



**International Covenant
on Civil and Political Rights**

Distr.
RESTRICTED */

CCPR/C/51/D/445/1991

10 August 1991

Original: ENGLISH

HUMAN RIGHTS COMMITTEE
Fifty-first session

VIEWS

Communication No. 445/1991

Submitted by: Lynden Champagnie, Delroy Palmer
and Oswald Chisholm [represented by counsel]

Victims: The authors

State party: Jamaica

Date of communication: 28 January 1991 (initial submission)

Documentation references: Prior decisions:
- Special Rapporteur's combined rule 86/rule 91 decision,
transmitted to the State party on 2 August 1991
(not issued in document form)
- CCPR/C/47/D/445/1991
(Decision on admissibility, dated 18 March 1993)

Date of adoption of Views: 18 July 1994

On 18 July 1994, the Human Rights Committee adopted its Views under article 5, paragraph 4, of the Optional Protocol, in respect of communication No. 445/1991. The text of the Views is appended to the present document.

[Annex]

*/ Made public by decision of the Human Rights Committee.
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ANNEX

**Views of the Human Rights Committee under article 5, paragraph 4,
of the Optional Protocol to the International Covenant
on Civil and Political Rights
- Fifty-first session -**

concerning

Communication No. 445/1991

Submitted by: Lynden Champagnie, Delroy Palmer
and Oswald Chisholm [represented by counsel]

Victims: The authors

State party: Jamaica

Date of communication: 28 January 1991

Date of decision on admissibility: 18 March 1993

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

Meeting on 18 July 1994,

Having concluded its consideration of communication No. 445/1991 submitted to the Human Rights Committee on behalf of Messrs. Lynden Champagnie, Delroy Palmer and Oswald Chisholm under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the authors of the communication, their counsel and the State party,

Adopts its Views under article 5, paragraph 4, of the Optional Protocol.

1. The authors of the communication are Lynden Champagnie, Delroy Palmer and Oswald Chisholm, three Jamaican citizens currently awaiting execution at St. Catherine District Prison, Jamaica. They claim to be the victims of violations by Jamaica of articles 2, paragraphs 2 and 3(a) and (b), 6, 7, 10 and 14, paragraph 5, of the International Covenant on Civil and Political Rights. They are represented by counsel. An earlier communication submitted to the Human Rights Committee by the authors, communication No. 257/1987, was declared inadmissible on 26 July 1988 because of non-exhaustion of domestic remedies, since they had not petitioned the Judicial Committee of the Privy Council for special leave to appeal. They re-submitted their communication, arguing that in their case a petition to the Judicial Committee of the Privy Council would not be an effective remedy within the meaning of article 5, paragraph 2(b), of the Optional Protocol.

The facts as submitted by the authors:

2.1 On 8 March 1979, the authors, together with one R.W. and one A.G., were convicted in the Home Circuit Court of Kingston of the murder of one C.M. The authors were sentenced to death; the two other co-accused were sentenced to life imprisonment, as they were minors when the crime was committed.

2.2 The case for the prosecution was that, on 9 July 1977 at 3 a.m., C.M. and his common law wife H.P. were woken up by noise outside their bedroom window. When C.M. enquired who was disturbing them, someone answered that it was the police. Immediately thereafter H.P. heard a gunshot and saw C.M. falling from the bed; she then hid under the bed. The door to the house was kicked open and five men entered the house. After they discovered H.P., the men asked her for money. She was then taken outside by two of the men who raped her. C.M. died from the gunshot wounds.

2.3 The authors and R.W. were identified by H.P. at separate identification parades. Supplementary evidence against them included self-incriminating statements, which they made to the police after their arrest. Their defence was mainly based on alleged irregularities during the identification parade and the involuntariness of their statements.

2.4 The authors appealed their convictions; on 10 June 1981, the Jamaican Court of Appeal, treating the applications for leave to appeal as the hearing of the appeal, dismissed the appeal in the cases of the authors and R.W., whereas A.G. was acquitted.

2.5 The Court of Appeal did not issue a written judgment in the case until 17 July 1986, over five years later. The judges admitted that "due to the most unpardonable oversight, the records got filed away and the reasons for judgment were never prepared". Furthermore, they stated that "we cannot after this lapse of time rely upon our memory of any impression formed during the hearing of the appeals and we will therefore confine our reasons to the points which clearly appear from our notes made during the hearing".

