

GUYANA

CCPR OPTIONAL PROTOCOL

RESERVATIONS AND DECLARATIONS

(Unless otherwise indicated, the reservations and declarations were made upon ratification, accession or succession)

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 persons 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 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."

Note

The Government of Guyana had initially acceded to the Optional Protocol on 10 May 1993. 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.

Subsequently, the Secretary-General received the following communication from the following State on the date indicated hereinafter:

Finland (17 March 2000):

"The Government of Finland is of the view that denying the rights recognised in the Optional Protocol from individuals under the most severe sentence is in contradiction with the object and purpose of the said Protocol.

Furthermore, the Government of Finland wishes to express its serious concern as to the procedure followed by Guyana, of denouncing the Optional Protocol (to which it did not have any reservations)

followed by an immediate re-accession with a reservation. The Government of Finland is of the view that such a procedure is highly undesirable as circumventing the rule of the law of treaties that prohibits the formulation of reservations after accession.

The Government of Finland therefore objects to the reservation made by the Government of Guyana to the said Protocol.

This objection does not preclude the entry into force of the Optional Protocol between Guyana and Finland. The Optional Protocol will thus become operative between the two states without Guyana benefitting from the reservation".

Sweden (27 April 2000):

"The Government of Sweden has examined the reservation to article 1 made by the Government of Guyana at the time of its re-accession to the Optional Protocol. The Government of Sweden notes that the Government of Guyana accepts the principle that States cannot use the Optional Protocol as a vehicle to enter reservations to the International Covenant on Civil and Political Rights itself, and that it stresses that its reservation in no way detracts from its obligations and engagements under the Covenant.

Nevertheless, the Government of Sweden has serious doubts as to the propriety of the procedure followed by the Government of Guyana. While article 12, paragraph 1 of the Protocol provides that any State Party may denounce the Protocol "at any time", the denunciation may in no case be used by a State Party for the sole purpose of formulating reservations to that instrument after having re-acceded to it. Such a practice would constitute a misuse of the procedure and would be manifestly contrary to the principle of good faith. It further contravenes the rule of *pacta sunt servanda*. As such, it undermines the basis of international treaty law and the protection of human rights. The Government of Sweden therefore wishes to declare its grave concern over this method of proceeding.

Furthermore, the reservation seeks to limit the international obligations of Guyana towards individuals under sentence of death. The Government of Sweden is of the view that the right to life is fundamental and that the death penalty cannot be accepted. It is therefore of utmost importance that states that persist in this practice refrain from further weakening the position of that group of individuals."

Poland (8 August 2000):

The Government of the Republic of Poland believes that this reservation seeks to deny the benefits of the Optional Protocol towards a group of individuals under the sentence of death. This reservation is contrary to the object and purpose of the Protocol which is to strengthen the position of individuals in respect of the human rights protected by the Covenant. Furthermore the Government of the Republic of Poland considers the procedure followed by the Government of the Republic of Guyana in the denunciation of the Optional Protocol, and its subsequent re-accession with

reservation as not consistent with the law of treaties and clearly undermining the Protocol. The Government of the Republic of Poland therefore objects to the above mentioned reservation made by the Government of the Republic of Guyana. This objection does not preclude the entry into force of the Optional Protocol between the Republic of Poland and the Republic of Guyana.

(Note 2, Chapter IV.5, Multilateral Treaties Deposited with the Secretary-General)

OBJECTIONS MADE TO STATE PARTY'S RESERVATIONS AND DECLARATIONS

France, 28 January 2000

With regard to the reservation made by Guyana upon accession:

... While article 12, paragraph 1, of the Protocol provides that any State Party may denounce the Protocol "at any time", with the denunciation taking effect" three months after the date of receipt of the notification by the Secretary-General, denunciation of the Protocol may not in any case be used by a State Party for the purpose of formulating reservations to the Covenant well after the party has signed, ratified or acceded thereto. Such a practice would call into question international commitments by a sort of abuse of process; it would be a clear violation of the principle of good faith that prevails in international law and would be incompatible with the rule of *pacta sunt servanda*. The means used (denunciation and accession on the same day to the same instrument but with a reservation) cannot but elicit a negative reaction.

Consequently, the Government of the French Republic expresses its objection to the reservation made by Guyana.

Germany, 26 August 1999

With regard to the reservation made by Guyana upon accession:

"The purpose of the Protocol is to strengthen the position of the individual under the Covenant. While the Government of the Federal Republic of Germany welcomes the decision of the Government of Guyana to reaccede to the Optional Protocol it holds the view that the benefits of the Optional Protocol should not be denied to individuals who are under the most severe sentence, the sentence of death. Furthermore, the Government of the Federal Republic of Germany is of the view that denunciation of an international human rights instrument followed by immediate reaccession under a far reaching reservation may set a bad precedent.

The Government of the Federal Republic of Germany objects to the reservation. This objection shall not preclude the entry into force of the Optional Protocol between the Federal Republic of Germany and Guyana".

Netherlands, 22 October 1999

With regard to the reservation made by Guyana upon accession:

" ...

2. The Government of the Kingdom of the Netherlands is of the view that this reservation, which seeks to limit the obligations of the reserving State towards individuals under sentence of death, raises doubts as to the object and purpose of the Optional Protocol.
3. The Government of the Netherlands considers that the purpose of the Optional Protocol [to the International Covenant on Civil and Political Rights] is to strengthen the position of the individual under the Covenant. Denying the benefits of the Optional Protocol in relation to the Covenant to a group of individuals under the most severe sentence is fundamentally in conflict with the object and purpose of the Optional Protocol.
4. Also the Government of the Kingdom of the Netherlands considers the procedure followed by Guyana, of denouncing the Optional Protocol followed by a re-accession with reservations, as contrary to the rules of the law of treaties that prohibit the formulation of reservations after ratification. The procedure followed by Guyana circumvents such well-established rules.
5. The Government of the Kingdom of the Netherlands therefore objects to the aforementioned reservation made by the Government of Guyana to the Optional Protocol to the International Covenant on Civil and Political Rights.
6. This objection shall not preclude the entry into force of the Optional Protocol between the Kingdom of the Netherlands and Guyana".

Spain, 1 December 1999

With regard to the reservation made by Guyana upon accession:

The Government of the Kingdom of Spain considers that this reservation raises doubts about the commitment of the Republic of Guyana to the purpose and goal of the Optional Protocol, which is to strengthen the position of the individual with regard to the rights protected by the International Covenant on Civil and Political Rights. The reservation, on the other hand, seeks to limit the international obligations of Guyana towards individuals who are under sentence of death.

The Government of Spain also has doubts about the correctness of the procedure followed by the Government of Guyana, inasmuch as denunciation of the Optional Protocol followed by

re-accession to it with a reservation prejudices the ratification process and undermines the international protection of human rights.

Consequently, the Government of Spain objects to the aforesaid reservation made by the Government of the Republic of Guyana to the Optional Protocol to the International Covenant on Civil and Political Rights.

This objection does not prevent the entry into force of the Optional Protocol between the Kingdom of Spain and the Republic of Guyana.

(Ed. note: for other objections, see Note under Reservations and Declarations, above)