

## HUMAN RIGHTS COMMITTEE

### Hendricks v. Guyana

Communication No. 838/1998

28 October 2002

CCPR/C/76/D/838/1998

### VIEWS

*Submitted by: Oral Hendricks*

*Alleged victim: The author*

*State party: Guyana*

*Date of communication: 5 June 1998 (initial submission)*

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

Meeting on 28 October 2002,

Having concluded its consideration of communication No. 838/1998, submitted to the Human Rights Committee on behalf of Mr. Oral Hendricks 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 is Mr. Oral Hendricks, a citizen of Guyana, at the time of submission of the communication, detained in Georgetown Prison, Georgetown, Guyana. He claims to be a victim of human rights violations by Guyana. 1/ The author does not invoke any specific provision of the Covenant, however, the communication appears to raise issues under

articles 9 and 14 of the International Covenant on Civil and Political Rights. He is not represented by counsel.

1.2 In accordance with rule 86 of the Committee's Rules of Procedure, the Committee requested the State party on 28 September 1998 not to carry out the death sentence against the author while the communication is under consideration by the Committee. 2/

### **The facts as submitted by the author**

2.1 The author, who was suspected of having murdered, on 12 December 1992, his three step-children aged 2, 4 and 7, was arrested on 13 December 1992 in West Bank Demerara, Guyana.

2.2 On 5 February 1996, the author was sentenced to death by hanging by a trial court in West Demerara County. On 4 July 1997, the Court of Appeal confirmed his sentence.

### **The Complaint**

3.1 The author claims a violation of his Covenant rights because he was denied access to a lawyer when questioned after his arrest.

3.2 The author further alleges that, as his lawyer was absent at one of the hearings of the "small" court, he was not permitted to cross-examine one witness during the trial.

3.3 The author claims that some statements of witnesses were not transmitted to his counsel and that the only reaction of the judge was to tell the prosecution that this should have been done.

3.4 The author alleges that he was forced to sign a confession, as when he asked for some food and water, he was told that he would receive food and water only if he signed a confession.

3.5 The author asserts that he has exhausted domestic remedies and that the same matter is not being examined under another procedure of international investigation or settlement.

### **The State party's submission on the admissibility and merits of the communication**

4. Notwithstanding the Committee's request to the State party by note verbale of 28 September 1998 and the Secretariat's reminders of 7 February 2000, 14 December 2000 and 5 October 2001, the State party has not made any submission on the admissibility or the merits of the case.

### **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 rule 87 of its rules of procedure, decide whether or not the communication 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.

5.3 The Committee has also ascertained, from the material before it, that the author has exhausted domestic remedies for purposes of article 5, paragraph 2 (b), of the Optional Protocol and the State party has raised no objection in this regard.

5.4 The Committee is of the opinion that the communication raises issues under articles 6, 9, paragraph 3 and 14, paragraph 3 (c), (d), (e) and (g) of the Covenant and therefore declares the communication admissible.

### **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 in article 5, paragraph 1, of the Optional Protocol. Moreover, in the light of the failure of the State party to cooperate with the Committee on the matter before it, due weight must be given to the author's allegations, to the extent that they have been substantiated. The Committee recalls in this respect that a State party has an obligation under article 4, paragraph 2, of the Optional Protocol to cooperate with the Committee and to submit written explanations or statements clarifying the matter and the remedy, if any, that may have been granted.

6.2 As to the allegations related to the question of whether or not he was informed of his right to be assisted by a lawyer when he was questioned after his arrest and also the question of his forced confession, raising possibly issues under article 14, paragraph 3 (d) and (g), of the Covenant, the Committee notes that the trial transcript reveals that the author's counsel fully canvassed those issues before the trial court with a view to render his confession inadmissible in evidence and that the Court duly considered it. In this connection, the Committee reiterates its jurisprudence that it is primarily for the courts of States parties to the Covenant to review facts and evidence in a particular case. It is for the appellate courts of States parties to the Covenant, and not for the Committee, to review the conduct of the trial and the judge's instructions to the jury, unless it can be ascertained that the evaluation of evidence was clearly arbitrary or amounted to a denial of justice, or that the judge manifestly violated his obligation of impartiality. The trial transcript in the author's case did not reveal that his trial suffered from such defects. Accordingly, this part of the communication does not reveal a violation of article 14, paragraph 3 (d) and (g) of the Covenant.