2.6 By letter dated 14 June 1988, concerning the authors' previous communication, a London law firm which had agreed to represent the authors before the Judicial Committee of the Privy Council, requested the Human Rights Committee to defer consideration of the communication, pending the outcome of the authors' petition for special leave to appeal. However, on 16 July 1990, leading counsel for the case opined that although the summing up of the case by the trial judge was highly questionable, and the conduct of the appeal by the Court of Appeal deplorable, there was little point in appealing to the Judicial Committee of the Privy Council, in the light of the narrow interpretation of its jurisdiction by this body. He pointed out that it was difficult to give full advice on the merits of an application for leave to appeal against the decision of the Court of Appeal, as the latter's written judgment had not yet been made available at that time. It appears that, after having received the written judgment in October 1990, counsel confirmed that there was no merit in seeking leave to appeal to the Judicial Committee for the following reason:

(a) Although there were potential grounds of appeal to the Court of Appeal in each of the three cases, many of those grounds had not been raised by counsel in Jamaica. The Privy Council would be most unwilling to allow new grounds to be argued before it for the first time;

(b) Because of the inadequacy of the Court of Appeal's judgment, the only proper way in which the case could be argued in the Privy Council, even assuming that it would allow new grounds to be argued, was by reference to the 2,000 page transcript of the trial. The Privy Council was unlikely to allow such a course to be adopted;

(c) The Privy Council would most likely be of the opinion that the proper way of redress for the authors was by way of constitutional motion to challenge the delay in the delivery and the inadequacy of the judgment.

2.7 In the light of the above, counsel submits that the only form of redress currently open to the authors is a constitutional motion to the Supreme (Constitutional) Court of Jamaica, for which the Poor Prisoners' Defence Act does not provide legal aid. Counsel further submits that, as it is virtually impossible to secure the services of qualified lawyers in Jamaica on a pro bono basis for the purpose, a constitutional motion cannot be deemed to be an available remedy.

The complaint:

3.1 It is submitted that the authors have been unable to petition the Judicial Committee of the Privy Council for special leave to appeal because of the lack of a reasoned judgment of the Court of Appeal, in violation of article 2, paragraphs 2 and 3(a) and (b), juncto article 14, paragraph 5, of the Covenant.

3.2 Counsel further submits that an execution of the authors at this point in time, after more than 15 years on death row, would amount to an arbitrary deprivation of life, in violation of article 6 of the Covenant. Similarly, the fact that the authors were kept on death row for six

years (from 1981 to 1987, when they initially submitted their communication to the Committee) during which there was no legal impediment to their execution, constitutes cruel, inhuman and degrading treatment within the meaning of article 7 of the Covenant.

3.3 Finally, counsel submits that the conditions of detention on death row amount to a violation of article 10 of the Covenant. In support of his contention, he submits a copy of a report on conditions of detention in Jamaican penitentiaries, prepared by a non-governmental organization.

The State party's information and observations on the question of the admissibility:

4.1 In its submission under rule 91, the State party argues that the communication is inadmissible under article 5, paragraph 2(b), of the Optional Protocol, because the authors have failed to exhaust domestic remedies. It notes that the authors may still appeal to the Judicial Committee of the Privy Council by way of petition for special leave to appeal, and that legal aid would be available to them under the Poor Prisoners' Defence Act for that purpose. The State party adds that the authors may still apply for constitutional redress; in this context, it notes that the rights invoked by the authors are co-terminous with the provisions of chapter III of the Jamaican Constitution, which guarantees and protects fundamental rights and freedoms to all persons in Jamaica. Pursuant to section 25 of the Constitution, an individual claiming that any of these provisions has been, is being or is likely to be contravened in relation to him, may apply to the Supreme (Constitutional) Court for redress. A right of appeal lies to the Court of Appeal and subsequently to the Privy Council.

4.2 With respect to the question of availability of legal aid, the State party submits that the Poor Prisoners' Defence Act does not make provision for legal aid in respect of constitutional motions, and that there is no obligation for States parties to the Covenant to provide legal aid in respect of matters other than criminal matters. It is submitted that nothing in the Optional Protocol or in customary international law would support the contention that a person is relieved of the obligation to exhaust local remedies because of his indigence.

The Committee's admissibility decision:

5.1 At its 47th session, the Committee considered the admissibility of the communication. In respect of the State party's contention that the communication was inadmissible because of non-exhaustion of domestic remedies, the Committee recalled its constant jurisprudence that for purposes of article 5, paragraph 2(b), of the Optional Protocol, domestic remedies must be both effective and available, and that an element of timeliness both in the pursuit and in the adjudication of such remedies must be observed. With respect to the authors' possibility to petition the Judicial Committee of the Privy Council for special leave to appeal, the Committee noted counsel's advice that such a petition would have little prospect of success. Moreover, the Committee noted that, on 11 July 1988, the Judicial Committee of the Privy

Council decided in another case¹ that it had no competence to hear an application relating to delay in judicial procedure. In the circumstances of the case before it, where the sole issue raised by the authors under article 14 was one of delay, the Committee considered that the petition for special leave to appeal to the Privy Council could not be considered an effective remedy within the meaning of article 5, paragraph 2(b), of the Optional Protocol.

5.2 With respect to the authors' possibility of filing a constitutional motion, the Committee considered that, in the absence of legal aid, a constitutional motion did not constitute an available remedy in the case. In the light of the above, the Committee found that it was not precluded by article 5, paragraph 2(b), of the Optional Protocol, from considering the communication.

5.3 The Committee considered, however, that the authors had failed to substantiate, for purposes of admissibility, their claim under article 7. Similarly, the Committee considered that the authors, by merely referring to a report outlining the conditions of detention in Jamaican prisons, had failed to substantiate, for purposes of admissibility, the allegation that they were the victims of a violation of article 10 of the Covenant. In this respect, the Committee found that the authors had no claim within the meaning of article 2 of the Optional Protocol.

