

## HUMAN RIGHTS COMMITTEE

### Yasseen and Thomas v. Republic of Guyana

Communication No. 676/1996\*\*

30 March 1998

CCPR/C/62/D/676/1996\*

### VIEWS

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

*Victim: The authors*

*State party: Republic of Guyana*

*Date of communication: 2 February 1996 (initial submission)*

*Date of decision on admissibility: 11 July 1997*

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

Meeting on 30 March 1998,

Having concluded its consideration of communication No.676/1996 submitted to the Human Rights Committee by Messrs. Abdool Saleem Yasseen and Noel 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, his counsel and the State party,

Adopts the following:

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

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 30 March 1987, the authors were indicted for 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 a 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 at the first trial, were not produced in the third 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 judgment 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 admissibility observations and counsel's comments, and Committee's admissibility decision:

4.1 On 9 February 1996, the State party argued that domestic remedies still available to the authors had not been exhausted, as their motions before the High Court could be appealed to the Court of Appeal, the State party's final judicial instance. By note of 11 April 1996, the State party requested an extension of the deadline for submission of observations on the admissibility of the communication.

4.2 On 28 February 1997, counsel informed the Committee that the Court of Appeal of Guyana had dismissed the authors' application on 14 May 1996 and that it had decided to remand the case to a new sitting of the Mercy Committee. To counsel, all available domestic remedies had been exhausted with the dismissal of the authors' application by the Court of Appeal.

4.3 During its 60th session, the Committee considered the admissibility of the communication. It regretted the lack of cooperation from the State party and rejected the State party's argument, which had been expressed in a note verbale dated 9 May 1997 addressed to the Committee, that the Committee was examining the present communication with undue delay. As to the requirement of exhaustion of domestic remedies, the Committee considered that following the dismissal of the authors' appeal by the Court of Appeal of Guyana, a further remittal of the case to the Mercy Committee did not constitute an effective remedy which the authors were required to exhaust for purposes of the Optional Protocol.

4.4 The Committee considered that the authors had adequately substantiated, for purposes of admissibility, their claims under articles 7, 9, 10 and 14 of the Covenant, which should be examined on their merits. Accordingly, on 11 July 1997, the Committee declared the communication admissible.

State party's merits observations and counsel's comments:

5.1 By note verbale of 19 August 1997, the State party's Minister for Foreign Affairs expressed "disappointment and .. distress" about the Committee's admissibility decision, noting that the Committee had failed to take into consideration the Government's observations of 3 October 1996 on the authors' claims. Upon inquiry by the Committee, it transpired that the State party's submission of that date had been addressed to the Special Rapporteur for Summary and Arbitrary Executions of the UN Commission on Human Rights. The Government of Guyana was so informed on 27 August 1997. By note of 29 August 1997, the State party requested that its observations of 3 October 1996 be incorporated into the case file, and that the Committee reconvene to consider the admissibility and/or the merits of the case during the 61st session in October 1997. The Committee was apprised of these developments during its 61st session and considered that authors' counsel should be given an opportunity to comment on the State party's observations of 3 October 1996. On 11 December 1997, the State party was informed that the case had been remanded for a final decision to the Committee's 62nd session.

5.2 In its observations of 3 October 1996, the State party provides a detailed factual account of the case which differs in some points from the authors' version. It notes that Noel Thomas and others were arrested on 21 March 1987 and questioned about the murder of Kaleem Yasseen. Thomas denied any involvement in the killing and was released from custody. On 23 March, one Hiram Narine was arrested and questioned; he provided information of relevant conversations between him and Thomas, and Thomas was re-arrested on the very same day. On 24 March 1987, Abdool Yasseen was arrested and informed that he was suspected of involvement in the killing of his brother. Later on the same day, Noel Thomas was confronted with Hiram Narine, and after Narine reconfirmed what he had told the police earlier, Thomas was cautioned and observed that he had been used by Abdool Saleen; he then volunteered to give a written statement. According to the State party, Thomas agreed that Asst. Police Superintendent Marks write down the statement, and declined to have a lawyer or relative present.

