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Title/Style of Cause: Damion Thomas v. Jamaica
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Decided by: Chairman: Helio Bicudo;
First Vice-Chairman: Claudio Grossman;
Second Vice-Chairman: Juan E. Mendez;
Commissioners: Marta Altolaguirre, Robert K. Goldman, Peter Laurie, Julio Prado Vallejo
Dated: 15 June 2000
Citation: Thomas v. Jamaica, Case 12.069, Inter-Am. C.H.R., Report No. 54/00, OEA/Ser.L/V/II.111, doc. 20, rev. (2000).

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I. SUMMARY

1. On November 12, 1998, the Inter-American Commission on Human Rights (the “Commission”) received a petition from Allen & Overy, a firm of Solicitors in London, United Kingdom (the “Petitioners”) against the Government of Jamaica (the “State” or “Jamaica”). The petition was presented on behalf of Mr. Damion Thomas, who is incarcerated at St. Catherine’s District Prison, Jamaica. The petition stated that on May 3, 1996, Mr. Thomas was convicted in the Home Circuit Court II, Kingston, Jamaica, of non-capital murder and was subsequently incarcerated.

2. In their petition, the Petitioners have alleged that the State violated Mr. Thomas’ rights under Articles 5(1) and 5(2) of the American Convention on Human Rights (the “Convention”), because he has been the victim of systematic and sustained physical and mental abuse and cruelty at St. Catherine’s District Prison. The Petitioners have also requested that the Commission adopt precautionary measures pursuant to Article 29 of its Regulations, based upon an immediate threat posed to Mr. Thomas’s mental and physical health. Specifically, the Petitioners have requested that the Commission ensure Mr. Thomas’s transfer to a prison in Jamaica other than St. Catherine’s District Prison

3. As set forth in this Report, having examined the contentions of the parties on the question of admissibility, and without prejudging the merits of the matter, the Commission decided to admit the present petition, and continue with the analysis of the merits of the case. Also based upon the information provided by both parties, the Commission has declined to adopt precautionary measures at the present time.

II. PROCEEDINGS BEFORE THE COMMISSION

4. Following receipt of the Petitioners' petition, the Commission decided to open Case No. 12.069 on December 11, 1998, and transmitted the pertinent parts of the petition to the Government of Jamaica by means of a note of the same date. The Commission requested the State's observations within 90 days as established by the Commission's Regulations. Also by note dated December 11, 1998, the Commission informed the Petitioners that a case had been opened in respect of Mr. Thomas's complaints, that the pertinent parts of their petition had been transmitted to the State, and that the Petitioners would be advised of any reply that the State might make.

5. By note dated January 12, 1999, the State responded to the petition, by indicating, *inter alia*, that it would investigate the Petitioners' alleged acts of ill-treatment and advise the Commission as soon as the results of its investigations were available. The pertinent parts of the State's response were transmitted to the Petitioners on February 1, 1999, with observations requested within 30 days. By facsimile transmission dated February 19, 1999, the Petitioners advised the Commission that they had received the Commission's February 1, 1999 communication, and would submit their observations within the 30 day limit prescribed therein. The Petitioners also expressed the view that the communication filed on Mr. Thomas' behalf was not a request to open a full case on their complaint, but rather was a request for precautionary measures to protect Mr. Thomas' life and physical integrity. In this regard, the Petitioners also reiterated their request that the Commission adopt precautionary measures in respect of Mr. Thomas.

6. On February 26, 1999, the Petitioners delivered a "First Additional Communication" to the Commission respecting the State's January 12, 1999 observations. In its communication, the Petitioners requested that the Jamaican authorities complete their investigation in a timely and thorough manner, and that the results and conclusions be forwarded to the Petitioners in order that they may take appropriate steps on Mr. Thomas's behalf. In addition, the Petitioners described further incidents of violence and maltreatment alleged to have been experienced by Mr. Thomas since the submission of the Petitioners' petition on November 12, 1998. By note dated August 4, 1999, the Commission transmitted the pertinent portions of the Petitioners' communication to the State, with a response requested within 30 days.

