

## HUMAN RIGHTS COMMITTEE

### Compass v. Jamaica

Communication No. 375/1989

19 October 1993

CCPR/C/49/D/375/1989\*

### VIEWS

*Submitted by: Glenmore Compass [represented by counsel]*

*Alleged victim: The author*

*State party: Jamaica*

*Date of communication: 22 August 1989 (initial submission)*

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

Meeting on 19 October 1993,

Having concluded its consideration of communication No. 375/1989, submitted to the Human Rights Committee by Mr. Glenmore Compass under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication, his counsel and the State party,

Adopts its

### **Views under article 5, paragraph 4, of the Optional Protocol**

The facts as submitted by the author:

1. The author of the communication 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.

2.1 On 4 September 1984, the author was charged, together with one Vernon Pinnock, with the murder, on 25 July 1984, of one Sidney Steele. On 17 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 men, Vernon Pinnock and one Barrington Shaw, on their way home on the night of 25 July 1984; during the assault, Mr. Steele was shot. It is further stated that, later that same night, the three men were stopped by two police officers for a routine control; a fight ensued during which the officers arrested Mr. Shaw and recovered a gun which, according to forensic tests, proved to be the murder weapon.

2.3 The author was arrested one month later, after having been recognized by one of the police officers who had been present at the incident of 25 July 1984. He was placed on an identification parade; Ms. Proverbs, the prosecution's main witness, purportedly was unable to identify the author properly, owing to insufficient light in the room. During the trial, however, she made 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 denied knowing that his friends intended to kill Mr. Steele. No written statement was taken from the author.

2.4 The author denies any involvement in the crime. During the trial, he made an unsworn statement from the dock, stating that he was at home with his wife and daughter, watching television, on the night of the murder. He contends that he did not know his co-defendant prior to the trial, and that he never made any statement concerning the murder upon his arrest.

2.5 The author further states that the Court of Appeal of Jamaica dismissed his appeal on 10 February 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 the evidence. The author 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 with respect to the evidence of the arresting officers.

2.6 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 identifications 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.

2.7 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:

3.1 The author claims that he was denied a fair trial and that several irregularities occurred in 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.

3.2 The author further contends that his right under article 14, paragraph 3(e), was violated since he was not able to cross-examine a prosecution witness, Detective McNab, who at the time of the trial had left the police and emigrated, but whose statements were admitted pursuant to section 34 of the Justices of the Peace Act. 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. In this context, counsel submits that the examination of witnesses in jury trials is fundamental to the notion of fair trial. He contends that the fact that an accused may have had an opportunity to examine a witness against him at a preliminary hearing should not detract from his right to examine that witness before a jury. In this connection, counsel submits that evidence which comes to light after the preliminary hearing, may throw up questions which an accused will wish to put to witnesses against him.

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

4.1 The State party contended that, in spite of the dismissal of the author's petition by the Judicial Committee of the Privy Council, the communication was inadmissible for failure to exhaust domestic remedies, since the author had not pursued the remedies available to him under the Jamaican Constitution. In this context, the State party submitted that article 14 of the Covenant invoked by the author is coterminous with the right protected by section 20 of the Jamaican Constitution, which guarantees to everyone the right to due process of law. Under article 25 of the Constitution, if anyone alleges that any of his fundamental rights has been, is being or is likely to be contravened in relation to him, he may, without prejudice to any other action with respect to the same matter which is lawfully available, apply to the Supreme Court for redress.

4.2 The State party further challenged the Committee's competence to examine the communication, in that the issues raised in the case relate to the evaluation of facts and

evidence. In this connection, it referred 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."<sup>1</sup>

5. In his comments on the State party's submission, counsel challenged the State party's contention that the author might still pursue constitutional remedies and submitted that these remedies were not available to the author owing to lack of financial means and unavailability of legal aid for the purpose. In this context, reference was 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 Committee's admissibility considerations and decision:

6.1 During its 40th session, in October 1990, the Committee considered the admissibility of the communication. It observed that recourse to the Constitutional Court under section 25 of the Jamaican Constitution was not a remedy available to the author within the meaning of article 5, paragraph 2(b), of the Optional Protocol.

6.2 In respect of the author's allegations relating to the issue of the adequacy of the judge's instructions to the jury, the Committee considered that the review by the Committee 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 were clearly arbitrary or amounted to a denial of justice. Since the Committee had no evidence that the judge's instructions suffered from such defects, it found that this part of the communication was inadmissible under article 3 of the Optional Protocol.

