



**International covenant
on civil and
political rights**

Distr.
RESTRICTED*

CCPR/C/86/D/812/1998
16 May 2006

Original: ENGLISH

HUMAN RIGHTS COMMITTEE
Eighty-sixth session
13 - 31 March 2006

VIEWS

Communication No. 812/1998

<u>Submitted by:</u>	Raymond Persaud and Rampersaud (not represented by counsel)
<u>Alleged victim:</u>	The authors
<u>State Party:</u>	Guyana
<u>Date of communication:</u>	26 February 1998 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 92/97 decision, transmitted to the State party on 9 April 1998 (not issued in document form)
<u>Date of adoption of Views:</u>	21 March 2006

* Made public by decision of the Human Rights Committee.

Subject matter: Death row phenomenon — Mandatory imposition of the death penalty

Procedural issues: State party's failure to cooperate

Substantive issues: Arbitrary deprivation of life

Articles of the Covenant: 6 and 7

Articles of the Optional Protocol: 2 and 4, paragraph 2

On 21 March 2006, the Human Rights Committee adopted the annexed draft as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 812/1998. The text of the Views is appended to the present document.

[ANNEX]

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
Eighty-sixth session

concerning

Communication No. 812/1998*

Submitted by: Raymond Persaud and Rampersaud (not represented by counsel)

Alleged victim: The authors

State Party: Guyana¹

* 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. Maurice Glèlè Ahanhanzo, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer, Mr. Hipólito Solari Yrigoyen, Ms. Ruth Wedgwood and Mr. Roman Wieruszewski.

An individual opinion co-signed by Committee members Mr. Hipólito Solari Yrigoyen and Mr. Edwin Johnson is appended to the present document.

¹ The Covenant and the Optional Protocol entered into force for the State party respectively on 15 May 1977 and 10 August 1993. On 5 January 1999, the State party notified the Secretary-General that it had decided to denounce the Optional Protocol with effect from 5 April 1999, that is, subsequent to the initial submission of the communication. On the same date, the State party re-acceded to the Optional Protocol with the following reservation: "[...] Guyana re-accedes to the Optional Protocol to the International Covenant on Civil and Political Rights with a Reservation to article 6 thereof with the result that the Human Rights Committee shall not be competent to receive and consider communications from any person who is under sentence of death for the offences of murder and treason in respect of any matter relating to his prosecution, detention, trial, conviction, sentence or execution of the death sentence and any matter connected therewith.

Accepting the principle that States cannot generally use the Optional Protocol as a vehicle to enter reservations to the International Covenant on Civil and Political Rights itself, the Government of Guyana stresses that its Reservation to the Optional Protocol in no way detracts from its obligations and engagements under the Covenant, including its undertaking to respect and ensure to all individuals within the territory of Guyana and subject to its jurisdiction the rights recognized in the Covenant (insofar as not already reserved against) as set out in article 2 thereof, as well as its undertaking to report to the Human Rights Committee under the monitoring mechanism established by article 40

Date of communication: 26 February 1998 (initial submission)

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

Meeting on 21 March 2006,

Having concluded its consideration of communication No. 812/1998, submitted to the Human Rights Committee by Raymond Persaud and Rampersaud 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 authors are Raymond Persaud and Rampersaud, nationals of Guyana. Raymond Persaud is currently detained in Georgetown Prisons and awaiting execution. Rampersaud died on 21 August 1998 (of natural causes) and the Committee has received no notification from any of his heirs that his communication is maintained. Although the authors do not invoke any specific provisions of the International Covenant on Civil and Political Rights, the communication appears to raise issues under articles 6 and 7 of the Covenant. The authors are not represented by counsel.

1.2 In accordance with rule 92 (former rule 86) of the Committee's Rules of Procedure, the Committee, through its Special Rapporteur for New Communications, requested the State party on 9 April 1998 not to carry out the death sentence against the authors, to make it possible for the Committee to examine the communication.

Factual background

2.1 On 21 January 1986, the authors were arrested for the murder of Bibi Zorina Alli, who was found buried in a shallow grave at the back of the Hollywood Hotel in Rose Hall, Corentyne. They were found guilty of the murder and were sentenced to death on 11 December 1990. The authors appealed and on 25 May 1994, the Court of Appeal confirmed their death sentences. They applied to have their sentences commuted to life sentences, but their application was dismissed on 31 July 1997. They lodged an appeal against this decision, which was dismissed on 25 February 1998.

2.2 On 16 or 17 July 1998, warrants of execution were mistakenly issued and read to the authors, because the Office of the President had not been notified that interim measures

thereof."

had been granted by the Committee. The warrants were withdrawn and the authors subsequently received letters of apology for the mistake.

The complaint

3. The authors claim that their death sentences should be commuted to life sentences as a result of their long delay on death row. By letter received on 14 January 2004 from the brother and sister of the remaining living author, Raymond Persaud, on his behalf, he claims that his remaining on death row is inhumane and that the delay amounts to a violation of his fundamental rights. The communication therefore raises issues under articles 6 and 7 of the Covenant.