7. The State responded to the Commission's August 4, 1999 correspondence by note dated September 9, 1999, in which it indicated that it would have the Petitioners' additional allegations of ill-treatment investigated and the results thereof submitted to the Commission. The State also indicated that the results of the investigations into the ill-treatment alleged in the Petitioners' original petition were not yet available, but that they would be provided to the Commission as soon as they were available. The Commission transmitted the pertinent parts of the State's observations to the Petitioners on September 15, 1999, with a response requested within 30 days.

8. By communication dated October 26, 1999, the Petitioners delivered to the Commission a "Second Additional Communication", in which the Petitioners addressed the issues raised in the State's September 9, 1999 observations, as well as further matters. In particular, the Petitioners described further instances of violence and abuse alleged to have been committed against Mr.

Thomas since the Petitioners' First Additional Communication of February 26, 1999. By note dated October 29, 1999, the Commission transmitted the pertinent parts of the Petitioners' Second Additional Communication to the State. In its note, the Commission also observed that the results of the investigations that the State had previously indicated would be conducted into the Petitioners' complaints had not yet been made available. Consequently, the Commission requested that the State deliver all relevant information in the case, including information as to the status and results of the State's investigation into the Petitioners' complaints, within 21 days.

9. By communication dated November 22, 1999, the State requested an extension of time to December 10, 1999 to respond to the Commission's communication of October 29, 1999. By note dated December 9, 1999, the Commission granted the State an extension of time of 30 days within which to deliver a response.

10. The State subsequently delivered observations to the Commission on December 14, 1999, in which it addressed the allegations contained in the Petitioners' October 26, 1999 communication and provided observations on the admissibility of the Petitioners' petition. By note dated January 31, 2000, the Commission transmitted the pertinent parts of the State's observations to the Petitioners, with a response requested within 30 days.

11. By communication dated March 17, 2000, the Petitioners delivered a "Third Additional Communication" to the Commission, which responded to the State's December 14, 1999 observations. In this communication, the Petitioners reiterated their request for precautionary measures under Article 29 of the Commission's Regulations. The Petitioners also made submissions respecting the admissibility of the petition, as well as the State's observations on the substantive claims raised by the Petitioners. By communication dated April 3, 2000, the Commission transmitted the pertinent parts of the Petitioners' communication to the State, with a response requested within 30 days.

12. In a communication to the Petitioners also dated April 3, 2000, the Commission indicated that, based upon the information provided by both parties in the matter, it considered that it could effectively address the concerns raised by the Petitioners through the Commission's complaint procedure and without the need to adopt precautionary measures at that time.

13. By communication dated May 2, 2000, the State responded to the Commission's communication of April 3, 2000, and argued that the Petitioners should be disallowed from applying for precautionary measures until such time as they intended to open a full case before the Commission. Alternatively, the State argued that the information provided by the Petitioners did not substantiate the occurrence or threat of irreparable damage necessary to support the adoption of precautionary measures by the Commission.

III. POSITIONS OF THE PARTIES

A. POSITION OF THE PETITIONERS

14. In relation to the admissibility of their complaint, the Petitioners claim that Mr. Thomas has exhausted his domestic remedies in Jamaica, as required under Article 46(1) of the

Convention and Article 37(1) of the Commission's Regulations. In particular, the Petitioners allege that they and Mr. Thomas have written authorities in Jamaica, including the Commissioner of Prisons, the Commissioner of Correctional Services, and the Jamaican Council for Human Rights, concerning Mr. Thomas's treatment while in detention, but that Mr. Thomas has received no relief in response to any of these complaints.

