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HUMAN RIGHTS COMMITTEE

Seventy-third session

15 October - 2 November 2001

VIEWS

Communication No. 728/1996

<u>Submitted by:</u>	Mrs. Margaret Paul (Mr. Sahadeo's sister)
<u>Alleged victim:</u>	Mr. Terrence Sahadeo
<u>State party:</u>	Republic of Guyana
<u>Date of communication:</u>	10 November 1996 (initial submission)
<u>Document references:</u>	<ul style="list-style-type: none">- Special Rapporteur's rule 86/91 decision, transmitted to the State party on 21 November 1996 (not issued in document form)- CCPR/C/64/D/728/1996. Decision on admissibility adopted on 29 October 1998
<u>Date of adoption of Views:</u>	1 November 2001

On 1 November 2001 the Human Rights Committee adopted its Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 728/1996. 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

Seventy-third session

concerning

Communication No. 728/1996*

Submitted by: Mrs. Margaret Paul (Mr. Sahadeo's sister)

Alleged victim: Mr. Terrence Sahadeo

State party: Republic of Guyana

Date of communication: 10 November 1996 (initial submission)

Decision on admissibility: 29 October 1998

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

Meeting on 1 November 2001,

Having concluded its consideration of communication No. 728/1996, submitted to the Human Rights Committee by Mrs. Margaret Paul (Mr. Sahadeo's sister), 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:

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, 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, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Martin Scheinin, Mr. Ivan Shearer, Mr. Hipólito Solari Yrigoyen and Mr. Maxwell Yalden.

The text of two individual opinions signed by Committee members: Mr. Martin Scheinin and Mr. Hipólito Solari Yrigoyen are appended to the present document.

Views under article 5, paragraph 4, of the Optional Protocol

1. The author of the communication is Mrs. Margaret Paul. She submits the communication on behalf of her brother Terrence Sahadeo, a Guyanese citizen, awaiting execution in Georgetown prison in Guyana. She claims that her brother is an alleged victim of human rights violations by Guyana. Although she does not invoke any specific articles of the Covenant, the communication appears to raise issues under articles 7, 9, 10 and 14 of the Covenant.

The facts as submitted by the author

2.1 On 18 September 1985, Mr. Terrence Sahadeo, a friend called Mutez Ali, and the latter's girlfriend, Shireen Khan, were arrested in Berbice, Guyana, for the murder of one Roshanene Kassim committed earlier the same day.

2.2 The author states that Mr. Sahadeo and his co-accused were convicted and sentenced to death on 8 November 1989, four years and two months after their arrest. Apparently, two prior trials, in June 1988 and February 1989, had been aborted. On appeal, heard in 1992, a retrial was ordered. On 26 May 1994, Mr. Sahadeo and his co-accused were again convicted and sentenced to death. In 1996, their appeal was dismissed and the sentence confirmed.

2.3 From the incomplete notes of evidence of the retrial in 1994 submitted by the alleged victim, it appears that the case for the prosecution was that Terrence Sahadeo and Mutez Ali, according to a common plan including also Ms. Kahn, went to the house of the deceased in order to rob her. The alleged victim and Mr. Ali tied her up and put a knife through her throat. One witness for the prosecution testified at the trial that, in the morning of the incident, she had overheard that Ms. Kahn, in the presence of the accused, had inquired a little girl about who would be in the house of the deceased. They were told that Roshanene Kassim would be in the house by herself. Ms. Kahn then told the two other accused to go and see what they could get. The witness testified that, through a window two houses away, she saw Ms. Kassim in the house and the two men enter and return about fifteen minutes later. She stated further that Mr. Sahadeo had blood on his hands that he washed away and that he handed over jewellery to Ms. Kahn. During her cross-examination the witness stated that she was held for two days by the police and tried to contact a lawyer, since she felt she was held against her will, before she made her statement.

2.4 The only other evidence against Mr. Sahadeo was his confession and other statements given by the investigating police officers. At the retrial in 1994, the voluntariness of the statement was challenged by the defence and examined in a voir dire. Mr. Sahadeo claimed that during police investigation in 1985 he was beaten by three policemen and that one policeman hit him on the toe with a small hammer. He then signed the statement. The prison doctor testified that when Mr. Sahadeo was admitted, he complained that he had been beaten on the back. When the doctor examined him, he found no injuries on his back, but discovered a toe injury, for which he gave him antibiotics. After the voir dire, the judge ruled the statement admissible.

2.5 The investigating police officers stated in the retrial in 1994 that the alleged victim was arrested, since he was found outside the house next to Kassim's with scratches on the upper part of his body. The officers denied having used force or threats when questioning the alleged victim and asserted that Mr. Sahadeo has received regular meals during his detention.

2.6 In a statement from the dock, Mr. Sahadeo denied having anything to do with the murder and stated that he had been beaten in order to force him to sign the confession on the third day after his arrest. It is submitted that after Mr. Sahadeo was arrested, he was taken to a doctor, who, after an examination of the alleged victim, issued a medical certificate to the police that he did not find any injuries on his body. The author further submits that the alleged victim was deprived of any food until the day after he made the confession.

