

HUMAN RIGHTS COMMITTEE

Yasseen and Thomas v. Republic of Guyana

Communication No. 676/1996

11 July 1997

CCPR/C/60/D/676/1996 *

ADMISSIBILITY

Submitted by: Abdool Saleem Yasseen and Noel Thomas (represented by Interights, London)

Victims: The author

State party: Republic of Guyana

Date of communication: 2 February 1996 (initial submission)

Documentation references: List - CCPR/C/CL/R.63/Add.1

Prior decisions - Special Rapporteur's combined rule 86/rule 91 decision, transmitted to the State party on 7 February 1996 (not issued in document form)

Date of present decision: 11 July 1997

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.

Decision on admissibility

1. The authors of the communication are Abdool Saleem Yasseen and Noel Thomas, two Guyanese citizens awaiting execution at the Centre Prisons, Georgetown, Guyana. They claim to be victims of violations by Guyana of articles 6, paragraphs 1 and 4; 7; 10, paragraphs 1 and 2; and 14, paragraphs 1 and 3(a) to (e) and (g), of the International Covenant on Civil and Political Rights. They are represented by Interights, a London-based organization.

The facts as submitted by the authors

2.1 On 24 March 1987, the authors were charged with the murder of one Kaleem Yasseen, half-brother of one of the authors. They were found guilty as charged in the Essequibe High Court and

sentenced to death on 2 June 1988. On 25 October 1990, the Court of Appeal ordered a re-trial. The re-trial was aborted and a third trial was held in September 1992. The authors were once again convicted as charged and sentenced to death on 6 December 1992. Their second appeal against conviction and sentence was dismissed in June 1994. On 5 July 1994, the authors applied to the President to invoke the prerogative of mercy. On 1 February 1996 a warrant of execution was read to them. A stay of execution was granted, pending their appeal to the High Court.

2.2 On 20 March 1987, Saleem Yasseen gave an oral statement to the police at Suddie police station. He claimed to have been out of town during the killing and had returned upon hearing about it. On 21 March 1987, Noel Thomas gave an oral statement to the police, the contents of which are unknown. He was placed in a police lock-up without food, water or toilet facilities, and was not permitted visitors.

2.3 On 24 March Yasseen was arrested. Both authors were then brought before a magistrate and placed on remand at the Central Prisons: they were not separated from convicted prisoners. Prison conditions were appalling. The authors were placed in a cell measuring 80 feet by 30 feet with about 150 other prisoners. There was only one electric light and one functioning toilet. Prisoners were only allowed to use the single bathroom once a day. The drainage was defective, forcing the authors to bath in six inches of dirty water. They had to sleep on the floor, due to lack of mattresses. No recreation facilities were available. They were only allowed one visit a month from relatives.

2.4 At the preliminary inquiry, the police produced a written statement, alleged to be a confession made by Noel Thomas. Mr. Thomas asserts that the confession was illegally obtained; he was physically abused by the police, who used pliers on his genitals. The officer who had received his confession, Superintendent Marks, did not testify during the preliminary hearing. Superintendent Barren produced his pocket book, in which he claimed to have recorded an oral confession by Yasseen. This pocket book, along with Superintendent Marks', and the Suddie station diary for the days between 21 to 26 March 1987 have since disappeared. The station diary is kept in a store room under lock and key. All three documents were produced at the first trial but disappeared shortly thereafter.

2.5 On 26 July 1987, the authors were taken to Suddie Magistrate Court, by public transport. The journey took at least eight hours and they were handcuffed in full view of the public. This was repeated some 10 times during the preliminary enquiry, which lasted from 27 July 1987 to 29 February 1988.

2.6 The first trial took place in May 1988. During the trial the authors were kept in solitary confinement at the Suddie Police station, in an 8 by 14 feet cell, with no toilet, mattress or light and one single air vent. The authors were returned to Central Prison upon conviction and placed in solitary confinement on "death row", where they remained during the period of their appeal. They were kept in cells measuring seven by seven feet and eight feet high, with no lights or toilet nor washing or recreation facilities.

2.7 In March 1990, the authors appealed. The hearings lasted some three months; the decision was reserved until 25 October 1990. The appeal was allowed on that date and a re-trial ordered, because of improper selection of the jury and the fact that Superintendent Marks was permitted to

testify at the trial and at the voir dire, although he had not appeared at the preliminary inquiry (despite having been available). In November 1990, Yasseen was placed in a cell with two other convicted men. In January 1991 when he was diagnosed as being mentally unsound, he was placed in a cell by himself, until April 1991, when he was transferred to the infirmary. Yasseen never saw a doctor, and his request to see the prison director remained unheeded.