15. In addition, the Petitioners claim that the State is mistaken in claiming that Mr. Thomas must appeal his conviction and sentence to the Judicial Committee of the Privy Council before domestic remedies could be considered to be exhausted for the purposes of his complaint before the Commission. In particular, the Petitioners contend that their complaint relates to Mr. Thomas's conditions of detention and not his conviction and sentence. Further, they claim that an appeal to the Judicial Committee of the Privy Council would pertain to Mr. Thomas's conviction and sentence, and would not provide him with relief in respect of his treatment while in detention.

16. In any event, the Petitioners allege that Mr. Thomas has been precluded by the State from pursuing an appeal to the Judicial Committee of the Privy Council. More particularly, they claim that neither the Jamaican Court of Appeal nor the Jamaican Director of Public Prosecutions have satisfied the Petitioners' requests for a copy of Mr. Thomas's file relating to his appeal before the Court of Appeal of Jamaica, which the Petitioners require in order to consider appealing to the Judicial Committee of the Privy Council. Rather, according to the Petitioners, authorities in Jamaica claim that the file is "missing."

17. The Petitioners have raised several additional allegations respecting the exhaustion of domestic remedies in relation to their complaint. They argue, for example, that their petition constitutes a request for precautionary measures, and therefore that it is not necessary for a petitioner to exhaust domestic remedies in applying for such measures. Further, the Petitioners argue that even if there were some effective relief that Mr. Thomas could seek in local courts, he is not in a position to make such an application, because they do not believe that he has the financial resources to do so. Finally the Petitioners argue that the burden lies on the State to establish that domestic remedies for the Petitioners' complaints exist and have not been exhausted, and that the State has failed to discharge this burden.

18. Also in relation to the admissibility of their complaint, the Petitioners contend that the matters complained of in their petition have not previously been submitted for examination by the United Nations Human Rights Committee or any other international organization.

19. With respect to the substance of their complaints against the State, the Petitioners claim that Mr. Thomas has been subjected to systematic and sustained physical and mental abuse and cruelty while incarcerated at St. Catherine's District Prison in Jamaica. Summaries of alleged instances of abuse include the following:

- a. on July 20, 1997, Mr. Thomas was beaten by a Prison Warder named Mr. Gardner, including strikes with a baton, and was subsequently denied medical treatment for his injuries;
- b. Mr. Thomas was beaten by Prison Warders Mr. Peter on October 25, 1997, Mr. Hammond on October 31, 1997, and Messrs. Fergusson, Campbell, McDermott and Wong on

December 11, 1997. These beatings included striking Mr. Thomas in his face and stepping on his chest;

c. on December 16, 1997, warders cut off Mr. Thomas's Rastafarian hair in breach of his religious beliefs, on the pretext that he had head lice. Mr. Thomas was also beaten on the same occasion;

d. on February 4, 1998, a number of warders accused Mr. Thomas of having an ice pick in his cell and of stabbing a fellow prisoner. On this pretext, the warders beat and kicked Mr. Thomas, following which Mr. Thomas claims that he was taken to a doctor. Mr. Thomas also alleges that on March 20, 1998, he was informed that the inmate whom he had been accused of stabbing had died, and that on that day he was accused of murdering the inmate and was further brutalized. Mr. Thomas claims that he knows nothing of the stabbing and death of the inmate;

e. five prison warders beat Mr. Thomas on August 4, 1998, after they found a knife under a car and claimed that it belonged to him;

f. on September 19, 1998, a group of prison warders again falsely accused Mr. Thomas of keeping a knife and beat him viciously. In addition, as punishment for the incident, the warders prevented Mr. Thomas from leaving his cell, emptying his slop bucket, or eating for the entire day on September 20, 1998;

g. on July 28, 1999, a number of prison warders, including Assistant Superintendent Ramsey and Staff Warder Green, brutalized and threatened Mr. Thomas in the presence of a police officer, Mr. Phipps. Mr. Thomas claims to have subsequently been denied timely medical assistance for his injuries.

