



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Eighty-first session
5 – 30 July 2004

VIEWS

Communication No. 938/2000

<u>Submitted by:</u>	Messrs. Girjadat Siewpersaud, Deolal Sukhram, and Jainarine Persaud (represented by counsel, Mr. Parvais Jabbar of the law firm Simons Muirhead & Burton)
<u>Alleged victim:</u>	The authors
<u>State party:</u>	Trinidad and Tobago
<u>Date of initial communication:</u>	25 July 1998 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 91 decision, transmitted to the State party on 1 August 2000. (not issued in document form)
<u>Date of adoption of Views:</u>	29 July 2004

On 29 July 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. 938/2000. 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-first session

concerning

Communication No. 938/2000**

Submitted by: Messrs. Girjadat Siewpersaud, Deolal Sukhram,
and Jainarine Persaud (represented by counsel,
Mr. Parvais Jabbar of the law firm Simons
Muirhead & Burton)

Alleged victim: The authors

State party: Trinidad and Tobago

Date of initial communication: 25 July 1998 (initial submission)

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

Meeting on 29 July 2004,

Having concluded its consideration of communication No. 938/2000, submitted to the
Human Rights Committee on behalf of Messrs. Girjadat Siewpersaud, Deolal Sukhram, and
Jainarine Persaud, 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. Franco Depasquale, Mr. Maurice Glèlè Ahanhanzo,
Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, 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.

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

1. The authors of the communication are Messrs. Girjadat Siewpersaud, Deolal Sukhram, and Jainarine Persaud, Guyanese citizens, currently detained at State Prison in Port of Spain in the Republic of Trinidad and Tobago. They claim to be victims of violations by Trinidad and Tobago¹ of articles 2, paragraph 3, 7, 9, paragraph 3, 10, paragraph 1, and 14, paragraph 1, of the International Covenant on Civil and Political Rights. They are represented by counsel.

The facts as submitted by the authors

2.1 On 19 January 1988, the High Court of Justice of Port of Spain convicted of murder and sentenced to death, Girjadat Siewpersaud, Deolal Sukhram and Jainarine Persaud. They applied for leave to appeal to the Court of Appeal. On 29 March 1993, the Court of Appeal rejected their applications. They thereupon petitioned the Judicial Committee of the Privy Council for Special Leave to Appeal. Their petition was dismissed on 27 April 1995. On 4 January 1994, the authors' death sentences were commuted to life imprisonment.

2.2 The authors were convicted of a murder said to have been committed between March and April 1985. The trial commenced in January 1988, approximately 34 months after arrest. The authors state that, throughout this time, they were detained in appalling conditions. From their conviction on 19 January 1988 to the commutation of their death sentences to life imprisonment on 4 January 1994, i.e. for six years they were confined to the death row section of State Prison in Port of Spain.

2.3 The authors contend that for the above period of time, they were held in solitary confinement in a cell measuring 9 by 6 feet containing a bench, a bed, a mattress and a table. In the absence of sanitation facilities in the cell, a plastic pail was provided as toilet. Deolal Sukhram's cell was in front of the prison officers' toilet and bath which meant that his cell was usually cold and damp, due to water leaking from the bath. A ventilation hole measuring 36 by 24 inches, provided scarce and inadequate ventilation and light to the authors' cells. The only other light provided was by a fluorescent neon light lit for 23 hours a day located outside the cell above the door. The lack of adequate light damaged Deolal Sukhram's eyesight necessitating the use of glasses. The authors were allowed out of their cells for exercise only one hour per week.

¹ Initially, the Optional Protocol entered into force for Trinidad and Tobago on 14 February 1981. On 26 May 1998, the Government of Trinidad and Tobago denounced the Optional Protocol to the International Covenant on Civil and Political Rights. On the same day, it re-accessed, including in its instrument of re-accession a reservation "to the effect that the Committee shall not be competent to receive and consider communications relating to any prisoner who is under sentence of death in respect of any matter relating to his prosecution, his detention, his trial, his conviction, his sentence or the carrying out of the death sentence on him and any matter connected therewith". The communication was submitted to the Committee before the denunciation and the re-accession with a reservation entered into force, on 26 August 1998. On 2 November 1999, the Committee decided that this reservation was not valid, as it was not compatible with the object and purpose of the Optional Protocol. On 27 March 2000, the Government of Trinidad and Tobago denounced the Optional Protocol again.

