

## HUMAN RIGHTS COMMITTEE

### **D. Thomas v. Jamaica**

**Communication N° 800/1998**

**8 April 1999**

**CCPR/C/65/D/800/1998\***

### **VIEWS**

*Submitted by: Damian Thomas*

*Alleged victim: The author*

*State party: Jamaica*

*Date of communication: 16 August 1997 (initial submission)*

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

Meeting on 8 April 1999,

Having concluded its consideration of communication No.800/1998 submitted to the Human Rights Committee by Damian Thomas, 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 and the State party,

Adopts the following:

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

1. The author of the communication is Damian Thomas, a Jamaican minor (16 years old at the time of submission of the communication), currently at St. Catherine's District Prison, Jamaica. The author was born on 21 November 1980. No articles of the Covenant are invoked, the communication appears to raise issues under articles 7, 10, and 14. He is not represented by counsel.

The facts as submitted by the author:

2.1 The author was arrested on 9 May 1995 and convicted on 3 May 1996. On 5 May 1996 he was placed in the General Penitentiary, Kingston.<sup>1</sup>

2.2 By a further submission the author informed the Committee that he was 15 years old when he was arrested. He was brought before the Gun Court for two murders where only one of those allegations was sent to trial. He was tried before the Home Circuit Court, convicted and sentenced to be detained during her Majesty's pleasure. Information in the communication is not sufficiently detailed to enable the Committee, at this stage, to consider any issue under article 14.

The Complaint:

3. While at the General Penitentiary, the author wrote to the Commissioner for Prisons requesting that he be removed from the adult prison. It appears that someone within the prison system, one Mr Dawkins, informed him that he was to be moved to a juvenile institution. However, when the author was moved it was to St. Catherine District Prison, once again among adults. The author claims that he is being held in a prison with adult inmates in violation of the Covenant.

The State party's submission and the author's comments there on:

4.1 By submission dated 23 March 1998, the State party contends that the circumstances under which the author is being held are not clear. It requests that the author provide information on the offence for which he was convicted, as well as any other relevant information, e.g how old was he at the time of his sentence and whether the judicial authorities were made aware of his age.

4.2 It undertakes to investigate the circumstances of the author's detention and would advise the Committee as soon as the results were available.

5.1 The author in a letter dated 11 May 1998, informed the Committee that he was tried at the Gun Court for two murders, that he lost his appeal, being sentenced to detention during her Majesty's pleasure. He informs the Committee that he was born on 21 November 1980, and was only 15 at the time of his arrest.

5.2 He further submits that since he has been in detention both at the General Penitentiary and at St. Catherine District Prison he has been systematically beaten by warders. He refers to several incidents; one on 8 November 1996, where he was kicked by several warders; Mr. Norris, Mr Dwight and Sergeant Brown. On 20 March 1997 a warden called Mr. Waugh boxed him round the ears and threatened him. On 16 December 1997 he was thumped on the back and beaten by a Mr. Campbell and a corporal Ferguson while taking him to the overseer's office. They told the overseer that they were taking him to the hospital allegedly because he had lice. He was never taken to the hospital but rather he was beaten and kicked about by the wardens and a warden called Mr. Mcdermatt cut off his Rastafarian hair. On

20 July 1997, he was beaten by several warders including a Mr Gardener allegedly because the author was from the same area where the warden's aunt had been killed.

5.3 These new allegations were transmitted to the State party with a request that any comments be submitted to the Committee before 30 January 1999, since the case would be put before the Committee at its 65th session. To date, 25 March 1999, no response has been received from the State party.

#### Issues and proceedings before the Committee:

6.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 The Committee has ascertained as required 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.

6.3 With regard to the author's alleged ill-treatment at the General Penitentiary and St. Catherine District Prison, the Committee notes that the author has made precise allegations that he was brutalized by several wardens on 8 November 1996; 20 March 1997; 16 December 1997 and 20 July 1997. The Committee also notes that the author has complained to the prison authorities. His claims have not been refuted by the State party, which has promised to investigate these, but has failed to forward to the Committee its findings, eleven months after promising to do so, in spite of a reminder sent on 30 October 1998. The Committee recalls that a State party is under the obligation to investigate seriously allegations of violations of the Covenant made under the Optional Protocol. However, in the present case the Committee notes that these allegations were transmitted to the State party after Jamaica's denunciation of the Optional Protocol came into force on 23 January 1998. Consequently, the Committee considers that these claims are inadmissible under article 1 of the Optional Protocol.

