

HUMAN RIGHTS COMMITTEE

Samuel Thomas v. Jamaica

Communication No. 614/1995

17 October 1996

CCPR/C/58/D/614/1995*

ADMISSIBILITY

Submitted by: Samuel Thomas (represented by counsel)

Alleged victim: The author

State party: Jamaica

Date of communication: 5 January 1995 (initial submission)

Documentation references: Prior decisions - Special Rapporteur's rule 86/91 decision, transmitted to the State party on 23 January 1995 (not issued in document form)

Date of present decision: 17 October 1996

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 author of the communication is Samuel Thomas, a Jamaican citizen currently awaiting execution at St. Catherine District Prison, Jamaica. He claims to be a victim of violations by Jamaica of articles 6, 7, 9, 10, 14 and 17 of the International Covenant on Civil and Political Rights. He is represented by counsel. The author's death sentenced has been commuted.

The facts as submitted by the author

2.1 On 25 April 1990, the author and three co-defendants 1/ were convicted for the capital murder of one Elijah McLean, on 24 January 1989, and sentenced to death. The Court of Appeal of Jamaica dismissed their appeals on 16 March 1992. On 6 July, 1994, the Judicial Committee of the Privy Council dismissed the author's petition for special leave to appeal. With this, it is submitted, all

domestic remedies have been exhausted. Following the enactment of the Offences Against the Person (Amendment) Act 1992, Jamaica created two categories of murder: capital and non capital, consequently all persons previously convicted of murder had their conviction reviewed and reclassified under the new system. The author's offence was reconfirmed as "capital".

2.2 The case for the prosecution was that the four accused were among seven men who entered the house of the deceased in the early morning of 24 January 1989, dragged him out of his bed, took him outside into the yard, and chopped him several times with their machetes, thereby killing him.

2.3 The prosecution relied upon the evidence of three relatives of the deceased, aged eleven, fourteen and seventeen, who lived at the deceased's house. They testified that they were awakened by sounds emanating from the room where the deceased and his common law wife were sleeping. They went to the doorway and saw one of the co-defendants (Byron Young) with a flashlight in one hand and a gun in the other pointing it at the deceased. Six other men, among whom they recognized the author, all carrying machetes, were standing by the bed of the deceased, and one of the men chopped him on his forehead. All seven men then pulled the deceased off the bed and carried him outside. The deceased held onto the door and was chopped on the hand by one of the men. The witnesses further testified that, in the yard, he was chopped several times by the men, including the author, while co-defendant Young stood in their midst with his gun still in his hand. All seven men then left.

2.4 The case for the defence was based on alibi. The author made an unsworn statement from the dock, maintaining that he was not present at the locus in quo and that he had no knowledge of the murder. The issue was therefore one of identification and the defence was solely directed at the witnesses' credibility and their ability, given the lighting in the room and the yard at the time of the incident, to correctly identify the author.

2.5 At the end of the judge's summing-up, the jury retired at 2:31 p.m. and returned at 3:14 p.m. to announce that they had not arrived at a unanimous verdict. The Judge told them that he could not at that stage accept anything but a unanimous verdict, and the jury retired again at 3:16 p.m. They returned at 4:27 p.m. and the foreman again announced that they had not arrived at a unanimous verdict. The judge then stated: "I am afraid that this is not a case in which I can accept a majority verdict, this is a murder case and your verdict must be unanimous one way or the other. [...] None must be false to the oath that he has taken to return a true verdict, but in order to arrive at a collective verdict, a verdict upon which you all agree, there must necessarily be some giving and taking. There will be arguments [...] but at the same time there must be [...] certain adjustment of views. Each of you must listen to the voices of the other and don't be dogmatic about it [...]. None of you should be unwilling to listen to the argument of the other. If any of you have a strong view, or you are in a state of uncertainty, you are not obliged or entitled to sink your view and agree with the majority, but what I tell you to do is to argue out and discuss the matter together and see whether or not you can arrive at a unanimous verdict". The foreman then asked the judge a question relating to the evidence, and after having it explained, the jury retired at 4:41 p.m. They returned at 5:30 p.m. and the foreman announced that they had arrived at a unanimous verdict, finding all four accused guilty as charged.

2.6 Counsel forwards sworn affidavits from Terence Douglas and Daphne Harrison, two members

of the jury who sat throughout the course of the trial and were present at the jury's deliberations.

* In his affidavit, dated 3 May 1990, Terence Douglas testifies that: "[...] On the last day of the trial - out of the twelve jurors - only three jurors found the men guilty. Because it was getting late and the foreman was pressuring us, we just told him to do what he wants. The foreman then stood up at 6:10 p.m. and said that he found all four men guilty. [...] After the case was dismissed I went outside and started to cry because I know that the four men are innocent, although the first day of the court was the first time I was seeing them. I would like the [Jamaican] Council [for Human Rights] to get a re-trial for these men because they did not get a fair trial."

