C. Communication No. 165/1984, J.M. v. Jamaica (Decision of 26 March 1986, adopted at the twenty-seventh session)

Submitted by: J.M.

Alleged victim: The author

State party concerned: Jamaica

Date of communication: 18 January 1984

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

Meeting on 26 March 1986,

Setting aside an earlier decision on admissibility, now adopts the following:

Decision on admissibility

1.1 The author of the communication, dated 18 January 1984, is J. M., who claims to be a Jamaican citizen born in Kingston, Jamaica, in 1954. He is represented by Rev. Yves-Jean Gabel, the Director of the Foyer evangélique universel (FEU) in Brussels, Belgium, where he resided without a residence permit at the time of the submission of the communication. It is alleged that, after losing his passport in Paris on 22 June 1983, he has been unsuccessful in obtaining a new passport and also unable to return to his home country, Jamaica. A one-page letter signed by J. M. authorizing Rev. Gabel to represent him before the Human Rights Committee is enclosed with the communication.

1.2 The facts are described as follows: upon losing his passport on 22 June 1983 J.M. obtained, on the same day, a certificate from the Jamaican Consulate in Paris confirming his identity. The certificate was issued for the purpose of facilitating his travel to the Jamaican Embassy in Brussels, Belgium, where he hoped to obtain a new passport. On 7 July 1983, J.M. was denied a new passport at the Jamaican Embassy in Brussels as he was not in possession of a birth certificate. He allegedly requested the responsible officer at the Embassy to contact the competent services in Kingston in order to provide a birth certificate. Allegedly, however, the Jamaican Embassy had him evicted from the Embassy and he was arrested by the Belgian police. From 8 to 27 July 1983, he was detained in various prisons in Belgium and then deported to France. He went back to the Jamaican Consulate in Paris which, at that stage, also refused to help him and had him arrested by the French police, who kept him under detention for two days. On 18 August 1983, he flew back to Kingston, Jamaica, but he was refused entry, because he did not have a passport and, allegedly, because the only documents in his possession were in French, and not in English. He was then made to board an Aeroflot flight to Moscow. The following day, having landed at Moscow airport, he was put on a flight to Luxembourg, from where he flew to Paris. On 23 August 1983, he returned to Brussels and was given refuge at FEU. All his subsequent efforts during the months of August to December 1983 and in January 1984 to obtain a passport, including the intervention of a Belgian attorney, were in vain.

1.3 It is claimed that J.M. is a victim of a violation of article 12 of the Covenant, in particular of article 12, paragraph 4.

1.4 With respect to the exhaustion of domestic remedies, it is alleged that no internal recourse could be filed because of lack of co-operation of the Jamaican consular authorities in Paris and Brussels. J.M. reports that on 24 November 1983 he addressed a registered letter to the Ambassador of Jamaica in Brussels, to which he has received no reply.

1.5 It is stated that the same matter has not been submitted to any other procedure of international investigation or settlement.

2. By its decision of 22 March 1984, the Working Group of the Human Rights Committee, through a note verbale from the Secretary-General dated 16 May 1984, transmitted the communication under rule 91 of the provisional rules of procedure to the Permanent Mission of Jamaica to the United Nations Office at Geneva, requesting from the State party information and observations relevant to the question of admissibility of the communication. The deadline for the State party's submission under rule 91 expired on 16 July 1984. There was no reply from the State party before the adoption of the Committee's decision on admissibility on 26 March 1985.

3. On the basis of the information before it, the Committee found that it was not precluded by article 5, paragraph 2 (a), of the Optional Protocol from considering the communication, as the author's indication that the same matter had not been submitted to another procedure of international investigation or settlement had remained uncontested by the State party. The Committee was also unable to conclude that in the circumstances of the case there were effective remedies available to the alleged victim which he had failed to exhaust. Accordingly, the Committee found that the communication was not inadmissible under article 5, paragraph 2 (b), of the Optional Protocol.

4. On 26 March 1985, the Human Rights Committee therefore decided that the communication was admissible and requested the State party, in accordance with article 4, paragraph 2, of the Optional Protocol, to submit to the Committee, within six months of the date of transmittal to it of the decision, written explanations or statements clarifying the matter and the remedy, if any, that might have been taken by it. The State party was asked to explain, in particular, why the author had been subjected to the treatment he allegedly suffered, which might raise issues under articles 7 and 12 of the Covenant.