6.3 The Human Rights Committee, therefore, on 18 October 1990, declared the communication admissible in so far as it might raise issues under article 14, paragraph 3(e), of the Covenant, in respect of the claim that the author was unable to cross-examine a prosecution witness whose evidence allegedly was highly prejudicial to his case.

#### Reconsideration of admissibility issues:

7. The State party, by submission of 12 June 1991, maintains that the communication is inadmissible because of the author's failure to seek constitutional redress. It contends that the Committee's reasoning in the admissibility decision reflects a misunderstanding of the relevant Jamaican law; it claims that constitutional redress is still available to the author, since the breach of the right to fair trial was not the subject of judicial determination by the Privy Council. The State party observes that there are judicial precedents which illustrate that recourse to criminal law appellate remedies does not preclude the Supreme (Constitutional) Court's jurisdiction to grant constitutional redress.

8.1 By submission of 9 August 1991, counsel contests that the constitutional motion is a remedy available to the author within the meaning of article 5, paragraph 2(b), of the Optional Protocol. He argues that the issue of fair trial was actually the subject matter of the appeal to the Privy Council, and concludes that the Supreme (Constitutional) Court is therefore barred from exercising its powers under section 25 of the Constitution.

8.2 Counsel further argues that, even if the constitutional motion were deemed adequate and effective, it is not a remedy available to the author owing to his lack of financial means and the unavailability of legal aid for the purpose. Counsel emphasizes that the existence of constitutional redress is not denied, but that, in the circumstances of the present case, the provision of legal aid would be necessary to enable an effective pursuit of the constitutional remedy.

9.1 The Committee has taken note of the State party's argument that constitutional remedies are still available to the author. It recalls that the Supreme Court of Jamaica has, in recent cases, allowed applications for constitutional redress in respect of breaches of fundamental rights, after the criminal appeals in these cases had been dismissed.

9.2 However, the Committee also recalls that by submission of 10 October 1991, concerning another case<sup>2</sup>, the State party indicated that legal aid is not provided for constitutional motions, and that it has no obligation under article 14, paragraph 3(d), of the Covenant to make legal aid available in respect of such motions, as they do not involve the determination of a criminal charge. In the view of the Committee, this supports the finding, made in the decision of admissibility, that a constitutional motion is not an available remedy for an author who has no means of his own to pursue it. In this context, the Committee observes that the author does not claim that he is absolved from pursuing constitutional remedies because of his indigence; rather it is the State party's unwillingness or inability to provide legal aid for the purpose that renders the remedy one that need not be pursued for purposes of the Optional Protocol.

9.3 Accordingly, the Committee considers that there is no reason to revise the decision on admissibility of 19 October 1990.

#### Examination of the merits:

10.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as provided in article 5, paragraph 1, of the Optional Protocol.

10.2 The Committee notes with concern that the State party in its submissions has confined itself to issues of admissibility. Article 4, paragraph 2, of the Optional Protocol enjoins a State party to investigate in good faith all the allegations made against it, and to make available to the Committee all the information at its disposal.

10.3 In respect of the author's claim that article 14, paragraph 3, was violated in his case, as he was not given the opportunity to cross-examine one of the main prosecution witnesses,

Detective McNab, the Committee notes that it is undisputed that the witness was unable to give evidence during the trial, because he had left Jamaica. The Committee notes, however, that it appears from the trial transcript that the author was present during the preliminary hearing, when McNab gave his statement under oath, and that counsel to the author cross-examined the witness on that occasion. The statement made by the witness, as well as the answers in cross-examination, were put before the Court during the trial as evidence; no objection was taken by the author or his counsel, either at the trial or on appeal, to the introduction of this evidence. The Committee observes that article 14, paragraph 3(e), protects the equality of arms between the prosecution and the defence in the examination of witnesses, but does not prevent the defence from waiving or not exercising its entitlement to cross-examine a prosecution witness during the trial hearing. In any event, the Committee notes that Detective McNab was examined by the defence under the same conditions as by the prosecution at the preliminary hearing. In the circumstances of the case, the Committee concludes that the facts before it do not disclose a violation of article 14, paragraph 3(e).

11. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it do not disclose a violation of any of the provisions of the International Covenant on Civil and Political Rights.

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

#### Footnotes

\*/ 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, para. 3.2.

2/ Communication No. 283/1988 ( Aston Little v. Jamaica ), Views adopted on 1 November 1991.