



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Eighty-fifth session
17 October – 3 November 2005

VIEWS

Communication No. 862/1999

<u>Submitted by:</u>	Hazerat Hussain and Sumintra Singh
<u>Alleged victims:</u>	Hazerat Hussain, Hafez Hussain, Vivakanand Singh and Tola Persaud
<u>State party:</u>	Guyana
<u>Date of communications:</u>	16 and 22 March 1999 (initial submissions)
<u>Document references:</u>	Special Rapporteur's rule 92/97 decision, transmitted to the State party on 22 April 1999 (not issued in document form)
<u>Date of adoption of Views:</u>	25 October 2005

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- Made public by decision of the Human Rights Committee.

<i>Subject matter:</i>	Mandatory imposition of the death penalty
<i>Substantive issues:</i>	Arbitrary deprivation of life – Deprivation of life consistent with Covenant – Fairness of trial <i>Procedural issues:</i> Failure by State party to supply submissions - Exhaustion of domestic remedies – Sufficient substantiation, for purposes of admissibility
<i>Articles of the Covenant:</i>	6, paragraphs 1 and 2, and 14, paragraph 1
<i>Articles of the Optional Protocol:</i>	3 and 5, paragraph 2(b)
	[ANNEX]

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-fifth session

concerning

Communication No. 862/1999**

<u>Submitted by:</u>	Hazerat Hussain and Sumintra Singh
<u>Alleged victims:</u>	Hafeez Hussain, Hazerat Hussain, Vivakanand Singh and Tola Persaud
<u>State party:</u>	Guyana ¹
<u>Date of communications:</u>	16 and 22 March 1999 (initial submissions)

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

Meeting on 25 October 2005,

Having concluded its consideration of communication No. 862/1999, submitted to the Human Rights Committee on behalf of Sumintra Singh and Hazerat Hussain 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 authors are Messrs. Hazerat Hussain and Sumintra Singh, two nationals of Guyana. Mr. Hazerat submits the communication on behalf of himself and three other

** The following members of the Committee participated in the examination of the present communication: Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Alfredo Castillero Hoyos, Mr. Maurice Glèlè Ahanhanzo, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer, Mr. Hipólito Solari-Yrigoyen and Mr. Roman Wieruszewski.

¹ Guyana denounced the Optional Protocol on 5 January 1999 and re-acceded to it on the same date with a reservation related to the competence of the Committee to examine death penalty cases. The reservation became effective on 5 April 1999.

Guyanese nationals, Hafeez Hussain, Vivakanand Singh and Tola Persaud, also Guyanese nationals imprisoned at the time of the communication. Mr. Sumintra Singh submits the communication exclusively on behalf of his son, Mr. Vivakand Singh. At the time of submission of the communication, Mr. Hafeez Hussain and Mr. Vivakanand Singh were awaiting execution. While the authors do not invoke any specific provisions of the International Covenant on Civil and Political Rights, the communication appears to raise issues under articles 6 and 14 the Covenant. The alleged victims are not represented.

1.2 In accordance with rule 92 of the Committee's Rules of Procedure, the Committee through its Special Rapporteur for New Communication, requested the State party on 22 April 1999 not to carry out the death sentence against Mr. Hussain and Mr. Singh, while their cases were under consideration by the Committee.

Factual background

2. On 1 September 1993, Arnold Ramsammy was robbed and shot dead in his house. All four alleged perpetrators were arrested between 3 and 4 September 1993 in relation to the crime. On 26 March 1996, Hafeez Hussain and Vivakanand Singh were convicted of murder. Pursuant to article 101 of the Laws of Guyana: Criminal Law (Offences), which provides that "Everyone who commits murder shall be guilty of felony and liable to suffer death as a felon", the Magistrate's Court of the Corentyne District automatically imposed the death sentence. On the same date, Hazrath Hussain and Tola Persaud were convicted of manslaughter and sentenced to two years and three years of imprisonment, respectively. In March of 1996, the four accused appealed their convictions to the Court of Appeal. The grounds of appeal were, *inter alia*, that the trial judge omitted to direct the jury adequately on the law relating to identification, and that he did not adequately deal with the effects the evidentiary statements said to be inconsistent.