The complaint

3.1 The author claims that her brother is innocent and that her brother and his friends were arrested only because they were strangers in the village, where they were spending a holiday. At the police station, Mr. Sahadeo was allegedly beaten and hit on his toenails with a small hammer so that signed a prepared statement out of fear of further ill treatment.

3.2 According to the author, there was no evidence to convict her brother. The medical certificate and the police file were all missing when the trial against her brother started, and the only evidence was the confession and the testimony given by one witness. The author claims that the witness first gave a statement to the police in which she did not inculcate her brother, but that she gave a second statement after having been in custody for two days without access to a lawyer. The author further alleges that the judge was biased, because she asked questions of the witnesses to assist the Prosecution and made contemptuous remarks. This is said to constitute miscarriage of justice.

3.3 Finally, it is claimed that the length of the procedure in the case has caused mental anguish.

Committee's decision on admissibility

4. On 21 November 1996, the Committee requested the State party to provide information about the admissibility of the communication. Under rule 86 of the Committee's rules of procedure, the State party was also requested not to carry out the death sentence against Mr. Sahadeo.

5. By note of 30 June 1998, the State party informed the Committee that it had no objection to admissibility, as Mr. Sahadeo had exhausted all available domestic remedies.

6.1 In its 64th session, the Committee considered the admissibility of the communication.

6.2 The Committee ascertained, as required under article 5, paragraph 2(a), of the Optional Protocol, that the same matter was not being examined under another procedure of international investigation or settlement.

6.3 With regard to the claim that there was not sufficient evidence against Mr. Sahadeo to convict him, the Committee referred to its prior jurisprudence and reiterated that it is generally not for the Committee, but for the courts of States parties, to review the evidence against an accused, unless it can be ascertained that the evaluation of the evidence was manifestly arbitrary or amounted to a denial of justice. The material before the Committee and the author's allegations did not show that this was the case in Mr. Sahadeo's trial. Accordingly, this part of the communication was inadmissible as the author has failed to forward a claim within the meaning of article 2 of the Optional Protocol.

6.4 With respect to the author's claim that the judge was biased, the Committee noted that the author has failed to provide any specific information in substantiation of this claim. This part of the communication was, therefore, declared inadmissible under article 2 of the Optional Protocol, for not having been substantiated for purposes of admissibility.

6.5 The Committee considered that the author's remaining claims were admissible and should be considered on the merits as they may raise issues under articles 9, paragraph 3, and 14, paragraph 3(c), in relation to the length of the proceedings, and under articles 7 and 14, in relation to the circumstances in which the confession was signed.

7. On 23 October 1998, the Human Rights Committee, therefore, decided that the communication is admissible in so far as it may raise issues under articles 7, 9, paragraph 3, and 14 of the Covenant.

Issues and proceedings before the Committee

8.1 On 27 November 1998, 22 September 2000 and 24 July 2001, the State party was requested to submit to the Committee information on the merits of the communication. The Committee notes that this information has still not been received.

8.2 The Committee regrets that the State party has not provided any information with regard to the substance of the author's claims. The Committee recalls that it is implicit in the Optional Protocol that States parties 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 they are substantiated. ⁽¹⁾

9.1. The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as provided in article 5, paragraph 1 of the Optional Protocol.

9.2 With regard to the length of the proceedings, the Committee notes that the alleged victim was arrested on 18 September 1985 and remained in detention until he was first convicted and sentenced to death on 8 November 1989, four years and two months after his arrest. The Committee recalls that article 9, paragraph 3, of the Covenant entitles an arrested person to trial within a reasonable time or to release. Paragraph 3 (c) of article 14 provides that the accused shall be tried without undue delay. The Committee recalls that, if criminal charges are brought in

¹ Communication No. 760/1997, J.G.A. Diergaardt et al. V Namibia, para. 10.2.

cases of custody and pre-trial detention, the full protection of article 9, paragraph 3, as well as article 14, must be granted. With respect to the alleged other delays in the criminal process, the Committee notes that the Mr. Sahadeo's appeal was heard from the end of April to the beginning of May 1992 and, upon retrial, the alleged victim was again convicted and sentenced to death on 26 May 1994, two years and one month after the judgment of the Court of Appeal. In 1996, the appeal against that decision was dismissed and the sentence confirmed. The Committee finds that, in the absence of a satisfactory explanation by the State party or other justification discernible from the file, the detention of the author awaiting trial constitutes a violation of article 9, paragraph 3, of the Covenant and a further separate violation of article 14, paragraph 3 (c).

