Communication No. 362/1989, Balkissoon Soogrim v. Trinidad and Tobago (views adopted on 8 April 1993, forty-seventh session)

Submitted by: Balkissoon Soogrim
(represented by counsel)

Alleged victim: The author

State party: Trinidad and Tobago

Date of communication: 19 March 1989

Date of decision on admissibility: 9 July 1991

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

Meeting on 8 April 1993,

Having concluded its consideration of communication No. 362/1989, submitted to the Human Rights Committee by Mr. Balkissoon Soogrim 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, his counsel and the State party,

Adopts its views under article 5, paragraph 4, of the Optional Protocol.

1. The author of the communication (dated 19 March 1989) is Balkissoon Soogrim, a Trinidadian citizen currently awaiting execution at the State Prison in Port-of-Spain, Trinidad and Tobago. He claims to be the victim of a violation by Trinidad and Tobago of articles 7 and 9, paragraphs 2, 10 and 14, paragraphs 1 and 3 (g), of the International Covenant on Civil and Political Rights. He is represented by counsel.

Facts as submitted

2.1 The author was arrested on 7 September 1978 on suspicion of having murdered, during the night between 6 and 7 September 1978, one Henderson Hendy in a cane field in the County of Caroni. On 11 September 1978, the Chaguanas Magistrate's Court committed him and his co-defendant, Ramesh Marahaj, to stand trial before the High Court of Justice in Port-of-Spain. a/ On 6 November 1980, they were convicted of murder. On 5 July 1983, the Court of Appeal quashed the convictions and ordered a retrial. At the end of the retrial, on 29 June 1984, the High Court of Justice of Port-of-Spain again convicted the author and his co-defendant of murder and sentenced them to death. Their appeal was dismissed by the Court of Appeal on 9 July 1985. A subsequent petition for special leave to appeal to the Judicial Committee of the Privy Council was dismissed on 22 May 1986.

2.2 The author submits that in 1986 a constitutional motion to the High Court of Trinidad and Tobago was filed on his behalf. However, the matter was adjourned, pending the outcome of two other cases before the Court. He claims that, regardless of whether this constitutional motion is still pending, the application of domestic remedies in his case has been unreasonably prolonged.

The constitutional motion was last scheduled to be heard on 7 January 1991 but was adjourned, apparently sine die.

2.3 The conviction of the author and his co-defendant was based substantially, if not exclusively, on the evidence produced by the main prosecution witness, L. S. Her testimony was to the effect that, on the morning of 6 September 1978, she went to the Couva Magistrate's Court to attend the hearing of a case in which the author was involved. As the hearing of the case was adjourned, she and the author left the court together with a third individual and visited some places of entertainment where they had drinks. Later that day, they separated from the third person and drove to the house of Ramesh Marahaj, who joined them. In the evening, they drove to a snack bar in San Juan, where the author and his co-defendant bought some drinks; this was apparently corroborated by the cashier of the snack bar. After leaving, the three of them drove to the deceased's house. She further testified that the author and his co-defendant invited Henderson Hendy to join them in having some fun with the woman. She claimed that, although she was aware of the men's intentions, she was too scared to react. They then drove to a sugarcane field and there they tried to abuse her. She maintained that the author hit the deceased in the neck while he was over her; while the author's co-defendant was holding Mr. Hendy to prevent him from escaping, she heard the author firing three shots. No bullets or shells were, however, found when the police searched the field in which, according to her, Henderson Hendy was killed. She added that they subsequently drove to a beach; there, the author allegedly threw the murder weapon, a cutlass, into the sea and hid a pair of trousers which belonged to the deceased in nearby bushes. A subsequent search of the beach by the police produced the trousers but not the cutlass. The woman added that the author and his co-defendant threatened her with death if she were to report to the police. During cross-examination, she admitted that she decided to report to the police only after her father had told her that the police were looking for her. She voluntarily presented herself to the police station, where she was cautioned and held in custody for a few days.

2.4 The author denies any involvement in the crime. At the trial he stated that, on the morning of 6 September 1978, he went to the Couva Magistrate's Court with his wife, his mother and his brother, and that, after leaving the court at 10 a.m., he went to see his doctor. The latter treated him and gave him a medical certificate, which he tendered as evidence. He further asserts that after he left the doctor's cabinet, he returned home for the remainder of the day.

Complaint

3.1 The author claims that the principal prosecution witness, L. S., was an accomplice or abettor, and that the trial judge failed to properly instruct the jury on the corroboration of her evidence. Moreover, the author maintains that the Court of Appeal erred in holding that there was no need for the trial judge to give a warning as to the corroboration. In this connection, it is submitted that the issue of appropriate instructions was

all the more important because of the alleged inconsistencies in the prosecution witnesses' testimony during the second trial.