2.8 In May-June of 1991 the re-trial was held. It was aborted after two weeks, on grounds of jury tampering. During the trial, the authors were held at the Suddie police station, under the conditions already described. After the trial, they were returned to Central Prison. Mr. Yasseen was placed in the infirmary until September 1992, because of a broken leg, the result of an injury in prison. In the infirmary he was placed in a semi-dormitory called “itchy park”, together with eight people with contagious diseases.

2.9 The third trial began in October 1992. On 6 December 1992, the authors were found guilty as charged and sentenced to death. Mr. Yasseen’s lawyer was unable to attend the first four days of the trial and accordingly requested an extension. This was denied to him, effectively leaving the author with no legal representation.

2.10 The prosecution’s case was based on the authors’ alleged confession statements. One witness who had been arrested on 25 March 1987 and had made a statement to the police concerning the case was called to testify, but failed to do so; this witness had appeared at the first trial. The station diary and police notebooks, which were produced for the first trial, were not produced in the second re-trial. The authors believe these would have shown that Mr. Yasseen had not been under arrest at the time of his alleged oral confession. Two medically trained personnel from Central Prison testified that Mr. Thomas had been physically abused in police custody. After the trial, the authors learned that the jury foreman was the deceased wife’s uncle. They were returned to Central Prison and kept on death row under the conditions already described. The crutches Mr. Yasseen used for his broken leg were taken away from him, thus forcing him to crawl.

2.11 On Thursday 1 February 1996 at 3:00 p.m., warrants were read to the authors for their execution at 8:00 a.m. on Monday 5 February 1996. The normal practice is for warrants to be read on a Thursday for the execution to take place the following Tuesday. The authors’ families were informed of the execution through an anonymous telephone call at 10:00 p.m. on Thursday 1 February.

2.12 On Saturday 3 February 1996, an application for a stay of execution was heard, and a Conservatory order was requested to allow a hearing to take place. The Conservatory order was denied, but an appeal against this judgement to the full Court of Appeal, was allowed. A seven day stay of execution was granted. On 7 February, the authors were informed that the Court of Appeal’s hearing on the merits of their case was scheduled for 8 February.

2.13 Counsel notes that no recourse to the Privy Council is permitted in Guyana; therefore, the authors are said to have exhausted domestic remedies. They assert that the litispence of the Conservatory motion should not be held to mean that domestic remedies have not been exhausted, for two reasons. Firstly, because the authors consider it highly unlikely that the motion will succeed. Secondly, since, given the nature of the situation, the authors will be pursuing all legal procedures

until the very last minute, they cannot be expected to wait until their final claim has been heard before petitioning the Human Rights Committee; this would require them to wait until a moment dangerously close to their execution before invoking their rights under the International Covenant on Civil and Political Rights, or force them to refrain from taking all possible courses of action in the domestic courts.

The complaint

3.1 Counsel submits that the authors were denied the right to a fair trial, in violation of article 14 of the Covenant. It is alleged that the authors were convicted on scant evidence, and while recognizing that the Human Rights Committee does not normally evaluate facts and evidence, it is submitted that in the instant case, the evidence was so weak that the execution of a death sentence on the basis of such weak evidence would be tantamount to a gross miscarriage of justice. Counsel notes that the authors were convicted on the basis of their own alleged confessions, which in Mr. Thomas' case was extracted from him by physical force and, in Mr. Yasseen's case, was an oral confession which he denies ever having made. Furthermore, the authors submit that they were denied a trial by an impartial tribunal, because it was later discovered that the foreman of the jury during the last trial, was the uncle of the deceased's wife.

3.2 The authors claim a violation of article 14, paragraph 3(c), in that they were not tried without undue delay. In this respect, it is submitted that the authors have been in detention for over ten years since they were charged with murder in March 1987.

3.3 Counsel submits that the authors' right to examine witnesses and call evidence was not guaranteed because one witness, Hiram Narine, did not appear, in spite of numerous summons and because the missing police notebooks and diary could have contained exculpatory evidence; this is said to be a violation of article 14, paragraph 3 (e), of the Covenant.

