

6 January, 2009

The UN Human Right Commissioner
Office of the United Nation Human Right Commissioner
Human Rights Treaties Branch
Palais Des Nations
Ch-1211, Geneve 10

RE: Request for Review of Decision
Communication No 1638/2007
Case Reference G/SO/2151/51/CAN (135)MS/HV/sn 1638/207

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)

Date of adoption of the decision: 30 October, 2008

Subject Matter: Alleged human rights violations committed by a non State Party of 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.

Mr Guneet Chaudhary as Harmon Wilfred's attorney hereby presents a request for a Judicial Review of the subject decision based upon the mistaken views and/or incorrect interpretations of the ICCPR Rules of Procedure and Optional Protocol as this relates to the communications admissibility as follows:

- 1. ICCPR Rules of Procedure 98 (2): Right of Review**
- 2. Optional Protocol to the ICCPR: Articles 1. Parties to the Optional Protocol; and 2. All Available remedies exhausted...**
- 3. ICCPR Rule 100 (2): The Committee shall not decide on the merits of the communication without having [*correctly*] considered the applicability of all the admissibility grounds referred to in the Optional Protocol...**
- 4. ICCPR, Article 2, Para 3(a) (b). Due Process right to "an effective remedy by a competent judicial, administrative or legislative authority..."
Optional Protocol to the ICCPR, Articles 1 and 2**

It is mistakenly submitted by the Council that the applicant has filed his petition against the state of USA and the state of Canada. Although this petition contains material evidence involving the USA in the body of the case that directly supports the alleged complicity with and violations of Harmon Wilfred's human rights by Canada as the sole offending state listed in the subject communication; this case is **not** filed against the USA, which is not a party to the Optional Protocol. Canada; however, is party to the Optional Protocol to the International Covenant on Civil and Political Rights and the appellant is well within his rights to file the complaint against Canada and include all relevant evidence.

Article 1

A state Party to the Covenant that becomes a Party to the Present protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claims to be the victims of a violation by that State party of any of the rights set forth in the Covenant. No communication shall be received by the Committee if it concerns a State Party to the Covenant which is not a party to the present Protocol.

Canada is signatory to the aforementioned Protocol since May 19, 1976.

Further to support the premises herein, the Council is reminded that the Petition Unit directed Plaintiff's counsel to remove the USA as an offending state with Canada on 20 September, 2007. The Petition was revised as requested and resubmitted on 7 November, 2007 with Canada as the sole offending State while continuing to include the material evidence of the USA's complicit involvement with Canada. The Petition was accepted as resubmitted against Canada only by the UN Chief Treaties and Council Branch on 5 December, 2007. The following is a brief history and further submission of this Appeal:

1. On 5 December, 2007 the subject communication was accepted by the Chief Treaties and Counsel as admissible under Optional Protocol, Articles 1 and 2 and assigned Communication No 1638/2007 on the merits of the case without further comment from the Petition Unit or the Council regarding the material evidence therein involving the USA's complicit relationship with Canada.
2. With no further comments or evaluation by the Council or the Working Group, upon acceptance of the admissibility of the communication by the Chief Treaties and Counsel and the assignment of a communication number; Canada was then required by the Rule 99 (1) (2) to answer the communication within 6 months.
3. When the 6 month statutory period was up, Plaintiff's council was then informed that Canada had been given a two month extension to August 5, 2008 to answer the communication.
4. The communication was again not responded to by Canada within the extension period and to Plaintiff's knowledge there is no evidence that Canada has ever responded to the communication; remaining in violation of Rule 99.
5. With no response from Canada, the Council has now decided to make the communication inadmissible after the fact of acceptance of the admissibility of the communication, and before Canada has answered the complaint in continued violation of Rule 99. Therefore the UNHRC is at least mistaken in its

