

# Grenada

The Grenada 17: the last of the cold war prisoners?

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**Cover photo: Bernard Coard and Hudson Austin in the custody of US troops. Since both are wearing life jackets, this photo was presumably taken shortly before their transfer to US warships. © Private.**

## **Introduction**

In 1983 the United States of America (USA) led an invasion of Grenada which removed from power the government of the island. In 1986, fourteen former members of the Government of Grenada and three soldiers were convicted for the 19 October 1983 execution-style murders of Prime Minister Maurice Bishop and several others, including Foreign Minister Unison Whiteman, Minister of Education and Women's Affairs Jacqueline Creft, Minister of Housing Norris Bain, Fitzroy Bain (President of the Agricultural and General Workers Union), Evelyn Bullen (businesswoman), and Keith Hayling (member of the Marketing & Import Board).<sup>1</sup> Fourteen of those convicted were sentenced to death by hanging while the other three were sentenced to lengthy terms of imprisonment.

Those imprisoned have subsequently come to be known as the Grenada 17. The Grenada 17 are Bernard Coard, Phyllis Coard, Hudson Austin, Ewart Layne, Selwyn Strachan, Liam James, Leon Cornwall, Dave Bartholomew, John Ventour, Colville McBarnette, Christopher Stroude, Lester Redhead, Calistus Bernard, Cecil Prime, Andy Mitchell, Vincent Joseph, and Cosmos Richardson. The Grenada 17 have maintained their innocence with respect to the charges brought against them.

Amnesty International classifies the Grenada 17 as political prisoners and as such called for them to be granted a prompt, fair and impartial trial. The organization has monitored their incarceration and legal processing since it has been practicably possible to do so. Observers were sent to pre-trial hearings and the trial itself. An Amnesty International delegation also carried out an inspection of the prison in which the 17 were incarcerated. Numerous representations outlining Amnesty International's concerns around the treatment of the 17 have been made to the Grenadian authorities over the interceding years.

Amnesty International does not take a position on the actual guilt or innocence of the Grenada 17. However, Amnesty International remains concerned over several violations of internationally recognised human rights law and standards in this case, and in particular those related to the right to a fair trial.

This report looks at the historical context and the crime in question, and subsequently examines the adequacy of the trial and appeals processes within the context of international human rights law and standards.

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<sup>1</sup> Also killed in violence preceding the executions were civilian supporters of Bishop including Avis Ferguson, Nelson Steele, Vince Noel, and Gemma Belmar as well as three soldiers in the Peoples' Revolutionary Army: Raphael Mason, Dorset Peters, and Conrad Mayers. Several others died trying to escape the violence, including Eric Dumont, Alleyne Romain, Simon Alexander, Andy Alexander, and Glen Nathan.

## **Historical Context: The Grenada Revolution**

The case of the Grenada 17 must be seen in the broader geo-political context of the Cold War and its impact upon the Caribbean and the Americas. In the early 1980s the US administration feared the advance of communism and the growth of the influence of the Soviet Union in the region. This led it to take action against various countries. For example, the US government sponsored armed opposition to the government of the Sandinista National Liberation Front in Nicaragua which came to power following the 1979 revolution. The Sandinista era had begun soon after the Grenada Revolution.

On 13 March 1979, the New Jewel Movement (NJM), a political party of the left, overthrew the Grenada United Labour Party government led by Eric Gairy. The NJM forcibly removed the Gairy government from power on 13 March 1979 whilst Gairy was visiting the USA.<sup>2</sup> The resulting NJM government, which included non-members of the NJM, became known as the Peoples' Revolutionary Government (PRG) and their policies and programmes became known as the Grenada Revolution.

The new government implemented economic and social reform in areas including health care, education, housing, and women's and children's rights. International funding agencies observed a marked improvement in the economy.<sup>3</sup> Amnesty International raised concerns around alleged violations of human rights that occurred under the NJM government, including detention without trial of over 100 people, including journalists. In 1981, an Amnesty International delegation visited Grenada to discuss the organization's concerns with the authorities.

Divisions appeared to exist among the members of the NJM leadership. The divisions were focused mainly on two key leaders of the NJM: Prime Minister Maurice Bishop and Deputy Prime Minister and Minister of Finance Bernard Coard. While Bishop enjoyed broad popular support among the Grenadian population, Coard enjoyed the support of a majority of the NJM Central Committee.

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<sup>2</sup> The new government subsequently sought to have Gairy extradited from the USA to face criminal charges. The application for extradition was denied by the US authorities.

<sup>3</sup> The unemployment rate in Grenada decreased from 49% before the Revolution to 14% in 1983. See also, for example, World Bank, *Economic Memorandum on Grenada*, Report No. 3825-GRD, 4 August 1982, p. i. (stating that the government that came to power in 1979 inherited a deteriorating economy but had since began to rehabilitate the economy of Grenada and laid a better foundation for growth). Additionally, the International Monetary Fund reported that in 1983 that Grenada enjoyed an increase in domestic food supplies, which in turn helped to keep inflation down, and calculated Grenada's economic growth after the Grenada Revolution at 3% per year, which compared favourably with growth rates in the rest of the Caribbean and Latin America, where many countries were experiencing negative or zero growth (International Monetary Fund staff report, EBS/83/164, 9 August 1984, p. 3).

The growing chasm within the NJM reached a critical point during the summer of 1983, when the Coard faction led a public challenge to Bishop. The crisis led to negotiations within the NJM Central Committee.

### **The Crime: The Murders of Prime Minister Maurice Bishop and Others**

In 1983, the Coard faction attempted to get Maurice Bishop to accept a power-sharing role. The Prime Minister requested time to decide on whether or not to accept the power sharing scheme but by October the Coard faction decided to force Bishop out of the government. On the evening of 13 October 1983 the People's Revolutionary Army in conjunction with the Coard faction placed Prime Minister Bishop and several of his supporters under house arrest.

Prime Minister Maurice Bishop, backed by other NJM leaders resisted the Coard faction. On October 19 there was a popular uprising in support of Bishop, seeking to restore him to power. Crowds estimated at between 15,000 to 30,000 persons shut down workplaces, poured into the streets of the capital, St. George's, and freed Bishop from house arrest. Bishop and his followers immediately went to Fort Rupert in order to regroup and gauge the situation.

Meanwhile, Bernard Coard and the nine members of the Central Committee who supported him, along with factions of the military, had grouped at Fort Frederick. These troops, under the leadership of a 25-year old officer, then travelled the short distance to Fort Rupert. Upon their arrival, gunfire broke out between the troops and those at Fort Rupert, killing and wounding somewhere between 60 and 150 men, women and children. Prime Minister Bishop ordered one of his supporters to immediately negotiate a surrender in order to prevent any further bloodshed. Military forces loyal to Coard captured Fort Rupert. Bishop, Fitzroy Bain, Norris Bain, Jacqueline Creft, Vincent Noel, and Unison Whiteman were singled out, detained and summarily executed in the Fort's courtyard.

