

HUMAN RIGHTS COMMITTEE

Compass v. Jamaica

Communication No. 375/1989

18 October 1990

CCPR/C/40/D/375/1989*

ADMISSIBILITY

Submitted by: Glenmore Compass (represented by counsel)

Alleged victim: The author

State party concerned: Jamaica

Date of communication: 22 August 1989

Document references: Prior decisions - Combined rule 86, rule 91 decision by Special Rapporteur, transmitted to the State party on 12 December 1989 (not issued in document form)

Date of present decision: 18 October 1990

The Human Rights Committee, acting through its Working Group, pursuant to rule 87, paragraph 2, of the Committee's rules of procedure adopts the following

Decision on admissibility

1. The author of the communication (initial submission dated 22 August 1989 and subsequent correspondence) is Glenmore Compass, 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, paragraphs 1 and 3 (e), of the International Covenant on Civil and Political Rights. He is represented by counsel.

The background:

2.1 On 4 September 1984, the author was arrested and charged, together with one Vernon Pinnock, with the murder, on 25 July 1984, of one Sidney Steele. In January 1986, he was tried in the Home Circuit Court of Kingston, convicted and sentenced to death; his co-defendant was found guilty of

manslaughter and sentenced to fifteen years of imprisonment.

2.2 The prosecution contended that Mr. Steele and his companion, Ms. Novelette Proverbs, were attacked by Mr. Compass and two other individuals, Vernon Pinnock and one Barrington Shaw, on their way home on the night of 25 July 1984; during the assault, Mr. Steele was killed by a gun shot. It is further stated that, later the same night, the three men were stopped by police officers for a routine control; a fight ensued during which the officers arrested one man and recovered a gun which, after forensic tests, proved to be the murder weapon. The author and his co-defendant were arrested one month later. The author was placed on an identification parade; Ms. Proverbs, the prosecution's main witness, purportedly was unable to identify the author properly, since the light in the parade room was insufficient. During the trial, however, she proceeded to a dock identification of the author, whom she allegedly knew only by sight and by his nickname of "Brown Man"; she also identified the two other assailants and testified that she saw the author shoot the deceased. According to the evidence of a police inspector, the author was duly cautioned upon his arrest and made a statement in which he admitted to being present at the murder scene, but that he did not know that his friends intended to kill Mr. Steele. No written statement was taken from the author.

2.3 The author denies any involvement in the crime and claims that on the night of the murder he was at home watching television with his wife and daughter. The latter did not testify on his behalf during the trial. He alleges that he did not know his co-defendant prior to the trial date, and that he had never made any statement concerning the murder upon his arrest.

2.4 The author further states that the Court of Appeal of Jamaica dismissed his appeal on 10 January 1988. In this context, he indicates that he sought to adduce fresh evidence, which included depositions of two witnesses who had been called to testify at the trial, in order to show inconsistencies in the evidence concerning the identification parade. The Court of Appeal, however, did not admit this new evidence. He further notes that he appealed on the ground that the trial judge erred in his summing-up to the jury in relation to Ms. Proverbs' identification evidence, as well as in respect to the evidence of the arresting officers.

2.5 After the dismissal of his appeal, the author filed a petition for special leave to appeal to the Judicial Committee of the Privy Council on the following grounds: (a) that the Court of Appeal erred in failing to consider whether the dock identification should have been allowed; (b) that it erred in assuming that the uncertainty of the author's identification by Ms. Proverbs was irrelevant; and (c) that it wrongly evaluated the evidence tendered by another prosecution witness as to why he did not attend the identification parade. On 19 December 1988, the Privy Council dismissed the petition.

2.6 With respect to the requirement of exhaustion of domestic remedies, the author submits that, since the Judicial Committee of the Privy Council dismissed his petition, he has exhausted available domestic remedies within the meaning of article 5, paragraph 2 (b), of the Optional Protocol.

The Complaint

3. The author claims that he was denied a fair trial and that several irregularities occurred during

its course. In particular, he alleges that the trial judge failed to exercise his discretion to prohibit a dock identification by witnesses who had not previously identified the author; that the judge failed to direct the jury on the issue whether the light at the identification parade was sufficient to allow Ms. Proverbs to identify him and that the judge failed to warn the jury on the dangers of dock identifications, the significance of the police's failure to hold another identification parade in better lighting conditions and the danger of relying upon evidence of an alleged confession which was not taken down in writing. He finally maintains that his right under article 14, paragraph 3 (e), was violated since he was not able to cross-examine one prosecution witness, Detective McNab, who had left the police and emigrated, but whose statements were admitted pursuant to section 34 of the Justices of the Peace Act (Chap. 188, 1886 and 1988). The statements are said to have been highly prejudicial to the author's case, in that they purportedly contained identification evidence and evidence that conflicted with the ballistic evidence.

