HUMAN RIGHTS COMMITTEE

Chadee et al v. Trinidad and Tobago

Communication No. 813/1998**

29 July 1998

CCPR/C/63/D/813/1998*

VIEWS

Submitted by: Dole Chadee et al (represented by Mr. David Smythe, of Kingsley Napley, a law firm in London)

Victim: The authors

State party: Trinidad and Tobago

Date of communication: 1 April 1998 (initial submission)

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

Meeting on 29 July 1998,

Having concluded its consideration of communication No.813/1998 submitted to the Human Rights Committee by Dole Chadee et al., 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 the following:

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

1. The authors of the communication are Nankissoon Boodram (Dole Chadee), Joel Ramsingh, Joey Ramiah, Ramkalawan Singh, Russell Sankeralli, Bhagwandeen Singh, Clive Thomas, Robin Gopaul and Stephen Eversley, all Trinidadian nationals at present detained on Death Row in the State Prison of Trinidad. They initially claim to be a victim of

violations by Trinidad & Tobago of article 14 of the Covenant. They are represented by David Smythe of Kingsley Napley Solicitors in London, England.

The facts as submitted

2.1 On 10 January 1994, four members of the Baboolal family in Williamsville were murdered. Between 13 and 15 May 1994, the authors were arrested on suspicion of murder. On 21 July 1994, the preliminary enquiry commenced, which concluded on 30 September 1994 with the authors plus one other accused, Levi Morris, being committed for trial. On 1 November 1994, Dole Chadee filed a constitutional motion (arising out of the pre-trial publicity) which was dismissed on 15 November 1994. Chadee's appeal was dismissed by the Court of Appeal on 20 January 1995. On 10 April 1995, Chadee was granted leave to appeal to the Privy Council, which dismissed the appeal in respect of the constitutional motion on 19 February 1996.

2.2 On 10 June 1996, the trial began at Chaguaramas Assize Court. The trial was held in a converted building, which had been used only once before as a court house, and during the trial there was a heavy security presence. The authors applied for a permanent stay on the ground that their trial would be an abuse of the process of the Court, because of the extent of negative pre-trial publicity. The application was dismissed. An application to examine all potential jurors on oath before being sworn was allowed, pursuant to an amendment to the Jury Act enacted about a month before. The jury selection started on 17 June and was completed on 12 July 1996, after the judge had ordered the praying of a tales [1] on 28 June 1996. On 15 July 1996, a further application to stay the proceedings permanently on the ground that any trial would be an abuse of process was dismissed.

2.3 The authors' co-accused, Levi Morris, was arraigned on 10 June 1996, pleaded guilty to four charges of murder and was sentenced to death on each charge. Immediately thereafter a conditional pardon was produced and read and the four sentences of death passed on him were commuted to sentences of life imprisonment. The pardon was subject to the condition that he undertook to give evidence for the prosecution in accordance with a statement given by him on 4 June 1996 and that that statement was true.

2.4 On 3 September 1996, the authors were convicted for murder of four members of the Baboolal family. They were all sentenced to death. On 16 May 1997, the Court of Appeal dismissed their appeals. On 1 April 1998, the Judicial Committee of the Privy Council in London refused to give leave to appeal. With this, all domestic remedies are said to be exhausted.

2.5 At trial, the case for the prosecution was that at about 2.00 am on 10 January 1994, a masked armed gang burst into the home of the Baboolal family in Williamsville and murdered four members of that family (the father Deo, the mother Rookmin, the son Hamilton and the daughter Monica). The prosecution led evidence that Dole Chadee organised the raid and that the authors except for Chadee, went in four vehicles from Chadee's farm to carry out the raid. They were armed with firearms and a sledgehammer. Ramkalawan Singh and Sankeralli took two of the vehicles to a place about a mile from the

Baboolal's home, whilst the others carried out the raid. Two children (Osmond and Hamatee) who were in the house escaped. The attack team then drove to the meeting point, where the number plates of the cars were removed. The prosecution's case was largely based on evidence given by the accomplice Levi Morris and on a statement deposed by the accomplice Clint Huggins[2], who died before the beginning of the trial. The deposition made by Huggins was admitted into evidence by the judge after he conducted a voir-dire on the matter. Fingerprint evidence was also led.

2.6 The accused denied any involvement in the murders and claimed that the prosecution was the result of a conspiracy between the police, alleged accomplices and other witnesses to frame them because of their belief that Chadee was an international drug dealer leading a gang of murderers. The fingerprint evidence, purportedly identifying a partial thumbprint of Ramsingh on the broken front number plate of one of the cars, was challenged by them.

