

## HUMAN RIGHTS COMMITTEE

**L. R. and T. W. v. Jamaica**

**Communication No. 258/1987**

**13 July 1990**

**CCPR/C/39/D/258/1987**

### ADMISSIBILITY

*Submitted by: L. R. and T. W. [names deleted]*

*Alleged victims: The authors*

*State party concerned: Jamaica*

*Date of communication: undated (received on 15 December 1987)*

*Date of decision on inadmissibility: 13 July 1990*

#### Decision on admissibility

1. The authors of the communication (initial letter received on 15 December 1987; subsequent submissions dated 9 March, 9 June and 4 October 1988) are L. R. and T. W., two Jamaican citizens awaiting execution at St. Catherine District Prison, Jamaica.

2.1 The authors state that on 4 July 1980 they were arrested and placed on an identification parade on suspicion of involvement in a murder. While Mr. L. R. was not identified, Mr. T. W. was. They were told by police that a man named D. J. had associated them with the crime. The authors allege that this man was forced to give their name to the police. They were subsequently tried, convicted and sentenced to death on 17 May 1982 in the Home Circuit Court of Kingston.

2.2 The Jamaican Court of Appeal dismissed the authors' appeal on 24 October 1984. The authors state that they have not been informed whether they would still be able to petition for leave to appeal to the Judicial Committee of the Privy Council. If this were to be the case, it would have to be in forma pauperis because of their precarious financial situation. They state that the Jamaican authorities are well aware of this fact, since they had to assign legal aid to the authors on the occasion of their trial. Since the dismissal of the appeal, the authorities have failed to assign legal aid to the authors, in spite of the fact that they have repeatedly expressed an interest in appealing

their case further. This, they argue, demonstrates that , the Jamaican Government has failed to fulfil its obligations under article 14, paragraphs 3 (c)and (d), of the International Covenant on Civil and Political Rights, especially inasmuch as the State party's obligation to try the authors without undue delay is concerned.

3. By decision of 15 January 1988, the Special Rapporteur of the Human Rights Committee for cases involving the death penalty transmitted the communication, for information, to the State party, requesting it, under rule 86 of the Committee's rules of procedure, not to carry out the death sentence against the authors before the Committee had had an opportunity to consider further the question of the admissibility of the communication. The authors were requested to provide a number of clarifications concerning their case.

4.1 In a letter dated 9 March 1988 the authors state that during the trial before the Home Circuit Court in Kingston, they were accused of having killed, on 20 June 1980 in the Parish of St. Agnew, one S. H.. One witness against them testified that he did not see who had fired the fatal shot. The police had told them, however, that a Mr. D. L. had made a statement incriminating them, and that it was on the basis of this statement that they had been arrested. On the occasion of the identification parade, the witness pointed out T. W., but not L. R.. The authors do not recall the date of the identification parade, nor the date when they were first brought to court after they had formally been charged with murder. T. W. recalls that he was not represented when the identification parade was held. L. R. states that at the police station, the police "tricked" him into signing a statement implicating him and T. W. as parties to the crime. He claims that he never made any statement to the police. At the time, he was unable to read and write; this was known to the police officer, who did not read out the incriminating statement signed by L. R.. The authors state that the police brought D. J. to the preliminary hearing in the Gun Court. He testified that he had not given the police any statement and that he had been beaten at the police station. The authors note that, subsequently, the police did not bring D. J. to testify before the Home Circuit Court.

4.2 Both authors state that they did not have adequate opportunities to consult with their lawyers prior to the hearing of the appeal, because the Jamaican authorities only informed them of the date of the appeal and the names of the lawyers assigned to their case on the day of the hearing. It appears that neither the authors nor their representatives sought to have witnesses testify on their behalf. Since the dismissal of the appeal on 24 October 1984, the authors have not received the court's written judgement. They acknowledge that they were represented both during the trial and during the appeal.

4.3 The authors further claim that, since the dismissal of their appeal, they have not been informed as to whether they are entitled to legal assistance for purposes of a petition for leave to appeal to the Judicial Committee of the Privy Council, although they have requested on two occasions that legal aid be assigned to them for that purpose.

5. On 22 March 1988, the State party informed the Committee that the communication was inadmissible because of the authors' failure to exhaust domestic remedies, without specifying further which remedies had not been exhausted. By decision of the same day, the Working Group of the Committee requested the State party, under rule 91 of the rules of procedure, to provide further information and observations relevant to the question of the admissibility of the communication. It

requested the State party, under rule 86, not to carry out the death sentence against the authors while their communication was under consideration by the Committee.

6. In its submission under rule 91, dated 20 July 1988, the State party reiterates that the authors have failed to exhaust all available domestic remedies, as required by article 5, paragraph 2(b), of the Optional Protocol. It adds that they have a right to appeal to the Judicial Committee of the Privy Council under Section 110 of the Jamaican Constitution. The State party further contends that legal aid would be available to the authors for that purpose pursuant to Section 3, paragraph 1, of the Poor Prisoners' Defence Act.

7. Commenting on the State party's submission, the authors, in a letter dated 4 October 1988, reaffirm that they remain uncertain about their prospects of pursuing a petition for special leave to appeal to the Judicial Committee of the Privy Council. They indicate that they have been informed that there would not be any merit in pursuing such an appeal. Furthermore, they emphasize that the State party has never informed them that legal aid would be available for the purpose of an appeal to the Privy Council. They consider that it is because of their submissions to the Human Rights Committee that the State party now acknowledges the existence of this possibility.

8. By further submissions, dated 27 January and 15 August 1989, the authors state that they have been endeavouring to obtain legal assistance from a London law firm for purposes of a Privy Council application. Accordingly, they request the Committee to defer consideration of their case, pending the outcome of the petition.

9.1 Before considering any claims 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.

9.2 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.

9.3 With regard to the requirement of exhaustion of domestic remedies, the Committee has taken note of the State party's contention that the communication is inadmissible because of the authors' failure to petition the Judicial Committee of the Privy Council for special leave to appeal, pursuant to Section 110 of the Jamaican Constitution. It observes that the authors, although claiming that there would be no merit in pursuing such a petition, have secured pro bono legal representation from a London law firm for this purpose, after submitting their communication to the Human Rights Committee, and that this representative continues to investigate the possibility of filing a petition for special leave to appeal on their behalf. While expressing grave concern about the apparent unavailability of a reasoned judgment of the Jamaican Court of Appeal in the case, the Committee cannot conclude that a petition for special leave to appeal to the Judicial Committee of the Privy Council, even without a written judgment of the Court of Appeal, must be considered *2 priori* futile. It therefore finds that the requirements of article 5, paragraph 2 (b), of the Optional Protocol have not been met.

10. The Human Rights Committee therefore decides:

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

(b) That the State party be requested to make the written judgment of the Court of Appeal available to the authors without further delay, so as to permit an effective recourse to the Judicial Committee of the Privy Council, and to ensure that adequate aid be made available to the authors;

(c) That, since this decision may be reviewed under rule 92, paragraph 2, of the Committee's rules of procedure upon receipt of a written request by or on behalf of the author containing information to the effect that the reasons for inadmissibility no longer apply, the State party is requested, taking into account the spirit and purpose of rule 86 of the Committee's 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;

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