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HUMAN RIGHTS COMMITTEE
Forty-fifth session

DECISIONS

Communication No. 340/1988

Submitted by : R.W.

Alleged victim : The author

State party : Jamaica

Date of communication : 23 November 1988 (initial submission)

Documentation references : Prior decisions - CCPR/C/WG/35/D/340/1988 (Working Group's combined rule 86/91 decision, dated 17 March 1988)

Date of present decision : 21 July 1992

Decision on admissibility

[Annex]

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respect and observe its confidential nature.

DEC340.45 cm

ANNEX**/

Decision of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights - Forty-fifth session -

concerning

Communication No. 340/1988

Submitted by :	R.W. [name deleted]
Alleged victim :	The author
State party :	Jamaica
Date of communication :	23 November 1988 (initial submission)

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

Meeting on 21 July 1992,

Adopts the following:

Decision on admissibility

1. The author of the communication (dated 23 November 1988) is R.W., a Jamaican citizen awaiting execution at St. Catherine District Prison, Jamaica. He claims to be the victim of a violation by Jamaica of his human rights.

The facts as submitted by the author :

2.1 The author, an ex-policeman, states that he was charged with murder in December 1983 and sentenced to death in June 1984, but claims to be innocent. The author does not provide information about the facts of the crime or the circumstances of his arrest. He alleges that the attorney who represented him during the preliminary inquiry and during the trial did so halfheartedly and without commitment. The lawyer allegedly did not argue the

defence in line with the author's instructions. The author claims that as a result the true facts of the case did not emerge and he was sentenced to death.

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

2.2 Concerning his appeal to the Jamaican Court of Appeal, the author claims that the Registry of the Court informed him only shortly before 16 May 1985 that his appeal was scheduled to be heard on that date. He immediately sent a letter to his lawyer and informed him that he would like to present new evidence, the nature of which the author does not explain, and to forward grounds of appeal. The lawyer allegedly did not reply. The author himself wrote to the Court of Appeal, stating that he wanted to submit fresh evidence and requesting a postponement of the hearing in order to be able to prepare his appeal more thoroughly. Some days later, he was informed that his application for leave to appeal had been dismissed. According to the author, the new evidence and the grounds of appeal had not been put forward. The author suspects that his lawyer was not even present at the hearing, although he was paid "thousands of dollars" by the author's father.

2.3 After the dismissal of the appeal, the Governor-General, on an unspecified date in 1985, signed a warrant for the author's execution. Another lawyer, hired by the author's mother, petitioned the Governor-General and obtained a stay of execution. According to the author, his new lawyer was shocked by the unprofessional manner in which the first lawyer had handled the case. Reportedly, the new lawyer attempted, without success, to secure a retrial. The Jamaica Council for Human Rights was also informed about the new situation.

2.4 According to the author, the Jamaica Council for Human Rights informed him in October 1988 that his case had been dismissed by the Supreme Court of Jamaica, but that no written judgment had been issued. It told him that a petition for special leave to appeal to the Judicial Committee of the Privy Council was being prepared, in cooperation with the author's first lawyer. The author, however, refused to sign the papers, as he did not want his first lawyer to represent him. Subsequently, the Governor-General signed a warrant for the author's execution on 15 November 1988. A priest who visited the author shortly before that date made him sign the papers necessary for a petition for leave to appeal to the Privy Council and, on 14 November 1988, the author obtained another stay of execution. On 14 December 1988, a petition for special leave to appeal was submitted to the Privy Council on behalf of the author by a London law firm. In February 1989, the author was informed that the petition had been dismissed.

The complaint :

3.1 The author claims that his human rights have been violated by the Jamaican Court of Appeal because it did not allow him to put forward new evidence and denied him the opportunity to submit grounds for appeal. He further claims that his defence was seriously harmed by the unprofessional attitude of his first lawyer, and by the negligence of the Jamaica Council for Human Rights, which allowed the first lawyer to prepare the petition for special leave to appeal to the Judicial Committee of the Privy Council.

3.2 Although the author does not invoke any of the articles of the International Covenant on Civil and Political Rights, it appears from his submission that he claims to be a victim of a violation by Jamaica of article 14 of the Covenant.

The State party's observations and author's comments thereon :

4. By submission of 2 August 1989, the State party argues that the communication is inadmissible on the ground of failure to exhaust all available domestic remedies as required by article 5, paragraph 2(b), of the Optional Protocol. It submits that the author's appeal to the Judicial Committee of the Privy Council was in respect of his criminal case, and that he still has constitutional remedies he may pursue. The State party further submits that the communication does not disclose a violation of any of the rights set forth in the Covenant.

5. In his reply to the State party's observations the author reiterates that his constitutional and human rights were seriously violated by the Jamaican Court of Appeal and the Jamaica Council for Human Rights. He claims that new evidence in his case should be examined by the Jamaican courts. He further states that he is not at present represented by a lawyer.

Issues and proceedings before the Committee :

6.1 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.

6.2 Article 5, paragraph 2(b), of the Optional Protocol precludes the Committee from considering a communication if the author has failed to exhaust all available domestic remedies. The Committee notes that the State party claims that the author still has constitutional remedies which he may pursue. The Committee observes that the Supreme (Constitutional) Court of Jamaica has, in recent cases, allowed applications for constitutional redress in respect of alleged breaches of fundamental rights, after the criminal appeals in these cases had been dismissed. The Committee further observes that the author appears to have means to secure legal assistance to file a constitutional motion. In the particular circumstances of the case, the Committee finds that the constitutional remedy referred to by the State party constitutes a remedy within the meaning of article 5, paragraph 2(b), of the Optional Protocol, which the author has failed to exhaust.

7. 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 pursuant to 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;

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

[Done in English, French, Russian and Spanish, the English text being the original version.]

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