



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Eighty-fifth session
17 October – 3 November 2005

VIEWS

Communication No. 913/2000

<u>Submitted by:</u>	Lawrence Chan (not represented by counsel)
<u>Alleged victim:</u>	The author
<u>State party:</u>	Guyana
<u>Date of communication:</u>	15 September 1998 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 92/97 decision, transmitted to the State party on 7 February 2000 (not issued in document form)
<u>Date of adoption of Views:</u>	31 October 2005

* Made public by decision of the Human Rights Committee.

Subject matter: Mandatory imposition of the death penalty after unfair trial

Substantive issues: Arbitrary deprivation of life – Right to adequate time and facilities for the preparation of one's defence – Right to free legal assistance

Procedural issues: State party's failure to cooperate – Failure to substantiate claims

Articles of the Covenant: 6 and 14, paragraph 3 (b) and (d)

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

On 31 October 2005, 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. 913/2000. 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-fifth session

concerning

Communication No. 913/2000^{**}

<u>Submitted by:</u>	Lawrence Chan (not represented by counsel)
<u>Alleged victim:</u>	The author
<u>State party:</u>	Guyana ¹

^{**} 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, Mr. Maurice Glèlè Ahanhanzo, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Michael O’Flaherty, Ms. Elisabeth Palm, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer, Mr. Hipólito Solari-Yrigoyen, Ms. Ruth Wedgwood and Mr. Roman Wieruszewski.

The text of two individual opinions, one co-signed by Committee members Mr. Ivan Shearer and Mr. Prafullachandra Natwarlal Bhagwati, the other by Ms. Ruth Wedgwood, are appended to the present document.

¹The Covenant and the Optional Protocol entered into force for the State party respectively on 15 May 1977 and 10 August 1993. Upon ratification of the Covenant, the State party entered the following reservation in respect of sub-paragraph (d) of paragraph 3 of article 14: “While the Government of the Republic of Guyana accept the principle of Legal Aid in all appropriate criminal proceedings, is working towards that end and at present apply it in certain defined cases, the problems of implementation of a comprehensive Legal Aid Scheme are such that full application cannot be guaranteed at this time.” 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 recognised in the Covenant (in so far as not already reserved against) as

Date of communication: 15 September 1998 (initial submission)

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

Meeting on 31 October 2005,

Having concluded its consideration of communication No. 913/2000, submitted to the Human Rights Committee by Lawrence Chan 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 is Lawrence Chan, a national of Guyana, currently detained in Georgetown Prisons and awaiting execution. Although he does not invoke any specific provisions of the International Covenant on Civil and Political Rights, the communication appears to raise issues under articles 6 and 14 of the Covenant. The author is 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 7 February 2000 not to carry out the death sentence against the author, to make it possible for the Committee to examine the communication.

Factual background

2.1 During the night of 11 January 1993, one Raphael Seecharan (R.S.), a trader, and his assistant, Ramong, were killed at a camp on the Kaituma River, in the presence of one J.K., who accompanied the two men on their journey. Also present were the author, who was armed with a gun, the author's brother, J.C., and the brother's friend, G.R. R.S. reportedly carried 25,000 Guyana dollars on him at the time of his death.

2.2 J.K. managed to escape and reported the incident to the police. The author was subsequently arrested and identified by J.K. at an I.D. parade on 15 March 1993. He was charged with murder and committed for trial together with his brother, J.C., who had surrendered himself to the police, and G.R. It is unclear whether the author was assisted by a lawyer during the preliminary inquiry.

2.3 During the preliminary inquiry, a statement incriminating the author allegedly made by J.C. was tendered in evidence and formed part of the proceedings. Upon receipt of the depositions after committal, the prosecution entered a nolle prosequi in favour of J.C., who was freed and later summoned to testify for the prosecution. G.R. died in prison.

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 thereof.”

2.4 On 21 November 1993, the bones and skulls of the deceased were found in a creek together with their clothes and a wristwatch that R.S. had worn at the time of his death.