- interpretation of Optional Protocol 1 and 2 as justified in making this communication inadmissible.
6. **The first reason for the Commission declaring the complaint inadmissible** was to declare that the substance of the violations of the ICCPR by Canada were related to the actions of the United States who have not signed the Optional Protocol to the ICCPR; making the US immune to such complaints by individuals. This reason for the inadmissibility of the case against Canada is not relevant as the United States was not submitted as an offending state in the complaint (as previously directed by the Petition Unit), but only for material evidence involving the US participation with Canada and Canada's participation with the US in the Canadian violations of the ICCPR. When the case was accepted as admissible on 5 Dec, 2007, this material evidence was already accepted by the Petition Unit and the Chief Treaties and Council as relevant to the case against Canada and therefore could not be excluded.
 7. **The second reason for the Commission declaring the complaint inadmissible** following the incorrect logic of the first reason has resulted in the complete exclusion of the material evidence presented against Canada that directly involved the US participation in the subject human rights violations. By incorrectly eliminating this crucial evidence, all other specific listed violations of the Articles of the ICCPR committed by Canada are deemed unsubstantiated. Does this mean that any country signatory of the Optional Protocol of the ICCPR can violate human rights as long as such violations are in concert with the US and thereby not be held accountable because the US (not a signatory of the Optional Protocol) is not accountable?
 8. In Paragraph 4.3 of the Council's decision, it is stated that the author "...confines himself to general denunciations, without offering information to substantiate the alleged violations". The Council is mistaken not only in failing to include the material evidence involving the United States actions in concert with Canada, but also in not citing Canada's actions with regard to the human rights violations that were fully documented in the author's Case History Sections 24, 25 and 26 of Plaintiff's web site evidence (www.luminadiem.com) that includes Federal Court Documents admitting and confirming the human rights violations as well as a letter of complaint to the Canadian Department of Justice from which the reply (also included) confirmed the violations with a refusal to acknowledge Canada's responsibility. A letter of rebuttal is also included from the author with no further reply from Canada.
 9. Further evidence for substantiating the charges may also be obtained by requiring the offending state to answer the complaint as per the ICCPR Rules and Procedures and thereby causing Canada to admit or deny the human rights violations; of which to date there has been no answer even though Canada is now 5 months beyond the statutory limit. The UN Human Rights Council has effectively intervened and answered the case on behalf of Canada as defendant, thereby not requiring the defendant to defend. This is incorrect.
 10. Canada is a signatory of the Optional Protocol of the ICCPR and therefore must be held accountable for all human rights violations.

With the aforementioned points of law and information provided, the logical conclusion is the Commission's determination of the inadmissibility of the subject communication is mistaken on the grounds that the US is named as an offending state; and thereby also incorrect in not allowing all of the material evidence to be admitted; and following that,

not requiring Canada as the offending state to answer the communication in due process.

ICCPR Rule 100 (2): The Committee shall not decide on the merits of the communication without having *[correctly]* considered the applicability of all the admissibility grounds referred to in the Optional Protocol.

Due process of any legal system of jurisprudence requires that the participants receive a fair and just hearing as part of the most basic of Human Rights. This cannot happen as long as co-conspirator states with the United States (as a non signatory of the Protocol) are permitted to completely avoid UN Human Rights tribunals because of their participation with the US. It could also be concluded that by the UNHRC decision of denying Mr Wilfred any opportunity to hear his case as this court of last resort; **the UNHRC may be in violation of Harmon Wilfred's Human Rights of Due Process of Law (ICCPR Article 2, Para 3 a,b) as this tribunal is "his only effective remedy by a competent judicial, administrative or legislative authority..."**

Article 2

Subject to the provisions of article 1, individuals who claim that any of their rights enumerated in the Covenant have been violated and who have exhausted all available domestic remedies may submit a written communication to the Committee for consideration.

Article 2 of the Optional Protocol to the International Covenant on Civil and Political Rights, and the Article 5(2) (b) are on consonance with each other and specify that if the individual has exhausted all his remedies and his communication is declared inadmissible by the Human Rights Committee he can submit for a judicial review. In the present petition case the appellant is well within his right to apply for this judicial review under Rule 98(2) of the Human Rights Committee as well as the other listed ICCPR Rules and Articles, should same be misinterpreted or inappropriately applied, which in this case we believe both instances are applicable.

Final Prayer

The Appellant had filed the petition in detail and it is one record as required by the Honorable Treaties branch and as amended accordingly by the instruction of the Petition Unit. The sequence of these events and the applicable ICCPR Rules and Articles are referenced and recorded herein for the further consideration of the Human Rights Committee in this Request for Review. More detail in this regard may be available upon request.

It is hereby humbly prayed that this Communication No 1638/2007 be heard before the Council with all evidence submitted and thereby the Human Rights of the Appellant be restored at the earliest.