3.2 As to his treatment during detention, the author claims that following his arrest on 7 September 1978, he was taken to a police station, where he was subjected to beatings and physical abuse and forced to sign a statement placing him on the scene of the murder. On 11 September, he complained about this treatment before the Magistrate's Court and a medical examination was ordered. The examination apparently was inconclusive, showing minor injuries that also could have been inflicted by the author himself. The issue was also raised before the court of first instance and on appeal. Some passages of the summing-up by the judge presiding over the retrial describe the nature of the psychological pressure and degrading treatment to which the author was allegedly subjected to in custody.

3.3 The author further claims that he was not informed of the charges against him until three days after his arrest. He does not, however, clarify this point.

3.4 The author further complains of inhuman and degrading treatment allegedly suffered since February 1987 in the State Prison of Port-of-Spain. On 2 February 1987 and again on 21 September 1988, he was allegedly beaten by prison warders and, on another occasion, left naked in a cold cell for two weeks. His complaints to the prison authorities were not followed up. He identifies the warders and prison officials whom he holds responsible for his continuously deteriorating state of health. In this context, he indicates that the virtually complete lack of exercise and sunlight in the prison has caused arthritis in his joints: furthermore, his eyesight has deteriorated during more than 10 years on death row, so that the prison doctor referred him to an eye clinic. The Commissioner of Prisons, however, informed him that there was no money for such medical treatment and that in any case he was in prison to die. The author further claims that visits from his family have been frequently delayed or restricted to very short periods. All this, it is submitted, constitutes a clear infringement of the United Nations Standard Minimum Rules for the Treatment of Prisoners.

State party's observations

4. As to the admissibility of the communication, the State party refers to the author's statement that a constitutional motion has been filed on his behalf and indicates that "the Ministry of Justice and National Security is awaiting confirmation from the Registrar of the Supreme Court with respect to the filing of such a motion".

Committee's decision on admissibility

5.1 During its forty-second session the Committee considered the admissibility of the communication. It considered that the author's claim relating to the court's evaluation of the evidence and the judge's instructions to the jury pertained to facts and evidence which are in principle for appellate courts of States parties to the Covenant to evaluate;

this part of the communication was therefore declared inadmissible. The Committee further considered that the author's claim under article 9 of the Covenant had not been substantiated for purposes of admissibility.

5.2 As to the author's claims under articles 7, 10, and 14, paragraph 3 (g), of the Covenant, the Committee considered that the author had exhausted domestic remedies available to him. On 9 July 1991, the Committee, accordingly, declared the communication admissible in as much as it might raise issues under articles 7, 10 and 14, paragraph 3 (g), of the Covenant.

Review of admissibility

6. In its submission dated 11 February 1992, the State party argues that the author's claim that he was forced to sign an incriminating statement should be deemed inadmissible, since it pertains to facts and evidence, which are generally for the appellate courts of States parties to evaluate, and not for the Committee. It further submits that, on 27 September 1991, the author was granted legal aid in order to bring a constitutional motion against his death sentence; this motion has yet to be heard.

7. In his comments on the State party's submission, dated 5 March 1992, the author argues that the constitutional remedy has been unreasonably prolonged within the meaning of article 5, paragraph 2, of the Optional Protocol.

8. The Committee observes that article 5, paragraph 2 (b), of the Optional Protocol precludes the Committee from considering a communication if the author has failed to exhaust domestic remedies. The Committee notes that, in respect to his claim under article 14 of the Covenant, the author has obtained the services of a legal aid lawyer and is pursuing constitutional remedies. The Committee further observes that decisions of the High Court in two other cases have resulted in the release of the applicants. In the particular circumstances of the instant case, the Committee considers that the constitutional motion filed by the author cannot be deemed to be prima facie ineffective and that it is a remedy within the meaning of article 5, paragraph 2 (b), of the Optional Protocol.

9. The Committee, therefore, reverses its decision on admissibility and decides that this part of the communication, concerning article 14 of the Covenant, is inadmissible under article 5, paragraph 2 (b), of the Optional Protocol.

Examination of the merits

10. In the light of the above, the Committee decides to proceed with its examination of the merits of the communication in so far as it relates to allegations under articles 7 and 10 of the Covenant.

11.1 In its submissions, dated 11 February and 27 July 1992, the State party argues that the author's allegations are unsubstantiated. It encloses a report by the Commissioner of Prisons of Trinidad and Tobago, whom the State party had requested to investigate the allegations.