5.1 By a note dated 23 October 1985, the State party contended that the decision of the Committee to declare the communication admissible was invalid, claiming that it had never received the Secretary-General's note of 16 May 1984 transmitting the Working Group's rule 91 decision and the text of the author's communication. The State party argued that "this non-receipt by the Jamaican Government of the Secretary-General's note of 16 May 1984 is important ... since rule 91, paragraph 2, of the provisional rules of procedure prohibits a declaration of admissibility of a communication in circumstances where a State party concerned has not received the text of the communication and been given an opportunity to comment on it ... The effect of non-receipt of [J.M.'s] communication was to deprive the Government of Jamaica of an opportunity to comment on the fulfilment of the pre-conditions set out in article 5, paragraph 2, of the Optional Protocol for the Committee's consideration of [J.M.'s] communication".

5.2 As to the substance of the author's claim, the State party explained that "although the onus would clearly be on a person claiming to be a citizen of a country to furnish evidence in support of that claim, the Government has carried out the most intensive investigations possible with a view to discovering whether [J.M.] was born in Jamaica. This search of the relevant records does not disclose the registration of the birth of [J.M.] in Jamaica. A search of relevant records does not disclose that a Jamaican passport was ever issued to [J.M.]".

5.3 The State party further explained that J.M. "arrived in Jamaica on 18 August 1983 and was refused leave to land because he was unable to substantiate his claim that he was a Jamaican". The State party added "that [J.M.], who said he had lost his Jamaican passport and also told the Immigration Officers that he had lived in Jamaica up to three years prior to the date of his arrival in Jamaica, was unable to provide even the most basic information about Jamaica. For example, he could not say where he was born, where he had lived prior to leaving Jamaica, what school he had attended or give the names of anybody who knew him".

5.4 The State party submitted that the suggestion that J.M. had been subjected to treatment which, in the words of paragraph 2 of the decision "may raise issues under article 7", strained credulity since that article provided protection from cruel, inhuman or degrading treatment or punishment, and it was difficult to see how there could be any reasonable basis for even hinting that the Government of Jamaica might somehow be in breach of that article. The fact was that on one of the occasions of J.M.'s visits to the Jamaican Consulate in Paris he had behaved boisterously, installed himself in the main entrance of the building, lying on the carpet, and so conducted himself that it was necessary to call the police who took charge of him. Clearly in such circumstances there was nothing to substantiate even a suggestion that J.M. had been subjected to cruel, inhuman or degrading treatment by the Jamaican Government. On one of the occasions of J.M.'s visits to the Jamaican Embassy in Brussels he had become noisy and aggressive and had spent several hours sitting in the reception area quarrelling boisterously. He had been abusive, had shouted and had vigorously shaken the door leading to the Embassy. After several hours of pleading with J.M. by the staff of the Embassy, who had asked him to leave quietly, it had been necessary to call in the police who came and took charge of him. In those circumstances, any suggestion of conduct on the part of the Government of Jamaica constituting a breach of article 7 would be baseless.

5.5 As far as remedies available to J.M. are concerned, the State party indicated that "he could have applied to the relevant Minister of Government under section 10 of the Jamaican Nationality Act to exercise the discretion which the law gives him to issue a certificate of citizenship in cases of doubtful citizenship. He could also have instituted proceedings in the Supreme Court for a declaration that he was a citizen of Jamaica and therefore entitled to enter Jamaica as well as for the issue of the prerogative writ of mandamus compelling the Government to allow him to enter Jamaica on the ground that he is a citizen of Jamaica".

6.1 On 21 November 1985, the text of the State party's submission was transmitted to the author's representative for comments under rule 93, paragraph 3, of the Committee's provisional rules of procedure. In the circumstances, a copy of the Secretary-General's note of 16 May 1984, transmitting to the State party the text of the Working Group's rule 91 decision of 22 March 1984 together with the text of the communication in question, was also transmitted to the author's representative.

6.2 The deadline for the author's comments under rule 93, paragraph 3, expired on 2 January 1986. No comments have been received, despite the State party's rebuttal, in particular concerning the question of J.M.'s nationality.

7. Pursuant to rule 93, paragraph 4, of its provisional rules of procedure, the Human Rights Committee has reviewed its decision on admissibility of 26 March 1985. On the basis of the information provided by the State party, the Committee concludes that the author has failed to establish that he is a Jamaican citizen and has failed to substantiate his allegation that he is a victim of violations of the provisions of the Covenant by the State party.

8. In the light of the above considerations, the Committee finds that it is precluded under articles 2 and 3 of the Optional Protocol from considering the merits of the case and decides:

1. The decision of 26 March 1985 is set aside.

2. The communication is inadmissible.