20. In support of their allegations, the Petitioners rely upon two reports prepared by Amnesty International, one dated December 1993 and entitled "Jamaica: Proposal for an Enquiry into Deaths and Ill-Treatment of Prisoners in St. Catherine's District Prison", and another dated October 1997 which the Petitioners indicate summarizes concerns about human rights issues in Jamaica, including the treatment and conditions of prisoners in St. Catherine's District Prison. Accordingly to the Petitioners, the content of these publications reinforces their allegations of Mr. Thomas's ill-treatment and supports the existence of a pattern of systematic abuse of prisoners at St. Catherine's District Prison.

21. The Petitioners also claim that several individuals have witnessed evidence of the abuse suffered by Mr. Thomas. These include a representative from the Center for Justice and International Law, who is said to have visited Mr. Thomas at St. Catherine's District Prison on February 11 and 13, 1998, and a representative from the Jamaican Council for Human Rights, who the Petitioners claim visited Mr. Thomas on July 29, 1998 and in September 1998. The Petitioners' observations did not include the names or other particulars of these alleged witnesses.

B. POSITION OF THE STATE

22. With respect to the admissibility of the Petitioners' petition, the State claims that the Petitioners have failed to exhaust domestic remedies in accordance with Article 46(1)(a) of the Convention, because Mr. Thomas has not yet appealed to the Judicial Committee of the Privy Council in London. The State takes the position that remedies are only exhausted for the purposes of Article 46(1)(a) of the Convention after the Judicial Committee of the Privy Council

has determined an appeal from the Court of Appeal of Jamaica, and therefore that Mr. Thomas can only come to the Commission once he receives a judgment from the Privy Council.

23. With respect to the substance of the Petitioners' complaints, the State indicates that it investigated, or attempted to investigate, each of Mr. Thomas's allegations of ill-treatment, and that it concluded as follows:

- a. the State denies the occurrence of the alleged incident on July 20, 1997, in part because two warders at St. Catherine's District Prison with the name Gardner deny having mistreated Mr. Thomas;
- b. with respect to the alleged incidents on October 25, 1997, October 31, 1997, March 20, 1998, September 19, 1998 and September 20, 1998, the State indicates that it was unable to investigate the complaints because Mr. Thomas was unable to provide details of the incidents, or because of the absence of official records of these incidents;
- c. the State claims that it was also unable to investigate the December 11, 1997 incident, because Warders Campbell and Fergusson were on leave or on interdiction;[FN1]

[FN1] In their March 17, 2000 response to the State's December 14, 1999 observations, the Petitioners allege that this suggests a failure on the part of the State to undertake adequate inquiries into Mr. Thomas's allegations.

- d. the State confirms that Mr. Thomas's hair was cut against his will on December 16, 1997, but that this was done in the interests of hygiene, as Mr. Thomas's hair was reported as having lice;
- e. with respect to the February 4, 1998 incident, the State indicates that Mr. Thomas was accused by other inmates of having stabbed a fellow inmate. Accordingly, members of the prison staff went to Mr. Thomas's cell and had to use force to take Mr. Thomas to the Overseers office. The State also contends that Mr. Thomas admitted that he was found with an ice pick but denied having stabbed any one. Finally, the State indicates in relation to this incident that "it does appear that more force than was necessary was used against the applicant";
- f. with respect to the August 4, 1998 incident, the State indicates that Mr. Thomas was searched on his return from Court and that a knife was discovered on his person. The State also contends that Mr. Thomas appeared to resist the search, and that no more force than was necessary was used to take the knife away from him;
- g. the State claims that there is no evidence to support the Petitioners' allegations respecting the July 28, 1999 incident, but rather than a "reasonably cordial" relationship existed between Superintendent Ramsey and Mr. Thomas.

24. With respect to the Amnesty International reports relied upon by the Petitioners, the State denies that the information contained in the reports substantiate allegations of ill-treatment. Rather, the State contends that the approach to be taken in the Petitioners' case is to consider Mr. Thomas's complaints individually, and to consider each on its own merits.