The complaint

3.1 The authors claim that the adverse pre-trial publicity prejudiced the trial against them. Widespread and continuous publicity suggested that Chadee was a notorious drug baron, wanted for international drug trade. The publicity also suggested that witnesses and others who participated in the legal process against Chadee were at risk of being killed. It is submitted that the prejudice created by the publicity was of such poisonous nature and persistence that no Court could be satisfied that any trial of the accused would be fair. It is further submitted that the mechanisms available to the trial judge, such as the examination of potential jurors and emphatic judicial warnings, were not capable of defusing that prejudice with the necessary degree of certainty required. It is also claimed that the Court of Appeal proceedings were tainted, because of the continuing publicity against the authors. It is submitted that the Attorney-General and the Director of Public Prosecutions should have taken measures to prevent the prejudicial publicity, as they would have been aware of its impact on the fairness of the trial.

3.2 The authors claim that the selection of the jury was flawed. It is submitted that each juror was examined to ascertain to what extent the adverse publicity had influenced them and that it then became apparent that an impartial jury could not be empanelled. It appears from the file that the defendants successfully challenged 169 potential jurors for cause, and used 36 peremptory challenges. The process of jury selection occupied 14 days. According to counsel, the evidence during the examination of the prospective jurors, as well as the number of challenges, shows that the prejudice against the authors, and in particular against Dole Chadee, was extensive and deep rooted, and that no section of the community was untouched by the prejudice. In this context, the authors also claim that the judge erred in law when he denied the accused the right to challenge some of the prospective jurors for cause, thereby forcing them to consume their limited peremptory challenges, as a consequence of which the jury contained persons who were biased or potentially biased. It is stated that the procedure adopted for the selection of new jurors after the existing panel had been exhausted was flawed and wrong in law, thereby rendering the trial a nullity. It is submitted that rather than ordering a tales, the judge should have discharged the jury members selected and put the case over to the next Assizes court to have a new, larger panel summoned.

3.3 The authors claim that the conduct of the trial was unfair and prejudiced against them. In this context, it is submitted that the judge allowed the evidence of the alleged accomplice Huggins to be read out to the jury, because he had died prior to the trial. Counsel claims that this witness had never been cross-examined regarding the immunities that he had been offered as these had not been disclosed to the defence at the time his evidence had been taken at the preliminary hearing.

3.4 It is also stated that the judge permitted hearsay evidence to be received before the jury, and that he failed to instruct the jury as to how to approach such evidence. The authors further claim that the judge failed to direct the jury that they should disregard the evidence of a scientific officer called by the prosecution at trial whose evidence concerning the blood stain found in one of the cars was not probative but prejudicial.

3.5 Counsel also claims that there were serious misdirections in the summing-up. In particular, the judge allegedly failed to remind the jury adequately of the differences between the evidence given by the prosecution's expert concerning the thumbprint on the car's plate, and the defence's expert in the same matter. This is said to be particularly significant, as the thumbprint was the only evidence, other than that given by the accomplices, linking the accused Joel Ramsingh to the murders. Moreover, if the evidence given on behalf of the defence were to be accepted by the jury, it would have discredited the evidence by the accomplices, thereby also discrediting the prosecution's case. The judge allegedly also failed to direct the jury properly with regard to the evidence given by the accomplices, and failed to draw to the jury's attention discrepancies in the evidence.

3.6 It is also stated that during his final address to the jury, counsel for the prosecution made a number of inflammatory remarks calculated to rekindle the prejudice caused by the publicity and to engender hatred against Dole Chadee. It is submitted that the judge failed to stop counsel for the prosecution from making such remarks and moreover, that he failed to give any appropriate remedial direction.

State party's observations

4.1 In its observations, the State party contends that the matters complained of do not amount to a violation of article 14 or any other article of the Covenant. The State party recalls that the authors' complaints have already been fully aired both before the Court of Appeal and the Judicial Committee of the Privy Council. According to the State party, the evidence against the authors was factually uncontradicted, and therefore the jury's verdict cannot be said to have been perverse.

4.2 With regard to the allegations made by the authors concerning the judge's directions to the jury, the State party refers to the Committee's jurisprudence that it is generally not for the Committee, but for the appellate courts of States parties, to review specific directions by the judge to the jury. The State party therefore argues that this part of the communication is inadmissible under article 3 of the Optional Protocol.

