



**International
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on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Eightieth Session
15 March - 2 April 2004

VIEWS

Communication No. 793/1998

<u>Submitted by:</u>	Errol Pryce, (represented by counsel, Mr. Hugh Dives, lawyer)
<u>Alleged victim:</u>	The author
<u>State party:</u>	Jamaica
<u>Date of communication:</u>	30 May 1997 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 91 decision, transmitted to the State party on 14 January 1998 (not issued in document form)
<u>Date of adoption of Views:</u>	15 March 2004

On 15 March 2004, the Human Rights Committee adopted its Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 793/1998. The text of the Views is appended to the present document.

[ANNEX]

* Made public by decision of the Human Rights Committee.

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

Eightieth session

concerning

Communication No. 793/1998**

Submitted by: Errol Pryce, (represented by counsel, Mr. Hugh
Dives,lawyer)

Alleged victim: The author

State party: Jamaica

Date of communication: 30 May 1997 (initial submission)

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

Meeting on 15 March 2004

Having concluded its consideration of communication No. 793/1998, submitted to the
Human Rights Committee on behalf of Errol Pryce 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

1.1 The author of the communication, dated 30 May 1997, is Errol Pryce, a Jamaican citizen
born on 28 September 1971. He claims to be a victim of violations by Jamaica of articles 7
and 10, paragraph 1, of the International Covenant of Civil and Political Rights. He is
represented by counsel.

1.2 Both the Covenant and Optional Protocol entered into force for the State party on 23
March 1976. The State party denounced the Optional Protocol on 23 October 1997, with
effect from 23 January 1998.

** The following members of the Committee participated in the examination of the present
communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal
Bhagwati, Ms. Christine Chanet, Mr. Franco Depasquale, Mr. Maurice Glèlè Ahanhanzo, Mr.
Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr.
Martin Scheinin, Mr. Ivan Shearer, Mr. Hipólito Solari Yrigoyen, Ms. Ruth Wedgwood, Mr.
Roman Wieruszewski and Mr. Maxwell Yalden.

The facts as submitted by the author

2.1 The prosecution alleged that the author lived with his girlfriend in the same premises. On the night of 24 June 1992, the author quarreled with his girlfriend. He approached her armed with an ice-pick. The girl called out to her mother, who came and offered her to come to her house, upon which the author attacked the mother. The injuries inflicted on her by the author left her crippled.

2.2 On 8 August 1994, the author was tried and convicted by the Home Circuit Court in Kingston of wounding with intent. He was sentenced to 4 years' hard labour and to 6 strokes of the tamarind switch. The author applied for special leave to appeal in the Court of Appeal, arguing that the sentence was manifestly excessive in the circumstances of the case. The court, considering the high incidence of violent crime in the society, particularly against women, refused application for leave to appeal. The author states that he has no financial means and is not entitled to any legal aid to pursue a constitutional motion.

2.3 As set out in an affidavit provided by the author, he was released on 1 March 1997, after appropriate remission for good behavior.

2.4 The tamarind switch punishment was carried out on 28 February 1997, the day before his release. As the author states in his affidavit, he was blindfolded and ordered to drop his pants and underpants. His feet were lifted and placed in slots in the floor in front of a barrel that was lying on its side. His arms were drawn forward so that his body was lying across the barrel. A warder placed the author's penis into a slot cut out in the side of the barrel. His wrists and ankles were strapped to the platform. He states that a doctor and about 25 prison warders were present during the whipping. According to the author, the doctor did not examine him afterwards.

The complaint

3.1 The author claims to be a victim of a violation of articles 7 and 10, paragraph 1, of the International Covenant on Civil and Political Rights. He claims that the tamarind switch punishment amounts to cruel, inhuman and degrading punishment contrary to articles 7 and 10, paragraph 1, of the Covenant. In the absence of regulations more comprehensive than those set out in the Approval and Directions (under Section 4 of the Crime (Prevention of) Act), the procedure is said to be largely at the discretion of the implementing prison authorities.

3.2 Alternatively, the author claims that the use of a tamarind switch on the buttocks, as a form of punishment, is inherently cruel, inhuman and degrading. In this respect he cites the decision of the Zimbabwe Supreme Court in S v Ncube and Others¹, in which the Court observed that “The *raison d’être* underlying [the prohibition on inhuman and degrading punishment] is nothing less than the dignity of man”

3.3 The author notes that the trial judge emphasized that the punishment and whipping was designed to “prevent crime”, an evaluation confirmed by the Court of Appeal. In this respect the author claims that there is no evidence that whipping acts as a deterrent to serious crime either generally or particularly in Jamaica. He cites the judgment of the European Court of

¹ S v Ncube; S v Tshuma; S v Ndhlovu, 1978 (2) ZLR 246 (SC); 1988 (2) SA 702.

Human Rights in Tyrer v United Kingdom², where the Court observed that “the prohibition [against inhuman and degrading punishment or treatment] contained in article 3 of the European Convention on Human Rights is absolute and, under article 15 (2), the Contracting States may not derogate from article 3 even in the event of war or other public emergency threatening the life of the nation. Otherwise in the Court’s view, no local requirement relating to maintenance of law and order would entitle any of the States... to make use of a punishment contrary to article 3”.