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

4.1 The State party contends that the communication is inadmissible, notwithstanding the fact that the Judicial Committee of the Privy Council dismissed the author's petition for special leave to appeal. It notes that the Privy Council's decision relates to the author's criminal appeal and that he must pursue constitutional remedies still available to him, given that the right to a fair trial guaranteed by article 14 of the Covenant is co-terminous with the right protected by Section 20 of the Jamaican Constitution. The State party continues: "... Under Section 25 of the Constitution, anyone who alleges that a fundamental right has been, is being or is likely to be infringed in relation to him may apply to the Supreme Constitutional Court for redress. An appeal lies from the decision of the Supreme Court to the Court of Appeal and from the decision of the Court of Appeal to the Judicial Committee of the Privy Council".

4.2 The State party further challenges the Committee's competence to examine the communication, in that the issues raised in the case relate to facts and evidence. In this connection, it refers to the Committee's jurisprudence, which holds that "while article 14 guarantees a 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". And that "the review by the Committee of specific instructions to the jury by the judge in a trial by jury is beyond the scope of application of article 14, unless it can be ascertained that the instructions to the jury were clearly arbitrary or amounted to a denial of justice." ^{1/}

4.3 Commenting on the State party's submission, author's counsel points out that the author lacks the financial means to pursue a constitutional motion, and that no legal aid is made available to him for this purpose. Thus, it is submitted that the remedy invoked by the State party is not a remedy which authors are required to exhaust before addressing a communication to the Committee. In this context, reference is made to the Committee's constant jurisprudence under which exhaustion of domestic remedies can only be required to the extent that those remedies are both effective and available within the meaning of article 5, paragraph 2 (b), of the Optional Protocol.

The 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 The Committee has ascertained, as it is required to do under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

5.3 The Committee has taken note of the State party's contention that the communication is inadmissible because of the author's failure to pursue constitutional remedies available to him under the Jamaican Constitution. In this connection, the Committee observes that Section 20, paragraph 1, of the Jamaican Constitution guarantees the right to a fair trial, while Section 25 provides for the implementation of the provisions guaranteeing the rights of the individual. Section 25, paragraph 2, stipulates that the Supreme (Constitutional) Court may "hear and determine" applications with regard to the alleged non-observance of constitutional guarantees, but limits its jurisdiction to such cases where the applicants have not already been afforded "adequate means of redress for the contraventions alleged" (Section 25, paragraph 2, *in fine*). The Committee notes that the State party has been requested to clarify, in a number of interlocutory decisions concerning similar communications, whether the Supreme (Constitutional) Court has had the opportunity to determine whether an appeal to the Court of Appeal and the Judicial Committee of the Privy Council constitute "adequate means of redress" within the meaning of Section 25, paragraph 2, of the Jamaican Constitution. The State party has replied that the Supreme Court has so far not had said opportunity. In the circumstance, the Committee concludes that recourse to the Constitutional Court under Section 25 of the Jamaican Constitution is not a remedy available to the author within the meaning of article 5, paragraph 2 (b), of the Optional Protocol.

5.4 The Committee notes that part of the author's allegations relates to the issue of the adequacy of the judge's instructions to the jury. The Committee reiterates that the review by it of specific instructions to the jury in a trial is beyond the scope of application of article 14, 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 judge's instructions suffered from such defects. This aspect of the author's communication is therefore inadmissible as incompatible with the provisions of the Covenant, pursuant to article 3 of the Optional Protocol.

5.5 As to the author's contention that he was unable to cross-examine one prosecution witness whose evidence allegedly was highly prejudicial to his case, the Committee notes that this claim may raise issues under article 14, paragraph 3 (e), of the Covenant. It should, accordingly, be considered on the merits.

6. The Human Rights Committee therefore decides:

(a) That the communication is admissible in so far as it may raise issues under article 14, paragraph 3 (e), of the Covenant;

(b) That, in accordance with article 4, paragraph 2, of the Optional Protocol, the State party shall be requested to submit to the Committee, within six months of the date of the transmittal to it of this decision, written explanations or statements clarifying the matter and the measures, if any, that may have been taken by it. The State party is requested, in particular, to provide the Committee

with a copy of the Justice of the Peace Act;

(c) That, with reference to its decision under rule 86 transmitted on 12 December 1989, the State party shall again be requested not to carry out the death sentence against the author while his communication is under consideration by the Committee. The Committee observes in this connection that its request does not imply a determination on the merits of the communication;

(d) That any explanations or statements received from the State party shall be communicated by the Secretary-General under rule 93, paragraph 3, of the Committee's rules of procedure, to the author and his counsel, with the request that any comments that they may wish to submit thereon should reach the Human Rights Committee in care of the Centre for Human Rights, United Nations Office at Geneva, within six weeks of the date of the transmittal;

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

*/ All persons handling this document are requested to respect and observe its confidential nature.

1/ Communication No. 329/1988 (D.F. v. Jamaica), inadmissibility decision of 26 March 1990, para. 5.2. See also Communication No. 369/1989 (G.S. v. Jamaica), inadmissibility decision of 8 November 1989, paragraph 3.2.