2.5 At the beginning of the trial on 23 November 1995, the author stated that he was not in a position to retain counsel and was assigned a legal aid lawyer who, in his absence, was represented by another lawyer. After the author had pleaded not guilty and the jury had been sworn in, the trial was adjourned until Monday, 27 November 1995, at the request of the representative of the author's lawyer, who was "engaged in the Court of Appeal today and tomorrow."

2.6 During the trial, J.C. withdrew his claim that the police had beaten him to extract a statement incriminating the author and stated that the author had told him to make this allegation. He also denied that he and G.R. had made up a story against the accused because they were lovers, or that he had surrendered himself to the police to have his sister released from police custody.

2.7 By judgment of 20 December 1995, a jury of the High Court of the Supreme Court of Judicature of Guyana found the author guilty of murder. The Court based the author's conviction, *inter alia*, on the testimonies of J.K., J.C., J. Clementson (a cousin of R.S.), L.M. (the medical practitioner who had performed the post mortem examination of the deceased), L.T. (a ballistic expert), O.S. (a former police corporal), and several other police officers.

2.8 Pursuant to Section 101 of the Criminal Law (Offences) Act, which provides that "Everyone who commits murder shall be guilty of felony and liable to suffer death as a felon", the Court automatically imposed the death sentence on the author.

2.9 On 3 January 1996, the author appealed his conviction and sentence to the Court of Appeal of the Supreme Court of Judicature of Guyana on the ground that he did not have a fair trial. In particular, the author claimed (a) that the trial judge had shown a bias when constantly filling the gaps for the prosecution's case by questioning the witnesses, which had resulted in an unbalanced approach of the case for the defence in his summing-up, and (b) that the judge had erred in allowing additional evidence from J. Clementson, J.C., L.T. and O.S., in the absence of any good reason for not having taken such evidence during the preliminary inquiry.

2.10 On 13 June 1997, the Court of Appeal of the Supreme Court, by two votes to one, dismissed the author's appeal and confirmed his conviction and sentence. The Court held that the trial judge had duly exercised his discretion throughout the trial.

The complaint

3.1 The author claims that he was severely beaten to confess the crime, as were his brother and G.R., both of whom signed a statement as a result. All of them were denied medical treatment, although they could not eat or walk properly. The police simply waited until they felt better to bring them before a judge, who took no action on their complaints about their ill-treatment.

3.2 The author also claims that the prosecution made a deal with J.C. and G.R., by which they testified against him. The charges against them were dropped in exchange. His death sentence was thus based on the false testimony of his brother.

3.3 The author emphasizes that, as a member of a poor Amerindian family, he did not have sufficient means to pay for a lawyer. He therefore had to rely on the assistance of a State-appointed lawyer throughout his trial. Ultimately, the injustice done to him was a result of his poverty.

Failure of the State party to cooperate

4. On 13 August and 11 October 2001, the State party was requested to submit to the Committee information on the admissibility and merits of the communication. The Committee notes that this information has not been received. The Committee regrets the State party's failure to provide any information with regard to admissibility or the substance of the author's claims. It recalls that it is implicit in article 4, paragraph 2, of the Optional Protocol that States parties examine in good faith 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 author's allegations, to the extent that these have been properly substantiated.

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 article 93 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

5.2 The Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement for purposes of article 5, paragraph 2 (a), of the Optional Protocol and that the author has exhausted all available domestic remedies,² in accordance with article 5, paragraph 2 (b), of the Optional Protocol.

5.3 As to the author's allegation that the police had beaten him and his brother, as well as G.R., thereby extracting incriminating statements against him from J.C. and G.R., the Committee notes the inconsistencies in the testimony given by J.C. on this issue at the jury trial. It further notes the author's claim that part of the evidence against him had been obtained as a result of a deal between the prosecution and his brother. However, in the absence of any evidence which would corroborate these allegations, the Committee considers that the author has not sufficiently substantiated these claims for purposes of admissibility. It follows that this part of the communication is inadmissible under article 2 of the Optional Protocol.

