

HUMAN RIGHTS COMMITTEE

Champagnie et al. v. Jamaica

Communication No. 445/1991

18 March 1993

CCPR/C/47/D/445/1991*

ADMISSIBILITY

Submitted by: Lynden Champagnie, Delroy Palmer and Oswald Chisholm (represented by counsel)

Alleged victims: The authors

State party: Jamaica

Date of communication: 28 January 1991 (initial submission)

Documentation references: List - CCPR/C/CL/R.50/Add.1

Prior decisions - Special Rapporteur's combined rule 86/91 decision, transmitted on 2 August 1991 (Not issued in document form)

Date of present decision: 18 March 1993

The Human Rights Committee, acting through its Working Group pursuant to rule 87, paragraph 2, of the Committee's rules of procedure, adopts the following decision on admissibility.

Decision on admissibility

1. The authors of the communication are Lynden Champagnie, Delroy Palmer and Oswald Chisholm, three Jamaican citizens currently awaiting execution at St. Catherine District Prison, Jamaica. They claim to be the victims of violations by Jamaica of articles 2, paragraphs 2 and 3 (a) and (b), 6, 7, 10 and 14, paragraph 5, of the International Covenant on Civil and Political Rights. They are represented by counsel. An earlier communication submitted to the Human Rights Committee by the authors, communication No. 257/1987, was declared inadmissible on 26 July 1988 because of non-exhaustion of domestic remedies, since they had not petitioned the Judicial Committee of the Privy Council for special leave to appeal. They re-submitted their communication, arguing that in their case a petition to the Judicial Committee of the Privy Council would not be an

effective remedy within the meaning of article 5, paragraph 2 (b), of the Optional Protocol.

Facts as submitted by the authors:

2.1 On 8 March 1979, the authors, together with one R. W. and one A. G., were convicted in the Home Circuit Court of Kingston of the murder of one C. M. The authors were sentenced to death; the two other co-accused were sentenced to life imprisonment, as they were minors when the crime was committed.

2.2 The case for the prosecution was that, on 9 July 1977 at 3 a.m., C.M. and his common law wife H.P. were woken up by noise outside their bedroom window. When C.M. enquired who was disturbing them, someone answered that it was the police. Immediately thereafter H.P. heard a gunshot and saw C.M. falling from the bed; she then hid under the bed. The door to the house was kicked open and five men entered the house. After they discovered H.P., the men asked her for money. She was then taken outside by two of the men who raped her. C.M. died from gunshot wounds.

2.3 The authors and R.W. were identified by H.P. at separate identification parades. Supplementary evidence against them included self-incriminating statements, which they made to the police after their arrest. Their defence was mainly based on alleged irregularities during the identification parade and the involuntariness of their statements.

2.4 The authors appealed their convictions; on 10 June 1981, the Jamaican Court of Appeal, treating the applications for leave to appeal as the hearing of the appeal, dismissed the appeal in the cases of the authors and R.W., whereas A.G. was acquitted.

2.5 The Court of Appeal did not issue a written judgement until 17 July 1986, over five years later. The judges conceded that “due to the most unpardonable oversight, the records got filed away and the reasons for judgment were never prepared”. Furthermore, they stated that “we cannot after this lapse of time rely upon our memory of any impression formed during the hearing of the appeals and we will therefore confine our reasons to the points which clearly appear from our notes made during the hearing”.

2.6 By letter dated 14 June 1988, concerning the author’s previous communication, a London law firm which had agreed to represent the authors before the Judicial Committee of the Privy council, requested the Human Rights Committee to defer consideration of the communication, pending the outcome of the author’s petition for special leave to appeal. However, on 16 July 1990, leading counsel for the case opined that although the summing up of the case by the trial judge was highly questionable, and the conduct of the appeal by the Court of Appeal deplorable, there was little point in appealing to the Judicial Committee of the Privy Council, in the light of the narrow interpretation of its jurisdiction by this body. He pointed out that it was difficult to give full advice on the merits of an application for leave to appeal against the decision of the Court of Appeal, as the latter’s written judgment had not yet been made available at that time. It appears that, after having received the written judgment in October 1990, counsel confirmed that there was no merit in seeking leave to appeal to the Judicial Committee for the following reason:

(a) Although there were potential grounds of appeal to the Court of Appeal in each of the three cases, many of those grounds had not been raised by counsel in Jamaica. The Privy Council would be most unwilling to allow new grounds to be argued before it for the first time;

(b) Because of the inadequacy of the Court of Appeal's judgment, the only proper way in which the case could be argued in the Privy Council, even assuming that the Board would allow new grounds to be argued, was by reference to the 2,000 page transcript of the trial. The Board was unlikely to allow such a course to be adopted;

(c) The Board would most likely be of the opinion that the proper way of redress for the authors was by way of constitutional motion to challenge the delay in the delivery and the inadequacy of the judgement.

2.7 In the light of the above, counsel submits that the only form of redress currently open to the authors is a constitutional motion to the Supreme (Constitutional) Court of Jamaica, for which the Poor Prisoners' Defence Act does not provide legal aid. Counsel further submits that, as it is virtually impossible to secure the services of qualified lawyers in Jamaica on a pro bono basis for the purpose, a constitutional motion cannot be deemed to be an available remedy.