### **The Invasion: United States removal of the Grenada Government**

Following the assassination of Prime Minister Bishop and ostensibly "to resolve a condition of anarchy caused by a breakdown of government institutions", the US mounted an invasion of Grenada on 25 October 1983. Many analysts believed the invasion may have had little to do with Bishop's death or Coard's accession to power, but may have been motivated by the USA's desire to remove left-wing leaning governments in the region.<sup>4</sup> It is possible that the

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<sup>4</sup> See also Canadian Department of Foreign Affairs and International Trade, *The U.S.'s Intervention in Grenada, 1983*, in The Responsibility to Protect: Research, Bibliography and Background – Supplementary Volume to the Report of the International Commission on Intervention and State Sovereignty (December 2001) (stating in relevant part that "subsequent research has shown that senior policymakers in Washington saw the unsettled political situation as a tactical opportunity to influence

invasion may have been planned since as early as 1981, well before the divisions within the NJM becoming apparent.<sup>5</sup>

Known as Operation Urgent Fury, the intervention by the United States forces met with limited resistance and achieved effective control of the country within a matter of days, with the official cessation of hostilities occurring on 2 November. Twenty-four civilians were killed in the invasion, including 21 patients in a psychiatric hospital accidentally bombed by US planes.

The invasion of Grenada was deemed by the United Nations General Assembly to be an unlawful aggression and intervention into the affairs of a sovereign state.<sup>6</sup> A similar resolution under discussion in the UN Security Council, although receiving widespread support, was ultimately vetoed by the USA.

### **Arrest and Incommunicado Detention: Politically Motivated Denial of Liberty**

*No person may be deprived of his liberty except in the cases and according to the procedures established by pre-existing law. ... Every individual who has been deprived of liberty has the right to have the legality of his detention ascertained without delay by a court, and the right to be tried without undue delay, or, otherwise, to be released. He also has the right to humane treatment during the time he is in custody.*

—Article XXV, American Declaration on the Rights and Duties of Man

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the authority structure in Grenada, rather than as a desperate situation involving U.S. nationals”); Bob Woodward, *Veil*, New York: Simon and Schuster, 1985, pp. 289—290 (who interviewed William Casey, the then director of the CIA and others); Clarence Lusane, *Grenada, Airport '83: Reagan's Big Lie*, CAIB, Spring-Summer 1983, p.29.

<sup>5</sup> The US military began practice exercises in preparation for an invasion as early as 1981. These exercises, part of Ocean Venture '81 and known as Operation Amber and the Amberdines, involved air and amphibious assaults on the Puerto Rican island of Vieques. According to the plans for these maneuvers, “Amber” was considered a hypothetical island in the Eastern Caribbean which had engaged in anti-democratic revolutionary activities. Also, discussions regarding the invasion occurred at least as early as 1981, when the US discussed such plans with several Eastern Caribbean governments.

<sup>6</sup> See United Nations General Assembly, Resolution 38/7 on the situation in Grenada, UN Doc. A/RES/38/7 (2 November 1983). The resolution was passed by a vote of 108 for, 9 against and 27 abstentions. Nine NATO allies — Denmark, France, Greece, Iceland, Italy, the Netherlands, Norway, Portugal, and Spain — argued that the intervention was unlawful, while the other members abstained. The nine no votes consisted of seven of the countries involved in the invasion plus Israel and El Salvador.

In late October 1983, the Grenada 17 were arrested and detained by US forces. Over the next few days, members of the Grenada 17 were held incommunicado on US naval vessels, sometimes in metal containers or wooden crates, and subjected to lengthy interrogation. During their detention, the whereabouts of the Grenada 17 were kept secret and requests from lawyers, family members and others to meet with them were rejected. They were held by the US for periods of nine to twelve days before eventually being turned over to Grenadian and Caribbean Peacekeeping Force authorities at Richmond Hill Prison on or around 5 November 1983.

The incommunicado detention of the Grenada 17 violated both the constitutional law of Grenada and international human rights law. The Constitution of Grenada, adopted in 1973, provides in Article 3(3) that:

any person who is arrested or detained for the purpose of bringing him before a court in execution of the order of a court; or upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law of Grenada, and who is not released, shall be brought without undue delay before a court.

Article 7(2) of the American Convention on Human Rights, which the Government of Grenada ratified on 14 July 1978 and the USA signed on 1 June 1977 but has yet to ratify, states that “no one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party.” Furthermore, Article 7 also guarantees the right to:

be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within reasonable time or to be released without prejudice” and the right “to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful.

Similar protections derive from Article 9 of the International Covenant on Civil and Political Rights<sup>7</sup> and Principle 11(1) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.<sup>8</sup>

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<sup>7</sup> Article 9 of the International Covenant on Civil and Political Rights (ratified by Grenada on 6 September 1991 and by the USA on 8 June 1992) states in relevant part:

*(1) Everyone has the right to liberty and security of persons. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.*

...

*(4) Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.*

Under international human rights and “common law”<sup>9</sup> principles of due process, “undue delay” generally requires a person to be brought before an independent and impartial tribunal which shall ascertain the lawfulness of the detention as soon as possible, but in any event usually no longer than 48 hours.<sup>10</sup> The United Nations Human Rights Committee, however, has found that, under normal circumstances, detention for 48 hours without judicial review is questionable,<sup>11</sup> while the European Court of Human Rights, considering similar protections, found that delays of four or five days in the presentation of a detainee before a judicial authority were in violation of the [European] Convention for the Protection of Human Rights and Fundamental Freedoms.<sup>12</sup>

Members of the Grenada 17 were also subjected to cruel, inhuman or degrading treatment, in violation of international laws and standards.<sup>13</sup> For instance, some of the Grenada 17 were held in wooden crates, fully exposed to the sun and without facilities for water or personal hygiene.<sup>14</sup> Bernard Coard was allegedly held for a total of nine days in steel cages in the holds of two US military ships. The cages were placed very near the engine rooms of the ships where the noise was deafening.<sup>15</sup>

On 25 July 1991, the Grenada 17 petitioned the Inter-American Commission on Human Rights (Inter-American Commission) alleging violations by the Government of the United States of America of their human rights guarantees under the American Declaration on

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<sup>8</sup> Principle 11(1) of the Body of Principles States in relevant part:

*A person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority.*

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 11(1), G.A. res. 43/173, annex, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988).

<sup>9</sup> “Common law” is the system of jurisprudence throughout the English-speaking Caribbean that originated in the unwritten laws of England.

<sup>10</sup> See, e.g., *Gerstein v. Pugh*, 420 U.S. 103 (1975) (requiring a competent, independent and impartial tribunal to make a determination as soon as is reasonably feasible, but in no event later than 48 hours after arrest).

<sup>11</sup> See, United Nations, *Human Rights and Pre-trial Detention* (1994), at 12, citing UNGAOR, 45<sup>th</sup> Sess., Supp. 40 (A/45/40), vol. I, para. 333 (report of Federal Republic of Germany); see also General Comment No. 8, adopted 30 June 1982 (stating that “delays must not exceed a few days”).

<sup>12</sup> See, *Brogan et al.*, Ser. A Vol. 145 (1988); *Koster v. The Netherlands*, Ser. A Vol. 221 (1991).

<sup>13</sup> *Inter alia*, Article 5 of the American Convention on Human Rights; Articles I, XXV, and XXVI of the American Declaration on the Rights and Duties of Man; Article 7 of the International Covenant on Civil and Political Rights.

<sup>14</sup> Amnesty International, Annual Report 1984: Grenada (1984).

<sup>15</sup> *Ibid.*

the Rights and Duties of Man.<sup>16</sup> Specifically, the Grenada 17 alleged violations of Article I, the right to life, liberty and security of the person; Article II, the right to equality before the law; Article XXV, the right to protection from arbitrary arrest and the right to humane treatment in custody; Article XVII, the right to recognition of juridical personality and civil rights; Article XVIII, the right to a fair trial; and Article XXVI, the right to due process of law.

The Inter-American Commission found that the allegations with respect to the fairness of the trial were inadmissible because only the arrest and detention was established to have been carried out by the USA and therefore restricted its examination to allegations with respect to those matters.<sup>17</sup>

The Inter-American Commission noted that it is fundamental that detention not be left to the sole discretion of the State agents(s) responsible for that detention. Consequently, applicable international law requires that persons detained be allowed to challenge the lawfulness of their detention before an independent and impartial tribunal. For instance, Article XXVI of the American Declaration on the Rights and Duties of Man guarantees the right of every individual deprived of liberty “to have the legality of his detention ascertained without delay by a court, and the right to be tried without undue delay, or, otherwise, to be released.”<sup>18</sup>

The Inter-American Commission concluded that there were no safeguards in effect to ensure that the military detention of the Grenada 17 was not left to the sole discretion of the United States forces responsible for carrying it out. The Grenada 17 were found to be victims of arbitrary detention, as the Commission also found no indication that they had the opportunity to challenge the lawfulness of their detention as required under international law.<sup>19</sup> The Commission went on to determine that the Grenada 17 continued to be detained after the cessation of hostilities on 2 November 1983. As such, the delay in allowing the Grenada 17 to challenge their continued detention was not attributable to a situation of active hostilities or necessary for reasons of security.<sup>20</sup>

Consequently, the Inter-American Commission found that the Government of the United States had violated Articles I (right to life, liberty and the security of his person), XVII

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<sup>16</sup> See Inter-American Commission on Human Rights, Report No. 109/99, Case 10.951, *Coard et al v. United States* (29 September 1999). The American Declaration is binding as stated by the Inter-American Court of Human Rights through its Advisory Opinion OC-10/89.

<sup>17</sup> Inter-American Commission on Human Rights, Report 14/94 (7 February 1994).

<sup>18</sup> American Declaration of the Right and Duties of Man, Art. XXV, O.A.S. res. XXX, *approved by the Ninth International Conference of Americas States, Bogota (1948): Novena Conferencia Internacional Americana, 6 Actas y Documentos 297-302 (1953).*

<sup>19</sup> Inter-American Commission on Human Rights, para. 56, Report No. 109/99, Case 10.951, *Coard et al v. United States* (29 September 1999).

<sup>20</sup> *Id.* at para. 58.



(the right to recognition of juridical personality and civil rights) and XXV (right to be protected from arbitrary arrest and the right to humane treatment in custody) of the American Declaration on the Rights and Duties of Man. The Inter-American Commission recommended to the United States that it:

1. *Conduct a complete, impartial and effective investigation into the facts denounced in order to determine and attribute responsibility to those accountable for the violations concerned, and repair the consequences; [and]*
2. *Review its procedures and practices to ensure that, in any instance where its armed forces may be responsible for detaining civilians, there are adequate safeguards in effect, in accordance with the applicable norms of the American Declaration and international humanitarian law, most specifically, so that such persons shall be heard with the least possible delay by a competent judicial authority with the power to order release should detention be deemed unlawful or arbitrary.*<sup>21</sup>

The United States has thus far refused to fully comply with these recommendations.

### **Damning confessions: given freely or extracted under torture?**

The investigation into the killing of Bishop and the others was conducted by police officers from other Caribbean nations, including Barbados and Jamaica.

Bernard Coard and ten others alleged that they were tortured by detaining forces prior to incarceration at Richmond Hill Prison or by police officers after their incarceration.

Out of the 17, Redhead, Bernard, Mitchell, Richardson, Bartholomew, Layne, James, Strachan, Cornwall, McBarnette and Stroude all gave confessions implicating themselves and others as guilty of murder, to investigating police officers. In the texts of the confessions, the defendants continue to make self-incriminating statements despite alleged warnings from the interviewing officers that “you are not obliged to say anything unless you wish to do so but what you say may be put into writing and given in evidence”.

None of the 17 were allowed to have legal representatives present as they were interrogated, despite many of them requesting lawyers. The United Nations Special Rapporteur on the independence of judges and lawyers has stated that “it is desirable to have the presence of an attorney during police interrogation as an important safeguard to protect the rights of the accused. The absence of legal counsel gives rise to the potential for abuse...”<sup>22</sup>

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<sup>21</sup> Id. at para. 62.

<sup>22</sup> Report of the Mission of the Special Rapporteur to the United Kingdom, UN Doc. E/CN.4/1998/39 add. 4, para 47, 5 March 1998.

The right not to be tortured is absolute and cannot be derogated from under any circumstances. It is enshrined in, among other human rights standards, Article 5 of the Universal Declaration of Human Rights which states that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”. The right to legal assistance is also enshrined in Principle 17(1) of the United Nations Basic Principles on the Role of Lawyers, which states: “A detained person shall be entitled to have the assistance of a legal counsel. He shall be informed of his right by the competent authority promptly after his arrest and shall be provided with reasonable facilities for exercising it”. The Inter-American Commission on Human Rights has concluded that the right to legal counsel should be applied on the first interrogation.<sup>23</sup>

The fact that none of the 17 was provided with legal assistance during interrogation by police officers is a serious breach of their rights under international law. Had the Grenadian authorities ensured this right was met, the confessions obtained during the interrogation would have been more reliable for use in court.

Police officers from Barbados who were responsible for much of the investigation were accused by members of the Grenada 17 of committing acts of torture against them. However, in a letter sent on 3 July 1986 to the Commissioner of Police of Barbados, the acting Director of Public Prosecutions stated that the accusations of torture have “been dismissed as being totally unsupported by the doctor whom the accused persons alleged attended them”.

During the trial, many of the Grenada 17 repeatedly spoke of the alleged torture they had been subjected to and accused one police officer in particular, Inspector Watson, as being responsible for committing acts of torture against them and accused him of such during his testimony to the court. Unusually, the judge – rather than wait for the prosecution to invite Watson to rebut the allegation during questioning – gave the appearance of bias when he “gave permission” for the Inspector to reply. The Inspector denied that any ill-treatment had been inflicted upon the prisoners.

The allegations of ill-treatment continued during the trial and appeared to be referred to by the prosecution, who commented on the appearance of defendant Selwyn Strachan (who had a clearly swollen eye and other bruising, as reported in the media<sup>24</sup> and had alleged he was beaten by police officers), stating:

One can see that Strachan seems to be in need of medical attention. I cannot explain why he has not received medical attention yet...<sup>25</sup>

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<sup>23</sup> Report on the Situation of Human Rights of a Segment of the Nicaraguan Population of Miskito. Origin, OEA Ser.L/V/11.62,doc.10, rev.3, 1983.

<sup>24</sup> For example see “Coards Tell of Beatings”, *Jamaican Gleaner*, 29 April 1986.

<sup>25</sup> Page 304 of the trial transcript.

Many of the 17 spoke in court of the alleged torture. For example, Lester Redhead told the Court:

I say that statement was taken under torture. I admit that the signature at the bottom of the statement is mine. I only signed the statement after being tortured for several hours by Barbadian police officer Sgt. Ashford Jones and Courcey Holder... On or about 29 October 1983 I was captured by US invasion forces and taken to a prison (sic) of war camp at Port Saline. There I was subject to physiological torture. I was placed in a box 8 x 8 [feet] with a little door I had to lie down to crawl into. On first night that box was beaten for the entire night... A forklift actually lifted that box off the ground with me inside. I was only given one meal per day...

On 11<sup>th</sup> November 1983 I was taken... by Sgt. Ashford Jones and Courcey Holder among others... I was immediately handcuffed to a chair and left there for about 30 minutes with a Bajan police officer pointing a .38 pistol at my head... I told him [Sgt. Jones who had entered the room] I would only do so [make a statement] in the presence of my lawyers. Having said that Courcey Holder immediately stated to beat me in the head...

After this Sgt. Jones start (sic) reading from what I assumed was a statement in front of him asking me if I know anything about this. I told him to my knowledge I don't know anything about what he is speaking about. Having said that Courcey Holder started to beat me in the chest and stomach telling me to say that I know what Sgt. Jones was reading. This pattern continued for several hours...

After they completed writing that so called statement Sgt. Jones asked me to read the statement. I told him that as far as I was concerned I did not give any statement. I refused to do so. Again they started beating me. When I could not take the blows anymore I had to give in and sign the statement. I was then taken back to Point Saline and put back in the box...

It was incumbent upon the Court – and vital to the interest of justice – for a thorough investigation to be carried out into the allegations of torture before the confessions were introduced as evidence, as specified under international laws and standards. For example, the United Nations Special Rapporteur on Torture has stated:

Where allegations of torture and other forms of ill-treatment are raised by a defendant during trial, the burden of proof should shift to the prosecution to prove beyond reasonable doubt that the confession was not obtained by unlawful means, including torture or similar ill-treatment.<sup>26</sup>

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<sup>26</sup> UN reference: E/CN.4/2001/66/Add.2; page 56.

The Court did conduct a *voir dire* (a separate trial within a trial, generally in the absence of the jury, on the admissibility of contested evidence) to ascertain whether the statements had been coerced. While the investigation may have been hampered by the lack of cooperation from some of the defendants, some of them did provide detailed accounts (see above) of their alleged treatment. Other made specific requests for the investigation. For example, Lester Redhead told the Court

I was [sic] court to subpoena diary from prison (sic) of war camp in (sic) period of November 1983. Secondly I want court to subpoena Dr. Gopaul who saw me on or about 17<sup>th</sup> November to treat wounds inflicted on my body by Bajan torturers including Ashford Jones. Subpoena also prison medical records of November 1983. Subpoena also Mason from Grenada Police Force who will prove that Ashford Jones tortured me in Fort Rupert and on 12<sup>th</sup> to 13<sup>th</sup> November 1983. Subpoena Inspector John, a member of Peace Keeping Force who took a statement from me on the question of my torture.

The Court called Dr. Gopaul and Officer Mason into court the following day. Lester Redhead refused to participate in an examination of them. However, this did not prevent the Court from asking questions regarding the allegations of torture. Inexplicably, the Court simply dismissed the two witnesses without explanation or examination.

Defendant Liam James also told the Court that on 5 March 1984, after he had been questioned by police officers, Dr. Gopaul was called to the prison at 8 pm for an “emergency” visit and that Dr. Gopaul prescribed treatment that included x-rays of James following allegations of torture. On 8 March James claimed he was x-rayed at the hospital.

Dr. Gopaul was eventually called back into Court and questioned by the judge. He told the Court he did examine James on 5 March but described his injuries as slight. He did prescribe pain killers but denied ordering an x-ray.

Christopher Stroude claimed in court that he had been removed from the prison early on the morning of 15 November 1983 and not returned until the following morning, during which time he alleged he was tortured. Movement of this type would be detailed in the prison diary and Stroude requested the prison diaries for that day be produced in court. However, an official from the prison was unable to provide the diary for that day as it had gone missing but was able to provide the diary for the 14 and 16; no explanation was provided for the missing diary above the statement that it could not be found.

In five cases Dr. Gopaul was able to confirm to the Court that he had observed injuries to the defendants on the day following their interrogation by the police, including abrasions to the chest, abdomen and genitals. Dr. Gopaul maintained that the injuries were not serious and that in the majority of cases they could have been self-inflicted. However, in one case the doctor admitted that the injuries could not have been self-inflicted.

In their appeal of the conviction, lawyers for the Grenada 17 were severely critical of the trial judge's investigation into the allegations of torture and asserted that:

- Of the 16 persons named by the defendants as being able to give evidence in support of their having been tortured, the judge decided to call only three of them as witnesses;
- Of the three witnesses, the judge examined only one fully;
- Having called the police inspector who had conducted an official investigation into the allegations of torture, he failed to ask him a single question to determine what the results of his investigation had been. The judge even refused to admit into evidence the defendants' statements as to their torture, recorded and formally witnessed by the investigator, as they had not been given under oath;
- Although 12 defendants alleged that they were tortured, the judge called and questioned the prison doctor only in respect to four of them. In a fifth case, he called the doctor but sent him away again without asking him a single question;
- A comparison of the doctor's testimony with his written records in the prison files reveals certain inconsistencies. For example, in one case he stated that he did not order x-rays for possible internal injuries, whereas the medical files show that he did. The judge declined to examine the medical files himself.

From its examination of the trial transcript and other documentation, Amnesty International views the investigation into the allegations of torture as woefully inadequate. The Court limited its investigations to a few questions posed to a handful of witnesses. The Court appeared to reply primarily on the testimony of the police officers against whom the allegations were made, who, not surprisingly, stated that no torture took place and that the statements were given of the defendants' free will. The Court ignored numerous avenues of inquiry into the allegations of torture.

A confession admitting guilt is one of the most powerful pieces of evidence against any individual accused of a serious crime. It is highly likely that any juror hearing evidence of a confession will be minded to move towards a guilty verdict immediately and less likely to be influenced by other evidence of guilt or innocence.

For this reason, courts should employ extreme caution before admitting into evidence confessions that are alleged to have been coerced or obtained under torture. Amnesty International is not in a position to ascertain whether or not some of the Grenada 17 were tortured or otherwise ill-treated. However, it is clear that the Court did not undertake adequate investigation into the allegations of torture made by members of the Grenada 17.

## **Establishment of the Tribunal and Selection of the Trial Judge and Jury: Denial of a Competent, Independent and Impartial Tribunal of Justice**

Under international law and Article 8(1) of the Constitution of Grenada<sup>27</sup> the right to an independent and impartial tribunal is recognised as essential to a fair trial. Additionally, tribunals must not be *ad hoc* creations but rather previously established by law. These important principles are enshrined throughout international human rights law.<sup>28</sup> As the national emergency surrounding the US invasion was officially ended in November 1983, there were no longer any circumstances which might justify derogation from the rights guaranteed in the above international instruments. Notwithstanding these essential principles of the right to a fair trial, the Grenada 17 were tried before a tribunal created specifically for their case and before a judge who lacked both independence and impartiality.

Prior to the trial, on 10 May 1985, a three judge panel of the Court of Appeal found that the proposed tribunal was indeed unconstitutional. The trial was allowed to continue, however, as the Court of Appeal deemed it a “court of necessity,” even though no such procedure is recognised within either international or Grenadian law and even though a tribunal deemed unconstitutional cannot be considered a lawful court of law. Amnesty International remains gravely concerned that even though the trial took place in excess of two years after the invasion, the authorities had either failed or were reluctant to ensure that an appropriately constituted court had been established.

The trial of the Grenada 17 ran from 4 March to 4 December 1986. The tribunal was established solely to try the Grenada 17 and was financed in part by a grant from the Government of the United States. The circumstances surrounding establishment of the Court were in contravention of internationally recognised human rights. For instance, Article 8(1) of the American Convention,<sup>29</sup> binding upon the Government of Grenada, and Article XXVI

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<sup>27</sup> Which states: “If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.”

<sup>28</sup> Including the Universal Declaration of Human Rights (UDHR) (Article 10), the International Covenant on Civil and Political Rights (ICCPR) (Art. 14(1)), the American Declaration on the Rights and Duties of Man (American Declaration) (Arts. XXV and XXVI), the American Convention of Human Rights (American Convention) (Art. 8), and the Basic Principles on the Independence of the Judiciary (Basic Principles) (Principles 1, 2, 3, 4, 5, and 10).

<sup>29</sup> Article 8(1) of the American Convention states:

*Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.*

of the American Declaration,<sup>30</sup> binding on both the Government of Grenada and the Government of the US, clearly protect a defendant's right to be tried by an independent and impartial tribunal *previously* established by law.<sup>31</sup> The *ad hoc* establishment of the tribunal, even without the many additional irregularities, was thus not only unconstitutional but in violation of the international legal obligations of Grenada.

The selection of the jury also was fraught with irregularities which contravened accepted legal protections under the common law system, including the laws of Grenada. Although not expressly protected by international human rights law, the right to a jury trial is established in most common law systems, including Grenada's, and entails several due process protections and procedures. These protections and procedures include the right of defendants to be involved in the jury selection process on equal footing with the prosecution.

In the case of the Grenada 17, however, these rights were not respected. Under Grenadian law, jury pools are selected by the Registrar of the court. In this case, the court removed the long-standing Registrar (who later returned as Registrar in other cases) and dismissed the jury pool he had established. The Registrar was replaced with Denise Campbell, who had been a long-term member of the prosecution team. Denise Campbell had appeared on behalf of the prosecution in September, October and November 1985 and on 3, 4, and 5 March 1986. She did not appear on the 6 March or any subsequent days. According to the testimony of Eileen James, Chief Personnel Officer of the Public Service Commission, Denise Campbell had been appointed as Registrar on 5 March 1986, a day when she was still technically appearing for the prosecution. Eileen James also testified that the paperwork to establish Denise Campbell as the court's Registrar had been initiated on 3 March 1986, one-day before the judge had found the jury pool not to have been appropriately established.

When it was pointed out to the presiding judge that Denise Campbell had been both the Registrar and a member of the prosecution team on 5 March 2003, the judge simply stated:

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<sup>30</sup> Article XXVI of the American Declaration states:

*Every accused person is presumed to be innocent until proved guilty. Every person accused of an offense has the right to be given an impartial and public hearing, and to be tried by courts previously established in accordance with pre-existing laws, and not to receive cruel, infamous or unusual punishment.*

<sup>31</sup> Similar protections are found in Article 14(1) of the ICCPR Article 14(1) of the International Covenant on Civil and Political Rights States, in relevant part:

*All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.*

“I am satisfied that when Miss Campbell took up her appointment as Registrar she had no connection with the prosecution team...”

The jury pool established by the original Registrar was dismissed at the request of the prosecution on 4 March 1986 following a cursory investigation by the judge into how the names had been selected. The investigation only established a *prima facie* (at first glance) case that the jury pool had been inappropriately established and did not delve into the full facts of the matter as was appropriate (since there were legitimate explanations to the alleged incursion of the law and the transgression appeared to be relatively minor). The matter in question was whether the names of three potential jurors had previously appeared on other lists. Rather than fully investigate this matter – and despite the reassurance from the court Registrar that “I have followed the law carefully according to my understanding” – the judge dismissed *all 33 jurors*, not just the three concerned.

The Court appeared to be unwilling to tolerate any public debate on the lawfulness of the proceedings. A newspaper, *The Informer*, published an article questioning whether the original 33 potential jurors had been selected unlawfully. Its editor was charged with contempt of court, tried and sentenced to two weeks’ imprisonment.

The jury pool list compiled by Denise Campbell also contained “repeater jurors”, the irregularity for which the previous Registrar and jury pool had been removed. However, this time the prosecution and judge took no action.

Under Grenadian law, a jury pool is established from a book of potential jurors arranged in alphabetical order. The pool is selected by taking one from the top and one from the bottom in turn until the appropriate number is reached for that sitting of the court. The selection for the next sitting starts from where the selection from the last had stopped.

In the case of the second jury pool selection for the trial of the Grenada 17, this system appears to have been all but abandoned. The jury pool was picked from over 15 alphabetical categories. For example, 11 jurors were selected from 29 whose name began with F but only 5 were selected out of 126 whose names began with C. The names do not appear to be picked in any order (for example every fifth name). Under A, names number 17, 28, 29, 38, 45 and 55 were chosen.

The jury was picked without any probe for prejudice and no defendant or defence counsel were present during the selection process.

Some members of the jury were also alleged to have cheered when the judge informed the defence lawyers that they were liable to be cited for contempt of court during preliminary hearings on 11 April 1986. In a sworn affidavit, defence lawyer Jacqueline Samuels-Brown stated:

...immediately after he [the judge] initiated contempt proceedings, there was widespread clapping by jurors, as well as jeering and booing. During the adjournment,



the jurors continued to make hostile comments in relation to the accused and their Counsel... On this adjournment, the array of jurors hurled further hostile remarks, threats and jeers at the accused...[calling them] “murderers” and “criminals”.

As buses filled with jurors left the compound, a large number had raised their fists threateningly and menacingly at Defence Counsel who were in the prison yard, saying among other things, “They going to get a cut-ass and you too” and “We must get Coard and them”. From this array, twelve persons were subsequently empanelled to sit as the triers of fact in the case.

In another affidavit, defence team member Arthur Cruickshank stated that on 11 April 1986 he heard members of the jury pool state “You never give Bishop a chance; so we won’t give you a chance” and “You all are murderers. You must all hang”.

Nonetheless, none of the jurors was disqualified, apart from one alternate juror who was removed after it transpired that his son had been killed during the 1983 events.<sup>32</sup> The prosecution requested this juror be removed, as was appropriate. However, Amnesty International remains concerned that someone with such a clear motive for bias became a jury member during the selection process.

On 4 December 1986, at the conclusion of the trial, Bernard Coard, Phyllis Coard, Hudson Austin, Ewart Layne, Selwyn Strachan, Liam James, Leon Cornwall, Dave Bartholomew, Colville McBarnette, Christopher Stroude, Lester Redhead, Calistus Bernard, John Ventour and Cecil Prime were convicted of multiple counts of murder and sentenced to death by hanging. Andy Mitchell, Vincent Joseph and Cosmos Richardson were convicted of multiple counts of manslaughter and sentenced to fifteen years’ imprisonment for each count, with certain sentences to be served consecutively.

## **The Defence: Lack of Legal Representation at Trial**

Article 8(2) of the Constitution of Grenada provides that:

*Every person who is charged with a criminal offence-*

*a. shall be presumed to be innocent until he is proved or has pleaded guilty;*

*b. shall be informed as soon as reasonably practicable, in a language that he understands and in detail, of the nature of the offence charged;*

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<sup>32</sup> See Amnesty International, Annual Report 1987: Grenada (1987).

*c. shall be given adequate time and facilities for the preparation of his defence;*

*d. shall be permitted to defend himself before the court in person or, at his own expense, by a legal representative of his own choice;*

*e. shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before the court, and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution; and except with his own consent the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence: Provided that, in such circumstances as may be prescribed by law, the trial may take place in the absence of the person charged so long as no punishment of death or imprisonment (other than imprisonment in default of payment of a fine) is awarded in the event of his conviction.*

Prior to the trial, the Grenada 17 were often barred from meeting with their legal counsel. Their first lawyer was denied access to the prisoners for two weeks after they made their initial appearance before the court on 22 February 1984. Later, when preparations should have been underway for the trial, defence counsel reported to the court that they had only been allowed half an hour's consultation with each of their clients.<sup>33</sup> The restricted access to legal counsel continued throughout the trial process, including the withholding of correspondence and documents and other information necessary for the preparation of their defence.<sup>34</sup>

During the early stages of the trial, the Grenada 17 consulted with their lawyers and instructed them to withdraw from the trial on 15 April 1986. Ian Ramsey, QC, the head of the defence team reportedly wrote to the heads of all Commonwealth Governments stating: "As lawyers trained in England and brought up in the principles of the common law, we are unable to take part, nay prohibited, from legitimising in any way a trial by an admittedly unconstitutional court". The Grenada 17 were thus not represented by legal counsel at trial. After the withdrawal of counsel, the Grenada 17 were often denied visits and correspondences with legal advisors and others.

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<sup>33</sup> See Amnesty International, Annual Report 1985: Grenada (1985).

<sup>34</sup> See Amnesty International, Annual Report 1986: Grenada (1986).

The Grenada 17 themselves were often barred from participating in their own trial because of their disruptive behaviour, which included chanting phrases objecting to the unfairness of the trial, clapping and stamping of feet during the hearing of testimony. During the course of the trial, therefore, the prosecution presented the bulk of its evidence without the defendants present.

It is clear from the trial records that the defendants' behaviour was so disruptive that the Court would have been forced to have them removed to allow the trial to proceed in an orderly fashion. In such cases, Amnesty International believes that video or audio links should be employed to allow the defendants to follow proceedings; no attempt was made by the judge to ensure the 17 could follow the trial during their absence.<sup>35</sup> Whatever the defendants' behaviour, it in no way relieves the State of its duty to ensure that the defendants were legally represented at all times. The appropriate course of action would have been to appoint legal counsel to represent the defendants; leaving the 17 unrepresented in court when their very lives were at stake should not have been an option. The United Nations Human Rights Committee (HRC) has held that, when an offence is punishable by death, the interests of justice requires that the case should not proceed if the accused is not represented by legal counsel.<sup>36</sup>

The American Convention on Human Rights also states in Article 8.2.e:

the inalienable right to be assisted by counsel provided by the state, paid or not as the domestic laws provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law

The Grenada 17 – again in violation of the Constitution and international human rights standards of due process – were denied access to numerous documents that had been seized by US forces and which were deemed by the Grenada 17 to be essential to their defence case. The 17 applied to the Court to have the documents returned to them and the Court in turn issued a writ to the US Ambassador. However, when denying further requests to obtain the documents, the Judge stated:

The position of this court is that it has no jurisdiction to compel a foreign Government to attend or produce documents before court... [the subpoena to the Ambassador] was returned with a diplomatic note invoking immunity and alleging that the Embassy does not have possession of the various documents referred to in the summons. There is no action of a compulsive nature in which the Court can engage.

Amnesty International would argue that it was incumbent upon the Court to make further attempts to obtain the documents in order to ensure a fair trial. While the Embassy

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<sup>35</sup> See page 110, Amnesty International *Fair Trials Manual*, AI index POL 30/02/98.

<sup>36</sup> *Robinson vs Jamaica* (223/1987), 30 March 1989; Report of the HRC (A/44/40), 1989, page 245.

claimed not to have the documents, this does not mean the materials were not in the possession of the US Government off the island. Further attempts should have been made to obtain the materials from the US authorities.

The Judge went on to rule that the documents were not strictly necessary for the defence, stating:

The accused have alleged that the purpose for which the documents are required fall into two categories (1) as a tool for cross examination to impeach the credibility of prosecution witnesses and as to evidence about proceedings at meetings and the whereabouts of individuals at particular time; and (2) as a means of proving what transpired at meetings and the whereabouts of individuals at particular time. [Repetition in original trial transcript.]

Cross examination as to the credibility of witnesses and on the issue of what transpired can be carried out without the documents. Proof of what transpired at meeting and as to the whereabouts of individuals can be adduced by oral testimony.

Amnesty International would profoundly disagree with this assertion and ruling. While the organization is not in a position to ascertain how the documentation requested would have affected the trial, it is clear that written documents detailing times, events, statements and those present at various locations could have impacted upon the trial. The allegations against the Grenada 17 centred around a sequence of events and a schism within the New Jewel Movement. If documentation had shown that prosecution witnesses had mislead the court about these events it would constitute important evidence. Amnesty International fears that the Court's unwillingness to try every avenue to obtain the documentation is a possible indication of the Court's bias against the defendants and its willingness to tolerate a low standard of jurisprudence.

The US did release certain selected documents relating to the invasion in 1984 in *Grenada Documents: Overview and Selection*.

Members of the Grenada 17 also had legal documents they were preparing in their cells removed by the prison authorities on various occasions, in violation of the right to prepare a defence in confidence. For example, in an affidavit, defendant Ewart Layne alleged:

...on the morning of April 25, 1986, all my legal and confidential documents were demanded and forcibly taken away from my cell despite my objections and protests... the evening before I had observed P.O. [prison officer] Harris and P.O. Johnson go to the cell of my co-accused, Liam James, and also demand from him all his papers, including legal documents. In the process I distinctly heard P.O. Harris say, "It don't have no legal thing in jail and the big man say take everything away".

On the 29 April the prosecution admitted that documents had been taken from the cells of the defendants and claimed it had been due to a misunderstanding on the part of the prison authorities. However, this would not explain why the removals had occurred on numerous previous occasions over a period of time leading up to the trial. Some of the documents were returned to the defendants but it is alleged that others – including a detailed analysis of the contradictions in the evidence of prosecution witnesses and a list of defence witnesses – were not. The trial judge refused to investigate the reason or impact of the documents being removed from the cells of the defendants despite its possible bearing of the defendants' ability to present their case to the Court.

The above mentioned irregularities amount to violations of the defendant's rights under Article 8(2) of the Grenadian Constitution. They also violate several international human rights standards which guarantee the right to a fair trial. For example, Article 8(2) (d) of the American Convention on Human Rights protects the right of an "accused to defend himself personally or to be assisted by legal counsel of his own choosing," while Article 8.2(f) protects "the right of the defence to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts."<sup>37</sup> Similarly, Article 14(3)(d) and (e) of the ICCPR guarantee, respectively, the right "to be tried in his presence, and to defend himself in person or through legal assistance" and the right "to examine, or have examined, the witnesses against him."<sup>38</sup>

In light of such violations of fundamental principles of the right to a fair trial, it is clear that the trial of the Grenada 17 fell short of a fair process. As such protections are crucial to ensure a process by which the truth emerges, the lack of a proper and lawfully protected defence alone indicates the trial was manifestly and fundamentally unfair.

### **The Case for the Prosecution: Insufficient and Questionable Evidence**

The prosecution's case rested heavily on the questionable testimony of one witness, Cletus St. Paul. The trial judge made this clear when he instructed the jury on the importance of St. Paul's testimony and stated that without his evidence there could have been no convictions.<sup>39</sup>

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<sup>37</sup> American Convention on Human Rights, Art. 8(2), OAS Treaty Series No. 36, at 1, OEA/Ser.L./V/II.23 doc. rev. 2, entered into force 18 July 1978.

<sup>38</sup> International Covenant on Civil and Political Rights, Art. 14(3), GA Res. 2200A (XXI), 21 UN GAOR Supp (No. 16) at 52, UN Doc. A/6316 (1966), 999 UNTS 171, entered into force 23 March 1976.

<sup>39</sup> See Court Record of Case no. 19 of 1984, *the Queen v. Andy Mitchell and Others*, Vol. 4, Part 3, Page 5205. The Trial Judge charged the jury that:

*The evidence of Cletus St. Paul is very important evidence in this trial .... The Prosecution is relying on it to lay the factual basis for you to find that the ten accused persons at the time at Fort Frederick instigated or commanded the soldiers to go to*

Cletus St. Paul was the former chief bodyguard of Prime Minister Bishop. He was arrested on the orders of the Central Committee, on 12 October 1983 and incarcerated from that date until 19 October. During questioning in preparation for and during the trial, St. Paul reportedly gave five conflicting statements: three to the police, one at the preliminary inquiry, and one at trial. At trial, St. Paul testified that the Central Committee arrived at Fort Frederick just after 11:00 am on 19 October and immediately dispatched troops to Fort Rupert with the order that Prime Minister Bishop and others “must be liquidated.” Had the troops been immediately dispatched to Fort Rupert, however, they would have arrived at or before 11:30 am. The testimony and statements to the effect that troops did not arrive at Fort Rupert until after 1:00 pm was corroborated by other evidence which was excluded from trial. Most other eye witnesses contradicted the testimony of St. Paul by placing the arrival of the troops at Fort Rupert at or after 1:00 pm.<sup>40</sup> For example, fire department records indicate that the alarms at Fort Rupert, set off by the melee, did not go off until after 1:00 pm.<sup>41</sup>

Many of these witnesses were not called to testify at trial, even though they had been interviewed by police and the prosecution. Furthermore, the defendants were not allowed to call these witnesses on their behalf.<sup>42</sup>

For example, Errol Seaton George was a security officer for the Grenadian Government in 1983 and was at Fort Frederick on 19 October. During the Preliminary Inquiry he testified, on behalf of the prosecution, that “At no time during my stay on Fort Frederick did I witness any member of the Central Committee giving instructions to any soldier or group of soldiers”, that only three members of the 17 were present and that they did not speak to each other. George’s testimony would have been all the more damaging to the prosecution’s case since he also stated he was speaking to or was very close to St. Paul between approximately 10.40 and 12.40 that morning – the vital time in question. He stated “At no time during my stay on Fort Frederick did I hear shouts of “Long live the Central Committee” and “Long live the Revolution” or similar shouts as testified to by Cletus St. Paul and Joseph St. Bernard at the Maurice Bishop trial.”<sup>43</sup>

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*Fort Rupert to cause the deaths that they did.*

<sup>40</sup> See, e.g., testimony of Joseph St. Bernard, Court Record of Case no. 19 of 1984, *the Queen v. Andy Mitchell and Others*, Vol. 1, Part. 2, Pages 419-20.

<sup>41</sup> See testimony of Fire Inspector Sheridan Williams, Court Record of Case no. 19 of 1984, *the Queen v. Andy Mitchell and Others*, Vol. 1, Part 2, Page 357.

<sup>42</sup> Source: Affidavit of Ramsey Clark in *Dr. Richard John Gibson v. Central Intelligence Agency, National Security Agency, and Defense Intelligence Agency*, United States District Court, Eastern District of Michigan, Southern Division, Case No. 97-72734 (1998).

<sup>43</sup> Source for all quotes: sworn affidavit of George given 1 August 1991, in which he states “I have had the opportunity to review the deposition of evidence taken from me at the Preliminary Inquiry... I gave substantially the same evidence as deposed in this my affidavit”. This is verified with cross referencing from other sources, including statement of Errol George, Preliminary Inquiry Depositions, Pages 8-9,

The issue of the conflicting statements of St Paul were scheduled to be examined by the Court of Appeal. The President of the Court, Justice Haynes, had stated that he intended to call St. Paul to appear before the Court to answer questions about his testimony. However, Justice Haynes died before the hearing took place.

This issue was raised by defence lawyer Clarence Hughes, QC, during the May-June 1989 session of the appeal in 1989. Hughes told the court that the defence possessed information that some or all of the three statements given by St Paul to the police were contradictory to both his evidence at the preliminary hearing and the trial. When asked by the judges where this information had come from, Hughes informed the Court that the late Justice Haynes had told him personally that he had found St Paul's evidence too rehearsed and therefore asked to see the police statements. Hughes went on to tell the court that Justice Haynes had told him that when he examined the prior statements the contradictions between then and his trial evidence were so great that he could hardly believe the statements were from St Paul, and he had therefore decided to call St Paul.

Hughes pointed out that where the prosecution knows that a witness has given a prior statement that is very different from his trial evidence, they are under a legal duty to show it to the defence. At the Bishop trial, the defendants were never advised that the prior statements existed. Hughes therefore requested that the statements be produced in the interests of justice. This request was strongly opposed by the prosecution, despite an admission by prosecution lawyer Karl Hudson-Phillips that Haynes had expressed similar sentiments to him, and that he was aware that Justice Haynes had ordered the supreme court to subpoena two of the trial witnesses.

