

Institution: Inter-American Commission on Human Rights  
File Number(s): Report No. 89/98; Case 11.826  
Title/Style of Cause: Leroy Lamey v. Jamaica  
Doc. Type: Decision  
Decided by: Chairman: Carlos Ayala Corao;  
First Vice Chairman: Robert K. Goldman;  
Second Vice Chairman: Jean Joseph Exume.  
Commissioners: Alvaro Tirado Mejia, Claudio Grossman, Helio Bicudo,  
Henry Forde.  
Dated: 3 November 1998  
Citation: Lamey v. Jamaica, Case 11.826, Inter-Am. C.H.R., Report No. 89/98,  
OEA/Ser.L/V/II.102, doc. 6 rev. (1998)  
Represented by: APPLICANT: Saul Lehrfreund Esq.  
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## I. ALLEGED FACTS

1. By letter dated October 24, 1997, Saul Lehrfreund Esq., Solicitor, (hereinafter referred to as "the Petitioner,") from the firm of Simons Muirhead & Burton, Solicitors, in London, United Kingdom, presented a petition to the Inter-American Commission on Human Rights, (hereinafter referred to as "the Commission"), against the State of Jamaica (hereinafter referred to as "the State"), on behalf of Mr. Leroy Lamey. The Petitioner stated that Mr. Lamey a Jamaican national was tried and convicted of capital murder on September 21, 1993, was sentenced to death, and is incarcerated on death row at St. Catherine District Prison, in Jamaica. The Petitioner also stated that Mr. Lamey applied for leave to appeal to the Court of Appeal in Jamaica, and his application was dismissed on November 7, 1994, by the Court of Appeal. In addition, the Petitioner stated that a warrant of execution was issued to Mr. Lamey in January 1995, and he was due to be executed on January 26, 1995, however, on January 18, 1995, a stay of execution was granted by the Governor General. Moreover, the Petitioner stated that Mr. Lamey petitioned the Judicial Committee of the Privy Council ("the Privy Council") in London, for Special Leave to Appeal as a Poor Person, and on June 22, 1995, the Privy Council granted the leave, and on May 1, 1996, Judgment was reserved at the hearing of the full appeal. Further, the Petitioner stated that on May 20, 1996, Judgment was delivered by the the Privy Council ("the Privy Council") allowing the appeal, and Mr. Lamey's capital conviction was substituted to one of non capital murder.

2. The Petitioner stated that on October 13, 1993, Mr. Lamey was convicted of a second murder (no.2), Mr. Lamey appealed, and on November 7, 1994, Mr. Lamey's appeal against his second conviction was allowed and a re-trial was ordered. The Petitioner also stated that on May 16, 1996, at the re-trial, Mr. Lamey was convicted of capital murder in the course or furtherance of an act of terrorism, and between December 16 and December 18, 1996, he appealed against

his conviction and sentence. In addition, the Petitioner stated that on February 19, 1997, Judgment was delivered quashing the conviction for capital murder, and substituting it for one of non capital murder, however, at sentencing, Mr. Lamey was sentenced to capital murder by virtue of two non-capital convictions as provided by the Offences Against the Person Act, 1992. The Offences Against the Person (Amendment) Act, 1992, (hereinafter referred to as the principal Act) and all amendments thereto defines "capital murder" and the circumstances in which the death penalty will be applied in the following sections:

Section 3(1A) provides:

Subject to subsection (5) of section 3B, a person who is convicted of non-capital murder shall be sentenced to death if before that conviction he has –

- (a) whether before or after the date of commencement of the Offences Against the Person (Amendment Act 1992, been convicted in Jamaica of another murder done on a different occasion; or
- (b) been convicted of another murder done on a different occasion.

3. The Petitioner stated that on May 8, 1997, Mr. Lamey signed the necessary Affidavits and notices indicating his intention to petition the Privy Council for Special Leave to Appeal as a Poor Person, and on the same day Notice of Intention was served on the Ministry of National Security. On May 14, 1997, copies were served on the Director of Public Prosecutions and filed in the Court of Appeal of Jamaica.

4. The Petitioner stated that on May 22, 1997, Mr. Lamey was issued a second execution warrant and taken to the condemned cells to be executed on June 10, 1997. The Petition stated that on May 27, 1997, the Petitioner wrote to the Governor General requesting a stay of execution, and on the same day, the Governor General granted the stay. The petition stated that the Petitioner was instructed to provide legal representation for Mr. Lamey's appeal for his murder conviction (No.2) to petition the Privy Council for Special Leave to Appeal as a Poor Person. The Petitioner also stated that Mr. Lamey's petition against conviction and sentence, was dismissed by the Privy Council on October 23, 1997.