2.4 Since the commutation of their death sentences, the authors have been detained at the State Prison in similarly degrading conditions. Each author is detained in a cell together with 8 to 14 other prisoners. The cell measures 9 by 6 feet and contains one iron bed with no mattress. As a result, prisoners are forced to sleep on the concrete floor on pieces of cardboard. Cells are infested with cockroaches, rats and flies and are generally dirty. There is inadequate ventilation and the cells heat up, making it impossible to sleep. The crowded conditions and the poor ventilation result in a general lack of oxygen in the cells, causing Deolal Sukhram to feel drowsy and suffer from continuous headaches.

2.5 In the absence of integral sanitation, each cell is provided with one bucket that is emptied only every 16 hours. The bucket causes a constant stench. In the absence of toiletries or soap, it is impossible to keep any standard of hygiene or health care. Food is inadequate and virtually inedible. Prisoners are given stale bread and rotten meat or fish every day. The kitchen in which the food is prepared is only 10 feet away from the toilets and is infested with vermin. There is infrequent access to medical treatment. Jainerine Persaud suffers from migraines and has not been provided with proper medical treatment, although this was prescribed by doctor. There are no provisions for facilitating religious worship of any kind. Writing of letters is restricted to one letter per month and Deolal Sukhram is denied access to legal consultation on a regular basis. Counsel submits the affidavit of one Mr. Lawrence Pat Sankar, who was held at the State Prison at the same time as the authors, and who confirms the conditions of detention in the prison.

The complaint

3.1 The authors submit that the 34 month delay between arrest and trial is unreasonable and constitutes a violation of article 9, paragraph 3 of the Covenant. The delay in their case is comparable with the periods of delay in other cases in which the Committee found violations of article 9, paragraph 3 or article 14, paragraph 3c). They contend that the State party must organize its criminal justice system in such a way that such periods of delay do not occur.

3.2 The authors also claim that the delay of 4 years and 10 months from the sentence (on 19 January 1988) to the Court of Appeal's dismissal of the appeal (on 29 March 1993) is unreasonable and amounts to another violation of article 9, paragraph 3, of the Covenant. The authors submit that in assessing the reasonableness of the delay it is relevant to take into account that they were under sentence of death, and detained in unacceptable conditions.

3.3 The authors claim to be victims of a violation of articles 7 and 10, paragraph 1, on the ground that they were detained under appalling conditions. These prison conditions are said to have been repeatedly condemned by international human rights organizations as breaching internationally accepted standards and the UN Standard Minimum Rules for the Treatment of Prisoners.

3.4 The authors claim that after commutation of their death sentence, they remain detained in conditions which manifestly violate domestic Prison Rules standards, which govern the prisoners' entitlement to food, bedding, clothing, and the prison medical officer's responsibility to respond to complaints and take steps to alleviate the intolerable unsanitary conditions in the prison. This amounts to another violation of articles 7 and 10, paragraph 1, of the Covenant.

3.5 Relying on the Committee's General Comments 7 and 9 on articles 7 and 10, respectively, and the Committee's jurisprudence, the authors argue that the conditions endured by them at each phase of the proceedings breached a minimum inviolable standard of detention conditions (to be observed regardless of a State party's level of development) and accordingly violated articles 7 and 10, paragraph 1, of the Covenant. The authors invoke the Committee's jurisprudence and other relevant judicial decisions.

3.6 Finally, the authors allege a violation of article 14, paragraph 1, read in conjunction with article 2, paragraph 3, in that they are being denied the right of access to court to complain about the other allegations of violations of their rights under the Covenant.

3.7 The authors submit that the right to present a constitutional motion is not effective in the circumstances of the present case, owing to the cost of instituting proceedings in the High Court to obtain constitutional redress, the absence of legal aid for constitutional motions, and the unwillingness of local lawyers to represent applicants pro bono. They invoke the Committee's jurisprudence to the effect that in the absence of legal aid, a constitutional motion did not constitute an effective remedy for the indigent author in that case. In this context, it is stated that the authors have exhausted all of their possible domestic remedies for purposes of article 5, paragraph 2 (b) of the Optional Protocol. It is further stated that the matter has not been submitted for examination to any other international instance.

4. Notwithstanding the Committee's request to the State party to present its observations on the case, made on 1 August 2000, 12 October 2001, 8 January 2002, and 28 May 2004, the State party has not commented on the admissibility and/or the merits of the case.

Issues and proceedings before the Committee

Consideration of admissibility

5.1 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.

