



**International Covenant
on Civil and Political Rights**

Distr.
RESTRICTED*

CCPR/C/80/D/1239/2004
22 April 2004

Original: ENGLISH

HUMAN RIGHTS COMMITTEE
Eightieth session
15 March - 2 April 2004

DECISION

Communication No. 1239/2004

<u>Submitted by:</u>	John Wilson (not represented by counsel)
<u>Alleged victim:</u>	The author
<u>State party:</u>	Australia
<u>Date of communication:</u>	20 March 2003 (initial submission)
<u>Date of adoption of decision:</u>	1 April 2004

[ANNEX]

* Made public by decision of the Human Rights Committee

ANNEX

**DECISION OF THE HUMAN RIGHTS COMMITTEE UNDER THE OPTIONAL
PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND
POLITICAL RIGHTS**

Eightieth session

concerning

Communication No. 1239/2004**

Submitted by: John Wilson (not represented by counsel)

Alleged victim: The author

State party: Australia

Date of communication: 20 March 2003 (initial submission)

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

Meeting on 1 April 2004

Adopts the following:

Decision on admissibility

1. The author of the communication, initially dated 20 March 2003, is John Wilson, an Australian citizen, born in 1942 and resident of Australia.¹ He claims to be a victim of a violation by Australia of articles 1, 2, 9, 14 and 17 of the Covenant. He is not represented by counsel.

The facts as presented by the author

2.1. The author claims that he has been involved in a number of different legal proceedings in the State of New South Wales which have been conducted unfairly, and which have denied him the right to a trial by jury. He claims that this has resulted in him being unlawful imprisoned, unlawfully evicted from his premises, and defamed. He also claims that he has been the victim of what he described as the unlawful use of authority by a foreign power.

** The following members of the Committee participated in the examination of the present communication: Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Alfredo Castillero Hoyos, 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, Mr. Roman Wieruszewski and Mr. Maxwell Yalden.

¹ The Optional Protocol entered into force in relation to Australia on 25 December 1991.

2.2 The author states that on 5 September 1997 he was arrested and charged with an offence under s326 of the *New South Wales Crimes Act 1900*, which criminalizes the making of threats to cause injury or detriment to a witness in a proceeding, a juror or a judicial officer (the author does not provide details of the charges against him or the surrounding circumstances). On 26 September 1997 the author appeared in the Local Court, where he insisted on being tried by jury, to which the presiding Magistrate agreed.

2.3 On 17 November 1997, the author appeared in the New South Wales Supreme Court in response to a summons issued by the Prothonotary of that Court, seeking to have the author charged with contempt of court. No details are provided, and it is unclear how or whether this charge related to those laid under the Crime Act. The author requested that his trial for contempt of court be by way of jury trial. The presiding judge refused this request. The author challenged this decision in the Supreme Court, but this was dismissed by a single judge of the Court on 13 February 1998, and then by the Court of Appeal on 26 August 1998. The author's further application to the High Court of Australia for special leave to appeal against the refusal to grant a jury trial was dismissed on 16 April 1999.

2.4 The author claims that he was unlawfully imprisoned from 9 November 1999 to 28 February 2000 in the Silverwater Correctional Centre in Sydney, after being tried and convicted of contempt of Court by the Supreme Court of New South Wales. No details of the circumstances surrounding his conviction are provided. He claims that he was denied his request for a trial by jury in relation to the contempt of court charges against him. On 28 February 2000, he was released from prison, following a successful appeal to the Court of Appeal. The author claims that the above circumstances reveal a breach of article 9(5) of the Covenant.

2.5 The author states that on 28 December 2000, he filed proceedings against the St. George Bank in relation to allegations that the bank had committed fraud against him in relation to a housing loan contract, by including terms as to variable interest rates. The author's claim was also directed against the State of New South Wales, which, as the author argued, was 'vicariously liable' for an earlier decision of a judge of the New South Wales Supreme Court. This decision had upheld an application by the bank to grant it possession of the author's house, in view of the author's default on loan repayments. The author claimed that the judge in the earlier matter had perverted the course of justice by not granting him a trial by jury in relation to the bank's claims against him. In his claim against the bank and the State of New South Wales, the author argued that he was entitled to a trial by jury, but this was rejected by a judge of the Supreme Court of New South Wales, and the author's subsequent appeals against this procedural decision in the New South Wales Court of Appeal and the High Court were dismissed on 16 November 2001 and 14 February 2003 respectively.

2.6 The author refers to 23 proceedings in which the relevant court refused his request for a jury trial, and claims that this reveals a violation by the State party of articles 2 and 14 of the Covenant.

2.7 The author further alleges that his proceedings against a media company in June 1997 for defamation, the circumstances of which are not explained, were unsuccessful, and that the Supreme Court of New South Wales struck out his claim despite the author's contention that

his proceedings should be heard and determined by a jury. This is said to have amounted to a violation of article 17 by the State Party.

2.8 The also author also claims that, because the State party's judges and parliamentarians swear allegiance to Queen Elizabeth the Second, the monarch of a foreign state, it is in breach of article 1 of the Covenant.

2.9 Finally, the author claims that the failure of the State party's courts to uphold his claims against the aforementioned bank in relation to his loan contract constituted a violation of article 26, as he was denied the protection of the law against what he claims to have been the bank's fraudulent practices.

The complaint

3.1 The author contends that, in the various legal proceedings referred to in his communication, he was not afforded a trial by jury, and that the proceedings were not conducted fairly, in violation of articles 9 and 14. He also claims that the conduct complained of amounted to breaches of articles 1, 2, 17 and 26 of the Covenant.

Issues and proceedings before the Committee

4.1 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.

4.2 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.

4.3 The Committee reiterates its position that an individual cannot claim the status of "victim" in respect of alleged violations of the right of all peoples to self-determination, as enshrined in article 1 of the Covenant.² Consequently, this part of the communication is inadmissible under article 1 of the Optional Protocol.

4.4 As to the author's claims under articles 2, 9, 14, 17 and 26 of the Covenant, the Committee considers that they either fall outside the scope of those provisions or have not been substantiated, for purposes of admissibility. The Committee observes, in particular, that the Covenant does not confer the right to trial by jury in either civil or criminal proceedings, rather the touchstone is that all judicial proceedings, with or without a jury, comport with the guarantees of fair trial.³ Consequently, the author's claims are inadmissible under articles 2 and 3 of the Optional Protocol.

5. The Committee therefore decides that the communication is inadmissible. The decision will be transmitted to the author and, for information, to the State party.

² See, for example, Hom v The Philippines Caser No 1169/2003, Decision adopted on 8 August 2003.

³ See, for example, Kavanagh v Ireland (No.1) Case No 818/1998, Views adopted on 4 April 2001.

[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.]
