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D. D. [name deleted] v. Jamaica, Communication No. 313/1988, U.N. Doc. CCPR/C/41/D/313/1988 (1991).

Communication No. 313/1988 : Jamaica. 06/05/91.

CCPR/C/41/D/313/1988. (Jurisprudence)

Convention Abbreviation: CCPR

Human Rights Committee

Forty-first session

Decision of the Human Rights Committee under the Optional Protocol
to the International Covenant on Civil and Political Rights
forty-first session
concerning

Communication No. 313/1988

Submitted by: D. D. [name deleted]

Alleged victim: The author

State party concerned: Jamaica

Date of communication: Undated (received on 1 June 1988)

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

Meeting on 11 April 1991,

Adopts the following:

Decision on admissibility

1. The author of the communication (initial undated submission received on 1 June 1988 and subsequent submissions) is D. D., a Jamaican citizen currently awaiting execution at St. Catherine District Prison, Jamaica. He claims to be the victim of a violation by Jamaica of article 14 of the International Covenant on

Civil and Political Rights.

The facts as submitted by the author

2.1 The author states that he was arrested on 5 February 1983 near his home in Port Antonio and charged with murder jointly with two other individuals. At the conclusion of the trial in the Home Circuit Court in Kingston, one of his co-defendants was acquitted, the other received a lesser sentence, whereas the author was found guilty as charged and sentenced to death. The author claims to be innocent and that he has no knowledge of the facts of the murder for which he was convicted. No information is provided about the dates of the trial or of the sentence, or about the circumstances under which the trial took place. The Court of Appeal of Jamaica dismissed his appeal on 8 June 1987. After submitting his case to the Human Rights Committee, the author secured pro bono assistance of a London law firm for purposes of a petition for special leave to appeal to the Judicial Committee of the Privy Council.

2.2 The author states that, after his arrest, one of the arresting officers, who had known him when he lived at Kingston, took him to the police station for an identity check. Although he continued to deny any involvement in the crime when interrogated by the arresting officers, he was charged with murder and taken to a preliminary hearing in the Gun Court on 10 February 1983.

2.3 During the preliminary hearings, the author was represented by counsel; two witnesses appeared for the prosecution. The first testified that he did not know the author, whereas the second initially claimed that he had known the author for one year and subsequently, under cross-examination by the defence attorney, admitted that he had known him for much longer. The first witness did not testify in the Home Circuit Court: the second did.

2.4 By telefax submission of 19 March 1991, author's counsel confirms that she is endeavouring to file a petition for special leave to appeal to the Judicial Committee of the Privy Council, that the preparations for such a petition are proceeding, and that she has obtained most of the court documents in the case.

The complaint

3.1 The author claims that during interrogation by the arresting officers he was repeatedly beaten. On two occasions he was allegedly administered electric shocks through a cord that had been put under tension. Furthermore, he was not placed on an identification parade, as is customary for individuals suspected of having committed a capital offence. He alleges that while a legal aid lawyer had been assigned to his case, the assistance of this lawyer was wholly inadequate. Additional irregularities allegedly occurred during the trial, in that the prosecution's main Witness, who had testified during the preliminary inquiry, was not cross-examined, and no attempt was made to locate any witness to: testify on the author's behalf. This is said to constitute a violation of article 14, paragraph 3(e) of the Covenant.

3.2 As to the circumstances of his appeal, the author alleges that he was unable to consult with the legal aid attorney who had been assigned to him for the appeal. He adds that numerous requests to meet with this attorney remained

unanswered.

The State party's observations

4. The State party contends that the communication is inadmissible on the ground of non-exhaustion of domestic remedies, since the author has failed to petition the Judicial Committee Of the Privy Council for special leave to appeal.

Issues and proceedings before the Committee

5.1 Before considering any claims contained in a communication, the Human Rights Committee 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.

5.2 With regard to the requirement of exhaustion of domestic remedies, the Committee has taken note of the State party's contention that the communication is inadmissible because of the author's failure to petition the Judicial Committee of the Privy Council for special leave to appeal. It observes that the author has secured pro bono legal representation from a London law firm for this purpose, after submitting his case to the Human Rights Committee, and that his representatives are seeking to petition the Privy Council for special leave to appeal on his behalf. While expressing its concern about the apparent unavailability, so far, of relevant court documents in the case and the author's difficulties in securing legal assistance before the Privy Council, the Committee does not consider that a petition for special leave to appeal to the Judicial Committee of the Privy Council would necessarily be unavailable and, as such, a remedy that authors need not exhaust before addressing a communication to the Committee. It therefore finds that the requirements of article 5, paragraph 2(b), of the Optional Protocol have not been met.

5.3 With regard to the author's allegations under articles 7 and 10 of the Covenant, concerning torture and beatings during his detention, the Committee notes that although a legal aid lawyer had been assigned to the author, his submissions to the Committee do not show that he complained to the competent authorities about these events, or that local remedies before the Jamaican courts in respect of this issue have been exhausted. In this respect, therefore, the Committee concludes that the requirements of article 5, paragraph 2(b), of the Optional Protocol have not been met.

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 the State party be requested to make the complete set of the court documents available to the author and to his representative before the Privy Council without further delay, should these documents not be in his possession yet, so as to permit an effective recourse to the Judicial Committee of the Privy Council;

(c) That, since this decision may be reviewed under rule 92, paragraph 2, of the Committee's 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, under rule 86 of the Committee's 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:

(d) That this decision shall be transmitted to the State party, to the author and to his counsel.