25. Finally, the State suggested in its December 14, 1999 observations that Mr. Thomas has been recognized by prison authorities as constantly demonstrating aggression that requires continuing and individual counselling, evaluation and supervision, and that Mr. Thomas "has given the impression that he has serious social adjustment problems that have led him to highly fabricate or exaggerate some incidents and genuinely forget his involvement with others".[FN2]

[FN2] In their March 17, 2000 observations, the Petitioners claim that these assertions appear to be "unsubstantiated prejudice" and have asked the Commission not to consider them.

IV. ANALYSIS

A. COMPETENCE OF THE COMMISSION

26. The Petitioners claim that the State has violated Mr. Thomas' rights under Articles 5(1) and 5(2) of the American Convention. The State ratified the Convention on August 7, 1978. The events that relate to the Petitioners' claim occurred subsequent to the State's ratification of the Convention. The alleged victim is a natural person, and the petition was lodged by Solicitors from London, who are authorized to present petitions to the Commission pursuant to Article 44 of the Convention. Therefore the Commission is competent to examine this petition.

B. ADMISSIBILITY OF PETITION

1. Duplication of Procedures

27. According to the record, the matters complained of in this petition have not previously been submitted for examination by the United Nations Human Rights Committee or by any other international organization. The State has not contested the issue of duplication of procedures. The Commission therefore finds no bar to the admissibility of the petition under Article 46(1)(c) or 47(d) of the Convention.

2. Exhaustion of Domestic Remedies

28. Article 46(1)(a) of the Convention specifies that, in order for a case to be admitted, "remedies under domestic law [must] have been pursued and exhausted in accordance with generally accepted principles of international law." When domestic remedies are unavailable as a matter of fact or law, however, the requirement that they be exhausted may be excused. Article 46(2) of the Convention specifies that this exception applies if the legislation of the state concerned fails to afford due process for the protection of the right allegedly violated, if the party alleging the violation has been hindered in his or her access to domestic remedies, or if there has been an unwarranted delay in the issuance of a final judgment.

29. Further, when the petitioner alleges that he or she is unable to prove exhaustion, Article 37(3) of the Commission's Regulations provides that the burden then shifts to the State to demonstrate that the remedies under domestic law have not previously been exhausted.[FN3]

[FN3] See also I/A Court H.R., Velasquez Rodriguez Case, Merits, Judgment of July 29, 1988, Ser. C No. 4, para. 59.

30. In the present case, the State has argued that the Petitioners' claim is inadmissible because Mr. Thomas has failed to pursue an appeal to the Judicial Committee of the Privy Council in London. The Commission notes in this regard that the substance of the Petitioners' petition relates to Mr. Thomas's treatment while in detention at St. Catherine's District Prison, and not the propriety of his conviction or sentencing. Further, the Petitioners indicate that an appeal to the Judicial Committee of the Privy Council would not provide a remedy for the abuse which Mr. Thomas alleges he has suffered while incarcerated at St. Catherine's District Prison. In any event, the Petitioners claim that the State has failed to provide them with a copy of the file from Mr. Thomas's appeal before the Court of Appeal of Jamaica, which they claim is necessary to consider an appeal to the Judicial Committee of the Privy Council. The State has not disputed these assertions, nor has it demonstrated that an appeal to the Judicial Committee of the Privy Council, or any other domestic process, would provide an effective remedy for the matters complained of in the Petitioners' petition.

31. Moreover, the Petitioners claim that they and Mr. Thomas have complained to appropriate State authorities about Mr. Thomas's treatment at St. Catherine's District Prison, but have not been granted any relief in respect of these complaints. The State has not responded substantively to these allegations.

32. Finally, the Petitioners claim that even in the event that effective domestic remedies were available, Mr. Thomas would not be in a position to pursue them because they believe he lacks the financial resources to do so.[FN4] Again, the State has not disputed these contentions, and has not otherwise demonstrated that remedies for the matters complained of in the Petitioners' petition are available in fact or in law or have previously been exhausted.