4.3 Also, in respect of the judge's discretion in relation to the admission of evidence, the

State party submits that it is generally for the appellate courts to review this discretion, and that in the absence of manifest arbitrariness or denial of justice, this part of the communication is to be declared inadmissible as being incompatible with the provisions of the Covenant.

4.4 With regard to the complaint that the trial judge should have stayed the proceedings on the basis of the pre-trial publicity, the State party notes that article 14 of the Covenant provides that in the determination of a criminal charge against him, everyone shall be entitled to a fair trial by a competent, independent and impartial tribunal, not that he should be entitled to avoid such a determination altogether. The State party explains that under its legislation, a stay of trial will not be granted unless it is established that it would be impossible to empanel an impartial jury. The State party challenges as contrary to law counsel's argument that because it was difficult to ensure a fair trial, the trial should have been stayed. According to the State party, where there has been substantial pre-trial publicity, as there was in this case, it is the judge's duty to take such steps as he believes necessary to ensure that the trial is fair. The State party submits that the judge did exactly that in this case. As a result, 12 jurors were sworn in who were fair minded, unbiased and fully capable of providing a fair trial to the authors. In this connection, the State party contends that staying the trial would have put the authors above the law. In respect to the authors' argument that the DPP should have taken steps to halt the adverse publicity, the State party submits that this complaint is irrelevant to the question whether or not the authors had a fair trial.

4.5 With regard to the authors' complaint that the selection of the jury was flawed, the State party provides information about the examination of the twelve jurors selected, and notes that it is impossible to say that the jurors in this case were biased. It notes that the authors base their claim on the fact that because of the pre-trial publicity any juror might have been suffering from unconscious prejudice. The State party contends that in the absence of bias on the part of the jurors, no such complaint can lead to the view that the trial was unfair or that the tribunal was not impartial. The State party further notes that the authors' complaint about how the tales was conducted is based on a legal technicality, and that their argument was rejected by the Court of Appeal. It states that this could not possibly have affected the fairness of the trial.

4.6 With regard to the complaint that Huggins' deposition should not have been admitted, the State party notes that the witness had made a sworn deposition at the Preliminary Enquiry before a Magistrate and had been extensively cross-examined by counsel for the defence, as certified by the Magistrate. In respect of the authors' argument that at the time of the Preliminary Enquiry they were not informed about the immunities from prosecution given to Huggins, the State party refers to the finding of the Court of Appeal and contends that this did not deprive the defence of the opportunity for full cross-examination. The State party further notes that a voir dire was held at the beginning of the trial which included hearing evidence sought by the defence, with a view to discrediting Huggins' deposition; after this the judge allowed the deposition to be read. In his decision, the judge took into consideration the State's undertaking to tender all witnesses required by the defence for the purposes of exploring Huggins' credibility before the jury, and the fact that they were indeed

produced and gave evidence.

4.7 With regard to the authors' claim that the judge allowed hearsay evidence, the State party observes that hearsay evidence as such does not violate article 14 or any other article of the Covenant. The State party further notes that the evidence complained of was solicited by the defence in cross-examination by the witness Morris and went directly to his credibility. The State party argues that where a trial judge allows experienced defence counsel to ask perfectly proper questions of a prosecution witness in cross-examination, the answers obtained cannot lead to the trial becoming unfair. On the contrary, if the judge curtailed such cross-examination, that could in certain circumstances result in unfairness.

4.8 Concerning the expert evidence on blood stains found in the Mazda car, the State party notes that the defence never disputed that the car was used in the killings. The State party therefore submits that the evidence could not possibly have deprived the authors of a fair trial.

4.9 With regard to the prosecution's final speech, the State party argues that however inflammatory, it could not have deprived the authors of a fair hearing. The State party notes that everything said in the speech was justified on the basis of the prosecution's case. Moreover, the judge directed the jury to disregard certain suggestions made by the prosecution. Furthermore, the State party notes that the authors' defence was based on the theory of a conspiracy to frame Chadee because of his reputation as a drug lord. This is said to be more directly calculated to resurrect pre-trial publicity than anything in the Prosecution's final speech.

4.10 With regard to alleged misdirections in the summing-up, the State party contends that none of the complaints made by the authors is such as to render the trial unfair or to deprive the authors of their rights under the Covenant.

Counsel's comments

5.1 In his comments, counsel reiterates that the authors were denied a fair trial by allowing it to proceed in the light of the publicity and by permitting evidence to be called which was weak and untrustworthy. He emphasizes that the authors' complaint includes the decisions taken by the Court of Appeal and the Judicial Committee of the Privy Council. Counsel stresses that contrary to what the State party appears to think, the accused were not required to establish a positive defence, and the burden of proof should be on the State. Because of the alleged violations of article 14, rendering their conviction unsafe, the authors contend that they are entitled to an effective remedy, namely their immediate release.

