



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Eighty-second session
18 October - 5 November 2004

VIEWS

Communication No. 912/2000

Submitted by: Mrs. Deolall (not represented by counsel)

Alleged victim: Mr. Deolall (the author's husband)

State party: The Republic of Guyana

Date of initial communication: 17 August 1998 (initial submission)

Document references: Special Rapporteur's rule 86/91 decision, transmitted to the State party on 7 February 2000. (not issued in document form)

Date of adoption of views: 1 November 2004

On 1 November 2004, 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. 912/2000. The text of the Views is appended to the present document.

[ANNEX]

* Made public by decision of the Human Rights Committee.

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-second session

concerning

Communication No. 912/2000**

Submitted by: Mrs. Deolall (not represented by counsel)

Alleged victim: Mr. Deolall (the author's husband)

State party: The Republic of Guyana

Date of initial communication: 17 August 1998 (initial submission)

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

Meeting on 1 November 2004,

Having concluded its consideration of communication No. 912/2000, submitted to the Human Rights Committee on behalf of Mr. Deolall, 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, dated 17 August 1998, is Mrs. Deolall. She submits the communication on behalf of her husband, Mr. Deolall, currently imprisoned in Guyana under sentence of death¹. They are both Guyanese citizens. She claims that her husband is a victim of human rights violations by Guyana. Although she does not invoke any specific articles of the Covenant, her communication appears to raise issues under articles 14, and 6 of the Covenant. The alleged victim is not represented by counsel.

** The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Franco Depasquale, Mr. Maurice Glèlè Ahanhanzo, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Martin Scheinin, Mr. Ivan Shearer, Mr. Hipólito Solari-Yrigoyen, Ms. Ruth Wedgwood, Mr. Roman Wieruszewski and Mr. Maxwell Yalden.

¹ The file contains no information on the place of detention.

1.2 In accordance with rule 86 of the Committee's Rules of Procedure, the Committee through its Special Rapporteur for New Communication, on 7 February 2000 requested the State party not to carry out the death sentence against Mr. Deolall, while his case is under consideration by the Committee. There has been no reply from the State party to this request.

The facts as submitted by the author

2.1 Mr. Deolall was arrested on 26 October and charged with murder on 3 November 1993. On 22 November 1995, he was convicted of murder and sentenced to death in the Georgetown Criminal Assizes Court. He appealed to the High Court and subsequently to the Court of Appeal. The grounds of appeal to the Court of Appeal were that (a) the trial judge had erred in not putting the accused's defense adequately to the jury, and (b) that the trial judge had erroneously admitted inadmissible evidence, i.e. an alleged involuntary confession. The Court of Appeal dismissed his appeal and the Chief Justice confirmed the death sentence on 30 January 1997. With this it is submitted that all domestic remedies are exhausted. The author notes that Mr. Deolall has been on death row since November 1995, and that his sentence should have been commuted.

2.2 According to the author, Mr. Deolall was convicted on the basis of a single piece of evidence, namely the confession, which he is alleged to have signed after being subjected to ill-treatment during the interrogation by police officers. Although the police record shows that Mr. Deolall had no marks of violence on his body, at the trial it was disclosed that he had such marks when he had been examined individually by three doctors. It appears from the trial transcript, submitted by the author, that Mr. Deolall was examined on 30 October 1993 and 8 November 1993. Dr. Persaud saw him on 30 October 1993, and in a medical report stated that the "examination revealed a small bruise on the lower level of the left alliae fosse region (lower region of the left side of the abdomen)". Dr. Maynard saw him on the same day and had a similar finding. Dr. Joshua Deen day saw him on 8 November 1993, and stated in his medical report that Mr. Deolall had "scratch marks on his back" and that in his view they were received between 27 October 1993 and 31 October 1993, i.e. prior to making the alleged statement.

2.3 According to the author "Mr. Deolall's brother who was a suspect for the same crime was shot by the police but he was never charged".

2.4 On 1 June 2004, the author provided new factual information on the circumstances of the trial and the conditions of detention.

The complaint

3.1 The author claims that her husband was beaten and ill-treated by police officers during interrogations at the police station.