[FN4] In this regard, the Inter-American Court has suggested that if it can be shown that an indigent requires legal counsel to effectively protect a right which the Convention guarantees and his lack of resources prevents him from obtaining such counsel, he does not have to exhaust the relevant domestic remedies. See I/A Court H.R., Advisory Opinion OC-11/90, Exceptions to the Exhaustion of Domestic Remedies (Articles 46(1)(a) and 46(2) of the American Convention on Human Rights), (10 August 1990), Ser. A No. 11.

33. Based upon the information presented, the Commission finds that the State has failed to afford due process for the protection of the rights alleged to have been violated in the Petitioners' petition. Consequently, the requirement of exhaustion of domestic remedies does not apply to the Petitioners pursuant to Article 46(2) of the Convention.

3. Timeliness of the Petition

34. In accordance with Article 46(1)(b) of the Convention, a petition must be presented in a timely manner, namely within six months from the date on which the complaining party was notified of the final judgment at the domestic level.

35. As in the case of exhaustion of domestic remedies, however, Article 46(2)(a) of the Convention provides that the six month period under Article 46(1)(b) of the Convention shall not be applicable when "the domestic legislation of the State concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated."

36. Given the Commission's finding that that the State has failed to afford due process for the protection of the rights alleged to have been violated in the Petitioners' petition, the six month period does not apply to the Petitioners' petition. The State has not contested the issue of the six month period. The Commission therefore finds no bar to the admissibility of the petition under Article 46(1)(b) of the Convention.

4. Colorable Claim

37. Articles 47(b) and 47(c) of the Convention require the Commission to consider a petition to be inadmissible if the petition does not state facts that tend to establish a violation of the rights guaranteed by the Convention, or if the statements of the petitioner or of the state indicate that the petition is manifestly groundless or obviously out of order.

38. The Petitioners allege that the State has violated Mr. Thomas' rights under Articles 5(1) and 5(2) of the Convention. They have provided in support information from Mr. Thomas, as particularized in Part III.A of this Report, describing incidents of ill-treatment alleged to have been suffered by Mr. Thomas on approximately ten occasions between July 1997 and July 1999.

39. The State has refuted several of the Petitioners' allegations, on the basis that its own investigations of the alleged incidents do not substantiate ill-treatment of Mr. Thomas in violation of the Convention. The State claims in respect of several other incidents that it has been unable to investigate the Petitioners' allegations, due to insufficient detail from Mr. Thomas, the unavailability of State agents alleged to have been involved in the incidents, or the absence of official records of those incidents. Further, in respect of the alleged incident of ill-treatment on February 4, 1998, the State has indicated that "it does appear that . . . more force than was necessary was used against the applicant." The State did not indicate whether any disciplinary or other measures were undertaken to address this incident.

40. Based upon the information provided by the parties, and without prejudging the merits of the matter, the Commission finds that the Petitioners' petition contains factual allegations that, if proved, tend to establish violations of the rights guaranteed by the Convention, and that the statements of the Petitioner are not, on the information provided, manifestly groundless or obviously out of order. Consequently, the petition is not barred as inadmissible under Articles 47(b) or 47(c) of the Convention.

V. CONCLUSIONS

41. The Commission concludes that it has the competence to examine this case, and that the petition is admissible in accordance with Articles 46 and 47 of the Convention.

42. On the basis of the findings of fact and law set forth above, and without prejudging the merits of the matter,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the present case admissible, with respect to Articles 5, 8 and 25 of the Convention.
2. To transmit this Report to the Parties.
3. To continue with the analysis of the merits of the case.
4. To publish this Report and include it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed in the city of Brasília, Brazil, on the fifteenth day of the month of June, 2000.
(Signed): Hélio Bicudo, Chairman; Claudio Grossman, First Vice-Chairman; Juan Méndez, Second Vice-Chairman; Marta Altolaguirre, Robert K. Goldman, Peter Laurie, and Julio Prado Vallejo, Commissioners.