9.3 With regard to the circumstances in which the confession was signed, the Committee notes that Mr. Sahadeo identified those he holds responsible; further details of his allegations appear from the notes of evidence. The Committee recalls the duty of the State party to ensure the protection against torture and cruel, inhuman or degrading treatment as provided for in article 7 of the Covenant. The Committee considers that it is important for the prevention of violations under article 7 that the law must exclude the admissibility in judicial proceedings of statements or confessions obtained through torture or other prohibited treatment. The Committee observes that Mr. Sahadeo's allegations of torture had been dealt with during the first trial in 1989 and again in the retrial in 1994. It appears from the notes of evidence of the retrial that Mr. Sahadeo had the opportunity to give evidence and that witnesses of his treatment during his detention by the police were cross-examined. The Committee recalls that it is in general for the courts of States parties, and not for the Committee, to evaluate the facts in a particular case. The information before the Committee and the arguments advanced by the author do not show that the Courts' evaluation of the facts were manifestly arbitrary or amounted to a denial of justice. In the circumstances, the Committee finds that the facts before it do not sustain a finding of a violation of article 7 and article 14, paragraph 3 (g), of the Covenant in relation to the circumstances in which the confession was signed.

10. 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 9, paragraph 3; and 14, paragraph 3 (c), of the Covenant.

11. The Committee is of the view that Mr. Sahadeo is entitled, under article 2, paragraph 3 (a), to an effective remedy, in view of the prolonged pretrial detention in violation of article 9, paragraph 3, and the delay in the subsequent trial, in violation of article 14, paragraph 3 (c), entailing a commutation of the sentence of death and compensation under article 9, paragraph 5, of the Covenant. The State party is under an obligation to take appropriate measures to ensure that similar violations do not occur in the future.

12. On becoming a State Party to the Optional Protocol, Guyana 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 or subject to its jurisdiction the rights recognized in the Covenant and to provide an enforceable effective remedy in case a violation has been established. The Committee

wishes to receive from the State party, within ninety 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.

[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.]

AppendixIndividual Opinion by Committee Member, Mr. Martin Scheinin (partly dissenting)

I share the view of the majority on two important points: (a) that the Covenant was violated in the course of the criminal case against Mr Sahadeo, resulting in the imposition of capital punishment and (b) that, as a result, the obligation of the State party under article 2 (3) of the Covenant to afford an effective remedy must entail that the victim is allowed to preserve his life. As prescribed in article 6 (2) of the Covenant, capital punishment may never be imposed through a procedure that entails a violation of the Covenant.

Where I dissent is the majority's approach to what conclusions should be drawn from how the confession statement was handled in the course of the judicial proceedings. Before the Committee Mr Sahadeo, who is on death row in Georgetown prison, was represented by his sister, a lay person. As the State party has not provided the Committee with any information whatsoever, except its blanket consent to the admissibility of all aspects of the communication, I take the approach that the incomplete nature of the file cannot be held against Mr Sahadeo.

It is generally for the courts of States parties and not for the Committee to review the evidence against an accused. However, in the present case it appears from the incomplete materials submitted to the Committee that when presenting the evidence related to the credibility of Mr Sahadeo's testimony that he signed the confession statement under ill-treatment, the presiding judge used language that was prejudicial to the defendant. For instance, he referred to Mr Sahadeo's colour of skin as basis for an inference that ill-treatment would have left marks that would have been visible in the medical inspection that took place afterwards, in addition to the bruise on the toe that was recorded. As the court, consequently, did not address the issue of possible coercion and ill-treatment in a proper way in a case that lead to the imposition of capital punishment, I find that there has been a violation of articles 7 and 14 of the Covenant.

[Signed] Martin Scheinin

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

Individual Opinion by Committee Member, Mr. Hipólito Solari Yrigoyen (dissenting)

I disagree with the Committee's opinion on the following grounds:

The author alleges that the police extracted his confession by means of beatings and ill-treatment, including a hammer blow to one toe. The prison doctor confirms that Mr. Sahadeo complained of being beaten on the back and that he had an injury to the foot. He also states that he therefore prescribed antibiotics. Later, in the dock, the author repeated his allegations that he had been beaten in order to make him sign a confession. This confession was the principal piece of evidence produced by the Public Prosecutor, and was used to justify the death sentence.

In its General Comment No. 20, the Committee finds that, for the discouragement of violations under article 7, it is important for the law to prohibit the admissibility in judicial proceedings of statements or confessions obtained through torture or other prohibited treatment. The State party does not contest the alleged victim's claim to have been beaten, and the court did not consider his allegations of torture until four years had passed. As the Committee has stated on other occasions, an absence of comment by the State party is tantamount to a lack of cooperation insofar as the State party has failed to comply with its obligation under article 4, paragraph 2, of the Optional Protocol, to submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by the State.

The Committee is of the view that the facts before it disclose a violation by the State party of article 7 of the Covenant, and that the use of the contested confession in court as grounds for a conviction for murder also constitutes a violation of articles 14, paragraph 3 (g), and 6, paragraph 2, of the Covenant. In accordance with article 2, paragraph 3 (a), of the Covenant, the author has the right to an effective remedy, which entails commutation of the death sentence. The State party is also under an obligation to take steps to prevent similar violations from occurring in the future.

[Signed] Hipólito Solari Yrigoyen

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