6.3 With regard to the issues raised under articles 9, paragraph 3, and 14, paragraph 3 (c) of the Covenant, the Committee notes that the author was tried more than three years after he was arrested. Recalling its General Comment 8, according to which "pre-trial detention should be an exception and as short as possible", and noting that the State party has not provided any explanation justifying such a long delay, the Committee considers that the period of pre-trial detention constitutes in the present case an unreasonable delay. The Committee therefore concludes that the facts before it reveal a violation of article 9, paragraph 3, of the Covenant. Furthermore, recalling the State party's

obligation to ensure that an accused person be tried without undue delay, the Committee finds that the facts before it also reveal a violation of article 14, paragraph 3 (c), of the Covenant.

6.4 As to the allegations according to which his lawyer was absent on one day at the "small" court, and that as a consequence he was denied the right to cross-examine one witness, the Committee notes from the information before it, that the author in fact refers to the preliminary hearing where his counsel was apparently absent at one stage and that this was not disputed by the State party. The Committee recalls its prior jurisprudence that, in capital cases, it is axiomatic that legal assistance be available at all stages of criminal proceedings. 3/ It also recalls its decision in communication No. 775/1997 (Brown v. Jamaica), adopted on 23 March 1999, in which it decided that a magistrate should not proceed with the deposition of witnesses during a preliminary hearing without allowing the author an opportunity to ensure the presence of his lawyer. Accordingly, the Committee finds that the facts before it disclose a violation of article 14, paragraph 3 (d) and (e) and, consequently, of article 6 of the Covenant.

6.5 As to the allegations according to which some of the witnesses' statements were not transmitted to the author's counsel, raising possibly an issue under article 14, paragraph 3 (e) of the Covenant, the Committee notes that the trial transcript does not contain any indication in this respect and is therefore of the opinion that the author has not substantiated his claim of a violation of article 14, paragraph 3 (e), of the Covenant in this respect.

7. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol, is of the view that the facts before it disclose a violation of articles 9, paragraph 3 and 14, paragraph 3 (c), (d) and (e) and consequently of article 6 of the International Covenant on Civil and Political Rights.

8. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including commutation of sentence. The State party is also under an obligation 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, 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, 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.

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[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.]

\* The following members of the Committee participated in the examination of the present

communication: Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Louis Henkin, Mr. Ahmed Tawfik Khalil, Mr. Eckart Klein, Mr. David Kretzmer, Mr. Rajsoomer Lallah, Ms. Cecilia Medina Quiroga, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Martin Scheinin, Mr. Ivan Shearer, Mr. Hipólito Solari Yrigoyen and Mr. Maxwell Yalden.

**Individual opinion by Committee Member Mr. Hipólito Solari Yrigoyen (dissenting)**

I disagree with regard to the present communication on the grounds set forth below:

In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including commutation of sentence and adequate compensation or consideration of early release. The State party is also under an obligation to prevent similar violations in the future.

(Signed): Mr. Hipólito Solari Yrigoyen

**Notes**

1/ The Government of Guyana had initially acceded to the Optional Protocol on 10 May 1993. Subsequent to the submission of the communication, on 5 January 1999, the Government of Guyana notified the Secretary-General that it had decided to denounce the said Optional Protocol with effect from 5 April 1999. On that same date, the Government of Guyana re-acceded to the Optional Protocol with a 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").

2/ The State party has not informed the Committee as to its compliance with the request.

3/ See inter alia, the Committee's Views in respect of communication No. 695/1996, Devon Simpson v. Jamaica, adopted on 31 October 2001, communication No. 730/1996 Clarence Marshall v. Jamaica, adopted on 3 November 1998, communication No. 459/1991, Osbourne Wright and Eric Harvey v. Jamaica, adopted on 27 October 1995, and communication No. 223/1987, Frank Robinson v. Jamaica, adopted on 30 March 1989.