5.4 With regard to the author's legal representation, the Committee recalls that, on the first day of the trial, the representative of the author's State-appointed lawyer requested an adjournment of the trial for only two week days, during which the lawyer was engaged in the Court of Appeal. It considers that the short time available for the preparation of the author's defence raises issues under article 14, paragraph 3 (b) and (d), of the Covenant. Moreover, the Committee considers that the mandatory imposition of the death sentence on the author raises issues under articles 6 and 14 of the Covenant. In the absence of any observations by

² Guyana does not recognize the jurisdiction of the Judicial Committee of the Privy Council as the final instance of appeal.

the State party on the admissibility of the communication, the Committee declares the communication admissible, insofar as it raises issues under articles 6 and 14 of the Covenant.

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, as provided under article 5, paragraph 1, of the Optional Protocol.

6.2 As regards the time available for the preparation of the author's defense, the Committee recalls that the author's right under article 14, paragraph 3 (d), to have legal assistance assigned to him entitled him to effective legal representation,³ including adequate time and facilities for the preparation of his defence, as guaranteed in article 14, paragraph 3 (b). While noting that the trial was adjourned for only two week days at the request of the author's counsel, the Committee recalls that counsel was assigned to the author by the State party. It further recalls that the conduct of a defence lawyer may be attributed to a State party, if it was manifest to the judge that such conduct was incompatible with the interests of justice.⁴

6.3 The Committee considers that in a capital case, where the defence lawyer is absent on the first day of the trial, when he is being appointed as legal aid counsel for the accused and, through his representative, requests adjournment of the trial, the Court must ensure that such adjournment provides the accused with sufficient time to prepare his defence together with his lawyer. It should have been manifest to the judge in a capital case that counsel's request for an adjournment of the trial for only two week days, during which he was engaged in another case, was not compatible with the interests of justice, since it did not provide the author with adequate time and facilities to prepare his defence. In the light of this and in the absence of an explanation by the State party, the Committee concludes that the author was not effectively represented at trial, in violation of article 14, paragraph 3 (b) and (d), of the Covenant.

6.4 With regard to the author's sentence, the Committee recalls its jurisprudence 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 a violation of article 6 of the Covenant.⁵ It also recalls that the author was not effectively represented at trial, in violation of article 14, paragraph 3 (b) and (d). The Committee concludes that the sentence of death was passed on the author without meeting the guarantees set out in article 14 of the Covenant, and thus also in breach of article 6, read in conjunction with article 14.

6.5 Furthermore, the Committee notes that the death sentence was passed automatically by the trial court, once the jury had rendered its verdict that the author was guilty of murder, in application of Section 101 of the Criminal Law (Offences) Act. This provision requires that

³ Communication No. 594/1987, Phillip v. Trinidad and Tobago, Views adopted on 20 October 1998, at para. 5.10.

⁴ Cf. Communication No. 618/1995, Campbell v. Jamaica, Views adopted on 20 October 1998, at para. 7.3.

⁵ See, for example, Communication No. 838/1998, Oral Hendricks v. Guyana, Views adopted on 28 October 2002; Communication No. 912/2000, Deolall, v. Guyana, Views adopted on 1 November 2004; Communication No. 867/1999, Smartt v. Guyana, Views adopted on 6 July 2004.

“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.⁶ It follows that the automatic imposition of the death penalty on the author violated his rights under article 6, paragraph 1.

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 reveal violations by the State party of article 14, paragraph 3 (b) and (d), and of article 6, read alone and in conjunction with article 14, of the Covenant.

8. 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. The State party is also under an obligation to take measures to prevent similar violations in the future.

9. 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.]

⁶ See Communication No. 806/1998, Thompson v. St. Vincent and The Grenadines, Views adopted on 18 October 2000; Communication No. 845/1998, Kennedy v. Trinidad and Tobago, Views adopted on 26 March 2002; Communication No. 1077/2002, Carpo et al. v. Philippines, Views adopted on 28 March 2003; Communication No. 1167/2003, Ramil Rayos v. Philippines, Views adopted on 27 July 2004.

