

## HUMAN RIGHTS COMMITTEE

### D. F. v. Jamaica

Communication No. 329/1988

26 March 1990

### ADMISSIBILITY

*Submitted by: D. F. [name deleted]*

*Alleged victim: The author*

*State party: Jamaica*

*Date of communication: 6 May 1988 (date of initial letter)*

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

Meeting on 26 March 1990,

Adopts the following:

#### **Decision on admissibility**

1. The author of the communication (initial letter dated 6 May 1988 and subsequent correspondence) is D. F., a Jamaican citizen born in 1954, currently serving a 12-year prison term at St. Catherine District Prison, Jamaica. He claims to be the victim of a violation of his human rights by Jamaica.

2.1 The author indicates that he was convicted of felonious wounding by the Circuit Court in Spanish Town on 24 January 1986 and sentenced to 12 years of hard labour. He claims to be innocent of the crime.

2.2 The author, a shopkeeper, states that on 10 March 1985 he was involved in a fight with one younger brother of the victim, E. S., who had allegedly insulted him and tried to steal several bottles of liquor from his shop. On 19 March 1985, stones and a bottle were thrown at his shop, destroying several windows. The author claims that at the time of the crime he was at his shop repairing the damage perpetrated earlier that day, and that he was not the person who, in a fight, had cut four

fingers off the victim's hand.

2.3 The author alleges that the testimony of the prosecution's main witness, one R. B., an acquaintance of the victim and of the author, was entirely fabricated. He further claims that the judge misdirected the jury, both about the evaluation of Ms. B.'s testimony, by stating that she was testifying on his behalf, and about the conflicting evidence presented by the public prosecutor and by the author.

2.4 On 16 December 1986, the author's appeal was dismissed by the Court of Appeal of Jamaica. The author states that he cannot afford to file a petition for special leave to appeal to the Judicial Committee of the Privy Council because he lacks the financial means to do so. A request for legal aid to the Jamaican Council for Human Rights apparently remains unanswered. It appears, however, that the author has not formally applied for legal aid under section 3, paragraph 1, of the Poor Prisoners' Defence Act.

3. By decision of 24 October 1988, the Working Group of the Human Rights Committee transmitted the communication to the State party and requested it, under rule 91 of the rules of procedure, to provide information and observations relevant to the question of the admissibility of the communication. It further requested the author to provide several clarifications about his efforts to apply for special leave to appeal to the Judicial Committee of the Privy Council. In several subsequent submissions the author claims, in essence, that the judge misdirected the jury, in the light of the contradictory evidence that was put before the jury and which it was for the jury to accept or reject.

4. In its submission under rule 91, dated 20 January 1989, the State party argues that the communication is inadmissible under article 5, paragraph 2, of the Optional Protocol, on the ground of non-exhaustion of domestic remedies, because the author did not apply, pursuant to section 110 of the Jamaican Constitution, for special leave to appeal to the Judicial Committee of the Privy Council.

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 the communication is admissible under the Optional Protocol to the Covenant.

5.2 The Committee has considered the material submitted by the author. From this information it appears that the author claims that the judge misdirected the jury, in the light of the contradictory evidence that was put before the jury and which it was for the jury to accept or reject. While article 14 of the Covenant guarantees the right to a fair trial, it is for the appellate courts of States parties to the Covenant to evaluate facts and evidence in a particular case. a/ It is not in principle for the Committee to review specific instructions to the jury by the judge in a trial by jury, unless it can be ascertained that the instructions to the jury were clearly arbitrary or amounted to a denial of justice. The Committee has no evidence that the trial judge's instructions suffered from such defects. Accordingly, the author has no claim under article 2 of the Optional Protocol.

6. The Human Rights Committee therefore decides:

(a) The communication is inadmissible;

(b) This decision shall be transmitted to the author and to the State party.

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a/ See communication No. 369/1989 (G. S. v. Jamaica), inadmissibility decision adopted on 8 November 1989, para. 3.2.