* In her affidavit, dated 12 June 1990, Daphne Harrison testifies that: "[...] On our first deliberation, nine of us had come to the decision that the quality of the evidence was so poor and conflicting, that we saw no reason why the men should not be acquitted. After the foreman had informed the court that we could not arrive at a unanimous verdict, we were further addressed by the trial judge. However, on our second deliberation the situation remained the same. On our final deliberation, the nine - eight others and myself - held steadfast to our decision as we genuinely believed that the evidence was poor. However, as it was getting late and we had all wanted to go home, and the fact that we were becoming frustrated, we all turned to the foreman and two jurors and said: "Alright, you can all do whatever you want to do, but remember, we are not a party to any guilty verdict". The foreman then remarked: "I only hope that when I get out there none of you say anything". Mrs. Harrison further states that: "I am willing to attest to this statement in any court at anytime if I am required to do so".

2.7 The author's lawyer filed the grounds of appeal on 1 May 1990. The appeal of all four co-defendants to the Court of Appeal of Jamaica was based on the trial judge's failure, in his directions to the jury, to highlight certain discrepancies in the evidence of the prosecution witnesses, his direction to the foreman and members of the jury that their verdict must be unanimous one way or the other, the effect of which was said to have cajoled the jury into the verdict of guilty, and his direction to the jury on the issue of the unsworn statements made by all four co-defendants. As stated above, the Court of Appeal dismissed the appeals on 16 March 1992.

2.8 The author's petition for special leave to appeal to the Judicial Committee of the Privy Council was based, inter alia, on the following grounds:

- that the trial judge erred in his direction to the jury by over-stressing the need for unanimity and failed to advise the jury adequately of their right and duty to disagree, thereby causing the jury to be pressured into arriving at a unanimous verdict; and
- that there was a material irregularity in the course of the trial in that although nine of the twelve jurors intended to acquit the author, the foreman wrongly and improperly announced that a unanimous verdict of guilty had been reached against the author.

2.9 It is stated that the grounds concerning the material irregularities during the course of the jury's deliberations and their need to reach a unanimous verdict were raised before the Privy Council.

The complaint

3.1 Counsel points out that, since his conviction on 25 April 1990, the author has been held on death row at St. Catherine District Prison. He submits that to execute the author now after this lengthy delay of over six years would be in violation of article 7 of the Covenant, in that the delay would render the execution cruel, inhuman and degrading treatment, as recognised in the cases of Pratt and Morgan v. the Attorney-General of Jamaica 2/, Catholic Commission for Justice and Peace in Zimbabwe v. the Attorney-General of Zimbabwe 3/, and Soering v. United Kingdom 4/. It is further submitted that the author has already been subjected to cruel, inhuman and degrading treatment or punishment by being held for such a substantial period of time in the appalling conditions that exist in the death row section of St. Catherine District Prison.

3.2 In respect of article 9, counsel refers to the delays in the judicial proceedings against the author, which were attributable to the State party. He points to the delay of nearly fourteen months between the date of the author's arrest (27 February 1989) and his trial (23 to 25 April 1990), a further delay of nearly twenty-three months between the date of conviction and sentence (25 April 1990) and the dismissal of his appeal (16 March 1992), and a further delay of nearly ten months between London solicitors accepting instructions to act on the author's behalf (13 May 1992), and the date of receipt of the trial transcript and written judgment of the Court of Appeal (8 March 1993), before it was possible to consider whether there were any grounds to appeal to the Judicial Committee of the Privy Council. In this context, counsel refers to his repeated requests to the Jamaican judicial authorities to provide him with the court documents in the author's case.

3.3 It is submitted that the author was held in police detention from the date of his arrest (27 February 1989) to the date of conviction and sentence (25 April 1990), and that, during this period, he was not segregated from convicted prisoners, nor was he subject to separate treatment appropriate to his status as an unconvicted person, in violation of article 10 of the Covenant. Furthermore, the author claims that, whilst in police detention, his right to receive visitors was interfered with, and he was badly beaten by police officers and threatened with further physical violence.

3.4 Counsel claims that the author's right to a fair trial was violated in that there was a material irregularity in the course of the trial because, although nine of the twelve jurors intended to acquit the author, the foreman wrongly and improperly announced that a unanimous verdict of guilty had been reached against the author. In this context, counsel refers to the above-mentioned sworn affidavits of the two jurors. The failure of the Court of Appeal to accept and rectify the errors and omissions relating to the trial judge's direction to the jury that their verdict had to be unanimous one way or the other, is said to amount to grave and substantial injustice, in violation of article 14 of the Covenant.

