

## HUMAN RIGHTS COMMITTEE

### Ashby v. Trinidad and Tobago

Communication No. 580/1994

21 March 2002

CCPR/C/74/D/580/1994

### VIEWS

*Submitted by: Interights (Represented by Ms. Emma Playfair, Executive Director, and Ms. Natalia Schiffrin, Legal Officer, on behalf of and representing the author, acting as counsel)*

*State Party concerned: Trinidad and Tobago*

*Date of registered communication: 6 July 1994 (initial submission)*

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

Meeting on 21 March 2002,

Having concluded its consideration of communication No. 580/1994, submitted to the Human Rights Committee by Interights, 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 (4) of the Optional Protocol**

1. The communication was submitted on 6 July 1994 by Interights on behalf of Glenn Ashby, a Trinidadian citizen, at the time of submission awaiting execution at the State prison at Port-of-Spain, Trinidad and Tobago. On 14 July 1994, after the complaint had been transmitted to the authorities of Trinidad and Tobago, Mr. Ashby was executed in the State prison. Counsel claims that Mr. Ashby was the victim of violations of articles 6, 7, 10, paragraph 1, and 14, paragraphs 1, 3 (b), (c), (d) and (g) and 5 of the International Covenant on Civil and Political Rights.<sup>1</sup>

## **The facts as submitted by counsel**

2.1 Mr. Ashby was arrested on 17 June 1988. He was convicted of murder and sentenced to death in the Port-of Spain Assizes Court on 20 July 1989. The Court of Appeal of Trinidad and Tobago dismissed his appeal on 20 January 1994. On 6 July 1994, the Judicial Committee of the Privy Council dismissed Mr. Ashby's subsequent application for special leave to appeal. With this, it was argued, all available domestic remedies within the meaning of the Optional Protocol had been exhausted. While Mr. Ashby might have retained the right to file a constitutional motion in the Supreme (Constitutional) Court of Trinidad and Tobago, it is submitted that the State party's inability or unwillingness to provide legal aid for constitutional motions would have rendered this remedy illusory.

2.2 The prosecution's case rested mainly on the testimony of one S. Williams, who had driven Mr. Ashby and one R. Blackman to the house where the crime was committed. This witness testified that before entering the victim's house with Blackman, Mr. Ashby had held a penknife in his hand. Furthermore, he testified that Mr. Ashby, after having left the house with Blackman and having entered the car, had said he had "cut the man with the knife". This testimony was corroborated by evidence of the pathologist, who concluded that the cause of death had been a stab wound to the neck. In addition to that, Mr. Ashby himself allegedly made oral statements as well as written statements admitting that he had killed the victim.

2.3 The defence challenged the credibility of the testimony of S. Williams and maintained that Mr. Ashby was innocent. It submitted that there was clear evidence that Mr. Williams was himself an accomplice to the crime; that Mr. Ashby had not carried a penknife; that it was Blackman who had sought to involve Mr. Ashby in the crime and that he had been beaten by a police officer after his arrest and had made a subsequent statement only after being promised that he could return home if he gave the statement.

## **The chronology of events surrounding Mr. Ashby's execution**

3.1 Mr. Ashby's communication under the Optional Protocol was received by the secretariat of the Human Rights Committee on 7 July 1994. On 13 July 1994, counsel submitted additional clarifications. On the same day, the Committee's Special Rapporteur on New Communications issued a decision under rules 86 and 91 of the Committee's rules of procedure to the Trinidad and Tobago authorities, requesting a stay of execution, pending the determination of the case by the Committee, and seeking information and observations on the question of the admissibility of the complaint.

3.2 The combined rule 86/rule 91 request was handed to the Permanent Mission of Trinidad and Tobago at Geneva at 4.05 p.m. Geneva time (10.05 a.m. Trinidad and Tobago time) on 13 July 1994. According to the Permanent Mission of Trinidad and Tobago, this request was transmitted by facsimile to the authorities in Port-of-Spain between 4.30 and 4.45 p.m. on the same day (10.30-10.45 a.m. Trinidad and Tobago time).

3.3 Efforts continued throughout the night of 13 to 14 July 1994 to obtain a stay of execution for Mr. Ashby, both before the Court of Appeal of Trinidad and Tobago and before the Judicial Committee of the Privy Council in London. When the Judicial Committee issued a stay order shortly after 11.30 a.m. London time (6.30 a.m. Trinidad and Tobago time) on 14 July, it transpired that Mr. Ashby had already been executed. At the time of his execution, the Court of Appeal of Trinidad and Tobago was also in session, deliberating on the issue of a stay order.

3.4 On 26 July 1994, the Committee adopted a public decision expressing its indignation over the State party's failure to comply with the Committee's request under rule 86; it decided to continue consideration of the Mr. Ashby's case under the Optional Protocol and strongly urged the State party to ensure, by all means at its disposal, that situations similar to that surrounding the execution of Mr. Ashby do not recur. The Committee's public decision was transmitted to the State party on 27 July 1994.

### **The complaint**

4.1 Counsel claims a violation of articles 7, 10 and 14, paragraph 3 (g), alleging that Mr. Ashby was beaten and ill-treated at the police station after his arrest and that he signed the confession statement under duress, after having been told that he would be released if he signed the statement.

4.2 It is submitted that the State party violated article 14, paragraph 3 (d), since Mr. Ashby received inadequate legal representation prior to and during his trial. Counsel points out that Mr. Ashby's legal aid attorney spent hardly any time with his client to prepare the defence. The same lawyer reportedly argued the appeal without conviction.

4.3 Counsel submits that the Court of Appeal failed to correct the trial judge's omission to direct the jury on the danger of acting on uncorroborated evidence given by an accomplice as well as the Privy Council's failure to correct the misdirection and material irregularities of the trial, amounted to a denial of Mr. Ashby's right to a fair trial.

4.4 In her initial submission, counsel submitted that Mr. Ashby was the victim of a violation of article 7 and 10, paragraph 1, on the grounds of his prolonged detention on death row, namely, for a period of 4 years, 11 months and 16 days. According to counsel, the length of the detention, during which Mr. Ashby lived in cramped conditions with no or very poor sanitary and recreational facilities, amounted to cruel, inhuman and degrading treatment within the meaning of article 7. As support for her argument, counsel adduces recent judgements of the Judicial Committee of the Privy Council and the Supreme Court of Zimbabwe.<sup>2</sup>

4.5 It is submitted that Mr. Ashby's execution violated his rights under the Covenant, because he was executed (1) after an assurance had been given to the Privy Council that he would not be executed before all his avenues of relief had been exhausted; (2) while his application for a stay of execution was still under consideration by the Court of Appeal in Trinidad and Tobago; and (3) just moments after the Privy Council heard and granted a stay. Moreover, Mr. Ashby was executed in violation of the Committee's rule 86 request.

4.6 Counsel further submits that Mr. Ashby's execution deprived him of his rights under:

- Article 14, paragraph 1, because he was denied a fair hearing in that he was executed before his pending litigation was completed;

- Article 14, paragraph 5, because he was executed before the Court of Appeal in Trinidad and Tobago, the Privy Council and the Human Rights Committee reviewed his conviction and the lawfulness of his sentence. In this latter context, counsel recalls the Committee's jurisprudence that article 14, paragraph 5, applies to whatever levels of appeal are provided by law.<sup>3</sup>

4.7 Counsel concedes that there may be an issue of whether Mr. Ashby had a right, under article 14, paragraph 5, to have his case reviewed by a higher tribunal, where that constitutional review was available to him, and where he was already in the process of pursuing it and relying upon it. She submits that where an individual has been permitted to initiate a constitutional challenge, and where that individual is actually in court in the midst of seeking "review", that individual has a right under article 14, paragraph 5, to effective access to that review. Moreover, it is submitted that this interference with the appellate process was so grave that it not only violated the right to an appeal under article 14, paragraph 5, but also the right to a fair trial and equality before the courts under article 14, paragraph 1. It is clear that the constitutional process is governed by the guarantees of article 14, paragraph 1. Counsel relies on the Committee's Views in case No. 377/1989 (*Currie v. Jamaica*) in this respect.

4.8 It is submitted that article 6 has been violated both because it is a violation of article 6, paragraph 1, to execute the penalty of death in a case where the Covenant's other guarantees have not been adhered to, and because the specific guarantees of article 6, paragraphs 2 and 4, have not been adhered to. Finally, counsel argues that a "final judgement" within the meaning of article 6, paragraph 2, must be understood in this case to include the decision on the constitutional motion, because a final judgment on the constitutional motion, challenging the constitutionality of Mr. Ashby's execution, would in reality represent the "final" judgement of this case. Furthermore, article 6, paragraph 4, was violated because Mr. Ashby was in the process of pursuing his right to seek commutation when he was executed.

### **The State party's observations and counsel's comments thereon**

5.1 In a submission dated 18 January 1995, the State party submits that its authorities "were not aware of the Special Rapporteur's request under rule 86 at the time of Mr. Ashby's execution. The representation of Trinidad and Tobago at Geneva transmitted a covering memorandum by fax at 16.34 (Geneva time) (10.34 Trinidad time) on 13 July 1994. This memorandum made reference to a note from the Centre for Human Rights. However, the note referred to was not attached to the memorandum. The entire application filed on behalf of Mr. Ashby, together with the Special Rapporteur's request under rule 86, was received by the Ministry of Foreign Affairs on 18 July 1994, that is, four days after Mr. Ashby's execution."

5.2 The State party notes that "unless the urgency of the request and Mr. Ashby's imminent

execution were drawn by the Committee to the attention of the Permanent Representative, he would not in any way have been aware of the extreme urgency with which the request was to be transmitted to the relevant authorities in Trinidad and Tobago. It is not known whether the Committee in fact drew the urgency of the request to the attention of the Permanent Representative." Mr. Ashby was executed at 6.40 (Trinidad and Tobago time) on 14 July 1994.

5.3 The State party gives the following chronology of the events preceding Mr. Ashby's execution: "On 13 July 1994, a constitutional motion was filed on behalf of Mr. Ashby, challenging the constitutionality of the execution of the sentence of death upon him. Mr. Ashby's attorneys sought an order staying the execution until the determination of the motion. The High Court refused a stay of execution and held that Mr. Ashby had shown no arguable case to warrant the grant of a conservatory order. An appeal was filed on behalf of Mr. Ashby and another application was made to stay the execution pending the determination of the appeal. Attorneys for Mr. Ashby also sought to render ineffective the established procedure of the courts in Trinidad and Tobago by bypassing both the High Court and the Court of Appeal and approaching the Privy Council directly for a stay of execution, prior to the decisions of the local courts. There was confusion as to whether the State party's lawyer had given an undertaking to the Privy Council and as to whether the Privy Council had jurisdiction to grant a stay or a conservatory order prior to the decision of the local Court of Appeal."

5.4 The State party goes on to note that, so as "to preserve the status quo, the Privy Council granted a conservatory order in the event that the Court of Appeal refused a stay at 11.45 a.m (United Kingdom time) (6.45 a.m. Trinidad and Tobago time) on 14 July 1994, that is five minutes after Mr. Ashby's execution. The trial attorney for Mr. Ashby indicated to the Court of Appeal at 6.52 (Trinidad and Tobago time) that he had received a document by fax from the Registrar of the Privy Council indicating that a conservatory order was granted in the event that the Court of Appeal refused a stay of execution. This order appeared to be conditional upon the Court of Appeal refusing to grant the stay of execution."

5.5 According to the State party, "Mr. Ashby was executed pursuant to a warrant of execution signed by the President, at a time when there was no judicial or presidential order staying the execution. The Advisory Committee on the Power of Pardon considered Mr. Ashby's case and did not recommend that he be pardoned."

5.6 The State party "questions the competence of the Committee to examine the communication, since the communication was submitted at a time when Mr. Ashby had not exhausted his domestic remedies, and the communication would therefore have been inadmissible under rule 90". It further disputes the Committee's finding, in its public decision of 26 July 1994, that it had failed to comply with its obligations both under the Optional Protocol and under the Covenant: "Apart from the fact that the relevant authorities were unaware of the request, the State party is of the view that rule 86 does not permit the Committee to make the request which was made nor does it impose an obligation on the State party to comply with the request."

6.1 In a submission dated 13 January 1995, counsel elaborates on the circumstances of the death of her client and submits new allegations relating to article 6 of the Covenant, as well as supplementary information on the claims initially filed under articles 7 and 14. She submits these

observations at the express request of Desmond Ashby, the father of Glen Ashby, who has requested that the case of his son be further examined by the Committee.

6.2 Counsel provides the following chronology of events: "On 7 July 1994, through his attorneys in Trinidad and Tobago, Glen Ashby wrote to the Mercy Committee. Mr. Ashby requested the right to be heard before that body, stating that the Human Rights Committee was considering his communication and asking that the Mercy Committee await the outcome of the Human Rights Committee's recommendations. On 12 July 1994, the Mercy Committee rejected Glen Ashby's petition for mercy." On the same day, a warrant for execution at 6 a.m. on 14 July 1994 was read to Mr. Ashby.

6.3 On 13 July 1994, Mr. Ashby's lawyers in Trinidad filed a constitutional motion in the Trinidad and Tobago High Court, seeking a conservatory order staying the execution because of (1) delay in carrying out execution (pursuant to the Privy Council's judgement in *Pratt and Morgan*); (2) refusal of the Mercy Committee to consider the recommendations of the Human Rights Committee; (3) the unprecedented short interval between the reading of the warrant and the date of Mr. Ashby's execution. The respondents to the motion were the Attorney-General, the Commissioner of Prisons and the Prison Marshal. On 13 July, at approximately 3.30 p.m. London time, at a special sitting of the Privy Council, London counsel for Mr. Ashby sought a stay of execution on his behalf. The representative of the Attorney-General of Trinidad and Tobago then informed the Privy Council that Mr. Ashby would not be executed until all possibilities of obtaining a stay of execution, including applications to the Court of Appeal in Trinidad and Tobago and the Privy Council, had been exhausted. This was recorded in writing and signed by counsel for Mr. Ashby and counsel for the Attorney-General.

6.4 Also on 13 July, following a hearing in the High Court of Justice, Trinidad and Tobago, a stay of execution was refused. An appeal against the refusal was lodged immediately and its hearing started before the Court of Appeal in Trinidad and Tobago at 12.30 a.m. Trinidad and Tobago time, on the morning of 14 July. In the Court of Appeal, counsel for the respondents said that, notwithstanding any assurances given in the Privy Council, Glen Ashby would be hanged at 7 a.m. Trinidad and Tobago time (noon London time) unless the Court of Appeal granted a conservatory order. The Court of Appeal then proposed to adjourn until 11 a.m. Trinidad and Tobago time in order to seek clarification of what had taken place before the Privy Council. Lawyers for Mr. Ashby asked for a conservatory order until 11 a.m., noting that the execution had been scheduled for 7 a.m. and that counsel for the respondents had made it clear that Mr. Ashby could not rely on the assurance given to the Privy Council. The Court expressed the view that, in the interim, Mr. Ashby could rely on the assurance given to the Privy Council, and declined to make a conservatory order. The Court instead decided to adjourn until 6 a.m. Lawyers for Mr. Ashby applied for an interim conservatory order until 6 a.m. but the Court denied this request. At no time did the lawyers for the State party indicate that the execution was scheduled to take place earlier than 7 a.m.

6.5 On 14 July, at 10.30 a.m. London time, at a special sitting of the Judicial Committee of the Privy Council, a document was signed by counsel for the Attorney-General of Trinidad and Tobago in London and countersigned by counsel for Mr. Ashby, recording what had happened, and what had been said in the Privy Council on 13 July. That document, consisting of three handwritten pages, was

immediately sent by the Registrar of the Privy Council by facsimile to the Court of Appeal and to counsel for both sides in Trinidad and Tobago. Mr. Ashby's lawyers in Trinidad and Tobago received the document before 6 a.m. The Privy Council then asked for further clarification of the Attorney-General's position. As no clarifications were forthcoming, the Privy Council ordered a stay of execution at approximately 11.30 a.m. London time, directing that the sentence of death should not be carried out. At approximately the same time, 6.20 a.m. in Trinidad and Tobago, the Court of Appeal reconvened. At this time, lawyers for Mr. Ashby informed the Court that, at that moment, the Privy Council was in session in London. Counsel for Mr. Ashby also gave the Court the three-page document received by fax.

6.6 At around 6.40 a.m., the lawyers for Mr. Ashby again applied to the Court of Appeal in Trinidad and Tobago for a conservatory order. The order was denied; the Court again emphasizing that Mr. Ashby could rely on the assurance given to the Privy Council. At this point, one of Mr. Ashby's lawyers appeared in Court with a handwritten transcript of an order of the Privy Council staying the execution. The order had been read to him over the telephone, having been granted at approximately 6.30 a.m. Trinidad and Tobago time (11.30 a.m. London time). Shortly thereafter, it was announced that Mr. Ashby had been hanged at 6.40 a.m.

### **Decision on admissibility**

7.1 At its fifty-fourth session in July 1995, the Committee considered the admissibility of the communication.

7.2 As to the claims under article 14, paragraph 1, relating to the trial judge's alleged failure to direct the jury properly on the danger inherent in relying on the testimony of a potential accomplice to the crime, the Committee recalled that it is primarily for the courts of States parties to the Covenant, and not for the Committee, to review facts and evidence in a particular case. It is for the appellate courts of States parties to the Covenant to review the conduct of the trial and the judge's instructions to the jury, unless it can be ascertained that the evaluation of evidence was clearly arbitrary or amounted to a denial of justice, or that the judge manifestly violated his obligation of impartiality. The trial transcript in Mr. Ashby's case did not reveal that his trial before the Assizes Court of Port-of-Spain suffered from such defects. Accordingly, this part of the communication was inadmissible as incompatible with the provisions of the Covenant, pursuant to article 3 of the Optional Protocol.

7.3 As to the claims related to Mr. Ashby's ill-treatment after his arrest, the inadequate preparation of his defence, the inadequacy of his legal representation, the alleged involuntary nature of his confession, the undue delay in the adjudication of his appeal, and the conditions of his detention, the Committee considered them to have been sufficiently substantiated, for purposes of admissibility. These claims, which may raise issues under articles 7, 10, paragraph 1, and 14, paragraphs 3 (b), (c), (d) and (g) and 5, should accordingly be considered on their merits.

7.4 As to the claims under article 6, the Committee has noted the State party's contention that since the communication was submitted at a time when Mr. Ashby had not exhausted available domestic remedies, his complaint should be declared inadmissible under article 5, paragraph 2 (b),

of the Optional Protocol. Counsel has argued that, as Mr. Ashby was executed unlawfully while he was pursuing judicial remedies, the State party is estopped from claiming that further remedies remained to be exhausted.

7.5 The Committee observed that it was to prevent "irreparable harm" to Mr. Ashby that the Committee's Special Rapporteur issued, on 13 July 1994, a request for a stay of execution pursuant to rule 86 of the rules of procedure; this request was intended to allow Mr. Ashby to complete pending judicial remedies and to enable the Committee to determine the question of the admissibility of Mr. Ashby's communication. In the circumstances of the case, the Committee concluded that it was not precluded, by article 5, paragraph 2 (b) of the Optional Protocol, from considering Mr. Ashby's complaint under article 6, and that it was not necessary for counsel first to exhaust available local remedies in respect of her claim that Mr. Ashby was arbitrarily deprived of his life before she could submit this claim to the Committee.

8. On 14 July 1995, the Human Rights Committee therefore decided that the communication was admissible inasmuch as it appeared to raise issues under articles 6, 7, 10, paragraph 1, and 14, paragraphs 3 (b), (c), (d) and (g) and 5, of the Covenant.

#### **State party's observations on the merits and counsel's comments thereon**

9.1 By submission of 3 June 1996, the State party submits explanations and statements with regard to the merits of the case.

9.2 With regard to the alleged ill-treatment of Mr. Ashby after his arrest, the State party refers to the trial transcript. The State party submits that these allegations were raised in relation to Mr. Ashby's confession and that Mr. Ashby had the opportunity to give evidence and was cross-examined on this issue. The court therefore dealt with the complaint impartially and these findings of the court should prevail.

9.3 With regard to the inadequate preparation of Mr. Ashby's defence, the State party submits that the legal aid attorney, who appeared for him, is a well-known and competent counsel, who practises at the Criminal Bar in Trinidad and Tobago. The State party attaches comments by the former trial attorney refuting Mr. Ashby's allegations to the submission.

9.4 The State party further reiterates that a fair hearing took place with regard to the involuntary confession. Both the court of appeal and the State Court of Trinidad and Tobago were aware of the complaint in respect to the confession and reviewed the facts and evidence in an impartial manner.

9.5 On the question of undue delay in adjudication of Mr. Ashby's appeal, the State party points to the circumstances prevailing in Trinidad and Tobago at that time. The State party argues that delays are caused by the practice in all murder trials of handwritten notes of evidence that would then need to be typed and verified by the respective trial judge on top of their busy court schedule. Furthermore, it has proven difficult to recruit lawyers suitable for filling vacancies in the judiciary, so that even the Constitution had to be changed to allow the appointment of retired judges. Still, there are not enough judges at the High Court to deal with the increasing number of appeals in



criminal cases. The State party explains that from January 1994 to April 1995, after the decision of the Judicial Committee of the Privy Council in the case of *Pratt and Morgan*, the High Court almost exclusively heard appeals in murder cases, largely ignoring civil appeals.

9.6 The State party submits that the conditions of Mr. Ashby's detention are similar to those of all prisoners on death row. The State party points to an affidavit of the Commissioner of Prisons attached to the submission and describing the general conditions of prisoners on death row. The State party contends that the facts in *Pratt and Morgan* and the Zimbabwe judgement are so different from the facts in Mr. Ashby's case that statements in these provide little, if any, assistance.

9.7 With regard to the alleged violation of article 6 of the Covenant, the State party submits that the Committee should not proceed with this claim as proceedings were filed at the High Court of Trinidad and Tobago in relation to the execution of Mr. Ashby. Without prejudice to this submission, the State party argues that Mr. Ashby had no right to be heard by the Mercy Committee pointing to precedence decision of the Judicial Committee of the Privy Council.<sup>4</sup>

9.8 The State party contests details of the facts as provided by counsel. In particular, the State party states that it was not correct that the Court of Appeals expressed the view that counsel should rely on the assurances given to the Privy Council that Mr. Ashby would not be executed. Instead, the Court expressed that it was not prepared to do anything until the Judicial Committee of the Privy Council resolved the dispute.

9.9 On 26 July 1996, counsel requested the Committee to suspend examination of the merits of the communication, as an effective domestic remedy could be regarded as having become available. Counsel submits that the father of Mr. Ashby brought a constitutional and civil action against the State Party in relation to the circumstances of the execution. On 16 July 2001, counsel requested the Committee to resume consideration of the case and submitted that the lawyers in Trinidad and Tobago had been unable to resolve difficulties in meeting certain procedural requirements with regard to the constitutional and civil action.

### **Consideration of the merits**

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

10.2 The Committee notes the State party's statement that Mr. Ashby's lawyers in Trinidad and Tobago were pursuing, on behalf of his estate and his father, certain court actions in relation to the circumstances surrounding Mr. Ashby's execution. The Committee notes that the civil and constitutional procedures in question are not relevant for the consideration of the claims in the present case. However, the Committee respected counsel's request to suspend examination of the merits (see para. 9.9).

10.3 With regard to the alleged beatings and the circumstances leading to the signing of the confession, the Committee notes that Mr. Ashby did not give precise details of the incidents,

identifying those he holds responsible. However, details of his allegations appear from the trial transcript submitted by the State party. The Committee observes that the allegations of Mr. Ashby were dealt with by the domestic court and that he had the opportunity to give evidence and was cross-examined. His allegations were also mentioned in the decision of the Court of Appeals. The Committee recalls that it is in general for the courts of States parties, and not for the Committee, to evaluate the facts in a particular case. The information before the Committee and the arguments advanced by the author do not show that the Courts' evaluation of the facts were manifestly arbitrary or amounted to a denial of justice.<sup>5</sup> The Committee finds that there is not sufficient evidence to sustain a finding that the State party violated its obligations under article 7 of the Covenant.

10.4 With regard to the claim of inadequacy of legal representation during and in preparation of the trial and the appeals proceedings, the Committee refers to its jurisprudence that a State party cannot be held responsible for the conduct of a defence lawyer, unless it was or should have been manifest to the judge that the lawyer's behaviour was incompatible with the interests of justice.<sup>6</sup> In the instant case, there is no reason for the Committee to believe that the trial attorney was not using other than his best judgement. It is apparent from the trial transcript that the lawyer cross-examined all witnesses. It is further apparent from the appeals decision that the grounds of appeal submitted by the lawyer were argued and fully taken into account by the High Court in its reasoning. The material before the Committee does not reveal that either counsel or the author ever complained to the trial judge that the time for preparation of the defence was inadequate. In the circumstances, the Committee finds that the facts before it do not reveal a violation of the Covenant in this respect.

10.5 Counsel also claims undue delay in the adjudication of Mr. Ashby's appeal. The Committee notes that the Port-of-Spain Assize Court found Mr. Ashby guilty of murder and sentenced him to death on 20 July 1989 and that the Court of Appeals affirmed the sentence on 20 January 1994. Mr. Ashby remained in detention during this time. The Committee notes the State party's explanation concerning the delay in the appeals proceedings against Mr. Ashby. The Committee finds that the State party did not submit that the delay in proceedings was dependent on any action by the accused nor was the non-fulfilment of this responsibility excused by the complexity of the case. Inadequate staffing or general administrative backlog is not sufficient justification in this regard.<sup>7</sup> In the absence of any satisfactory explanation from the State party, the Committee considers that the delay of some four and a half years was not compatible with the requirements of article 14, paragraphs 3 (c) and 5, of the Covenant.

10.6 As to the conditions of Mr. Ashby's detention (see para. 4.4), the Committee reaffirms its constant jurisprudence that detention on death row for a specific period does not violate, as such, article 7 of the Covenant in the absence of further compelling circumstances. The Committee concludes that article 7 has not been violated in the instant case.

10.7 As to the claim regarding Mr. Ashby's conditions of detention being in violation of article 10 of the Covenant, the Committee notes the absence of any further submission after the Committee's admissibility decision in substantiation of Mr. Ashby's claim. Therefore, the Committee is unable to find a violation of article 10 of the Covenant.

10.8 Counsel finally submits that Mr. Ashby was arbitrarily deprived of his life when the State party

executed him in full knowledge of the fact that Mr. Ashby was still seeking remedies before the Courts of Appeal of the State party, the Judicial Committee of the Privy Council and the Human Rights Committee. The Committee finds that, in these circumstances (detailed above at 6.3 to 6.6), the State party committed a breach of its obligations under the Covenant. Moreover, having regard to the fact that the representative of the Attorney-General informed the Privy Council that Mr. Ashby would not be executed until all possibilities of obtaining a stay of execution had been exhausted, the carrying out of Mr. Ashby's sentence notwithstanding that assurance constituted a breach of the principle of good faith which governs all States in their discharge of obligations under international treaties, including the Covenant. The carrying out of the execution of Mr. Ashby when the execution of the sentence was still under challenge constituted a violation of article 6, paragraphs 1 and 2, of the Covenant.

10.9 With regard to Mr. Ashby's execution, the Committee recalls its jurisprudence that apart from any violation of the rights under the Covenant, the State party commits a serious breach of its obligations under the Optional Protocol if it engages in any acts which have the effect of preventing or frustrating consideration by the Committee of a communication alleging any violation of the Covenant, or to render examination by the Committee moot and the expression of its Views nugatory and futile.<sup>8</sup> The behaviour of the State party represents a shocking failure to demonstrate even the most elementary good faith required of a State party to the Covenant and of the Optional Protocol.

10.10 The Committee finds that the State party breached its obligations under the Protocol, by proceeding to execute Mr. Ashby before the Committee could conclude its examination of the communication, and the formulation of its Views. It was particularly inexcusable for the State to do so after the Committee had acted under its Rule 86 requesting the State party to refrain from doing so. Flouting of the Rule, especially by irreversible measures such as the execution of the alleged victim, undermines the protection of Covenant rights through the Optional Protocol.

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 disclose violations of articles 6, paragraphs 1 and 2 and 14, paragraphs 3 (c) and 5, of the Covenant.

12. Under article 2, paragraph 3, of the Covenant, Mr. Ashby would have been entitled to an effective remedy including, first and foremost, the preservation of his life. Adequate compensation must be granted to his surviving family.

13. 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;<sup>9</sup> 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 also requested to publish the Committee's Views.

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\* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Maurice Glele Ahanhanzo, Mr. Louis Henkin, Mr. Ahmed Tawfik Khalil, Mr. Eckart Klein, Mr. David Kretzmer, Mr. Rajsoomer Lallah, Ms. Cecilia Medina Quiroga, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Martin Scheinin, Mr. Ivan Shearer, Mr. Hipolito Solari Yrigoyen, Mr. Patrick Vella and Mr. Maxwell Yalden.

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

## Notes

<sup>1</sup> Finally, 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-acceded, 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”. On 27 March 2000, the Government of Trinidad and Tobago denounced the Optional Protocol again.

<sup>2</sup> Judicial Committee of the Privy Council, *Pratt and Morgan v. Attorney-General of Jamaica*, Privy Council Appeal No. 10/1993, judgement of 2 November 1993; Supreme Court of Zimbabwe, judgement No. SC 73/93 of 24 June 1993 (unreported).

<sup>3</sup> Communication No. 230/1987, *Henry v. Jamaica*, para 8.4; Views adopted on 1 November 1991

<sup>4</sup> *De Freitas v. Benny* (1975), 3 WLR 388 ; *Reckley v. Minister of Public Safety (No. 2)* (1996), 2 WLR 281 at 291G to 292G.

<sup>5</sup> *Terrence Sahadeo v. Guyana*, Case No. 728/1996, Views adopted on 1 November 2001, para. 9.3.

<sup>6</sup> See *inter alia*, the Committee's decision in communication No. 536/1993, *Perera v. Australia*, declared inadmissible on 28 March 1995.

<sup>7</sup> Communication No. 390/1990, *Lubuto v. Zambia*, para 7.3.

<sup>8</sup> See Communication No. 707/1996, *Patrick Taylor v. Jamaica*, para. 8.5.

<sup>9</sup> Communications Nos. 839/1998, 840/1998, and 841/1998, *Mansaraj et al. V. Sierra Leone, Gborie et al. v. Sierra Leone, and Sesay et al. v. Sierra Leone*, para. 5.1 et seq. ; Communication No. 869/1999, *Piandiong et al v. The Philippines*, para. 5.1 et seq.