5.2 In an additional communication, counsel newly claims violations of articles 6, 7 and 14 of the Covenant, and contends that the system of criminal law and justice with regard to those condemned to death upon conviction is discriminatory, arbitrary and is manipulated by the State for political ends. In this connection, counsel argues that following the Privy Council's decision in Pratt & Morgan, persons sentenced to death in Trinidad & Tobago have fallen into two categories: those whose appeals have been expedited so that their execution

may not be aborted through the passing of time, and those whose appeals have been allowed to follow their normal course, so that their executions may be aborted through passing of time. It is submitted that the decision whether to expedite or not is taken by the Attorney General for reasons of political advantage.

5.3 It is alleged that, although to date no convicted person held on death row in Trinidad & Tobago has been executed, there is clear evidence that the authors have been "fast-tracked" so that their executions may not be prevented by the decision in Pratt & Morgan. In this connection, counsel notes that the authors' appeal hearing took place eight months after the conviction, whereas other appeals took much longer, from one year and seven months up to three year and ten months. Counsel refers to press clippings and argues that there is ample evidence that the Attorney General targeted the authors, and in particular Dole Chadee, so as to achieve his objective of resuming executions as quickly as possible. Counsel notes that, since the fast-tracking has no basis in law, it is an arbitrary process and discriminatory. According to counsel, this violates article 6 of the Covenant and moreover, article 7, since the deliberate selection and targeting of the authors so as to ensure their executions is cruel, inhuman and degrading treatment.

5.4 Counsel presents a second additional claim and argues that there has been a violation of article 7 of the Covenant, because of the inhuman conditions of detention to which the authors have been subjected since their arrest. He refers to questionnaires completed by Dole Chadee, Joey Ramiah, Joel Ramsingh, Bhagwandeen Singh, Russell Sankeralli and Robin Gopaul, which testify that the medical treatment in prison is unsatisfactory, that the sanitary facilities are inadequate, that the food is bad, that the water is contaminated, and that the cells are insufficiently ventilated and do not have natural lighting. It is further claimed that they are allowed out of their cell for not more than one hour every week to enjoy sunshine, but that they cannot exercise during those breaks because they are hand cuffed.

5.5 In addition, counsel claims on behalf of Russell Sankeralli, that there was insufficient evidence to convict him, as the witnesses did not give evidence that he was present when the alleged plot was revealed to the extent that he was aware of what was going to take place. It is claimed that he was not given a gun, and that he drove the get away car without knowing what the others were up to. At trial, a no case submission was rejected by the judge. Counsel admits that the point was not raised on appeal.

State party's further submission and counsel's comments

6.1 By note of 6 July 1998, the State party notes that counsel for the authors, in his comments on the State party's submission and 68 days after the initial communication was presented to the Committee, has made new claims, to which the State party must respond or otherwise they will be deemed admitted. According to the State party, the submission of new claims is a deliberate attempt to delay the Committee's consideration of the case, since the matters raised in the claims could have been raised in the initial communication. In this context, it recalls that, in order for any recommendation by the Human Rights Committee to be considered, the Government must receive the Committee's Views within a period of six months from the State party's response to the communication.

6.2 With regard to counsel's claim that the expeditious hearing of the authors' appeal violates articles 6, 7 and 14 of the Covenant, the State party refers to the time frames set up by the Privy Council's decision in Pratt & Morgan. Pursuant to this decision, the Court of Appeal is required to hear and determine appeals concerning death sentences within one year of conviction. The State party underlines that these are constitutional standards which have led to measures to streamline the procedures in capital cases with the objective of ensuring completion of the appellate process within the shortest possible time consistent with due process of law.

6.3 The State party submits that all cases are expedited and that no fast-tracking of individual cases has occurred. That some cases are completed in a shorter period of time than others is said to be due to the individual circumstances of each case. In this context, the State party explains that the main cause of delay is the availability of the written judgement. According to the State party, since 1996 the time taken to hear an appeal has varied between 3 and 12 months. The State party argues that any allegation that it has targeted the authors for expedition is without grounds, since the period of eight months between conviction and appeal fits within the general range now effected by the courts in order to comply with the decision of Pratt & Morgan.