Submission by the State party on the admissibility of the communication

4. By letter of 30 June 1998, the State party conceded that the communication was admissible since the authors had exhausted all available domestic remedies.

State party's failure to cooperate

5. On 14 December 2000, 24 July 2001, 21 October 2003 and 7 July 2004, the State party was requested to submit to the Committee information on the merits of the communication. The Committee notes that this information has not been received; it regrets the State party's failure to provide any information with regard to the substance of the authors' claims. It recalls that it is implicit in article 4, paragraph 2, of the Optional Protocol that States parties examine all the allegations brought against them, and that they make available to the Committee all information at their disposal. In the absence of a reply from the State party, due weight must be given to the authors' allegations, to the extent that these have been properly substantiated.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with article 93 of its rules and procedures, decide whether or not it is admissible under the Optional Protocol of the Covenant.

6.2 The Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement for the purposes of article 5, paragraph 2 (a), of the Optional Protocol and that the authors have exhausted all domestic remedies, in accordance with article 5, paragraph 2 (b), of the Optional Protocol. In the present case, the Committee further notes that the State party, in its submission of 30 June 1998, does not contest the admissibility of the communication. Accordingly, the Committee proceeds directly with the examination of the merits.

Consideration of the merits

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

7.2 As regards the issues under article 6 of the Covenant, and basing itself on the examination of the applicable law in Guyana, the Committee presumes that the death sentence was passed automatically by the trial court, once the jury had rendered its verdict that the authors were guilty of murder, in application of section 101 of the Criminal Law (Offences) Act. This provision requires that “Everyone who commits murder shall be guilty of felony and liable to suffer death as a felon”, without regard being able to be paid to the defendant’s personal circumstances or the circumstances of the particular offence. The Committee refers to its jurisprudence that the automatic and mandatory imposition of the death penalty constitutes an arbitrary deprivation of life, in violation of article 6, paragraph 1, of the Covenant, in circumstances where the death penalty is imposed without regard being able to be paid to the defendant’s personal circumstances or the circumstances of the particular offence.² It follows that the automatic imposition of the death penalty on the authors violated their rights under article 6, paragraph 1.

7.3 As regards the issues raised under article 7 of the Covenant, the Committee would be prepared to consider that the prolonged detention of the author on death row constitutes a violation of article 7. However, having also found a violation of article 6, paragraph 1, it does not consider it necessary in the present case to review and reconsider its jurisprudence that prolonged detention on death row, in itself and in the absence of other compelling circumstances, does not constitute a violation of article 7.

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 article 6, paragraph 1, of the Covenant.

9. In accordance with article 2, paragraph 3, of the Covenant, the State party is under an obligation to provide the remaining living author with an effective remedy, including commutation of his death sentence. The State party is also under an obligation to take measures to prevent similar violations in the future.

² See Communication No. 806/1998, *Thompson v. St. Vincent and The Grenadines*, Views adopted on 18 October 2000, para. 8.2; Communication No. 845/1998, *Kennedy v. Trinidad and Tobago*, Views adopted on 26 March 2002, para. 7.3; Communication No. 1077/2002, *Carpó et al. v. Philippines*, Views adopted on 28 March 2003, para. 8.3; Communication No. 1167/2003, *Ramil Rayos v. Philippines*, Views adopted on 27 July 2004, para. 7.2; Communication No. 862/1999, *Hussain et al. v. Guyana*, Views adopted on 25 October 2005, para. 6.2; and Communication No. 913/2000, *Chan v. Guyana*, Views adopted on 31 October 2005, para. 6.5.

10. Bearing in mind that, by becoming a 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, that State party has undertaken to ensure 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, 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 also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

ANNEX

**Dissenting opinion by Committee members Mr. Hipólito Solari-Yrigoyen and
Mr. Edwin Johnson**

I disagree with the majority view that it is unnecessary in the present case for the Committee to reconsider its jurisprudence, which has, to date, held - wrongly, in my view - that prolonged detention on death row does not, in itself, constitute a violation of article 7 of the Covenant.

Although the Committee has rightly concluded that there has been a violation of article 6, it is my view that, in a case in which the death sentence was imposed, we have an obligation not to disregard the specific claim by the author that his prolonged stay on death row amounts to a violation of his fundamental rights; and that we are thus bound to rule on the claim.

Consequently, taking into account the circumstances of this case, in which the author of the communication has spent 15 years on death row, I am of the view that this fact alone constitutes cruel, inhuman and degrading treatment and that article 7 of the Covenant has been violated.

Accordingly, the facts before the Committee reveal violations by the State party both of article 6 and of article 7 of the Covenant.

In accordance with article 2, paragraph 3, of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including commutation of his death sentence and the possibility of his being granted his freedom.

[Signed]: Hipólito Solari-Yrigoyen

[Signed]: Edwin Johnson

[Done in English, French and Spanish, the Spanish 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.]