3.5 It is further submitted that the trial judge violated his obligations of impartiality by overstressing to the jury the need for unanimity, and by failing to advise the jury adequately as to their right and duty to disagree. Counsel reiterates that the trial judge, by stating that under no circumstances would he be prepared to accept a majority verdict (contrary to what he implied when the jury returned for the first time, when he stated that he could not accept anything but a unanimous verdict at that stage), caused the jury to be pressured into accepting the unanimous verdict as read out by the foreman.

3.6 Counsel points out that the author's lawyer filed the grounds of appeal on 1 May 1990, and that

it took the Court of Appeal twenty-two months to hear and dismiss the appeal. This is said to amount to a violation of article 14, paragraph 3 (c), of the Covenant.

3.7 Reference is made to the findings of the Committee that the imposition of a sentence of death upon the conclusion of a trial in which the provisions of the Covenant have been breached constitutes, if no further appeal against sentence is available, a violation of article 6 of the Covenant. It is submitted that no further remedies are available to the author, and that, since the final sentence of death was passed without having met the requirements of the Covenant, article 6 has been violated in his case.

3.8 Finally, as to a violation of article 17, the author claims that his correspondence is repeatedly and unlawfully interfered with by the prison warders. In this respect, he claims that letters he has sent to the prison office have not reached the correct addressee.

State party's observations and Counsel's comments thereon

4. By submission of 18 May 1995, the State party submitted comments on the merits of the communication in order to expedite the consideration of the case. However, the State party promised information regarding investigations to be carried out into several of the author's allegations, which have not been forthcoming.

5. On 28 July 1995, the author's counsel objected to the joint consideration of the admissibility and merits of the communication, as the State party had failed to address all the issues raised in the communication. However counsel forwarded comments on the State party's submission on those issues that had been addressed.

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 As to the requirement in article 5, paragraph 2 (b), of the Optional Protocol that domestic remedies be exhausted, the Committee notes that the Court of Appeal dismissed the author's appeal and that the Privy Council dismissed his application for leave to appeal. Therefore, with regard to the author's allegation that his trial was unfair because of the material irregularities in the deliberations of the jury, the way in which the verdict was reached and the trial judge's instructions to the jury telling them that they had to reach a unanimous verdict, the Committee is satisfied that domestic remedies have been exhausted for purposes of the Optional Protocol. The Committee further, considers that the allegations may raise issues under article 14 and consequently of article 6, of the Covenant which need to be examined on the merits.

6.4 With regard to the author's claim that his detention on death row amounts to a violation of articles 7 and 10 of the Covenant, the Committee refers to its prior jurisprudence that detention on death row does not per se constitute cruel, inhuman or degrading treatment in violation of articles 7 and 10 paragraph 1, of the Covenant, in the absence of some further compelling circumstances. 5/ The Committee observes that the author has not shown in what particular ways he was so treated as to raise an issue under articles 7 and 10 of the Covenant. This part of the communication is therefore inadmissible under article 2 of the Optional Protocol.

6.5 As to the claim of undue prolongation in the appeal proceedings, the Committee considers that the author and his counsel have sufficiently substantiated, for the purposes of admissibility, that the delay of twenty three months between his conviction and the dismissal of his appeal, may raise issues under article 14, paragraphs 3 (c), and 5 of the Covenant, which should be examined on the merits.

6.6 With regards to the author's allegation of ill-treatment while in pre-trial detention and his non-separation from convicted prisoners during this period, the Committee considers that the author's claim regarding his pre-trial detention may raise issues under article 10 of the Covenant, pending the outcome of the State party's investigations.

6.7 With regard to counsel's allegation that there has been an arbitrary interference with the author's mail, in violation of article 17, paragraph 1, the Committee considers that neither the author nor his counsel have sufficiently substantiated this claim for purposes of admissibility under article 2 of the Optional Protocol.

7. The Human Rights Committee therefore decides:

(a) that the communication is admissible in so far as it may raise issues under articles 6; 9, paragraph 3; 10; 14 paragraphs 1, 3 (c) and 5;

(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. In particular, the State party is requested to furnish the Committee with all possible factual information in the author's case, including information on the legal consequences for a juror who commits perjury;

(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 author, with the request that any comments which he may wish to make should reach the Human Rights Committee, in care of the Centre for Human Rights, United Nations Office in Geneva, within six weeks of the date of the transmittal;

(d) 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/ Among the co-defendants were Hixford Morrison and Byron Young, whose cases have been submitted to the Human Rights Committee, and have been registered as communication No. 611/1995 and communication No. 615/1995, respectively.

2/ Privy Council Appeal No. 10 of 1993, judgment delivered on 2 November 1993.

3/ Zimbabwe Supreme Court Judgment No. S.C. 73/93, delivered on 24 June 1993.

4/ 1989, II EHRR 439.

5/ See Committee's Views on communication No. 588/1994 (Errol Johnson v. Jamaica), adopted on 22 March 1996, paragraphs 8.2 to 8.5.