5. The Petitioner alleges that the Governor's General Instructions violate Mr. Lamey's right to life of Article 4(1), right to apply for amnesty, pardon, and commutation of sentence, Article 4(6), right to humane treatment, Article 5(1) and 5(2), the right to judicial protection, as established by Article 25(1) of the American Convention. The Petitioner alleges that Mr. Lamey's right to a fair trial as established by Article 8 of the American Convention was violated, because there is no hearing to determine whether the death penalty should be imposed or implemented. The Petitioner alleges that the conditions under which Mr. Lamey is held at St. Catherine District Prison constitute a violation of his right to humane treatment, as established by Article 5 of the American Convention and XXVI of the American Declaration. Further, the Petitioner alleges that the mandatory nature of the death penalty violates Mr. Lamey's right to an effective remedy, right to recognition of his juridical personality and civil rights, his right to equality before the law, and his right to humane treatment as established by Articles 24, and 25 of the American Convention and Articles II, XVIII, and XXVI of the American Declaration.

6. The Petitioner requests an investigation of the claims raised in the petition, and an on-site investigation to St. Catherine District Prison, in Jamaica where Mr. Lamey is detained. The Petitioner requested precautionary measures pursuant to Article 29(2) of the Commission's Regulations, and also requests an oral hearing before the Commission.

## II. PROCEEDINGS BEFORE THE COMMISSION

7. The Commission received the petition on October 24, 1997, and acknowledged receipt of the same. On October 31, 1997, it opened a case, and forwarded the pertinent parts of the petition to the State in accordance with Article 34 of its Regulations. It requested that the State supply the information in respect of the petition, and any additional information which would enable it to determine whether the internal legal remedies and procedures have been exhausted in the case as provided by Article 37 of its Regulations.

8. On November 10, 1997, the Commission received a letter from the Petitioner reiterating its request for precautionary measures pursuant to Article 29.2 of its Regulations. The Petitioner also enclosed a copy of a letter from the Governor General's Secretary Mr. Geoff Madden, which stated that pursuant to the Governor General's Instructions, proof must be furnished by December 3, 1997, that the petition has been filed before the Commission, and that "you may wish to advise the IACHR, as well, that we need a request from it for a stay and a response as soon as possible, certainly before December, 3, 1997." [FN1]

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[FN1] The Governor General's Instructions were published in Vol. CXX, on Thursday, August 7, 1997, in "The Jamaica Gazette Extraordinary." The Governor General's Instructions were later amended and published in "The Jamaica Gazette Extraordinary," on Thursday, April 23, 1998. The Governor General's Instructions, inter alia states that when a petitioner submits a petition to the Commission for consideration, that petitioner must furnish proof to the Governor-General in Privy Council within 3 weeks that an application has been filed; the Commission must then request a response to the petition from the State, and also request a stay of execution of the victim, within one month of receipt of the petition; the Commission must make a decision on the petition within six months after the State responds to the petition; if the Commission make its decision within six months, such decision will be considered by the Jamaican Privy Council as to whether or not the Prerogative of Mercy should be exercised in the victim's favor; and if the Commission does not issue its decision within six months of receipt of the State's response to the petition, the execution of the victim will not be further postponed.

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9. The Commission wrote to the State on November 20, 1997, and inter alia informed it, that it issued precautionary measures on behalf of Mr. Lamey pursuant to Article 29.2 of its Regulations, and requested that the State stay the execution of Mr. Lamey, until it has had the opportunity to fully investigate the claims raised in this case, concerning allegations of violations of Mr. Lamey's fundamental human rights pursuant to the American Convention. The parties' arguments on the merits of the petition will be included in the decision on the merits of the petition.

### III. PARTIES' POSITIONS ON ADMISSIBILITY

#### A. Petitioner's position

10. The Petitioner argues that the petition is admissible because Mr. Lamey appealed to the Court of Appeal of Jamaica, and his application for leave to appeal was dismissed by the Privy Council on October 23, 1997. The Petitioner argues that Mr. Lamey has a Constitutional remedy in theory, however, it is not available to him in practice due to his lack of funds and the unavailability of legal aid, and the extreme difficulty of finding a Jamaican Lawyer to represent Mr. Lamey on a Constitutional Motion (pro bono) is well known. In addition, the Petitioner argues that it is the State Party's inability or unwillingness to provide legal aid for such motions, which absolves Mr. Lamey from pursuing constitutional remedies. Moreover, the Petitioner argues that this petition is admissible as all available and effective domestic remedies have been exhausted by Mr. Lamey, and Mr. Lamey is practically unable to pursue a Constitutional Motion, given the complexity of the Constitution as a legal document, it is obvious that expert legal representation for such a motion would be required in order to establish any prospect of success. Further, the Petitioner claims that there are a dearth of local lawyers who are willing to represent applicants free of charge.

