



**International covenant
on civil and
political rights**

Distr.
RESTRICTED*

CCPR/C/81/D/811/1998
18 August 2004

Original: ENGLISH

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

VIEWS

Communication No. 811/1998

<u>Submitted by:</u>	Ms. Rookmin Mulai (represented by counsel, Mr. C. A. Nigel Hughes of Hughes, Fields & Stoby)
<u>Alleged victim:</u>	Mr. Lallman Mulai and Mr. Bharatraj Mulai
<u>State party:</u>	Republic of Guyana
<u>Date of communication:</u>	4 March 1998 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 86/91 decision, transmitted to the State party on 9 April 1998 (not issued in document form)
<u>Date of adoption of Views:</u>	20 July 2004

On 20 July 2004, the Human Rights Committee adopted its Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 811/1998. 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. 811/1998**

Submitted by: Ms. Rookmin Mulai (represented by counsel,
Mr. C. A. Nigel Hughes of Hughes, Fields & Stoby)

Alleged victim: Mr. Lallman Mulai and Mr. Bharatraj Mulai

State party: Republic of Guyana

Date of communication: 4 March 1998 (initial submission)

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

Meeting on 20 July 2004,

Having concluded its consideration of communication No. 811/1998, submitted to the
Human Rights Committee on behalf of Mr. Lallman Mulai and Mr. Bharatraj Mulai 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. The author of the communication is Ms. Rookmin Mulai. She submits the communication on behalf of her two brothers Bharatraj and Lallman Mulai, both Guyanese citizens, currently awaiting execution in Georgetown Prison in Guyana. She claims that her brothers are victims of human rights violations by Guyana¹. Although she does not invoke any

** The following members of the Committee participated in the examination of the present communication: Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, 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 and Mr. Roman Wieruszewski.

¹The Optional Protocol to the Covenant entered into force for the State party on accession on 10 August 1993. On 5 January 1999, the Government of Guyana notified the Secretary-General that it had decided to denounce the said Optional Protocol with effect from 5 April 1999, that is,

specific articles of the Covenant, her communication appears to raise issues under articles 6, paragraph 2, and 14 of the Covenant. After the submission of the communication, the author has appointed counsel who, however, has not been in a position to make any substantive submissions in the absence of any response from the State party.

1.2 On 9 April 1998, the Special Rapporteur on New Communication issued a request under Rule 86 of the Committee's Rules of Procedure, that the State party does not carry out the death sentence against the authors while their communication is under consideration by the Committee.

The facts as submitted by the author

2.1 On 15 December 1992, Bharatraj and Lallman Mulai were charged with the murder of one Doodnauth Seeram that occurred between 29 and 31 August 1992. They were found guilty as charged and sentenced to death on 6 July 1994. The Court of Appeal set aside the death sentence and ordered a retrial on 10 January 1995. Upon conclusion of the re-trial, Bharatraj and Lallman Mulai were again convicted and sentenced to death on 1 March 1996. On 29 December 1997, their sentence was confirmed on appeal.

2.2 From the notes of evidence of the re-trial, it appears that the case for the prosecution was that Bharatraj and Lallman Mulai had an argument with one Mr. Seeram over cows grazing on the latter's land. In the course of the argument, Bharatraj and Lallman Mulai repeatedly chopped Seeram with a cutlass and a weapon similar to a spear. After Mr. Seeram fell to the ground, they beat him with sticks. On 1 September 1992, Mr. Seeram's corpse was found by his son, drowned in a small river in the proximity of Mr. Seeram's property. It disclosed injuries to the head, the right hand cut off above the wrist and a rope tied around the neck to keep the body submerged in water.

2.3 Evidence against Bharatraj and Lallman Mulai was given by one Nazim Baksh, alleged eyewitness to the incidents. The court also heard Mr. Seeram's son, who had found the body,

subsequent to submission of the communication. On that same date, the Government of Guyana re-acceded to the Optional Protocol with the following reservation: "Guyana re-accedes to the Optional Protocol to the International Covenant on Civil and Political Rights with a Reservation to article 6 thereof with the result that the Human Rights Committee shall not be competent to receive and consider communications from any persons who is under sentence of death for the offences of murder and treason in respect of any matter relating to his prosecution, detention, trial, conviction, sentence or execution of the death sentence and any matter connected therewith. Accepting the principle that States cannot generally use the Optional Protocol as a vehicle to enter reservations to the International Covenant on Civil and Political Rights itself, the Government of Guyana stresses that its Reservation to the Optional Protocol in no way detracts from its obligations and engagements under the Covenant, including its undertaking to respect and ensure to all individuals within the territory of Guyana and subject to its jurisdiction the rights recognised in the Covenant (in so far as not already reserved against) as set out in article 2 thereof, as well as its undertaking to report to the Human Rights Committee under the monitoring mechanism established by article 40 thereof."

and, among other, the investigating officer of the police and the doctor, who examined the victim's body on 29 October 1992.

2.4 In a statement from the dock, Bharatraj and Lallman Mulai claimed that they were innocent and had not been present at the scene on the day in question. They stated that they had been on good terms with Mr. Seeram, while they had not been "on speaking terms" with Mr. Baksh.

2.5 By letter of 19 May 2003, counsel advised that Bharatraj and Lallman Mulai remain on death row.

The complaint

3.1 The author claims that her brothers are innocent and that the trial against them was unfair. According to her, unknown persons tried to bribe the foreman of the jury. Two persons visited the foreman on 23 February 1996 at his house and offered to pay him an unspecified amount of money if he influenced the jury in favour of Bharatraj and Lallman Mulai. The foreman reported the matter to the prosecutor and the judge, but it was never disclosed to the defence. Unlike what had happened in other cases, the trial was not aborted due to the incident². Furthermore, Mr. Baksh claimed during his testimony to have been approached by members of the Mulai family. The author argues that, as a result, the foreman and the jury were biased against her brothers.