6.4 With regard to the claim that there has been a violation of article 7 of the Covenant because of the conditions of detention, the State party denies that such a violation has taken place. According to the State party, the authors are held in the Royal Gaol in Port of Spain where conditions are sanitary. Proper food, clean water, medical attention and recreational facilities are provided and comply with international norms. The State party explains that each condemned prisoner has his own cell, which measures a standard six by nine feet, and ten feet in height. Each cell contains a single bed with a mattress and pillow and a small wooden bench. The arrangement of the cells allows the prisoners to converse with one another. The cells are warm and dry and there is no moisture or water accumulating in the cells. The cells are well ventilated by a ventilation vent (2.5 by 1.5 feet) built into the top of the back of the wall of each cell, which allows the outside air to come in. The corridors of the division have ceiling fans which circulate air into the cell areas. Each division has its own shower and toilet facilities, and once a day each prisoner is allowed to use these facilities. It is stated that all prisoners are provided with basic toiletries. A prisoner is allowed to empty his slop pail three times a day, in the morning, at midday and in the evening. The prisoners are allowed to fill their water jugs twice a day, in the morning and in the evening before lock down. If a prisoner runs out of water, he is allowed to refill the jug upon request.

6.5 The State party submits that each condemned prisoner is allowed to come out of his cell for sunlight and exercise at least one hour a day from Monday to Friday. On public holidays and weekends, the prison operates on minimal staff and as a result there are insufficient guards on duty to supervise the exercise of prisoners. In addition, prisoners will not be taken out if the weather is bad or if there is a security alert or a staff shortage. The State party explains that the Royal Gaol compound has two exercise yards. The main yard has 2289 square feet available for use, and the other 799. When a prisoner goes out to the exercise yard, each is accompanied by a security officer. Another officer is assigned to supervise all

prisoners in the yard. The prisoners are hand-cuffed in front. Since incidents have occurred in the past with prisoners attacking guards or other prisoners, or trying to escape, the State party explains that death row prisoners are considered high risk prisoners and in the interest of safety their handcuffs are not removed during the exercise period. The State party explains that the prisoners are only hand-cuffed when they leave the cell division.

6.6 The State party submits that the prisoners are given a balanced diet, prepared by prison personnel trained at the Hotel School in Chaguaramas. Breakfast usually consists of milk, tea, coffee or cocoa with either porridge or bread and either butter, cheese, eggs, jam, corned beef, sardines, vegetables or peas. For lunch, either goat, pork, liver, chicken or fish, served with rice and peas or beans or vegetables. Dinner is similar to breakfast but in addition vegetables are sometimes served with bread. The prisoners are also given juice, sorrel or mauby as a drink. If prescribed by the prison doctor, prisoners will be given a special diet. The prison canteen sells food supplies. The prisoner's relatives can purchase up to a limit of $ 200 per week from the canteen to be given to the prisoner.

6.7 According to the State party, prison rules are posted around the prison. All condemned prisoners are entitled to three meals a day, family visits twice a week, four books at a time (new books can be brought by family every week), six cigarettes a day (if supplied by relatives), writing paper on request. Prisoners can write up to two letters a week to their families and unlimited letters to their lawyers and officials such as the Ombudsman. Newspapers are circulated every day and the radio is on in the division from 6 a.m. to 9 p.m. every day.

6.8 Two welfare officers are assigned to the prisoners. An Infirmary officer visits the divisions twice a day to treat minor complaints and to hand out any prescribed medication. The Prison Medical Officer visits the prison on a daily basis. Further, every two weeks the prisoners are visited in their cells by the prison doctor for a medical examination.

6.9 In respect of the additional claim on behalf of Mr. Sankeralli, the State party submits that the matters complained of do not amount to a violation of article 14 or any other article of the Covenant. The State party refers to the Committee's jurisprudence, and notes that the point raised now was not raised on appeal, although the author was represented by an eminent senior counsel.

7.1 In his comments, counsel for the author takes issue with the State party's reference to its instructions relating to applications, and to its statement that the Committee has to adopt its Views within six months in order for the Government to consider them. According to counsel these instructions are unlawful both at the domestic and at the international level, since they have not been approved by Parliament. Counsel argues that the instructions are "typical of the dictatorial and undemocratic modus operandi of the present regime". In this connection, counsel also refers to the State party withdrawal from the Optional Protocol as well as from the American Convention on Human Rights.