5.3 Shortly after the written deposition had been made, Abdool Yasseen was confronted with

a copy of the statement - he read it, confirmed the correctness of Thomas' version, and volunteered to make an oral statement. On 26 March 1987, both accused were asked, in the presence of each other, about the location of the shotgun which was used for the murder of Kaleem Yasseen. Noel Thomas allegedly made statements heavily incriminating Abdool Yasseen as the instigator of the crime. On 30 March 1987, both were charged with murder in the Suddie Magistrate's Court.

5.4 The State party notes that after each sitting of the preliminary inquiry, the accused were sent on remand to Georgetown Prisons, as Essequibo County (location of the court) does not have a prison. According to the State party, the remand section of Georgetown Prisons is not overcrowded and has both toilet and bathing facilities. It has "sufficient mattresses for sleeping purposes - although it is not denied that prisoners sometimes prefer to sleep on the floor rather than share a mattress with another prisoner." The authors' allegation that there is a six-inch build-up of dirty water caused by a defective drain is dismissed as false. The mode of travel to and from Suddie Magistrate's Court is by ferry boat, which is used by the general public including lawyers, magistrates and judges. Prisoners charged with murder are handcuffed during the four-hour journey, as a security measure.

5.5 The preliminary inquiry concluded on 29 February 1988; neither of them called any witnesses during the preliminary inquiry. The trial in the High Court began in May 1988 and concluded on 2 June 1988; the accused were found guilty as charged. During the trial, Abdool Yasseen denied having made any oral confession to Asst. Superintendent Marks, and Noel Thomas argued that the written statement had been signed under duress. Thomas further claimed that he was beaten by police officers and that pliers were applied to his genitals. The trial judge conducted a *voir dire* into these allegations and, after hearing evidence from both prosecution and defense witnesses on the voluntariness of the statement, dismissed Thomas' allegations and admitted his statement as evidence.

5.6 On 3 June 1988, the authors appealed conviction and sentence. On 25 October 1990, the appeal was allowed on the grounds that (a) a police witness who was not called during the preliminary inquiry was allowed to testify on trial without any explanation provided by the prosecution as to why he was not called as a prosecution witness then; (b) the trial judge improperly excused jurors on the insufficient ground that they feared that they might be sequestered at some stage during the trial. A re-trial was ordered. The re-trial started before a different High Court Judge in June 1991; it was aborted after an inquiry by the judge into allegations that a member of the jury had been seen in company of, and heard in conversation with, a relative of Abdool Yasseen. Two weeks had elapsed when the trial was aborted.

5.7 The second re-trial was scheduled to start in June 1992, but was adjourned for 3 months due to the absence and unavailability of counsel for Abdool Yasseen between July and September 1992. It eventually started in October 1992 and on 4 December 1992, the accused were again found guilty as charged and sentenced to death. The appeal was heard between April and June 1994, and dismissed. According to the State party, "prior to this final determination, there were two Christmas vacations and annual judicial vacation periods of 2 months or more". The State party thereafter provides a detailed account of the

constitutional motion and appeal proceedings filed on the authors' behalf after a warrant for their execution had been issued on 1 February 1996.

5.8 As to conditions of imprisonment for the authors, the State party explains that persons charged with criminal offences awaiting trial in detention are housed in a dormitory at Georgetown Prisons. At no time were the authors kept with convicted prisoners prior to conviction. The dormitory is equipped with adequate lighting, ventilation and mattresses, four toilets and two bathrooms. As prisoners awaiting trial, the authors were allowed visits by friends or relatives twice a week. The State party admits that there is a block at Georgetown Prisons where prisoners with communicable diseases are kept. Abdool Yasseen was never an inmate on that block.