3.4 The authors claim a violation of article 14, paragraph 3 (g), in that they were forced to confess guilt. In Mr. Thomas' case, physical force was used against him to obtain his confession; in Mr. Yasseen's case, it was wrongly argued that he had made an oral confession.

3.5 Counsel submits that Mr. Thomas was not promptly informed of the charges against him, in violation of article 14, paragraph 3 (a), since he was arrested on 20 March 1987, that is four days after his arrest. With respect to Mr. Yasseen, it is submitted that he has been the victim of a violation of article 14, paragraph 3(b) and (d), as his lawyer was unable to attend the first four days of the last trial, despite an adjournment having been requested, thus leaving the author without legal representation.

3.6 The authors claim a violation of articles 7 and 10, paragraph 1, on the grounds that Mr. Thomas was subjected to physical abuse in custody, resulting in a false confession. They were taken on at least 11 separate journeys, lasting eight hours each, on public transport to attend hearings, during which they were handcuffed and fully in the public's view, thereby causing unnecessary humiliation. The conditions of their detention were poor and at various times, they were denied food, medical care and basic hygiene, visits from family and recreational facilities; Mr. Yasseen was denied access to a doctor though he had been pronounced mentally unfit and was deprived of his

crutches, forcing him to crawl. Furthermore, it is alleged that the authors have been subjected to great mental anguish, due to the nine years they have lived in terrible prison conditions, during pre-trial detention and during the periods between the various trials. All this has been compounded by the lack of response to their request for mercy; they only learned of the presidential refusal to exercise the prerogative of mercy when their death warrants were read to them. Their families were not officially informed of the date of execution but received an anonymous telephone call.

3.7 Counsel submits that the authors have been the victims of a violation of article 10, paragraph 2, because on many occasions they were held together with convicted prisoners, with no exceptional circumstances justifying this situation.

3.8 The lack of any official response to the authors' request for mercy, and the failure of the authorities to follow the normal procedure in the issuance of an execution date (the authors were given one day less in which to pursue legal redress), is said to constitute a violation of article 6, paragraph 4, of the Covenant.

State party's observations and authors' comments

4.1 By submission of 9 February 1996, the State party argues that domestic remedies available to the authors have not been exhausted, as the authors' motions before the High Court may be appealed to the Court of Appeal, the State party's final court of appeal.

4.2 By further note of 11 April 1996, the State party requests an extension of the deadline for submission of information and observations in respect of the admissibility of the communication. No further information has been received from the State party.

5. By note of 28 February 1997, counsel informs the Committee that the Court of Appeal had dismissed in application of Messrs. Yasseen and Thomas on 14 May 1996 and that it had decided to remand the case to a new sitting of the Mercy Committee. Counsel argues that all available domestic remedies had been exhausted with the dismissal of the authors' application by the Court of Appeal, and emphasizes that the procedure for granting of pardon is an extraordinary remedy resting on personal discretion in the highest executive official, which is not considered an effective remedy in the Committee's jurisprudence.

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 rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 The Committee regrets the lack of cooperation from the State party, and cannot accept the State party's argument, expressed in a note verbale dated 9 May 1997 addressed to the Committee, that the Committee has examined the present communication with "undue delay". Rather, it was the State party itself, with its request for an extension of the deadline for submission of admissibility arguments of 11 April 1996, which contributed to delays in the examination of the case.

6.3 Article 5, paragraph 2(b), of the Optional Protocol precludes the Committee from considering a communication if an author has not exhausted all available remedies. The Committee recalls that domestic remedies within the meaning of the Optional Protocol must be both available and effective. In the instant case, following the dismissal of the authors' appeal by the Court of Appeal of Guyana, the Committee considers that a further remittal of the case to the Mercy Committee is not an effective remedy which the authors must exhaust for purpose of the Optional Protocol.

6.4 The Committee considers that the authors have sufficiently substantiated, for purposes of admissibility, their claims under articles 7, 9, 10 and 14 of the Covenant. These allegations should be considered on their merits.

7. The Human Rights Committee therefore decides;

(a) that the communication is admissible;

(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 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;

(c) that any explanations or statements received from the State party shall be communicated by the Secretary-General under rule 93, paragraph 3, of the rules of procedure to the authors, with the request that any comments which they may wish to make should reach the Human Rights Committee, in care of the High Commissioner/Centre for Human Rights, United Nations Office at Geneva, within six weeks of the date of the transmittal;

(d) that this decision shall be communicated to the authors of the communication, to their counsel and to the State party.

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

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