7.2 With regard to the authors' claim of discrimination in relation to the expedition of the appeal process, counsel contests the State party's claim that administrative, judicial and

legislative reforms have been undertaken. He states that the only judicial activity in this respect is the hearing of constitutional motions in relation to the execution of the death sentence. Counsel claims that the statistics provided by the State party are "false and tendentious" and do not include those condemned persons whose appeals were delayed by administrative favour. According to counsel the justice system is inherently flawed in a manner which makes the application of the death penalty at worst discriminatory or otherwise capricious.

7.3 Counsel denies that the authors are seeking to manipulate the process by delay. He points out to difficulties in communicating with the authors in Trinidad.

7.4 In respect to the conditions in prison, counsel reaffirms the previous allegations and notes that the State party accepts that there is no sanitation in the cells save for a slop pail, and that there is no mention of any window or light in the cells. According to counsel, the ventilation hole providing fresh air must be inadequate to provide any level of relief in the prevailing climate. Counsel notes that the State party admits that prisoners are only allowed five hours a week of sunlight and exercise, and less if there are public holidays, inclement weather or security alert. Counsel concludes that this means that the authors are kept in their cell for a minimum of 48 hours at weekend. Counsel disagrees with the State party's description of the conditions of detention and maintains that the conditions are as described by the authors.

Issues and proceedings before the Committee

8.1 Before considering any claims 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.

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

8.3 With regard to the authors' claim concerning the conduct of the trial by the judge, the admittance of evidence, his treatment of the prosecution's final address and his instructions to the jury, the Committee refers to its prior jurisprudence and reiterates that it is generally not for the Committee, but for the appellate Courts of States parties, to review the admissibility of evidence and the specific instructions to the jury by the trial judge, unless it can be ascertained that the instructions to the jury or the conduct of the trial were manifestly arbitrary or amounted to a denial of justice. The material before the Committee does not show that the trial judge's directions or the conduct of the trial suffered from such defects. Accordingly, this part of the communication is inadmissible as incompatible with the provisions of the Covenant, pursuant to article 3 of the Optional Protocol.

8.4 With regard to the additional claim raised by counsel in relation to the conviction of Russell Sankeralli, whom counsel claims was convicted on the basis of insufficient evidence, the Committee reiterates that the evaluation of facts and evidence is generally a matter for

the courts of States parties, and not for the Committee, unless it can be ascertained that the evaluation was manifestly arbitrary or amounted to a denial of justice. The material before the Committee does not show that the trial suffered from such defects. Accordingly, this part of the communication is inadmissible as incompatible with the provisions of the Covenant, pursuant to article 3 of the Optional Protocol.

9. The Committee considers that the authors' remaining claims are admissible and proceeds to their examination on the merits.

10.1 The authors have claimed that they did not receive a fair trial because of (a) the pre-trial publicity, and (b) the process of jury selection. The Committee notes that the pre-trial publicity was extensive, and that for this reason the State party amended the law so as to allow examination of prospective jurors by the defence with the aim of determining whether the pre-trial publicity had affected them to the extent of being biased. The jury selection occupied 14 days and the defence successfully challenged 169 potential jurors for cause. In the end, twelve jurors were sworn. The Committee is of the opinion that, in the circumstances, the State party took proper measures to prevent the pre-trial publicity from rendering the trial unfair. That not all challenges for cause by the defence were allowed does not indicate that the judge did not discharge his duty properly. With regard to the process of jury selection through conduct of a tales, the Committee refers to its jurisprudence that it is for the courts of States parties, and not for the Committee, to review the application of domestic law, unless it is evident that the application was manifestly arbitrary or amounted to a denial of justice. This not being so in the instant case, the Committee finds that the facts before it do not reveal a breach of article 14 of the Covenant.

10.2 With regard to the authors' additional claim that their appeal has been expedited in order to ensure their execution, in violation of articles 6, 7, and 14 of the Covenant, the Committee has taken note of the statistics provided by both counsel and the State party in this respect. In this context, the Committee recalls that the State party is under an obligation, under article 14 (3)(c) and (5) of the Covenant, to ensure that appeals are heard without undue delay. The Committee should nevertheless examine whether the period of time between conviction and the hearing of the appeal is sufficient for the defence to prepare the appeal. After having examined the information before it, the Committee considers that it has not been shown that the period of time in the instant case was insufficient to prepare the appeal by defence counsel. The Committee concludes therefore that the facts before it do not show that articles 6, 7 and 14 have been violated in this respect.

10.3 Dole Chadee, Joey Ramiah, Joel Ramsingh, Bhagwandeen Singh, Russell Sankeralli and Robin Gopaul have provided information with regard to their conditions of detention. The State party has addressed the claims made by the authors, and has submitted that the authors' conditions of detention do not violate the standards set out in the Covenant. On the basis of the information before it, the Committee is not in a position to make a finding of a violation of article 10 of the Covenant.

