleted]

Alleged victims: The authors

State party concerned: Jamaica

Date of communication: 14 October 1987 (date of initial letter)

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

Meeting on 26 July 1988,

Adopts the following:

Decision on admissibility

1. The authors of the communication (initial letter dated 14 October 1987; further letter dated 24 May 1988) are L. C. et al., Jamaican citizens currently awaiting execution at St. Catherine District Prison, Jamaica.

2.1 The authors state that they were convicted on a murder charge and sentenced to death in the Kingston Home Circuit Court on 8 March 1979. They state that their appeal was rejected by the Jamaica Court of Appeal on 10 June 1981. Allegedly, it then took almost six years for the judgement of the Court of Appeal to be put into writing. The delay in the rendering of a written judgement is termed an "anomaly of the judicature" in Jamaica; reference is made to chapter III (3) of the Jamaican Constitution, which purports to protect "the individual against abuse of power by act of State, whether the act be legislative, judicial or executive". The authors further affirm that, because of the non-availability of the written judgement of the Court of Appeal, they were unable to comply with the requirements for filing a petition for leave to appeal to the Judicial Committee of the Privy Council.

2.2 The authors claim that the delay in the production of a written Court of Appeal judgement caused them severe mental distress that amounted to cruel, inhuman and degrading treatment in violation of their rights under section 17 (1) of the Jamaican Constitution. They acknowledge that the responsibility of the accused for asserting his rights is an important factor in considering allegations of breach of the right to be tried within a reasonable time. They claim, however, to have contacted the judicial authorities with a view to obtaining the written judgement of the Court of Appeal long before it was actually produced. They were told that it was not yet available.

3. On 1 December 1987, the Special Rapporteur of the Human Rights Committee, Mr. A. Mavrommatis, acting under a mandate conferred on him by the Committee on 12 November 1987, requested the authors, under rule 91 of the Committee's provisional rules of procedure, to furnish clarifications on a number of issues relating to their communication and transmitted the communication for information to the State party, requesting it, under rule 86 of the provisional rules of procedure, not to carry out the death sentences against the authors before the Committee had had an opportunity to consider further the question of the admissibility of their communication.

4. By a submission dated 18 March 1988, the State party objected to the admissibility of the communication. In particular, it stated that:

"the communication from Messrs. L. C. et al. is inadmissible because of their failure to exhaust all available domestic remedies as required by article 5, paragraph 2, of the Optional Protocol to the International Covenant on Civil and Political Rights. Section 25 of the Jamaican Constitution grants to any person a right to apply to the Supreme Court for redress in respect of an alleged breach of the fundamental rights set out in chapter III of the Constitution. These rights include protection from torture, inhuman or degrading punishment and the right to a fair hearing within a reasonable time."

5. By a decision dated 22 March 1988, the Working Group of the Human Rights Committee requested the State party, under rule 91 of the provisional rules of procedure, to provide further information and observations relevant to the question of the admissibility of the communication, in particular as to whether the authors still had the possibility of filing petitions for leave to appeal to the Judicial Committee of the Privy Council and whether legal aid would be made available to them in that respect. On 23 June 1988, the State party replied that the "authors may still appeal to the Judicial Committee of the Privy Council by way of petition for special leave to appeal in forma pauperis", and that legal aid would be available to them pursuant to the Poor Prisoners Defence Act. The authors had previously confirmed, by a letter dated 24 May 1988, that a London-based law firm had agreed to represent them before the Judicial Committee of the Privy Council; by a letter dated 14 June 1988, the authors' counsel requested the Committee to defer consideration of the communication pending the outcome of the authors' petition for special leave to appeal to the Judicial Committee of the Privy Council.

6.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its provisional rules of procedure, decide

whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 The Committee has ascertained, as it is required to do under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 With respect to the requirement of exhaustion of domestic remedies under article 5, paragraph 2 (b), of the Optional Protocol, the Committee has noted the letters from the authors and their counsel, dated 24 May and 14 June 1988, respectively, which indicate that a petition for special leave to appeal will be placed before the Judicial Committee of the Privy Council. It thus concludes that one available remedy has not been exhausted by the authors. Article 5, paragraph 2 (b), however, precludes the Committee from considering a communication prior to the exhaustion of all available domestic remedies.

7. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 5, paragraph 2 (b), of the Optional Protocol;

(b) .That, since this decision may be reviewed under rule 92, paragraph 2, of the Committee's provisional rules of procedure upon receipt of a written request by or on behalf of the authors containing information to the effect that the reasons for inadmissability no longer apply, the State party shall be requested, taking into account the spirit and purpose of rule 86 of the Committee's provisional rules of procedure, not to carry out the death sentence against the authors before they have had a reasonable time, after completing the effective domestic remedies available to them, to request the Committee to review the present decision;

(c) That this decision shall be transmitted to the State party and to the authors.