5.9 The State party notes that all inmates at Georgetown Prisons are provided with medical services by qualified medical personnel. Medical records of Abdool Yasseen reveal that he was examined a total of 21 times in the Prison Infirmary. At no time was he diagnosed as mentally unsound nor did he suffer a broken leg nor did he have to move around on crutches. In relation to Mr. Thomas, records reveal that while in prison, he was treated for urinary tract infection, which he had contracted before his incarceration.

5.10 Prisoners under sentence of death are kept in single cells measuring 8 x 8 feet. Cells are illuminated by lighting units placed outside cells to reflect into them, as prisoners on death row are closely watched. The State party notes that there is "adequate ventilation for each cell". Cells on death row do not have self-contained toilets, but prisoners are provided with utensils for urinary and defecatory purposes: "these are emptied and cleansed after use as often as practicable". Recreational facilities are available to all inmates, including the authors, and prisoners are allowed an hour a day for recreational purposes.

5.11 In the authors' cases, both were housed in the remand division of Georgetown Prisons until June 1988. When their appeals were allowed in 1990, they were returned to the remand division. After conviction in December 1992, both were returned to the single cells for prisoners under sentence of death.

6.1 In her comments, counsel notes that the State party does not deny the allegation that Mr. Yasseen was unrepresented during the first four days of the second re-trial, although a request for an adjournment in order to obtain counsel had been made. Whether or not an adjournment was granted for three months in June, it remains that the trial started in October 1992 in the absence of Yasseen's counsel. Yasseen had originally retained B. de Santos, who was paid \$ 300,000. One week before the trial was about to begin, de Santos returned the full sum, stating that he was unable to conduct the defense. Yasseen then retained another senior counsel, S. Hardy, who sought an adjournment from the judge, because he could not attend court at the appointed start date. The adjournment was refused, the trial started and two prosecution witnesses were interrogated and testified in counsel's absence.

6.2 Counsel notes, by reference to the Committee's jurisprudence<sup>1</sup>, that the start of the trial in the absence of counsel violated the author's rights under article 14, paragraph 3(b) and (d). She notes that the questioning of two prosecution witnesses in the absence of counsel



irreparably obstructed his defense, making it impossible for counsel to subject the prosecution's case to full adversarial challenge. It is emphasized that there can be no question that counsel was absent for relatively unimportant days, e.g. days on which the prosecution rested the case and the trial concerned procedural issues. Rather, counsel was absent the first 4 days of the trial, when the prosecution presented its case against the authors.

6.3 Concerning the allegation that the authors' right to examine witnesses and call evidence under article 14, paragraph 3(e), was violated, since one potentially exculpatory witness, Hiram Narine, did not appear despite summons, and since important police documents and diaries were missing and not produced at trial as requested, counsel recalls the absence of State party information on this point.

6.4 On the issue of the authors' claim that they were coerced to confess the murder of Kaleem Yasseen, counsel notes that the State party itself concedes that the prosecution case rested almost entirely upon the two alleged confessions, without offering a credible account of the circumstances surrounding them. Counsel dismisses the State party's version of the alleged spontaneous confession by Noel Thomas, as written down by Asst. Superintendent Marks, as well as Mr. Yasseen's alleged spontaneous oral confession, as dubious: while the prosecution maintains that the defendants spontaneously elected to forego legal advice and confess in full, Messrs. Yasseen and Thomas consistently maintained that they made no voluntary confessions. Counsel notes that the trial transcript is replete with convincing testimony from the medical examiner who examined Noel Thomas, describing the injuries he was subjected to while being forced to confess. In these circumstances, counsel submits that the two dubious confessions cannot support the authors' conviction and their death sentences.

6.5 Counsel recalls that the State party does not dispute the allegation of a violation of article 14, paragraph 1, because the jury foreman of the second re-trial was related to the wife of the deceased, and merely argues that this issue was not raised in domestic judicial proceedings.