11. 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 do not reveal a breach of any of the provisions of the Covenant.

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*/ Made public by decision of the Human Rights Committee.

*/ The following members of the Committee participated in the examination of the present communication: Mr. Nisuke Ando, Mr. Prafullachandra N. Bhagwati, Mr. Th. Buergenthal, Mrs. C. Chanet, Lord Colville, Mr. Omran El Shafei, Ms. Elizabeth Evatt, Mr. Eckart Klein, Mr. David Kretzmer, Mr. Rajsoomer Lallah, Ms. Cecilia Medina Quiroga, Mr. Martin Scheinin, Mr. Maxwell Yalden and Mr. Abdallah Zakhia.

**/ The text of individual opinions by Committee members Eckart Klein, David Kretzmer and Martin Scheinin is appended to the present document.

1/ An ancient common law system whereby, if so many potential jury-members are challenged that 12 cannot be empanelled, bystanders and members of the public in the vicinity are brought in to supplement numbers and complete the panel.

2/ The implication is that he, being in secure and secret accomodation for his own protection, became bored and went out, whereupon he was murdered.

Appendix

Individual opinion of E. Klein and D. Kretzmer (dissenting in part)

1. In the present case the authors made specific allegations regarding the quality of the water with which they are provided in jail. Thus, in a questionnaire submitted by Robin Gopaul, he states: "The water come from a tank and is often brownish in colour. The officer who work in the division don't ever drink this water." Similarly, Russell Sankeralli states in his questionnaire: "I am allowed to fill my two-litre mug twice a day, but the water is either dirty and/or tasting of rust and mud. The prison officers bost (sic) of their not having to drink of that water, they get special water from outside the division."

In response to these detailed allegations the State party merely states that the water is clean.

2. It has always been te jurisprudence of the Committee that when the author of a communication makes specific allegations that would point to a violation of a Covenant right, the State party cannot refute those allegations by a simple blanket denial. It must relate to the specifics of the case and do everything reasonably in its power to show that the allegations are unfounded. In the present case the State party could have given details of the water source from which water is supplied to inmates in the division in which the authors are being held, and the quality of that water. It could also have provided evidence that the

prison officers drink from the same water source as the prisoners. It failed to do so. Due credence must therefore be given to the author's allegations regarding the water. These unrefuted allegations establish that the State party has violated the authors' right under article 10, paragraph 1, of the Covenant.

Eckart Klein (signed)

David Kretzmer (signed)

Individual opinion by Mr. Scheinin (dissenting)

1. To my great regret it was impossible to find a consensus within the Committee on the merits of this communication, submitted by nine authors awaiting execution. My dissent relates to two separate issues, (a) prison conditions and (b) the fairness of the trial.

(a) Conditions on Death Row: Violation of article 10, paragraph 1

2. In my opinion, paragraph 5.4 and the beginning of para. 6.4 of the Views should have read as follows:

5.4 Counsel presents a second additional claim and argues that there has been a violation of article 7 of the Covenant in respect of all nine authors, because of the inhuman conditions of detention to which the authors have been subjected since their arrest. He refers to questionnaires completed by Dole Chadee, Joey Ramiah, Joel Ramsingh, Bhagwandeen Singh, Russell Sankeralli and Robin Gopaul which contain partly individualized details as to the treatment of the authors, partly information that relates to the conditions on Death Row that affect all the authors. The complaints relate to, inter alia, unsatisfactory medical treatment and specific instances of requested medical attention being denied, to water given to the detainees from a tank being contaminated and brownish, to the cells being without natural lighting, insufficiently ventilated and infested with insects, to frequent intimidating searches, to inadequate sanitary and sewage facilities, to the food being bad or even rotten. It is further claimed that the authors have not been allowed to go out for weeks or even months and that at best they can do so once a week.

6.4. With regard to the claim that there has been a violation of article 7 of the Covenant because of the conditions of detention, the State party denies that such a violation has taken place. This part of the State party submission consists of a general denial of the allegation presented on behalf of all nine authors plus a rather detailed description of the prison conditions in the Royal Gaol. In relation to the information presented on the questionnaires, the State party replies by stating that it is largely incorrect and that in so far it is accurate does not constitute a breach of article 7. [...]