APPENDIX**Individual opinion by Committee members Messrs. Ivan Shearer and Prafullachandra Natwarlal Bhagwati**

We agree with the Views of the Committee in finding a violation of article 6 in this case, confirming its consistent jurisprudence that the automatic and mandatory imposition of the death penalty, without regard to the personal circumstances of the convicted person or the circumstances of the particular offence, is contrary to the Covenant.

However, we find ourselves unable to join in the finding of additional violations of article 14, paragraphs 3 (b) and (d) regarding the fairness of Mr. Chan's trial. Mr Chan's trial opened on Thursday 23 November 1995. He stated that he was unable to retain counsel. The court then assigned a legal aid lawyer. The trial was deferred until Monday 27 November. The assigned lawyer was said to have been engaged in a case before the Court of Appeal on 23 and 24 November. However, even if that case engaged the lawyer's full attention on those two weekdays there still remained the weekend during which the lawyer could take instructions and prepare for the author's trial.

We note that the author himself does not allege as part of his complaint that his lawyer was granted insufficient time to prepare. His complaint was that he was unable to retain counsel of his own choice as a result of poverty. Nor is there any evidence before the Committee that the lawyer asked the court to allow further time for preparation. Notwithstanding the special care that should be exercised in securing a fair trial for an offence carrying the death penalty, in the circumstances of the present case there seem to us insufficient grounds for finding a violation of article 14.

[*signed*]

Ivan Shearer

[*signed*]

Prafullachandra Natwarlal Bhagwati

[Done 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.]

Individual opinion by Committee member Ms. Ruth Wedgwood

The Human Rights Committee has assumed in this matter that it is the date of an author's initial submission of a communication, rather than the date of its formal registration and transmission to the state party for reply, that is the decisive date for judging admissibility *ratione temporis*. Guyana denounced the Optional Protocol to the Covenant on 5 January 1999, with the denunciation taking effect as of 5 April 1999. Guyana re-acceded to the Optional Protocol on the same date, with a reservation concerning capital cases. The initial communication by the author to the Committee was submitted on 15 September 1998, and the state party was asked for a reply on 7 February 2000.

Our prior practice has varied. *See Thomas v. Jamaica*, No. 800/1998, at paragraph 6.3, noted in Manfred Nowak, U.N. COVENANT ON CIVIL AND POLITICAL RIGHTS, CCPR COMMENTARY, 2nd revised edition 2005, at p. 907. *But see Smartt v. Guyana*, No. 867/1999, at para. 1.2; *Deolall v. Guyana*, No. 912/2000, at para. 4.5; *Siewpersaud v. Trinidad and Tobago*, No. 938/2000, at para. 9 (transmitted to state party 1 August 2000). Though this is a debatable conclusion, within reasonable limits, I am willing to accept the Committee's view.

On the merits of this case, I join with my colleagues Ivan Shearer and Prafullachandra Natwarlal Bhagwati in concluding that there is no established violation of Article 14((3)(b), concerning the adequacy of preparation time for appointed legal counsel. Though, in a capital case, a period of four calendar days for counsel to prepare for trial is far from ideal, the defense attorney did not request any further delay. The committee is not in a position to second-guess the judgment of the defense counsel and the trial judge that this delay sufficed for adequate preparation.

On the issue of the capital sentence imposed on the author, Article 6(2) of the Covenant specifies that the death penalty may be imposed "only for the most serious crimes." The law of Guyana extends a mandatory death penalty to all cases of murder, whether or not the crime involved additional aggravating circumstances. It forbids the court or jury to consider any mitigating information concerning the defendant or the particular circumstances of the crime. Nor is it clear that the mandatory penalty is even limited to cases of intentional killing or wanton disregard for human life, as opposed to felony murder. In these circumstances, absent any clarification by the state party, application of the statute in this case would not appear to be consistent with the requirements of Article 6(2).

Consideration of the death penalty in Guyana may be importantly influenced in the future by the jurisprudence of the new Caribbean Court of Justice. But for the moment, the Committee is bound to measure state practice *tout simple* against the standards of the Covenant and the information provided by the parties to the Optional Protocol.

[signed] Ruth Wedgwood

[Done 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.]