3.4 Further, it is stated that under Regulation 9 of the Flogging Regulation Act 1903, “in no case shall sentence of flogging be passed upon a female...” In this respect the author contends that if the deterrence of serious crime were the primary purpose of the provision, “such exception would not arise”. Rather, the exception serves to emphasize that the punishment is intrinsically inhuman and /or degrading.

3.5 The author argues that if whipping is not an intrinsically cruel, inhuman and degrading treatment or punishment, the particular circumstances of whipping in Jamaica are contrary to articles 7 and 10 (1) of the Covenant. He notes that the Jamaican Regulations make no provision for the date on which the sentence must be carried out. In this respect, he refers to the decision of the Judicial Committee of the Privy Council in London in Pratt & Morgan v Attorney General of Jamaica in which the Committee held that the delay in carrying out the death sentence against the author amounted to inhuman and degrading punishment or treatment. In the context of whipping the same principle must apply. In the author’s case it is submitted that the delay in carrying out of the whipping sentence until the day before his release represented inhuman and degrading punishment or treatment. The author further submits that the failure to communicate to the prisoner the procedure and the timetable to be followed in carrying out the punishment aggravated the effect of the delay.

3.6 It is further submitted that the manner in which the whipping was carried out and the numbers and identity of witnesses to the punishment, far exceeding what was necessary in the interests of security, was humiliating in itself.

3.7 Finally, It is submitted that the sentence is in practice only pronounced for serious crimes of violence in addition to long terms of imprisonment or hard labour; and thus cannot serve as a deterrent to the individual prisoner. It is claimed that evidence suggests that such punishment does not serve the purpose of deterrence.

3.8 The author submits that his complaint as set out above has not been submitted to any other procedure of international investigation or settlement.

The State party’s submission on the admissibility and merits of the communication

4.1 In spite of reminders addressed to it on 5 October 2000 and 11 October 2001, the State party has made no submission on the admissibility or merits of the case.

² Tyrer v. United Kingdom, Application No 5856/72.

Issues and proceedings before the Committee

Consideration of admissibility

5.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with the Rule 87 of its Rules of Procedure, decide whether or not the case is admissible under the Optional Protocol to the Covenant.

5.2 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.

5.3 The Committee notes that the complaint was submitted prior to the denunciation of the Optional Protocol by Jamaica, 23 October 1997, and that no obstacles to admissibility arise in this respect.

5.4 Concerning the author's allegations that the punishment of whipping with the tamarind switch constitutes cruel, inhuman and degrading punishment, the Committee has noted his contention that, for practical purposes, there was no effective remedy available to him, and that, even if he had a remedy available in theory, it would not be available to him in practice, because of lack of funds and the unavailability of legal aid in constitutional motions. The Committee notes that the State party has not contested the admissibility of the communication. It concludes that there are no obstacles to the admissibility of the communication and proceeds to examine the merits, in the light of the information made available to it by the parties, as required by article 5, paragraph 1, of the Optional Protocol.

Consideration of the merits

6.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as provided under article 5, paragraph 1, of the Optional Protocol. It notes with concern that the State party has not provided any information clarifying the matters raised in the communication. It recalls that it is implicit in article 4, paragraph 2, of the Optional Protocol that a State party should examine in good faith all the allegations brought against it, and provide the Committee with all the information at its disposal. Given the failure of the State party to cooperate with the Committee on the issues raised, due weight must be given to the authors' allegations, to the extent that they have been substantiated.

6.2 The Committee notes that the author has made specific and detailed allegations concerning his punishment. The State party has not responded to these allegations. The Committee notes that the author was sentenced to 6 strokes of the tamarind switch and recalls its jurisprudence³, that, irrespective of the nature of the crime that is to be punished, however brutal it may be, corporal punishment constitutes cruel, inhuman and degrading treatment or punishment contrary to article 7 of the Covenant. The Committee finds that the imposition of

³ See Malcolm Higginson v. Jamaica, Communication No 792/1998, where the author was subjected to receive 6 strokes of the tamarind switch, and see also George Osbourne v. Jamaica, Communication No 759/1997, where the author was sentenced to 15 years of imprisonment with hard labour and was subjected to receive 10 strokes of the tamarind switch.

a sentence of whipping with the tamarind switch on the author constituted a violation of the author's rights under article 7, as did the manner in which the sentenced was executed.

6.3 While the author has made an allegation under article 10, paragraph 1, in respect of his treatment the Committee need not address this claim in the light of its finding under article 7 in paragraph 6.2 above.

7. 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 7 of the Covenant.

8. Pursuant to article 2, paragraph 3(a), of the Covenant, the Committee considers that the author is entitled to an appropriate remedy including compensation. The State party is under an obligation to ensure that similar violations do not occur in the future and to repeal domestic legislative provisions that allow for corporal punishment.

9. 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. This case was submitted for consideration before Jamaica's denunciation of the Optional Protocol became effective on 23 January 1998; in accordance with article 12(2) of the Optional Protocol the communication is subject to the continued application of the Optional Protocol. Pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or 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 by the Committee. The Committee wishes to receive from the State party, within 90 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the Committee's Views.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]