3.2 The author claims that Mr. Baksh could not be considered a credible witness. She states that Mr. Baksh testified at the re-trial that he saw Bharatraj and Lallman Mulai at the scene attacking Mr. Seeram, while at the initial trial he had testified that he could not see the scene, because it was too dark. Furthermore, he testified that Bharatraj and Lallman Mulai had chopped Mr. Seeram several times with a cutlass, while the investigating officer stated that the injuries to the body had been caused by a blunt instrument. Finally, Mr. Baksh testified that Bharatraj and Lallman Mulai had beaten Mr. Seeram for several minutes, but the doctor could not find any broken bones on the corpse, which would have been a typical injury caused by such beatings. Finally, the doctor estimated that Mr. Seeram's actual cause of death was drowning.

3.3 The author also contends that it would have been typical for the victim to try to fend off the beatings with hands and feet, but that Mr. Seeram's corpse did not show any injuries except the missing right hand. She notes that Mr. Bharatraj Mulai, who was identified by Mr. Baksh as having chopped Mr. Seeram with the cutlass, is right-handed. The author argues that Mr. Seeram's left hand should be missing if he used it to avert a hit with the cutlass by Bharatraj Mulai. The author concedes that the defence attorney did not argue these points on trial.

3.4 Finally, it is claimed that Mr. Baksh gave two different statements to the police. In his first statement on 8 September 1992, he stated that he did not observe anything of the incident, while on 10 December 1992, he gave the statement reflected above, paragraph 3.2. The

³The file includes a copy of the Appeal Court's judgement where the incident is addressed as having been raised upon appeal as a matter of unfair trial. The Court of Appeal dismissed the appeal on the grounds that the integrity of the jury foreman had not been tainted.

statements of Mr. Baksh and of Mr. Seeram's son were not consistent either with regard to the existence of trees at the scene. Mr. Seeram's son had stated that there had been many trees close to the scene of the incident.

Issues and proceedings before the Committee

4. On 9 April 1998 and 30 December 1998, 14 December 2000, 13 August 2001, and on 11 March 2003 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. The Committee regrets the State party's failure to provide any information with regard to admissibility or the substance of the author's claims. It 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 these have been properly substantiated³.

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 regard to the author's claim that Mr. Baksh lacked credibility and that testimony provided by the doctor and other witnesses had not been conclusive, the Committee recalls its constant jurisprudence that it is in general for the courts of States parties to the ICCPR, 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 and their interpretation of the law were manifestly arbitrary or amounted to a denial of justice. Accordingly, this part of the communication is inadmissible under article 2 of the Optional Protocol.

5.4 The Committee declares the remaining allegations related to the incident of jury tampering admissible insofar as they appear to raise issues under article 14, paragraph 1, and proceeds with its examination on the merits, in the light of all the information made available to it by the author, pursuant to article 5, paragraph 1, of the Optional Protocol.

Consideration of the merits

6.1. The Committee notes that the independence and impartiality of a tribunal are important aspects of the right to a fair trial within the meaning of article 14, paragraph 1, of the Covenant. In a trial by jury, the necessity to evaluate facts and evidence independently and impartially also

³ See *J.G.A. Diergaardt et al. v Namibia*, Case No. 760/1997, Views adopted on 25 July 2000, paragraph 10.2.

applies to the jury; it is important that all the jurors be placed in a position in which they may assess the facts and the evidence in an objective manner, so as to be able to return a just verdict. On the other hand, the Committee recalls that where attempts at jury tampering come to the knowledge of either of the parties, these alleged improprieties should have been challenged before the court⁴.

6.2 In the present case, the author submits that the foreman of the jury at the re-trial informed the police and the Chief Justice, on 26 February 1996, that someone had sought to influence him. The author claims that it was the duty of the judge to conduct an inquiry into this matter to ascertain whether any injustice could have been caused to Bharatraj and Lallman Mulai, thus depriving them of a fair trial. In addition, the author complains that the incident was not disclosed to the defence although both the judge and the prosecution were made aware of it by the foreman of the jury, and that unlike in some other trials the trial against the two brothers was not aborted as a consequence of the incident. The Committee notes that although it is not in the position to establish that the performance and the conclusions reached by the jury and the foreman in fact reflected partiality and bias against Bharatraj and Lallman Mulai, and although it appears from the material before it that the Court of Appeal dealt with the issue of possible bias, it did not address that part of the grounds of appeal that related to the right of Bharatraj and Lallman Mulai to equality before the courts, as enshrined in article 14, paragraph 1, of the Covenant and on the strength of which the defence might have moved for the trial to be aborted. Consequently, the Committee finds that there was a violation of article 14, paragraph 1, of the Covenant.

6.3 In accordance with its consistent practice the Committee takes the view 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 a violation of article 6 of the Covenant. In the circumstances of the current case the State party has violated the rights of Bharatraj and Lallman Mulai under article 6 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 reveal violations of article 14, paragraph 1, and article 6 of the International Covenant on Civil and Political Rights.

8. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide Bharatraj and Lallman Mulai with an effective remedy, including commutation of their death sentences. The State party is also under an obligation to avoid similar violations in the future.

9. Bearing in mind that, by becoming a 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 and that, 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

⁴ See *Willard Collins v Jamaica*, Case No. 240/1987, Views adopted on 1 November 1991, paragraph 8.4.

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 also requested to publish the Committee's Views.

[Done 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.]