The complaint

3. The authors claim that the trial in Corentyne District Court, following which they were automatically sentenced to death, was unfair. They argue *inter alia* that the police daily-record book which contained entries about the "real" authors of the crime was lost during the trial; that some testimonies of witnesses were not taken into account while a police officer's contradictory testimony, as well as other testimonies with significant discrepancies, were used against the accused; that the trial judge did not direct the jury how to approach these issues, in particular the reliability of evidentiary testimonies; that the officer-in-charge of the investigation, who was related to the deceased, had a conflict of interest so that, according to the authors, his findings were partial; and that the guilty verdict was reached even after the appellate judges allegedly commented that the case was "a fabrication".

Failure of State party to cooperate

4. On 22 April 1999, 18 December 2000 and 24 July 2001, 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 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 authors' 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 authors' allegations, to the extent that they have been properly substantiated.

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 93 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 (article 5, paragraph 2(a), of the Optional Protocol).

5.3 On the issue of exhaustion of domestic remedies, the Committee notes that the alleged victims appealed their convictions to the Court of Appeal, the court of final appeal in the State party, although the outcome of the appeal is not apparent from the material before the Committee. In the absence of arguments from the State party to the effect that domestic remedies had not in fact been exhausted, it follows that the Committee is not precluded from article 5, paragraph 2(b), of the Optional Protocol from consideration of the communication.

5.4 As to the issues of unfair trial raised by the authors, the Committee notes that this part of the authors' allegations relate to the evaluation of evidence and to the instructions given by the judge to the jury. The Committee recalls its jurisprudence and reiterates that it is generally for the courts of States parties to the Covenant to evaluate facts and evidence in a particular case.² Similarly, it is not for the Committee to review specific instructions to the jury by the trial judge, unless it can be ascertained that the instructions to the jury were clearly arbitrary or amounted to a denial of justice.³ On the material before it, the Committee cannot establish that the trial judge's instructions or the conduct of the trial suffered from such deficiencies as to raise issues under the provisions of the Covenant. Accordingly, this part of the communication is insufficiently substantiated, for purposes of admissibility, and is inadmissible under article 2 of the Optional Protocol.

5.5 The Committee considers, however, that the issue of the mandatory imposition of the death sentence on Messrs. Hafeez Hussain and Vivakanand Singh raises sufficiently substantiated issues under article 6 of the Covenant and proceeds to examine this matter on the merits.

Consideration of the merits

6.1 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 under article 5, paragraph 1, of the Optional Protocol.

² See Errol Simms v. Jamaica Case No. 541/1993, Decision adopted on 3 April 1995; Lyndon Marriott v. Jamaica Case No. 519/1992, Views adopted on 27 October 1995, at para 6.3; and Catalina Marín Contreras v. Spain Case No. 1099/2002 Decision adopted on 17 March 2005.

³ See Lloyd Reece v. Jamaica Case No. 796/1998, Views adopted on 14 July 2003, at para. 7.3.

6.2 The Committee notes that, with respect to Messrs. Hafeez Hussain and Vivakanand Singh, the death sentence was passed by the trial court automatically, once the jury rendered its verdict that those accused were guilty of murder. In doing so, the trial court applied the provisions of article 101 of the Laws of Guyana: Criminal Law (Offences), which provides that “Everyone who commits murder shall be guilty of felony and liable to suffer death as a felon.” Article 101 of the Criminal Law therefore was applied automatically without regard being able to be paid to the defendant’s personal circumstances or the circumstances of the particular offence or facts and evidence of each individual case. The Committee refers to its jurisprudence that the automatic and mandatory imposition of the death penalty constitutes an arbitrary deprivation of life, in violation of article 6, paragraph 1, of the Covenant, in circumstances where the death penalty is imposed without regard being able to be paid to the defendant’s personal circumstances or the circumstances of the particular offence.⁴ It follows that the automatic imposition of the death penalty in the authors’ cases violated their rights under article 6, paragraph 1, of the Covenant.

6.3 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 article 6, paragraph 1 of the Covenant.

7. In accordance with article 2, paragraph 3(a), of the Covenant, the State party is under an obligation to provide Messrs. Hafeez Hussain and Vivakanand Singh with an effective remedy, including commutation of their death sentence.

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 also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

⁴ See Thompson v. St. Vincent & The Grenadines (Case No. 806/1998), Views adopted on 18 October 2000; and Kennedy v. Trinidad & Tobago (Case No. 845/1998), Views adopted on 26 March 2002; Carpo et al. v. Philippines Case No. 1077/2002, Views adopted on 28 March 2003; Ramil Rayos v. Philippines Case No. 1167/2003, Views adopted on 27 July 2004.