11. The Petitioner claims that the United Nations Human Rights Committee's jurisprudence on this matter is clearly set out in the following passage, taken from the admissibility decision of March 18, 1993 at page 5, paragraph 5.4 in Communication No. 445/1991(Lynden Chapagnie, Delroy Palmer and Oswald Chisolm v Jamaica):

With respect to the author's possibility of filing a Constitutional Motion, the Committee considers that, in the absence of legal aid, a Constitutional Motion does not constitute an available remedy in the case.

#### B. State's position

12. The Commission received the State's Reply to the petition on December 2, 1997, and stated that "it acknowledges receipt of the Commission's request for comments on the admissibility of the communication. In order to expedite the examination of the communication, the merits will also be addressed at this stage." The State denied the allegations made by the Petitioner, and thereafter addressed the merits of the petition. The State did not proffer any arguments on the issue of admissibility.

### IV. GENERAL CONSIDERATIONS

#### A. Commission's competence

13. The Commission is competent to examine this petition. It derives its authority from the Charter of the Organization of American States, its Statute, the American Convention on Human Rights and its Regulations.

B. Admissibility of petition

1. Timeliness of petition

14. The Commission received Mr. Lamey's petition on October 24, 1997, one day after (appeal dismissed on October 23, 1997) Mr. Lamey's appeal was dismissed by the Judicial Committee of the Privy Council in London. The State has not contested the issue of timeliness of the petition, and thus, the Commission finds that this petition is timely filed pursuant to Article 46(1)(b) of the American Convention.

2. Duplication of procedures

15. The State has not contested the issue of duplication of procedures. The Commission finds that there are no duplication of procedures in this case. This petition is not pending settlement in another international proceeding for settlement pursuant to Article 46(1)(c) of the American Convention, nor is the petition substantially the same as one previously studied by the Commission or by another international organization as established by Article 47(d) of the American Convention.

3. Exhaustion of domestic remedies

16. The Petitioner argues that Mr. Lamey has exhausted domestic remedies, and that he has appealed to the Court of Appeal in Jamaica and the Privy Council in London. The State has not contested the issue of exhaustion of domestic remedies. The Commission finds that domestic remedies have been exhausted in this case.

V. CONCLUSION

17. The Commission finds this petition admissible having satisfied the requirements of Article 46 of the American Convention. The Commission wishes to state that Article 4 of the American Convention places great emphasis on the protection of the right to life rather than the deprivation of the right to life. "Article 4(1) of the American Convention provides that "every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No person shall be arbitrarily deprived of his life." However, Article 4(2) of the American Convention provides: "In countries that have not abolished the death penalty, it may be imposed only for the most serious crimes in accordance with a law establishing such punishment, enacted prior to the commission of the crime. The application of such punishment shall not be extended to crimes to which it does not presently apply."

18. The Petitioner alleges that the State has violated Mr. Lamey's human rights as established by Articles 4(1), 4(6), 5(1), 5(2), 8, 24, and 25(1) of the American Convention and Articles II, XVIII, and XXVI of the American Declaration. The Petitioner alleges violations of both the American Convention and the American Declaration. The State of Jamaica is a party to the American Convention, and since the same rights are found in both instruments, the Commission will examine and consider this petition pursuant to the provisions of the American Convention.

19. The Commission finds that this petition raises a prima facie claim of a violation of a human right recognized in the American Convention. Without prejudging the merits of this petition and the allegations of human rights violations made by the Petitioner on behalf of Mr. Lamey, the Commission will assess the validity of these claims in the merits phase of its decision.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES TO:

1. To declare the petition admissible.
  2. To transmit this Report to the State of Jamaica and the Petitioner.
  3. To place itself as the disposal of the parties concerned with a view to reaching a friendly settlement on the matter.
  4. To maintain in effect the precautionary measures issued on November 20, 1997, until it issues a decision on the merits.
24. To publish this Report in its Annual Report to the OAS General Assembly.

Done and approved at the headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C., on the 3rd. day of the month of November, 1998. (Signed): Carlos Ayala Corao, Chairman; Robert K. Goldman ; First Vice Chairman; Jean Joseph Exumé, Second Vice Chairman; Commissioners Alvaro Tirado Mejía; Claudio Grossman; Hélio Bicudo and Henry Forde.