3. As a consequence, a violation of article 10, para. 1, (but not of article 7) should have been established by adopting para. 10.3 of the Views as follows:

10.3. The authors have provided detailed information with regard to their conditions of detention. The concrete allegations relate both to conditions that affect all nine authors and to the individual treatment of those six of the authors who provided such details by filling a questionnaire. The State party has addressed the claims made by the authors, and has submitted that the authors' conditions of detention do not violate the standards set out in the Covenant. The Committee notes, however, that the State party has failed to address the authors' claims in detail, in particular in respect to the lack of medical treatment and the contamination of the water. In the circumstances, the Committee finds that the information before it discloses a violation of article 10, paragraph 1, of the Covenant in relation to all nine authors.

4. The consequence of my findings is that the authors are entitled to an effective remedy, including commutation of the death penalty.

5. Although the State party's reply, extensively paraphrased in paras. 6.4 to 6.8, represents a rather detailed account of prison conditions, it does not actually reply to the concrete allegations on inhuman treatment. For instance, both in relation to the quality of drinking water and access to medical service the authors have provided detailed and individualized information that could have easily been contested, if untrue, by the State party through providing a chemist's report on a water analysis and a doctor's report on some of the visiting rounds in Death Row. No information whatsoever from independent sources has been provided, and the State party reply on the allegations related to the drinking water consists basically of one word: "clean".

6. By making detailed and individualized allegations on their conditions of detention the authors have substantiated, taking into account the possibilities that they, on the one hand, and the State party, on the other, have for providing independent expert information, their claims to the effect that the State party would have had to submit objective evidence to refute the claims. Furthermore, the authors' description of the prison conditions is supported by the fact that the Committee has, in the cases of Harold Elahie v. Trinidad and Tobago (Communication No. 533/1993) and Clyde Neptune v. Trinidad and Tobago (Communication No. 523/1992), found a violation of article 10, para. 1, based on partly similar allegations by prisoners detained in the same prison (though not on Death Row). A violation of article 10, para. 1, in the case of a Death Row inmate in the same prison was established in Balkissoon Soogrim v. Trinidad and Tobago (Communication No. 362/1989) in relation to ill-treatment by warders but not in relation to the actual prison conditions. A distinctive element of the latter conclusion compared to the present case was the fact that the State party had produced individualized information on medical treatment, based on the medical record of the detainee.

(b) Fair trial: Violation of article 14, paragraphs 1 and 2

7. According to the authors the extensive pre-trial publicity of their case made a fair trial impossible. As is explained in para. 2.1 of the Views their constitutional motion based on this point was dismissed. In doing so, the Court of Appeal in January 1995, in my opinion rightly, stated that the securing of a fair trial was in the hands of the trial judge "who had at

his disposal several options" to that end.

8. The problem as to the fairness of the trial arises, however, from the fact that this outcome of the constitutional motion was not respected. The State party resorted, in 1996, to legislative measures that affected the trial in two important respects, namely by providing for an unlimited number of potential jurors (amendment to the Jury Act) and by allowing the use of the deposition of a deceased witness as evidence (amendment to the Evidence Act). Both amendments were passed while the case of the authors was awaiting trial, both had been designed for this particular case and both changed the list of "several options" that had been referred to in the Court of Appeal decision referred to above.

9. The Committee has, in Byron Young v. Jamaica (Communication No. 615/1995) dealt with the relevance of a verdict by jury for the Committee's own work. The Committee took the position that very limited possibilities to contest a verdict by jury in domestic appeal proceedings does not constitute a violation of article 14 provided, inter alia , that the trial itself was not unfair. In the present case the legislative amendments referred to in the preceding paragraph, enacted to secure the commencement of the trial, had the effect that a trial by jury could not be, and was not, fair. After the extensive media coverage, the constitutional motion process, the legislative amendments and the jury selection, subjecting the authors to a trial by jury constituted a violation of both the general principle of a right to a fair trial (article 14, para. 1) and the presumption of innocence (article 14, para. 2). Although the absolute prohibition against retroactive criminal legislation (article 15), does not as such apply to criminal procedure, article 14, paras. 1 and 2, must be understood to limit the enactment of retroactive legislation even in the procedural field when such legislation is designed for a concrete case.

10. I wish to emphasize that the finding in the preceding paragraph does not question, as such or in general, the jury institution as a constituent element of certain legal systems of the world. The consequence is a more limited one: if a State party to the Covenant opts for trial by jury and for limited possibilities to question the verdict on appeal, it must, in order to comply with article 14, also accept that there will be exceptional cases in which a trial will become impossible. If the laws of a State party do not provide for a fair trial, the only available remedy is release.

Martin Scheinin (signed)