

## HUMAN RIGHTS COMMITTEE

### Thomas v. Jamaica

Communication No 321/1988

19 October 1993

CCPR/C/49/D/321/1998

### VIEWS

*Submitted by: Maurice Thomas*

*Alleged victim: The author*

*State party: Jamaica*

*Date of communication: 10 July 1988*

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. 321/1988, submitted to the Human Rights Committee by Mr. Maurice 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 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 Maurice Thomas, a Jamaican citizen currently awaiting execution at St. Catherine District Prison. He claims to be the victim of a violation of articles 7 and 10 of the International Covenant on Civil and Political Rights by Jamaica.

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2. The author states that on the evening of 9 July 1988, a contingent of soldiers conducted a search in a block of St. Catherine Prison. At the end of their search, some of the soldiers were directed to the death row section where the author and 16 other inmates were detained. The soldiers were accompanied by several prison warders, whom the author mentions by name. Both the soldiers and the warders are said to have maltreated the inmates, including the author. In particular, the author claims that he was severely beaten with rifle butts and that he sustained injuries in his chest, his back, his left hip and his lower abdomen. Moreover, one of the soldiers wounded him in the neck with a bayonet and tore his clothes. The author adds that following the beatings he was thrown back into his cell and left without any kind of medical attention.

### The complaint and exhaustion of domestic remedies

3.1 The author claims that he is the victim of a violation of articles 7 and 10 of the Covenant.

3.2 With regard to the requirement of exhaustion of domestic remedies, the author states that he wrote to the Jamaican Minister of Justice and the Parliamentary Ombudsman. On 6 September 1988, he received a letter from the office of the former, informing him that his complaint was being investigated and that he would be contacted again at a later stage. Since then he has had no further information about the result of the investigation. The Parliamentary Ombudsman also replied to the author, that his complaint would receive "the most prompt attention possible". Notwithstanding further enquiries from the author, the Parliamentary Ombudsman has not contacted him again. The author submits that no Government official has ever visited him in prison in order to investigate the alleged incident.

3.3 The author further contends that, since he lacks the financial means to retain counsel for purposes of filing a constitutional motion to the Supreme (Constitutional) Court of Jamaica, a motion under Sections 17 and 25 of the Jamaican Constitution is not an effective remedy available to him within the meaning of article 5, paragraph 2 (b), of the Optional Protocol.

### The State party's observations

4. The State party contends that the communication is inadmissible for non-exhaustion of domestic remedies, since the author has failed to pursue constitutional remedies available to him. The State party submits that section 17 of the Jamaican Constitution guarantees protection from cruel, inhuman and degrading treatment, and that pursuant to section 25, anyone who alleges that a right protected by the Constitution has been, is being or is likely to be contravened in relation to him may apply to the Supreme (Constitutional) Court for redress.

### The Committee's decision on admissibility

5.1 At its forty-second session, the Committee considered the admissibility of the

communication. It noted that the author had submitted his case to the Inter-American Commission on Human Rights, but that the examination thereof was discontinued on 27 March 1990. The Committee found, therefore, that it was not precluded from considering the author's communication under article 5, paragraph 2 (a), of the Optional Protocol.

5.2 The Committee noted the State party's contention that the communication was inadmissible because of the author's failure to pursue the constitutional remedies available to him. It also noted the author's contention that the remedy indicated by the State party was not a remedy available to him because of his lack of financial means and the unavailability of legal aid for purposes of filing a constitutional motion to the Supreme (Constitutional) Court of Jamaica. The Committee further considered that the author had demonstrated that he had made reasonable efforts through administrative demarches to seek redress in respect of ill-treatment allegedly suffered while in detention. The Committee therefore found that the requirements of article 5, paragraph 2 (b), of the Optional Protocol had been met.

5.3 On 4 July 1991, the Committee therefore declared the communication admissible in so far as it might raise issues under articles 7 and 10 of the Covenant.

#### Review of admissibility

6. In its submission dated 16 February 1993, the State party maintains that the communication is inadmissible for non-exhaustion of domestic remedies. It submits that there exists no absolute obligation under the Covenant for a State party to provide legal aid. In this connection, the State party argues that the author's indigence cannot be attributed to the State party and cannot serve as a justification for not exhausting domestic remedies.

7. The Committee has taken note of the arguments submitted to it by the State party and reiterates that domestic remedies within the meaning of the Optional Protocol must be both available and effective. The Committee considers, that, in the absence of legal aid, a constitutional motion does not, in the circumstances of the instant case, constitute an available remedy within the meaning of article 5, paragraph 2 (b), of the Optional Protocol. There is therefore no reason to revise the Committee's earlier decision on admissibility of 4 July 1991.

#### Examination of the merits

8. The State party informs the Committee, by submission of 16 February 1993, that it has ordered investigations into the author's allegations and that it will forward the results to the Committee as soon as they are available. The Committee notes that the State party was informed about the author's allegations on 17 November 1988 and that it has not concluded its investigations some 60 months after the event complained of.

9.1 The Committee has considered the communication in the light of all information made available to it by the parties, as required under article 5, paragraph 1, of the Optional Protocol. The Committee notes that the State party has confined itself to issues of admissibility. Article 4, paragraph 2, of the Optional Protocol enjoins the State party to

investigate in good faith all the allegations made against it, and to make available to the Committee all information at its disposal. In the circumstances due weight must be given to the author's allegations, to the extent that they have been substantiated.

9.2 It remains uncontested that, on 9 July 1988, the author was assaulted by soldiers and warders, who beat him with rifle butts, as a result of which he sustained injuries in his chest, his back, his left hip and his lower abdomen, for which he did not receive medical treatment. The Committee considers that these claims have been substantiated and that the facts before the Committee amount to degrading treatment within the meaning of article 7 of the International Covenant on Civil and Political Rights and also entail a violation of article 10, paragraph 1, of the Covenant.

10. 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 7 and 10, paragraph 1, of the International Covenant on Civil and Political Rights.

11. The Committee is of the view that Mr. Maurice Thomas, a victim of a violation of articles 7 and 10 of the International Covenant on Civil and Political Rights, is entitled, under article 2, paragraph 3 (a), of the Covenant, to an effective remedy, including appropriate compensation. The State party is under an obligation to investigate the allegations made by the author with a view to instituting, as appropriate, criminal or other procedures against those found responsible and to take such other measures as may be necessary to prevent similar violations from occurring in the future.

12. The Committee would wish to receive information, within 90 days, on any relevant measures taken by the State party in respect of the Committee's views.

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

#### Notes

a/ The author's claims under articles 7 and 10 refer to the same factual background as in communication No. 320/1988 (Victor Francis v. Jamaica), views adopted on 24 March 1993 (see Official Records of the General Assembly, Forty-eighth Session, Supplement No. 40 (A/48/40), annex XII.K).