5.2 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.

5.3 With respect to the authors' possibility of filing a constitutional motion to the Supreme Court, the Committee notes that the authors have appealed their claims to the Court of Appeal and applied to the Privy Council for Special Leave to Appeal for Poor Persons, since the authors allegedly lack private funds, and legal aid was unavailable for such constitutional motions. Both these applications were dismissed. The Committee therefore considers that in the absence of legal aid, and in the absence of the State party's arguments to the contrary, a constitutional motion does not constitute an available remedy in the circumstances of the case. In the light of the above, the Committee finds that it is not precluded by article 5, paragraph 2 (b), of the Optional Protocol, from considering the communication.

5.4 The Committee considers that the authors' claims have been sufficiently substantiated for purposes of admissibility, and therefore proceeds to their examination on the merits insofar as they appear to raise issues under articles 2, paragraph 3, 7, 9, paragraph 3, 10, paragraph 1, and 14, of the Covenant. The Committee notes with concern the lack of any cooperation on the part of the State party. It is implicit in rule 91 of the Committee's rules of procedure and article 4, paragraph 2, of the Optional Protocol, that a State party to the Covenant should investigate in good faith all the allegations of violations of the Covenant made against it, and submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been granted by it. In the circumstances, due weight must be given to the authors' allegations, to the extent that they have been adequately substantiated.

5.5 To the extent that the authors have made a claim about the right to have access to Court under article 14, paragraph 1, of the Covenant, the Committee considers that they have not sufficiently substantiated this claim for purposes of admissibility.

Consideration of the merits

6.1 With regard to the authors' claims under article 9, paragraph 3, the Committee notes the authors were arrested in April 1985, that their trial began on 4 January 1988, and that the authors were kept in pre-trial detention throughout this period. That their pre-trial detention lasted 34 months is uncontested. The Committee recalls that pursuant to article 9, paragraph 3, anyone arrested or detained on a criminal charge shall be entitled to trial within a reasonable time or to release. What period constitutes a "reasonable time" within the meaning of article 9, paragraph 3, must be assessed on a case-by-case basis. A delay of almost three years, during which the authors were kept in custody cannot be deemed compatible with article 9, paragraph 3, in the absence of special circumstances justifying such delay. The Committee finds that, in the absence of any explanation from the State party, a delay of over 34 months in bringing the author to trial is incompatible with article 9, paragraph 3.

6.2 As to the claim of a delay of four years and ten months between conviction and dismissal of the appeal, counsel has invoked article 9, paragraph 3, but as the issues raised clearly relate to article 14, paragraph 3 c) and 5, the Committee will examine them under that article. The Committee considers that a delay of four years and 10 months between the conclusion of the trial on 19 January 1988 and the dismissal of the authors' appeal on 29 March 1993 is incompatible with the provisions of the Covenant, in the absence of any explanation from the State party justifying the delay. The Committee accordingly concludes that there has been a violation of article 14, paragraph 5 in conjunction with paragraph 3 (c), of the Covenant.

6.3 As to the authors' claim that their conditions during each stage of their imprisonment violated articles 7 and 10, paragraph 1, the Committee must give due consideration to them in the absence of any pertinent State party observation in this respect. The Committee considers that the authors' conditions of detention as described in paragraphs 2.3, 2.4 and 2.5 violate their right to be treated with humanity and with respect for the inherent dignity of the human person, and are therefore contrary to article 10, paragraph 1, of the Covenant. In the light of this finding in respect of article 10, a provision of the Covenant dealing specifically with the situation of persons deprived of their liberty and encompassing for such persons the elements set out

generally in article 7, it is not necessary separately to consider the claims arising under article 7 of the Covenant.

7. 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, 10, paragraph 1, and article 14, paragraph 5 in conjunction with paragraph 3 (c), of the Covenant.

8. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the authors with an effective remedy, including adequate compensation. In the light of the long period spent by the authors in deplorable conditions of detention that violate article 10 of the Covenant, the State party should consider release of the authors. The State party should, in any event, improve the conditions of detention in its prisons without delay.

9. On becoming a State party to the Optional Protocol, Trinidad and Tobago recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not. This case was submitted for consideration before Trinidad and Tobago's denunciation of the Optional Protocol became effective on 27 June 2000; in accordance with article 12 (2) of the Optional Protocol it continues to be subject to the application of the Optional Protocol. 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 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 the measures taken to give effect to the Committee's Views. The State party is 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.]