6.6 Counsel contends that the aggregate of delays in the judicial proceedings, between 1988 and 1994, constitute a violation of article 14, paragraph 3(c), of the Covenant. The State party's only explanation for the delay is the statement that , as to the period for the second re-trial and appeal, there were two Christmas vacations and annual judicial vacation periods of 2 months or more. This, it is submitted, is a wholly inadequate explanation given the mental anguish the authors suffered awaiting the determination of their cases.

6.7 Counsel reiterates the allegations pertaining to the deplorable conditions of detention before and after the trial, and forwards two affidavits sworn in November 1997 by the father of Abdool Yasseen and a Georgetown businessman and friend of Abdool Yasseen<sup>2</sup>. Both affidavits testify to the very poor conditions of detention the authors were subjected to, including gross overcrowding, insufficient bedding and toilet facilities, inadequate lighting, cramped accommodations, inadequate clothing and food, insufficient exercise and insufficient access to fresh air. Counsel further notes that the State party does not contest specific allegations concerning the authors' treatment in detention, in particular:

- That the authors sometimes were obliged to sleep on the floor, which is conceded by the remark that prisoners sometimes prefer to sleep on the floor rather than to share mattresses; this is said to be contrary to Rule 19 of the UN Standard Minimum Rules for the Treatment of Prisoners.

- That toilet facilities on death row are inadequate; this is said to be a violation of Rule 16 of the Standard Minimum Rules.

- That the authors' cells on death row have inadequate lighting is conceded by the State party through the remark that cells are illuminated through lighting units placed outside the cells. Counsel submits that lighting units outside the cells do not comply with rule 11 (b) of the Standard Minimum Rules. Moreover, the allegation that the authors were deprived of access to fresh air and sunlight (Rule 11(a) and Rule 21(1) of the Standard Minimum Rules) has not been denied by the State party.

- That the State party concedes that the authors were taken on numerous journeys by public transport and, being handcuffed and in public view throughout the journey, suffered great and unnecessary humiliation.

The above conditions of detention are said to constitute a violation of articles 7 and 10, paragraph 1, of the Covenant.

Reconsideration of admissibility and examination of the merits:

7.1 The Human Rights Committee has considered the present communication in the light of all the information made available by the parties, as provided for in article 5, paragraph 1, of the Optional Protocol to the Covenant. It has noted the State party's request of 29 August 1997 that the question of the admissibility of the communication be reconsidered, in the light of the State party's observations of 3 October 1996 which came to the Committee's attention *after* the communication was declared admissible.

7.2 The Committee observes, in this respect, that the State party's submission of October 1996 addresses the merits of the authors' complaints, and that it does not challenge the admissibility of the communication on any of the grounds enumerated in the Optional Protocol, save for the authors' claim that the jury foreman for the last trial (1992) was related to the deceased's wife. This claim, it argues, was not raised by the authors during the judicial proceedings against them. The Committee observes that in that respect, in effect, domestic remedies have not been exhausted, and, accordingly, the decision of admissibility of 11 July 1997 is set aside in as much as it relates to this claim. As to the other claims made by the authors, the Committee sees no grounds to review its decision of admissibility.

7.3 On the substance of the authors' claims, three distinct complexes must be addressed:

- the issue of the alleged forced confessions of the authors, physical abuse against Mr. Thomas during pre-trial detention, and poor conditions of incarceration during pre-trial detention;

- conditions of detention since the authors' first conviction (1988);
- and issues relating to the conduct of the authors' last trial (1992).

7.4 As to the first issue, the Committee notes that the authors and in particular Mr. Thomas, claim that they were abused in pre-trial custody, that they were detained in poor conditions together with convicted prisoners, and that they were unnecessarily humiliated by virtue of their being transferred handcuffed by public transport to court hearings, in full view of the public. The State party has provided a detailed account of the situation which differs in some respects from that presented by the authors and has provided some explanations for the treatment received. The State party has admitted, however, that detainees are required to share mattresses. The Committee finds that this situation is in violation of the requirements of article 10, paragraph 1, of the Covenant.