11.2 According to the report, dated 20 November 1991, the author was charged with disciplinary offences on 2 February 1987 and 21 September 1988. The report states that reasonable force had to be applied by prison officers to control the author. In a supplementary report it is submitted that the author was reprimanded on two of the five charges against him; three charges were dismissed. In the report, it is denied that the author was left naked in a cell for two weeks. It is submitted that the author's complaints have in the past been brought to the attention of the Inspector of Prisons, the Ministry of Justice and National Security and the Ombudsman.

11.3 With regard to prison conditions, it is stated that Prison Regulations afford condemned prisoners one hour of open air exercise per day. According to the report, the prison medical records, although revealing complaints about minor pains about the author's joints, confirm no history of chronic arthritis. In a memorandum, dated 2 June 1992, the Prison Medical Officer states that the author has a six-year history of hypertension, but that his physical and psychiatric state of health is normal, except for high blood pressure.

11.4 As regards the author's complaints about the deteriorating sight in his one eye, it is stated that the author has been treated at the Eye Clinic of the Port-of-Spain General Hospital; a pair of spectacles was issued to him, which he has been using for the past two years. Follow-up treatment has recently been recommended by the Medical Officer and an appointment has been made for 15 October 1992.

12.1 In his comments on the State party's submission, the author argues that the Commissioner's report does not reflect the truth, but tries to cover up the human rights abuses going on in the prison.

12.2 The author argues that, even though the Prison Regulations allow one hour of open air exercise per day, in practice he is only allowed at most one hour per week, due to a shortage of prison staff. He maintains that he is suffering from arthritis, and contends that the doctor has diagnosed it as such and has prescribed the use of the medicine Indosid. The author concedes that spectacles were issued to him several years ago, but claims that his family had to pay for them; he further claims that the spectacles are no longer of use, because of the deterioration of his eyesight.

12.3 With regard to the disciplinary charges, the author argues that they have been fabricated to cover up the unlawful use of force against him. He submits that all charges against him were dismissed. The author concedes that the Minister of Justice and National Security had ordered investigations of his complaints, but he claims that the prison authorities compiled a false report, so that no action was taken. He maintains that he was left naked in a cell for two weeks, and he states that several witnesses would be able to confirm his allegations.

13.1 The Committee has considered the communication in the light of all the information made available to it by the parties, as required under article 5, paragraph 1, of the Optional Protocol.

13.2 As to the substance of the communication, two issues are before the Committee: (a) whether the author was a victim of inhuman or degrading treatment, because on two occasions, he was allegedly beaten by prison warders and on one occasion left naked in a cell for two weeks; and (b) whether the conditions of his detention constitute a violation of article 10 of the Covenant.

13.3 In order to decide on these issues, the Committee must consider the arguments put forward by the author and the State party and assess their respective merits and intrinsic credibility. Concerning the beatings he allegedly received, Mr. Soogrim has given precise details, identified those he holds responsible and affirmed that he lodged complaints after being ill-treated. In this regard, the State party has not really issued any denial. It has admitted only that force was used against Mr. Soogrim although within reasonable limits and in order to control him, this having occurred on the dates referred to by the author of the communication. The State party furthermore recognizes that the author did report the facts he alleges and that his complaints were brought to the attention of the Inspector of Prisons, the Ministry of Justice and National Security and the Ombudsman. In addition, the explanations given by the author and the State party regarding the disciplinary charges reportedly filed against him are contradictory, but nevertheless concur in that some of them were dismissed by the State party. The dismissal of these charges, however, casts doubt on the facts as presented in the report dated 20 November 1991. Lastly, concerning the allegation that the author was left naked in his cell for two weeks, the Committee has no more specific information available to it than the claims of the author and the denials of the State party.

13.4 With regard to the author's allegations that he has not received the necessary medical care for his state of health and has been deprived of open-air exercise, the information communicated by the State party shows, with reference to his medical record, that he has been given medical treatment and, in particular, that his eyesight has been corrected and is checked regularly at the Port-of-Spain General Hospital. As to the hour of open-air exercise per day allowed by the prison regulations, there is no basis, apart from Mr. Soogrim's allegations, on which to affirm that he is being regularly deprived of such exercise.

14. 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 disclose a violation of articles 7 and, consequently, article 10, paragraph 1, of the International Covenant on Civil and Political Rights in so far as the author was beaten by prison warders on several occasions.

15. The Committee is of the view that Mr. Balkissoon Soogrim is entitled to a remedy, including appropriate compensation. The State party is under an obligation to ensure that similar violations do not occur in the future.

16. The Committee wishes to receive information, within 90 days, on any relevant measures taken by the State party in respect of the Committee's views.

[Done in English, French and Spanish, the English and French texts being the original versions.]

Notes

a/ Mr. Marahaj's case is also under consideration by the Human Rights Committee as communication No. 384/1989.