(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 inadmissibility 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.

K. Communication No. 267/1987, M. J. G. v. the Netherlands (Decision adopted on 24 March 1988 at the thirty-second session)

Submitted by: M. J. G. [name deleted]

Alleged victim: The author

State party concerned: The Netherlands

Date of communication: 19 November 1987

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

Meeting on 24 March 1988,

Adopts the following:

Decision on admissibility

1. The author of the communication (initial letter dated 19 November 1987) is M. J. G., a citizen of the Netherlands, born on 29 December 1963, residing in Bilthoven, the Netherlands. He claims to be the victim of a violation by the Government of the Netherlands of article 26 of the International Covenant on Civil and Political Rights. He is represented by counsel.

2.1 The author states that he is a conscientious objector. He was summoned to appear before a military court because of his refusal to obey orders in the course of his military service. In the Netherlands, it is possible for private citizens to object to a summons. If they do so, the judge is required to decide on the objection before the court proceedings begin. During the period of compulsory military service, a soldier, who comes under military jurisdiction, does not have this right, because military penal procedures do not envisage the possibility of an appeal against a summons. Thus, the author was unable to appeal against the summons before a military court.

2.2 The author claims that this constitutes a violation of article 26 of the Covenant, since he is not being treated as a civilian who can avail himself of the possibility to appeal against a summons before the start of court proceedings.

2.3 With respect to the requirement of exhaustion of domestic remedies, the author states that he appealed, on 12 November 1986, to the Administratieve Rechtspraak Overheidsbeschikkingen (AROB), the highest administrative organ in the Netherlands, arguing, inter alia, that the summons was in violation of article 6 of the European Convention on Human Rights and that he was entitled, under sections 285 and 289 of the Penal Code and under international treaties, to object to military service against his will. By decision of 31 December 1986, the President of the Afdeling Rechtspraak Raad van State (ARRS), the AROB Legal Chamber, declared the appeal inadmissible on the grounds that the law governing the procedure before AROB did not provide for an appeal against orders or judgements based on the Penal Code or the Code of Penal Procedure. By letter of 16 January 1987, the author introduced another recourse with the same Legal Chamber of AROB (which is possible under Netherlands law), claiming that he could not be considered an "accused" person within the meaning of the Penal Code, but a defendant within the meaning of the Civil Code. That would make an appeal possible. On 11 June 1987, the Legal Chamber of AROB dismissed the appeal.

3.1 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.

3.2 The Committee notes that the author claims that he is a victim of discrimination on the grounds of "other status" (Covenant, art. 26 in fine) because, being a soldier during the period of his military service, he could not appeal against a summons like a civilian. The Committee considers, however, that the scope of application of article 26 cannot be extended to cover situations such as the one encountered by the author. The Committee observes, as it did with respect to communication No. 245/1987 (R. T. Z. v. the Netherlands), that the Covenant does not preclude the institution of compulsory military service by States parties, even though this means that some rights of individuals may be restricted during military service, within the exigencies of such service. The Committee notes, in this connection, that the author has not claimed that the Netherlands military penal procedures are not being applied equally to all Netherlands citizens serving in the Netherlands armed forces. It therefore concludes that the author has no claim under article 2 of the Optional Protocol.

4. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible;

(b) That this decision shall be communicated to the author and, for information, to the State party.

L. Communication No. 285/1988, L. G. v. Jamaica (Decision adopted on 26 July 1988 at the thirty-third session)

Submitted by: L. G. [name deleted]

Alleged victim: The author

State party concerned: Jamaica

Date of communication: 20 January 1988 (date of initial letter)