7.5 Mr. Thomas argues that he was subjected to ill-treatment in order to force him to confess the killing of Kaleem Yasseen, in violation of article 14, paragraph 3(g). The Committee notes that this claim was examined by the judge at the first trial (1988) during a *voir dire* and found to be lacking in substance. The Committee has no material before it that would indicate whether or not any issues relating to the alleged ill-treatment or the confession were raised at the last trial (1992) or on appeal (1994). In the circumstances, the Committee considers that there is no basis to find a violation of article 14, paragraph 3(g).

7.6 The authors claim that their long detention in degrading conditions violated articles 7 and 10, paragraph 1. They have submitted sworn affidavits in support of their allegation that the conditions of their detention on death row are inhuman and particularly insalubrious. The State party refutes these claims but acknowledges that the authors' cells are illuminated by outside lighting units implying that the cells receive no natural lighting. The Committee considers that the fact that the authors are deprived of natural lighting save for their one hour of daily recreation, constitutes a violation of article 10, paragraph 1, of the Covenant, since it fails to respect the authors' inherent dignity as persons.

7.7 The Committee has noted counsel's claim that Mr. Thomas was not promptly informed of the charges against him, in violation of article 14, paragraph 3(a). This claim is not borne out by the account provided by the State party and was not reiterated by counsel in her comments on the State party's submission of 3 October 1996. There is thus no ground for a finding of violation of article 14, paragraph 3(a).

7.8 In respect of Mr. Yasseen, counsel claims a violation of article 14, paragraph 3(b) and (d), because the author was unrepresented during the first four days of the last trial (1992). The State party has simply noted that an adjournment was granted between July and September 1992, at the request of author's former counsel, but does not otherwise deny the claim. The Committee recalls that it is axiomatic that legal assistance be available in capital cases<sup>3</sup>. This is so even if the unavailability of private counsel is to some degree attributable to the author, and even if the provision of legal assistance entails an adjournment of proceedings. This requirement is not made unnecessary by efforts which the trial judge may otherwise make to assist the accused in the handling of his defense, in the absence of

counsel. The Committee considers that the absence of legal representation for Mr. Yasseen during the first four days of the trial constitutes a violation of article 14, paragraph 3(b) and (d).

7.9 Counsel claims that the evidence against the authors was so thin as to turn their conviction and death sentence into a miscarriage of justice. Counsel claims in particular that the author was the victim of a violation of article 14, paragraph 3(e), because at the last trial (1992), a witness did not appear and certain police notebooks and diaries were missing. With regard to the witness, the Committee notes that it appears from the information before it that this witness gave evidence for the prosecution in the first trial (1988). The information before the Committee does not indicate how the absence of this witness at the last trial (1992) could have prejudiced the authors. In the circumstances, the Committee finds that counsel has not substantiated his claim that the failure to ensure the attendance of the witness in the last trial (1992) deprived the authors of their right under article 14, paragraph 3(e).

7.10 With regard to the missing diaries and notebooks, the Committee notes that the authors claim that these may have contained exculpatory evidence. The State party has failed to address this allegation. In the absence of any explanation by the State party, the Committee considers that due weight must be given to the authors' allegations, and that the failure to produce at the last trial (1992) police documents which were produced at the first trial (1988) and which may have contained evidence in favour of the authors, constitutes a violation of article 14, paragraph 3, (b) and (e), since it may have impeded the authors in preparation of their defence.

7.11 Counsel finally claims a violation of article 14, paragraph 3(c), because of the aggregate delays between the author's arrest in 1987, their conviction after two re-trials in December 1992, and the dismissal of their appeal in the summer of 1994. The Committee notes that the delays are not entirely attributable to the State party, since the authors themselves requested adjournments. Nevertheless, the Committee considers that the delay of two years between the decision by the Court of Appeal to order a retrial and the outcome of the retrial, is such as to constitute a violation of article 14, paragraph 3(c).

7.12 The Committee considers that the imposition of a sentence of death upon conclusion of a trial in which the provisions of the Covenant have not been respected constitutes, if no further appeal against the sentence is possible, a violation of article 6 of the Covenant. In this case, the authors were convicted after a trial in which they did not have their right to a defense guaranteed. This means that the final sentence of death in their case was passed without having met the requirements of a fair trial set out in article 14 of the Covenant. It must therefore be concluded that the right protected under article 6 has also been violated.

8. 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 reveal violations by the State party of articles 10, paragraph 1, and 14, paragraph 3 (b), (c) and (e), in respect of both authors; and of article 14, paragraph 3(b) and (d), in respect of Mr. Abdool Yasseen.

9. Under article 2, paragraph 3(a), of the Covenant, Messrs. Abdool S. Yasseen and Noel Thomas are entitled to an effective remedy. The Committee considers that in the circumstances of their case, this should entail their release.

10. Bearing in mind that, by becoming a State party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and 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 any measures taken to give effect to the Committee's Views.

[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.]

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\*/ Made public by decision of the Human Rights Committee.

\*/ The following members of the Committee participated in the examination of the present communication: Mr. Nisuke Ando, Mr. Prafullachandra N. Bhagwati, Mr. Th. Buergenthal, Lord Colville. Ms. Christine Chanet, Mr. Omran el Shafei, Ms. Elizabeth Evatt, Mr. Eckart Klein, Mr. David Kretzmer, Mr. Rajsoomer Lallah, Ms. Cecilia Medina Quiroga, Mr. Fausto Pocar, Mr. Martin Scheinin, Mr. Maxwell Yalden and Mr. Abdallah Zakhia.

\*\*/ An individual opinion by Committee member Nisuke Ando is attached to the present document.

1/ See Views on communication No.223/1987 (Frank Robinson v. Jamaica), adopted 30 March 1989, paragraph 10.3.

2/ Originals of these affidavits are kept in the case file.

3/ See Views on communication No.223/1987 (Frank Robinson v. Jamaica), adopted 30 March 1989, paragraph 10.3.

## **Appendix**

### **Individual opinion by Committee member Nisuke Ando**

I do not oppose the Committee's findings of violations with respect to article 14 of the Covenant. However, I am unable to concur with its finding of a violation with respect to article 10, paragraph 1, for the following reasons:

With respect to the issues under article 10, paragraph 1, (as well as article 7, according to the author), the authors originally made the allegations as indicated in paragraph 3.6 of the Vies. However, these allegations were refuted in detail by the State party in its observations dated 3 October 1996 as indicated in paragraphs 5.4 and 5.8 - 5.11. Then, the authors attempted to challenge these refutations by quoting from the two affidavits which describe the conditions of detention as indicated in paragraph 6.7. In my view the descriptions of the affidavits are all of general nature and, despite the author's attempt, it is indeed doubtful whether and how these general conditions affected each of the two authors specifically. The only point, on which the Committee has managed to base its finding of a violation of article 10, paragraph 1, is the fact that "the authors were deprived of natural lighting save for their one hour of daily recreation", this fact being inferred from the State party's acknowledgement that "the authors' cells are illuminated by outside lighting units implying that the cells receive no natural lighting". (See paragraph 7.6. Emphasis supplied.)

I recognize that the authors attempted to base their allegation of a violation of article 10, paragraph 1, of the Covenant on the UN Standard Minimum Rules for the Treatment of Prisoners (see paragraph 6.7). In my view the standard may well represent "desirable" rules concerning the treatment of prisoners and, as such, the Committee may ask a State party to the Covenant to do its best to comply with those rules when it considers a report of that State party. Nevertheless, I do not consider that the rules constitute binding norms of international law which the Committee must apply in deciding on the lawfulness of allegations of each individual author of communications. In addition, considering the conditions of detention in urban areas of many of the States parties to the Covenant, I am unable to concur with the finding of a violation of article 10, paragraph 1, in this particular communication.