

I. Communication No. 268/1987, M. G. B. and S. P. v. Trinidad and Tobago (Decision of 3 November 1989, adopted at the thirty-seventh session)

Submitted by: M. G. B and S. P. [names deleted]

Alleged victims: The authors

State party concerned: Trinidad and Tobago

Date of communication: 4 December 1987

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

Meeting on 3 November 1989,

Adopts the following:

Decision on admissibility

1. The authors of the communication (initial letter dated 4 December 1987 and subsequent letters dated 30 December 1988 and 24 January 1989) are M. G. B. and S. P., two Trinidadian citizens born on 27 November 1927 and 1 January 1960, respectively, residing in Trinidad. They claim to be the victims of a violation by the Government of Trinidad and Tobago of articles 2 (3) (a) and (b) and 5 of the International Covenant on Civil and Political Rights. They are represented by counsel.

2.1 The authors state that they applied with the Registrar General of Trinidad to register a company known as the TNT Human Rights and Legal Aid Company Limited. This company was to promote the rule of law, human rights facilities and to assist in providing legal assistance and legal aid to the needy. The Registrar of Companies refused to recognize this company on the grounds that the establishment of a company with such objectives by non-professionals was against public policy. The authors filed an application for judicial review in the High Court of Trinidad and Tobago but the Judge dismissed the application without issuing a written judgment. They then appealed to the Court of Appeal and asked that the appeal be deemed urgent. The Court of Appeal, on 5 November 1987, refused to consider the appeal urgent on the grounds that the authors' application did not show sufficient ground for urgency, because "the incorporation of the Appellants under the name sought is not a sine qua non to the lawful provision of financial assistance to indigent persons directly or otherwise with a view to their obtaining legal aid and/or legal advice."

2.2 The authors indicate that there is no right of appeal against that decision to the Judicial Committee of the Privy Council. They claim that the statistics for hearings and the determination of matters in the Court of Appeal show that there is an "inordinate" delay in the hearings and the determination of appeals, usually three to four years. This, they argue, constitutes a judicial block for the determination of appeals and a denial of the right of access to the court.

3. By decision of 15 March 1988, the Working Group of the Human Rights Committee transmitted the communication to the State party under rule 91 of the Committee's rules of procedure, requesting information and observations relevant to the question of the admissibility of the communication. The Working Group further requested the authors to clarify (a) whether the company they sought to register would have operated on a non-profit basis; (b) whether the persons who would have constituted this company have been in any way prevented from providing legal aid to the needy; and (c) whether there were other associations of lawyers in Trinidad and Tobago which provided similar services.

4.1 By letter dated 30 December 1988, counsel notes that the appeal was discontinued by the authors on 15 December 1988, because they considered it impossible to obtain a positive result in the case since the High Court of Trinidad and Tobago had in October 1988, indicated to them that no written judgment was available. Without such a judgment however, the case could not be entertained by the Court of Appeal of Trinidad.

4.2 By further letter dated 24 January 1989 counsel clarifies that the company as a whole would have operated on a profit basis to achieve its aims but that it would have provided free legal advice and free legal representation in appropriate cases. He further states that the authors have not been prevented from providing legal aid to the needy and that there are other associations in Trinidad and Tobago, such as the Anglican Church and the Caribbean Human Rights Committee, whose aims and objectives are similar to those of the company the author sought to have registered. Counsel provides a copy of the Memorandum and Articles of Association of the company.

5. The State party's deadline for its submission concerning information and observations relevant to the question of the admissibility of the communication expired on 27 June 1988. No comments were received from the State party.

6.1 Before considering any claims in a communication, the Working Group 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.

6.2 The Committee has considered the authors' allegations of a violation of articles 2 (3) (a) and (b) and 5 of the Covenant and notes that these are general undertakings by States and cannot be invoked, in isolation, by individuals under the Optional Protocol. The Committee has ex officio examined whether the facts submitted raise potential issues under other articles of the Covenant. It has concluded that they do not. The Committee therefore finds that the communication is incompatible with the provisions of the Covenant within the meaning of article 3 of the Optional Protocol.

7. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible;

(b) That this decision shall be communicated to the authors and to the State party.