5.4 On 18 March 1993, the Committee declared the communication admissible in so far as it appeared to raise issues under article 14, paragraphs 3(c) and 5, juncto article 6 of the Covenant.

Examination of the merits:

6. The State party did not reply to the Committee's request under article 4, paragraph 2, of the Optional Protocol, to submit to it written explanations or statements clarifying the matter and the remedy, if any, that may have been taken in the case.

7.1 The Committee has considered the communication in light of all the information made available to it by the parties, as required under article 5, paragraph 1, of the Optional Protocol. The Committee notes with concern that the State party has not addressed the substance of the matter under consideration. Article 4, paragraph 2, of the Optional Protocol enjoins the State party to investigate, in good faith and within the imparted deadlines, all the allegations of violations of the Covenant made against it and against its judicial authorities, and to make available to the Committee all the information at its disposal.

7.2 The question before the Committee is whether the delay in the issuing and the inadequacy of the written judgment of the Court of Appeal of Jamaica deprived the authors of their right, under article 14, paragraph 3(c), to be tried without undue delay, and of their right, under article 14, paragraph 5, to have conviction and sentence reviewed by a higher tribunal according to law. The Committee recalls that article 14, paragraph 3(c), and article 14,

¹ The case of Howard Martin was subsequently submitted to the Committee as communication No. 317/1988. Views adopted on 24 March 1993.

paragraph 5, must be read together, so that the right to review of conviction and sentence must be made available without delay.² In this connection, the Committee refers to its earlier jurisprudence³ and reaffirms that under article 14, paragraph 5, a convicted person is entitled to have, within reasonable time, access to written judgments, duly reasoned, for all instances of appeal in order to enjoy the effective exercise of the right to have conviction and sentence reviewed by a higher tribunal according to law.

7.3 As regards the case before it, the Committee notes that the Court of Appeal dismissed the authors' appeal on 10 June 1981, but did not issue a written judgment until 17 July 1986, i.e. over five years later. Furthermore, it appears from the information before the Committee, which has remained uncontested, that it took another four years before the written judgment was made available to leading counsel in London, who was only then able to give his opinion on the merits of a petition for special leave to appeal to the Judicial Committee of the Privy Council. The Committee has also noted that, because of the considerable lapse of time that elapsed between the hearing of the appeal and delivery of the reasons for judgment, the Court of Appeal was unable to rely on its memory of the hearing of the appeal and had to confine its reasons to such notes as were made during the hearing of the appeal. In the circumstances, the Committee finds that it cannot be said that the authors benefitted from a proper review of their conviction and sentence, nor from timely access to the reasons for judgment, which would have enabled them to effectively exercise their right of appeal at all instances. The Committee therefore concludes that the rights of the authors under article 14, paragraphs 3(c) and 5, of the Covenant, have been violated.

7.4 The Committee is of the opinion that the imposition of a sentence of death upon conclusion of a trial in which the provisions of the Covenant have not been respected constitutes, if no further appeal against the sentence is possible, a violation of article 6 of the Covenant. As the Committee noted in its General Comment 6(16), the provision that a sentence of death may be imposed only in accordance with the law and not contrary to the provisions of the Covenant implies that "the procedural guarantees therein prescribed must be observed, including the right to a fair hearing by an independent tribunal, the presumption of innocence, the minimum guarantees for the defence, and the right to review of conviction and sentence by a higher tribunal"⁴. In the present case, since the final sentence of death was passed without due respect for the requirements for a fair trial set out in article 14, paragraphs 3(c) and 5, there has accordingly also been a violation of article 6 of the Covenant.

² See the Committee's Views concerning communications Nos. 210/1986 and 225/1987 (Earl Pratt and Ivan Morgan v. Jamaica), adopted on 6 April 1989, paragraphs 13.3 to 13.5.

³ Communications Nos. 230/1987 (Raphael Henry v. Jamaica) and 283/1988 (Aston Little v. Jamaica), Views adopted on 1 November 1991. See also communication No. 320/1988 (Victor Francis v. Jamaica), Views adopted on 24 March 1993.

⁴ See CCPR/C/21/Rev.1, page 7, paragraph 7.

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose a violation of article 14, paragraphs 3(c) and 5, and consequently of article 6 of the International Covenant on Civil and Political Rights.

9. In capital punishment cases, the obligation of States parties to observe rigorously all the guarantees for a fair trial set out in article 14 of the Covenant admits of no exception. The failure to provide Messrs. Champagnie, Palmer and Chisholm with an effective right to appeal without undue delay in accordance with article 14, paragraphs 3(c) and 5, of the Covenant, means that they did not receive a fair trial within the meaning of the Covenant. Consequently, they are entitled, under article 2, paragraph 3(a), of the Covenant, to an effective remedy. The Committee is of the view that in the circumstances of the case, this entails their release. The State party is under an obligation to ensure that similar violations do not occur in the future.

10. The Committee would wish to receive information, within ninety days, on any relevant measures taken by the State party in respect of the Committee's Views.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]