



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Ninety-fourth session
13-31 October 2008

DECISION

Communication No. 1638/2007

<u>Submitted by:</u>	Mr. Harmon Lynn Wilfred (represented by counsel, Mr. Guneet Chaudhary)
<u>Alleged victim:</u>	The author
<u>State Party:</u>	Canada
<u>Date of communication:</u>	7 November 2007 (initial submission)
<u>Date of adoption of the decision:</u>	30 October 2008

* Made public by decision of the Human Rights Committee.

Subject matter: Alleged human rights violations committed by a non State Party to the Optional Protocol, in complicity with a State Party.

Procedural issues: Lack of substantiation of claim; petition against a non State party to the Optional Protocol.

Articles of the Covenant: 6; 7; 9, paragraphs 1 and 5; 10, paragraph 1; 12; 13; 14; 15; 16; 17; and 26.

Articles of the Optional Protocol: 1 and 2.

[ANNEX]

ANNEX

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

Ninety-fourth session

concerning

Communication No. 1638/2007*

Submitted by: Mr. Harmon Lynn Wilfred (represented by
counsel, Mr. Guneet Chaudhary)

Alleged victim: The author

State Party: Canada

Date of communication: 7 November 2007 (initial submission)

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

Meeting on 30 October 2008,

Adopts the following:

DECISION ON ADMISSIBILITY

1. The author of the communication is Harmon Lynn Wilfred, originally a citizen of the United States of America, who renounced his US citizenship and currently resides in New Zealand. He claims to be a victim of violations by Canada and the United States of America of article 6, article 7, article 9, paragraphs 1 and 5; article 10, paragraph 1, article 12; article 13; article 14; article 15; article 16; article 17; and article 26 of the Covenant. The Optional Protocol entered into force for Canada on 19 May 1976. The author is represented by counsel, Mr. Guneet Chaudhary.

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Yuji Iwasawa, Mr. Edwin Johnson, Ms. Helen Keller, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer and Ms. Ruth Wedgwood.

The facts as submitted by the author

2.1 In 1992, the author was employed by commercial real estate contractors to support the renovation and sale of commercial properties purchased by the El Paso County Pension Fund in the United States. In the process of leasing, restoring and selling these properties on behalf of the Pension Fund, he discovered that significant amounts of money were being embezzled. In 1994, he reported this information to the District Attorney, who failed to initiate an investigation. The author later discovered that the District Attorney office was allegedly involved in the embezzlement scheme.

2.2 The author also reported these irregularities to the Federal Bureau of Investigation (FBI), which forced the District Attorney to open an investigation. As a result, a number of Pension Fund Board members were fined and dismissed. The author believes that his whistle blowing caused him difficulties in relation to subsequent family court matters in El Paso County.

2.3 In 1996, the author started work as an international financial consultant. His services were retained by the Central Intelligence Agency (CIA) to act as a financial advisor and intermediary in a transaction involving humanitarian assistance to Guatemala. In 1998, the US Securities and Exchange Commission (SEC) commenced a public investigation and asserted that a financial transaction in which the author was involved was illegitimate. The author sought to provide the SEC with information evidencing that the transaction was indeed legitimate, but the SEC did not accept any of the documented information offered. While the investigation was still ongoing, the author claims to have received death threats.

2.4 During the same period, the author filed for divorce from his former wife and relocated to Ontario, Canada, with his children. While he was in Canada, a hearing was held and an American judge awarded custody of the children to his wife. On 17 October 1997, a charge of "violation of custody order" was filed against him, and a warrant for his arrest was issued. The El Paso County District Attorney gained approval to seek extradition of the author from Canada.

2.5 On 14 February 1998, the Canadian authorities arrived at the author's home in Canada, took the children and returned them to Colorado, USA. They arrested the author at his home, without allegedly reading him his rights. The officer who arrested him stated that he did not have any documentation or evidence from the United States to confirm or substantiate any charges and that he was simply executing an arrest order. The author was incarcerated in Ontario for 89 days before he was released on bail. While in prison, he claims to have been subject to cruel, inhuman or degrading treatment. On 27 April 1998, while incarcerated, he was declared legally divorced by the Colorado family court.

2.6 On 1 June 1998, the author was brought before a Canadian Court for an extradition hearing. He claims the extradition was allowed solely on the basis of hearsay evidence from the El Paso County District Attorney. The author was re-incarcerated by the Canadian judge for an additional 31-day period, awaiting his extradition to Colorado. The author appealed the extradition order decision and he was released on bail in July 1998.

2.7 On 5 April 2000, the author was extradited to the US. He claims that although by virtue of the rule of specialty he could only be confronted in the US for the extradition offences for which

he was ordered to be extradited and not for any other cause, he was incarcerated in El Paso for unrelated offences. To those offences he pleaded not guilty and was released on bail.

2.8 On 7 April 2000, the author returned to Canada. While in Canada, he claims that secret charges were laid against him and when he returned to the USA he was arrested on non-payment of child support charges previously unknown to him. On 26 May 2000, a US federal judge dismissed these charges on the ground of violation of the USA-Canada Extradition Treaty. However, although his immediate release was ordered, he was re-arrested and kept in a detention centre for four days. He was not informed of the reasons for the arrest, nor was he brought before a judge to challenge it. Finally, on 30 May 2000, the author was released and returned to Canada, without being convicted of any offence.

The complaint

3.1 The author claims to be a victim of violations by Canada and the United States of America of article 6, article 7, article 9, paragraphs 1 and 5; article 10, paragraph 1, article 12; article 13; article 14; article 15; article 16; article 17; and article 26 of the Covenant.

3.2 On article 6 the author states in general terms that he fears for his life should he ever return or be returned to the United States or Canada.

3.3 With respect to article 7, the author complains about the conditions of detention in the Canadian prison, which would amount to torture or cruel, inhuman or degrading treatment. In particular, he allegedly suffered constant sleep deprivation, disproportionate restrictions to outside exercise, and unnecessary use of handcuffs, chains and shackles.

3.4 In relation to article 14, the author states that he was arrested without being informed of his rights in Canada.

Issues and proceedings before the Committee

4.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with article 93 of its Rules of Procedure, decide whether or not the communication is admissible under the Optional Protocol to the Covenant.

4.2 The Committee observes that several of the author's allegations appear to be directed against the authorities of the United States of America. Since the United States of America has not ratified or acceded to the Optional Protocol to the Covenant, the Committee considers those parts of the communication inadmissible under article 1 of the Optional Protocol¹.

4.3 The Committee further notes that the author has made several other general and unspecified allegations of violation of provisions of the Covenant, without providing meaningful evidence to substantiate his claims of violations of article 6, article 7, article 9, paragraphs 1 and 5; article 10, paragraph 1, article 12; article 13; article 14; article 15; article 16; article 17; and

¹ Communication No. 319/1988, *Cañón García v. Ecuador*, Views adopted on 5 November 1991, paragraph 5.1; Communication No. 409/1990, *E.M.E.H v. France*, Inadmissibility decision adopted on 19 December 1990, paragraph 3.2.

article 26 of the Covenant by Canada. Rather, he confines himself to general denunciations, without offering information to substantiate the alleged violations. In the circumstances, the Committee finds that the author has failed to sufficiently substantiate, for purposes of admissibility, that he is a victim of the alleged violations of the Covenant. The claim is therefore inadmissible under article 2 of the Optional Protocol.

4.4 The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under articles 1 and 2 of the Optional Protocol;

(b) That the decision be transmitted to the State Party, to the author and to his counsel.

[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.]