3.2 It is claimed that Mr. Deolall was innocent and that the trial against him was unfair.

3.3 The author claims that her husband was forced to sign a confession after being beaten by police officers, and that this confession was the only basis upon which he was convicted.

Issues and proceedings before the Committee

Consideration of admissibility

4.1 On 7 February 2000, 28 February 2001, 24 July 2001, and 8 April 2004, and 9 August 2004, 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 still not been received. The Committee regrets the State party's failure to provide any information with regard to the 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.

4.2 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with article 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

4.3 The Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement for the purposes of article 5, paragraph 2(a), of the Optional Protocol.

4.4 Mr. Deolall has appealed his conviction, an appeal that was dismissed. In the absence of arguments to the contrary, the Committee considers that Mr. Deolall has exhausted domestic remedies².

4.5 The Committee notes that the communication was submitted prior to Guyana's denunciation of the Optional Protocol on 5 January 1999 and its re-accession to it with a reservation related to the competence of the Committee to examine death penalty cases. It concludes therefore that its jurisdiction is not affected by this denunciation. The Committee can find no reasons to consider this communication inadmissible and proceeds to a consideration of the merits.

Consideration of the merits

5.1 The author claims that Mr. Deolall was ill-treated during interrogations by police officers and forced to sign a confession statement, a claim that raises issues under article 14, paragraphs 1 and 3 (g) and article 6, of the Covenant. The Committee refers to its previous jurisprudence that the wording, in article 14, paragraph 3 (g), that no one shall "be compelled to testify against himself or confess guilt", must be understood in terms of the absence of any direct or indirect physical or psychological coercion from the investigating authorities on the accused with a view to obtaining a confession of guilt, and that it is implicit in this principle that *the prosecution* prove that the confession was made without duress³. In the current case, the Committee notes that the testimony of 3 doctors at the trial, that Mr. Deolall displayed injuries, as outlined in paragraph 2.2 above, as well as Mr. Deolall's own statement, would prima facie support the

² Guyana is not a member of the appeal procedure of the Privy Council, Judicial Committee.

³ *Berry v. Jamaica*, Case no. 330/1988, Views adopted on 4 July 1994 and *Nallaratnam Singarasa v. Sri Lanka*, Case No. 1033/2001, Views adopted on 21 July 2004.

allegation that such ill-treatment indeed occurred during the police interrogations, prior to his signing of the confession statement. In its instructions to the jurors, the court clearly stated that if the jurors found that Mr. Deolall was beaten by the police prior to giving his confession, even though it was a slight beating, they could not attach any weight to that statement and would need to acquit the defendant. However, the Court did not instruct the jurors that they would need to be convinced that the prosecution had managed to prove that the confession was voluntary.

5.2 The Committee maintains its position that it is generally not in the position to evaluate facts and evidence presented before a domestic court. In the current case, however, the Committee takes the view that the instructions to the jury raise an issue under article 14 of the Covenant, as the defendant had managed to present prima facie evidence of being mistreated, and the Court did not alert the jury that that the prosecution must prove that the confession was made without duress. This error constituted a violation of Mr. Deolall's right to a fair trial as required by the Covenant, as well as his right not to be compelled to testify against himself or confess guilt, which violations were not remedied upon appeal. Therefore, the Committee concludes that the State party has violated article 14, paragraphs 1, and 3 (g), of the Covenant in respect of Mr. Deolall.

5.3 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, if no further appeal against the sentence is possible, a violation of article 6 of the Covenant.⁴ In the present case, since the final sentence of death was passed without having observed the requirement for a fair trial set out in article 14, it must be concluded that the right protected by article 6 of the Covenant has also been violated.

6. 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 articles 6, and 14, paragraphs 1, 3 (g) of the Covenant.

7. In accordance with article 2, paragraph 3(a), of the Covenant, the State party is under an obligation to provide Mr. Deolall with an effective remedy, including release or commutation.

8. Bearing in mind that, by becoming a State 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. Pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and 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 any measures taken to give effect to the Committee's Views.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

⁴ Taylor v. Jamaica, Communication no. 705/1996, Levy v. Jamaica, 719/1996.