Complaint:

3.1. It is submitted that the authors have been unable to petition the Judicial Committee of the Privy Council for special leave to appeal because of the lack of a reasoned judgment of the Court of Appeal, in violation of article 2, paragraphs 2 and 3 (a) and (b), juncto article 14, paragraph 5, of the Covenant.

3.2 Counsel further submits that an execution of the authors at this point in time, after almost 14 years on death row, would amount to an arbitrary deprivation of life, in violation of article 6 of the Covenant. Similarly, the fact that the authors were kept on death row for six years (from 1981 to 1987, when they initially submitted their communication to the Committee) during which there was no legal impediment to their execution, constitutes cruel, inhuman and degrading treatment within the meaning of article 7 of the Covenant.

3.3 Finally, counsel submits that the conditions of detention on death row amount to a violation of article 10 of the Covenant. In support of his contention, he submits a copy of a report on conditions of detention in Jamaica penitentiaries, prepared by a non-governmental organization.

State party's information and observations:

4.1 In its submission under rule 91 the State party argues that the communication is inadmissible under article 5, paragraph 2 (b), of the Optional Protocol, because the authors have failed to exhaust domestic remedies. It notes that the authors may still appeal to the Judicial Committee of the Privy Council by way of petition for special leave to appeal, and that legal aid would be available to them under the Poor Prisoners's Defence Act for that purpose. The State party adds that the authors may still apply for constitutional redress; in this context, it notes that the rights invoked by the authors are co-terminous with the provisions of chapter III of the Jamaican Constitution, which guarantees

and protects fundamental rights and freedoms to all persons in Jamaica. Pursuant to section 25 of the Constitution, an individual claiming that any of these provisions has been, is being or is likely to be contravened in relation to him, may apply to the Supreme (Constitutional) Court for redress. A right of appeal lies to the Court of Appeal and subsequently to the Privy Council.

4.2 With respect to the question of availability of legal aid, the State party submits that the Poor Prisoners' Defence Act does not make provision for legal aid in respect of constitutional motions, and that there is no obligation for State parties to the Covenant to provide legal aid in respect of matters other than criminal matters. It is submitted that nothing in the Optional Protocol or in customary international law would support the contention that a person is relieved of the obligation to exhaust local remedies because of his indigence.

Issues and proceedings before the Committee:

5.1 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.

5.2 The Committee has ascertained, as required 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.

5.3 The Committee has taken note of the State party's claim that the communication is inadmissible on the ground of non-exhaustion of domestic remedies. The Committee recalls its constant jurisprudence that for purposes of article 5, paragraph 2 (b), of the Optional Protocol, domestic remedies must be both effective and available, and that an element of timeliness both in the pursuit and in the adjudication of such remedies must be observed. With respect to the authors' possibility to petition the Judicial Committee of the Privy Council for special leave to appeal, the Committee has noted counsel's advice that such a petition would have little prospect of success. Moreover, the Committee notes that, on 11 July 1988, the Judicial Committee of the Privy Council decided in another case 1/ that it had no competence to hear an application relating to delay in judicial procedure. In the circumstances of the present case, where the sole issue raised by the authors under article 14 is one of delay, the Committee considers that the petition for special leave to appeal to the Privy Council cannot be considered an effective remedy within the meaning of article 5, paragraph 2 (b), of the Optional Protocol.

5.4 With respect to the author's possibility of filing a constitutional motion, the Committee considers that, in the absence of legal aid, a constitutional motion does not constitute an available remedy in the case. In the light of the above, the Committee finds that it is not precluded by article 5, paragraph 2 (b), of the Optional Protocol, from considering the communication.

5.5 The Committee considers, however, that the authors have failed to substantiate, for purposes of admissibility, their claim under article 7. Similarly, the Committee considers that the authors, by merely referring to a report outlining the conditions of detention in Jamaica prisons, have failed to substantiate, for purposes of admissibility, the allegation that they are the victims of a violation of article 10 of the Covenant. In this respect, therefore, the authors have no claim within the meaning

of article 2 of the Optional Protocol.

5.6 The Committee considers that the facts as submitted by the authors may raise issues under article 14, paragraphs 3 (c) and 5, juncto article 6 of the Covenant, which should be considered on the merits.

6. The Human Rights Committee therefore decides:

(a) That the communication is admissible inasmuch as it may raise issues under article 14, paragraphs 3 (c) and 5, juncto article 6 of the Covenant;

(b) That, in accordance with article 4, paragraph 2, of the Optional Protocol, the State party shall be requested to submit to the Committee, within six months of the date of transmittal to it of this decision, written explanations or statements clarifying the matter;

(c) That the State party shall be requested, under rule 86 of the Committee's rules of procedure, not to carry out the death sentence against the authors while their communication is under consideration by the Committee. This request does not imply a determination of the merits of the communication;

(d) That any explanations or statements received from the State party shall be communicated by the Secretary-General under rule 93, paragraph 3, of the rules of procedure to the authors and to their counsel, with the request that any comments that they may wish to submit thereon should reach the Committee, care of the Centre for Human Rights, United Nations Office in Geneva, within six weeks of the date of the transmittal;

(e) That this decision shall be communicated to the State party, to the authors and to their counsel.

[Done in English, French and Spanish, the English text being the original version.]

*/ All persons handling this document are requested to respect and observe its confidential nature.

1/ The case of Howard Martin was subsequently submitted to the Committee as communication No. 317/1988. Views adopted on 24 March 1993.