

E. Communication No. 304/1988, D.S. v. Jamaica (Decision of 11 April 1991, adopted at the forty-first session)

Submitted by: D.S. (name deleted)

Alleged victim: The author

State party concerned: Jamaica

Date of communication: 15 June 1988 (date of initial letter)

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 submission dated 15 June 1988 and subsequent submissions) is D.S., a Jamaican citizen currently awaiting execution at St. Catherine District Prison, Jamaica. He claims to be the victim of a violation of his human rights by Jamaica.

Facts as submitted by the author

2.1 The author was arrested on 19 July 1985. In police custody, he was informed by an arresting officer that he and his common-law wife were charged with the murder, on 16 July 1985, of his father. He claims to be innocent of the charge. While his wife was subsequently granted bail, the author remained in custody until the beginning of the trial on 13 October 1986 in the Home Circuit Court, Kingston. During the trial he was represented by a legal aid attorney. On 16 October 1986, D.S. was found guilty as charged and sentenced to death; his wife was sentenced to life imprisonment. On 22 July 1987, the Court of Appeal dismissed the author's appeal. A subsequent petition for special leave to appeal to the Judicial Committee of the Privy Council was dismissed on 20 February 1991.

2.2 The author alleges that his eight-year-old son, Andrew, was forced to give false evidence against his parents. He contends that his son was not at home on 16 July 1985 but was about three-and-a-half miles away from the place where the crime occurred. This was apparently corroborated by the author's 11-year-old daughter, Ann Marie, who testified that, on the day in question, her brother had left home. She apparently had gone to her grandfather's home, which was within earshot of the premises occupied by the author and his wife. The author purportedly heard her shout that her grandfather was lying on the floor of the house. a/

### Complaint

3.1 The author claims that he did not receive a fair trial. He affirms that on several occasions between 5 and 19 July 1985 he had to undergo medical treatment in hospital for an unspecified injury, and that the testimony of his son Andrew, the prosecution's principal witness, was "fabricated" by the police officer who had investigated the crime.

3.2 The author alleges general prejudice and bias of the trial court. In particular, he claims that the judge misdirected the jury by failing to point out, inter alia, that: (a) the prosecution had failed to prove the blood group of the deceased; (b) there was no evidence of bloodstains on the author's clothes; and (c) there were inconsistencies in Andrew's testimony, in particular with respect to the exact place of the crime, the window from which he claimed to have witnessed the murder, the crime weapon and the clothes and bandage the author was wearing at the time. In this context, the author adds that no fingerprints were ever taken from him, to match those on the crime weapon. He further claims that there was evidence that Andrew was on bad terms with his parents, and that the trial judge failed to put this to the jury. It is submitted that in the circumstances and especially bearing in mind Andrew's age, it was incumbent on the trial judge to direct the jury with particular care on Andrew's evidence; it is conceded, however, that the judge did point out to the jury that caution was required in accepting this evidence, unless sufficiently corroborated.

3.3 The author further submits that no witnesses were sought to testify on his behalf, and that his legal aid attorney did not make any effort to contact witnesses who might have corroborated his own version.

### State party's observations

4. In its submission, made on 17 November 1988, the State party argued that the communication was inadmissible on the ground of non-exhaustion of domestic remedies, since Jamaica's highest judicial instance, the Judicial Committee of the Privy Council, had not yet entertained an appeal in the case.

### Issues 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 respect to the author's claims of unfair trial, the Committee observes that it is generally for the appellate courts of States parties to the Covenant and not for the Committee to evaluate the facts and evidence placed before domestic courts and to review the interpretation of domestic law by national courts. Similarly, it is for the appellate courts and not for the Committee to review specific instructions to the jury by the judge, unless it is apparent from the author's submission that the instructions to the jury were clearly arbitrary or tantamount to a denial of justice, or that the judge manifestly violated his obligation of impartiality. The author's allegations do not show that the judge's instructions or conduct of the trial suffered from such defects in the present case. In this respect, therefore, the

author's claims as submitted do not come within the competence of the Committee and, in that sense, fall outside the scope of protection provided by article 14, paragraph 1, of the Covenant. Accordingly, this part of the communication is inadmissible as incompatible with the provisions of the Covenant, pursuant to article 3 of the Optional Protocol.

5.3 As to the claim that the author could not obtain the attendance and the testimony of witnesses on his behalf, the Committee notes that the author has failed to substantiate this allegation sufficiently, for purposes of admissibility. In particular, it is not explained why his attorney did not call any defence witness. In this respect, accordingly, the author has no claim under the Covenant within the meaning of article 2 of the Optional Protocol.

6. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 3 of the Optional Protocol in respect of the author's claim under article 14, paragraph 1, of the Covenant, and under article 2 of the Optional Protocol in respect of his claim under article 14, paragraph 3 (e), of the Covenant;

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

#### Notes

a/ No other details are provided on the facts of the case.