6.4 With respect to the remaining allegations the Committee observes that the State party has not raised objections to the admissibility of the communication. It further observes that, given the name, date of birth, date of arrest and of conviction and the location in 1998 in St. Catherine's District Prison, all in relation to the author, the State party should have no difficulty in identifying the details relevant to this matter. Accordingly the Committee decides that the remaining allegations are admissible and proceeds, without further delay, to an examination of the substance of the author claims, in the light of all the information made available to it by the parties, as required by article 5, paragraph 1 of the Optional Protocol.

6.5 With respect to the non segregation of the author from adult prisoners both at the General Penitentiary and at St. Catherine's District Prison, the Committee once again regrets the State party's lack of cooperation in this matter. The Committee considers that it is incumbent upon the State party where a complaint such as this is submitted to it in respect of a serving prisoner, to verify whether that prisoner is, or has at any relevant stage, been a minor. The

Committee notes from the information before it and not refuted by the State party, that the author was born in November 1980, making him seventeen years old when his communication was submitted to the Committee and 15 when he was sentenced. The Committee considers that the State party has failed to discharge its obligations under the Covenant in respect of Damian Thomas, in so far as he has been kept among adult prisoners when still a minor, and consequently, finds that there has been a violation of article 10 paragraphs 2 and 3.

6.6 The Committee further observes that the facts as described in the present case, also constitute a violation of article 24 of the Covenant, since the State party has failed to provide to Damian Thomas such measures of protection as are required by his status as a minor.

7. 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 disclose a violation of articles 10, paragraphs 2 and 3, and 24 of the Covenant.

8. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide Mr. Thomas with an effective remedy, entailing his placement in a juvenile institution, separated from adult prisoners if Jamaican legislation authorises it, and including compensation his non segregation from adult prisoners while a minor. The State party is under an obligation to ensure that similar violations do not occur in the future.

9. On becoming a State party to the Optional Protocol, Jamaica recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not. This case was submitted for consideration before Jamaica's denunciation of the Optional Protocol became effective on 23 January 1998; in accordance with article 12(2) of the Optional Protocol it is subject to the continued application of the Optional Protocol. Pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established. The Committee wishes to receive from the State party, within 90 days, information about the measures taken to give effect to the Committee's Views.

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\*/ The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra N. Bhagwati, Mr. Thomas Buergenthal, Ms. Christine Chanet, Lord Colville, Ms. Elizabeth Evatt, Mr. Eckart Klein, Mr. David Kretzmer, Mr. Rajsoomer Lallah, Ms. Cecilia Medina Quiroga, Mr. Fausto Pocar, Mr. Martin Scheinin, Mr. Hipólito Solari Yrigoyen, Mr. Roman Wieruszewski and Mr. Maxwell Yalden.

1/ A letter from several inmates at the General penitentiary, has been received requesting that the Committee act on behalf of the author.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

## Appendix

### Individual opinion by member Hipólito Solari Yrigoyen (dissenting)\*\*

The following is the Committee member's version of how paragraph 6.4 of the decision should have read.

6.4. The author informed the Committee in a letter dated 11 May 1998 that he had been beaten on several occasions by warders in St. Catherine's District Prison, where he is detained. He indicated that those incidents occurred on 8 November 1996, 20 March 1997 and 20 July 1997. When the first occurred, the author was 16 years old, and when the other two occurred, he was 17; the fact that he was a minor imprisoned with adults is also an aggravating circumstance. Paragraph 5.2 contains a description of the events and identifies the responsible individuals. The Committee notes that the author's complaint was very specific and that he protested to the prison authorities. On 30 October 1998, the Committee informed the State party of the author's complaint that he had been beaten and mistreated. It promised to investigate, but as of 8 April 1999, when the Committee considered the communication in question, it had not replied in accordance with its obligations under article 4, paragraph 2 of the Optional Protocol.

Although the State party denounced the Optional Protocol, a measure which took effect on 23 January 1998, the events described in the author's complaint occurred before that date and are handled in the same manner as the original complaint. The terms of the Optional Protocol therefore continue to apply to the communication, as provided in article 12, paragraph 2 thereof. Nor has the State party fulfilled its obligation to inform the Committee of whether the prison regime and the treatment suffered by the person deprived of his liberty comply with the terms of article 10 of the Covenant. For all these reasons, the Committee considers that the treatment suffered by the author and the beatings he received in St. Catherine's District Prison constitute violations of article 10, paragraph 1 and article 7 of the Covenant.

[Done in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]