

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/ 288, 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)

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

Meeting on 26 July 1988,

Adopts the following:

Decision on admissibility

1. The author of the communication (initial submission dated 20 January 1988; further letter dated 3 June 1988) is L. G., a Jamaican citizen currently awaiting execution at St. Catherine District Prison, Jamaica.

2.1 L. G. states that he was interrogated by the police at his home on the evening of 7 October 1985 in connection with the murder of Mr. T. M. The latter had been killed with a machete in the course of a robbery that occurred in the parish of Hanover on 2 October 1985, over 150 miles away from the author's home. The author explained that, while he knew the victim from the period when he lived in Hanover, he had not visited that town for a considerable time and knew nothing about the crime. He was, however, arrested in connection with the incident. On 25 October 1985, the author was put on an identification parade, where he was identified by Ms. E. M., whom he also knew. He was subsequently charged with the murder of Mr. M., together with his brother, V. G., who was then living in Hanover.

2.2 The author and his brother were convicted and sentenced to death in the Hanover District Court on 7 November 1986. The Court of Appeal dismissed the author's appeal but acquitted the brother on 5 October 1987. An appeal to the Judicial Committee of the Privy Council has yet to be made.

2.3 Throughout the trial and the appeal, the author was represented by legal aid attorneys; Ms. P. S. represented him before the District Court, Mr. D. C. before the Court of Appeal. The author states that two London-based attorneys have agreed to assist him with the preparation of a petition for leave to appeal to the Judicial Committee of the Privy Council.

2.4 The author raises a number of questions pertaining to his identification by Ms. M. and by another man, on the basis of which he was convicted. The other man allegedly testified that he had seen the author in a banana field - the scene of the crime. Yet, because the author was masked, according to the witness, he could only recognize and identify the author's build and other physical features, not his face. In the author's view, that was insufficient to allow proper identification.

3. Upon registering the communication on 21 March 1988, the Working Group of the Human Rights Committee instructed the Secretariat to seek further information from the author about a number of issues pertaining to his communication, in particular about the question of exhaustion of domestic remedies.

4. By a letter dated 3 June 1988, the author, in response, informed the Committee that his legal representatives in London had informed him that there were good grounds for him to appeal to the Judicial Committee of the Privy Council and that they were in the process of preparing a petition for leave to appeal on his behalf.

5.1 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.

5.2 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.

5.3 With respect to the requirement of exhaustion of domestic remedies under article 5, paragraph 2 (b), of the Optional Protocol, the Committee has noted the author's letter, dated 3 June 1988, which indicates that his legal representatives are currently preparing a petition for leave to appeal to the Judicial Committee of the Privy Council on his behalf. It thus concludes that one available remedy has not been exhausted by the author. Article 5, paragraph 2 (b), however, precludes the Committee from considering a communication prior to the exhaustion of all available domestic remedies.

6. The Human Rights Committee therefore decides:

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

(b) That, since this decision may be reviewed under rule 90, paragraph 2, of the Committee's provisional 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 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 author before he has had a reasonable time, after completing the effective domestic remedies available to him, to request the Committee to review the present decision;

(c) That this decision shall be transmitted to the State party and to the author.

M. Communication No. 286/1988, L. S. v. Jamaica  
(Decision adopted on 26 July 1988 at the  
thirty-third session)

Submitted by: L. S. [name deleted]

Alleged victim: The author

State party concerned: Jamaica

Date of communication: 8 February 1988 (date of initial letter)

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

Meeting on 26 July 1988,

Adopts the following: