



**International Covenant
on Civil and Political Rights**

Distr.
RESTRICTED */

CCPR/C/58/D/572/1994
20 November 1996

Original : ENGLISH

HUMAN RIGHTS COMMITTEE
Fifty-eighth session
21 October - 8 November

IEWS

Communication No. 572/1994

Submitted by: Hezekiah Price
(represented by Mr. Saul Lehrfreund of
Simons Muirhead & Burton)

Alleged victim: The author

State party: Jamaica

Date of communication: 23 September 1993 (initial submission)

Date of adoption of Views: 6 November 1996

On 6 November 1996, the Human Rights Committee adopted its Views under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 572/1994. The text of the Views is appended to the present document.

[ANNEX]

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

VIEWS OF THE HUMAN RIGHTS COMMITTEE UNDER ARTICLE 5, PARAGRAPH 4,
OF THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT
ON CIVIL AND POLITICAL RIGHTS
- FIFTY-EIGHTH SESSION -

concerning

Communication No. 572/1994 **/

Submitted by: Hezekiah Price
(represented by Mr. Saul Lehrfreund
of Simons Muirhead & Burton)

Victim: The author

State party: Jamaica

Date of communication: 23 September 1993 (initial submission)

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

Meeting on 6 November 1996,

Having concluded its consideration of communication No. 572/1994
submitted to the Human Rights Committee by Mr. Hezekiah Price 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 the following:

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

1. The author of the communication is Mr. Hezekiah Price, a Jamaican citizen, currently imprisoned at the General Penitentiary, Kingston, Jamaica, serving a life term. The author claims to be a victim of a violation by Jamaica of article 14, paragraphs 3(c), (d) and 5, of the International Covenant on Civil and Political Rights. He is represented by counsel.

The facts as submitted by the author:

2.1 The author was arrested on 19 June 1983 and charged with the murder of his common-law wife earlier that same day. On 26 January 1984, after a trial in the St. Catherine Circuit Court, he was found guilty of murder and sentenced to death.

2.2 The author's application for leave to appeal was dismissed by the Court of Appeal on 29 November 1985. A note of oral judgment was delivered on 6 October 1987. At the beginning of 1989 the author's sentence was commuted to life imprisonment.

2.3 The prosecution's case was based on evidence given by eye-witnesses, who

**/ Pursuant to rule 85 of the rules of procedure, Committee member Laurel Francis did not participate in the examination of the communication.

had heard the author and his common-law wife quarrelling. They testified that when the author and his wife came out of the house, he held her by the arm, beat her with the flat of a machete, and when she had fallen on the ground, he killed her with several sharp blows of the machete. The author then walked to the police station to give himself up. The case for the accused was based on self-defence. The judge also put the defence of provocation before the jury.

The complaint:

3.1 The author claims that he did not have a fair trial. More particularly he claims that his right under article 14, paragraph 3(d), was violated. An application for leave to appeal was filed with the Court of Appeal on the grounds of unfair trial and insufficient evidence to warrant a conviction. The legal aid lawyers who were instructed to conduct the appeal did not consult with the author before the hearing. Moreover, it appears from the note of the oral judgment that counsel for the author advised the Court of Appeal during the hearing that he could find no grounds for the appeal to be allowed. The author claims that, had he known that counsel would not put forward any grounds of appeal, he would have asked to have different legal aid counsel assigned to his case.

3.2 The author also claims that the failure of the Court of Appeal to produce a written judgment in his case constitutes a violation of article 14, paragraphs 3(c) and 5, since this failure effectively barred him from appealing to the Judicial Committee of the Privy Council.

The State party's observations on admissibility and author's comments thereon:

4. By submission of 11 November 1994, the State party argues that the communication is inadmissible under article 5, paragraph 2(b), of the Optional Protocol, because the author has failed to exhaust domestic remedies. It notes that the author may still appeal to the Judicial Committee of the Privy Council by way of petition for special leave to appeal. The State party adds that the author may still apply for constitutional redress; in this context, it notes that the rights invoked by the author and protected by article 14, paragraph 3(c) and (d), are coterminous with Sections 20(6) and 110 of the Jamaican Constitution. Pursuant to Section 25 of the Constitution, it is open to the author to seek redress for the alleged violations of his rights by way of a constitutional motion to the Supreme Court.

5. In his comments, dated 30 January 1995, the author's counsel states that he has been advised by leading counsel that there were no grounds upon which to petition the Privy Council, and concludes there are no effective domestic remedies that the author should still exhaust. He further states that, since legal aid is not made available for constitutional motions, a constitutional motion does not constitute an effective remedy in this case.

The Committee's admissibility decision:

6.1 During its 54th session, the Committee considered the admissibility of the communication. The Committee found that the formal requirements of admissibility under article 5, paragraph 2 (a) and (b), of the Optional Protocol had been met.

6.2 The Committee considered that author's counsel had failed, for purposes of admissibility, to present sufficient elements that would substantiate a possible violation of article 14, paragraph 3(c). In particular, author's counsel had not argued that, in the specific circumstances of Mr. Price's case, an earlier written judgment or note of oral judgment would have led to a different result.

6.3 The Committee considered that the author and his counsel had sufficiently substantiated, for purposes of admissibility, a possible violation of article 14, paragraph 3(d). The Committee recalled its jurisprudence that "measures must be taken to ensure that counsel, once assigned, provides effective representation in the interests of justice. This includes consulting with, and informing, the accused if he intends to withdraw an appeal or to argue before the appeal court that the appeal has no merits".¹ The Committee found that this part of the communication needed to be examined on the merits.

6.4 The Committee considered that the author and his counsel had failed to substantiate for purposes of admissibility, that the communication raised issues under article 14, paragraph 5, of the Covenant.

6.5 On 21 July 1995, therefore, the Human Rights Committee declared the communication admissible in as much as it appeared to raise issues under article 14, paragraph 3 (d), of the Covenant.

State party's observations on the merits and counsel's comments thereon:

7.1 In its submission under article 4, paragraph 2, of the Optional Protocol, dated 19 February 1996, the State party reiterates that the communication is inadmissible for non-exhaustion of domestic remedies.

7.2 On the alleged breach of article 14, paragraph 3 (d), because counsel did not argue the author's appeal, the State party contends that it has a duty to provide competent legal aid counsel to represent poor persons, thereafter the manner in which counsel represents the accused cannot be attributed to the State party.

8. In his comments on the State party's submission, counsel rebuts the State party's contention that domestic remedies are still open to the author and reiterates that the State party is responsible for the quality of legal aid counsel, and refers to the Committee's jurisprudence.

Examination on the merits:

9.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as required under article 5, paragraph 1, of the Optional Protocol.

9.2 Counsel has claimed that Mr. Price was not effectively represented on appeal, and the Committee notes that the Court of Appeal Judgement shows that Mr. Price's legal aid counsel for appeal conceded at the hearing that there was no merit in the appeal. The Committee notes that the matter would appear also to raise an issue under article 14, paragraph 3 (b), of the Covenant, but that it is precluded from examining whether such a violation has occurred, as this claim was never raised by counsel. The Committee recalls its earlier jurisprudence² that while article 14, paragraph 3(d), does not entitle the accused to chose counsel provided to him free of charge, the Court should ensure that the conduct of the appeal by the lawyer is not incompatible with the interests of justice. While it is not for the Committee to question counsel's professional judgment, the Committee considers that in a capital

¹ Communication No. 253/1987 (Kelly v. Jamaica), Views adopted on 8 April 1991, paragraph 5.10.

² See inter alia the Committee's Views in respect of communications Nos. 459/1991 (Osborne Wright and Eric Harvey v. Jamaica), adopted on 27 October 1995, paragraph 10.5 and 461/1991 (George Graham and Arthur Morrison v. Jamaica), adopted on 25 March 1996, paragraph 10.5.

case, when counsel for the accused concedes that there is no merit in the appeal, the Court should ascertain whether counsel has consulted with the accused and informed him accordingly. The Committee is of the opinion that Mr. Price should have been informed that his counsel was not going to argue any grounds in support of the appeal so that he could have considered any remaining options open to him. In the circumstances, the Committee finds that Mr. Price was not effectively represented on appeal, in violation of article 14, paragraph 3 (d), of the Covenant.

9.3 The Committee is of the opinion 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. As the Committee noted in its General Comment 6 [16], the provision that a sentence of death may be imposed only in accordance with the law and not contrary to the provisions of the Covenant implies that "the procedural guarantees therein prescribed must be observed, including the right to a fair hearing by an independent tribunal, the presumption of innocence, the minimum guarantees for the defence, and the right to review of the conviction and sentence by a higher tribunal". In the present case, since the final sentence of death was passed without having observed the requirement of effective representation on appeal as set out in article 14, it must be concluded that the right protected by article 6 of the Covenant has been violated. The Committee notes that the State party has commuted the author's death sentence and considers that this constitutes sufficient remedy for the violation of article 6, paragraph 2, in this case.

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 article 14, paragraph 3 (d), of the Covenant.

11. Pursuant to article 2, paragraph 3 (a) of the Covenant, the author is entitled to an appropriate remedy. The State party is under an obligation to ensure that similar events do not occur in the future.

12. 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 ninety days, information about the 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.]