The next morning the appeal court refused the application for St Paul's prior statements to be examined. President Smith stated that the court had accepted the prosecution's word (apparently given out of court) that there were no contradictions in the evidence and indicated that the court considered the interests of justice were best served by denying the application.<sup>44</sup> Therefore, the numerous statements of St Paul have never been examined by any court to ascertain whether St Paul has maintained the same version of events throughout his different testimonies.

The prosecution also relied upon the evidence of soldier Fabian Gabriel, who was a cook at Fort Rupert. Gabriel was originally charged along with the other 17 but was offered a conditional pardon at the request of the prosecution. The pardon was to be withdrawn if Gabriel failed to give "full and true" evidence at the trial in accordance with a previous statement he made to the prosecution. Since Gabriel's liberty appeared to depend upon his supporting the prosecution's case against the 17, his testimony should have been viewed as

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in case number 19 of 1984, *the Queen v. Andy Mitchell and others*.

<sup>44</sup> Source of information: Trade Union delegation representing several major trade unions from the UK, who attended the appeal court hearings.

potentially biased. Despite this, the judge, in his summing up told the jury: “You should not attach any significance to the fact that the Court has granted a pardon when you are coming to assess the truthfulness or reliability of the evidence given by the witness Vernon Fabian Gabriel.”

Amnesty International does not believe that that the granting of the pardon means Gabriel’s evidence is automatically unreliable. However, that the judge should rule it out as a factor is disturbing.

### **The Sentence: Condemned to Death by Hanging**

*In no case shall capital punishment be inflicted for political offences or related common crimes.*

–Article 4.4, American Convention on Human Rights

Amnesty International unconditionally opposes the death penalty under all circumstances. Even if it were possible for a government to create a judicial system entirely fair and free from bias and error, the punishment of death would still violate the most fundamental of all human rights: the right to life. Each death sentence and execution is an affront to human dignity – the ultimate form of cruel, inhuman and degrading punishment.

Amnesty International has found that the death penalty has and continues to be used as a tool of political repression, as a means to silence forever political opponents or to eliminate those considered to be politically troublesome.<sup>45</sup> In the case of the Grenada 17, the imposition of sentences of death are particularly troubling as they resulted from a manifestly and fundamentally unfair trial and in a highly politicised environment.

Due in part to intense international pressure, including decisions from the Inter-American Commission on Human Rights in which it held that the death penalty, if carried out, would violate Article 4.4 of the American Convention on Human Rights, the death sentences were commuted by the Grenadian authorities to terms of life imprisonment in 1991.

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<sup>45</sup> See Amnesty International, [The Death Penalty: Questions and Answers](#), Index: ACT 50/01/00 (April 2000).



## The Appeal: The Grenada Court of Appeal and the Privy Council

1. *The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.*

2. *The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.*

4. *There shall not be any inappropriate or unwarranted interference with the judicial process.*

-United Nations Basic Principles for the Independence of the Judiciary

*The decision was wholly political in context and tone. It included no consideration of facts and law... [making] the entire proceeding illegal, false in its finding of fact and a corruption of justice.*

-Statement of Ramsey Clark, trial observer  
and former US Attorney General.

The Grenada 17 began their appeal to the Grenada Court of Appeal on 8 March 1988. More than 30 grounds of appeal were presented. These challenged, *inter alia*, the selection and impartiality of the trial jury; the admissibility of statements made by several of the accused, who alleged that they had been extracted as a result of ill-treatment; and the trial judge's directions on the reliability of witness testimony. They also asserted that unfavourable pre-trial publicity had deprived them of a fair trial and challenged the constitutionality of the court.

The appeal process, like the trial itself, was fraught with irregularities. Many of the documents that would normally be made available to the defendants to assist them with their appeal were not forthcoming from the government, and other documents sent by defence lawyers to the defendants were allegedly confiscated by prison authorities. According to the attorneys for the defendants, this documentation could be of extreme importance in any appellate forum, including not only the Grenada Court of Appeal but regional human rights bodies such as the Inter-American Commission on Human Rights as well.<sup>46</sup> The US

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<sup>46</sup> See Affidavit of Ramsey Clark, *Dr. Richard John Gibson v. Central Intelligence Agency, National Security Agency, and Defense Intelligence Agency*, United States District Court, Eastern District of Michigan, Southern Division, Case No. 97-72734 (1998).

government has since also refused to provide the defendants and their counsel with documentation pertaining to the appeals process.

During the course of the appeal process, both the prosecution and the judiciary were consulted by the Political Office of the US Embassy in St. George's, Grenada. The information received from the US Embassy reportedly included information on how to dismiss an appeal on the grounds of timeliness, how to prohibit oral submissions, and reportedly even on the content of the Court's opinion.<sup>47</sup>

Near the conclusion of the Court of Appeal's consideration of the case, it was believed that two of the Grenada 17, John Ventour and Cecil Prime, would be released. Cecil Prime was not a member of the Central Committee, but was a member of the NJM who supported Coard. On the morning of 19 October 1983 he was at Fort Rupert and was locked in a room by the Bishop supporters upon their arrival at the Fort. He thus could not have taken part in any decision, assuming one was made, to "liquidate" Prime Minister Bishop and the others.

John Ventour was also not a member of the Central Committee nor the People's Revolutionary Government. He was, however, one of Grenada's leading trade unionists and a leader within the NJM. At the time of the US invasion, he was both President of the Commercial and Industrial Workers Union and Secretary General of the Grenada Trade Union Council. Two key US investigators who questioned several members of the NJM in 1983 were reported to have told both Ventour and Cecil Prime that they had formally recommended their immediate release as there was no evidence against them.<sup>48</sup>

According to a document released by the Government of the United States pursuant to a Freedom of Information Act request and subsequent trial and court order, the Director of Public Prosecutions for Grenada, Vilma Hylton, was in communication with the Political Office of the U.S. Embassy in St. George's during the appeals process.<sup>49</sup> On 24 August 1990, Vilma Hylton told the Political Office that she expected the guilty verdict would be upheld in cases of twelve of the fourteen defendants convicted of murder. She said that she expected that the conviction of John Ventour would be overturned, a decision with which she did not disagree. She also said that the court may acquit defendant Cecil Prime, an acquittal that she said she would find hard to accept. Hylton expected the Court of Appeal to render its decision within six weeks. Before finally delivering its opinion eleven months later on 12

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<sup>47</sup> See, e.g., declassified U.S. Department of State document Item No. 00637450, Subject: *Appellate Court Continues in Bishop Murder Case* (August 1990).

<sup>48</sup> Source: The Committee to Free the Grenada 17, *A Travesty of Justice: The Case of the Grenada 17*, p. 61 (2000).

<sup>49</sup> Declassified U.S. Department of State document Item No. 00637450, Subject: *Appellate Court Continues In Bishop Murder Case* (August 1990); see also Report of Director of Public Prosecution, Ms. Vilma Hylton, of August 1990 at page 0742 et seq.

July 1991, however, the Court negotiated an additional US\$650,000 in funds from the Government of Grenada, after which it upheld the death sentences in the cases of all fourteen members who were convicted of murder and the three convicted of manslaughter.<sup>50</sup> The Government of the United States has to date refused to release most of the documents pertaining to the appeals process.

### **The appeal courts: manipulated to avoid wider scrutiny**

To date, the 1991 written opinion of the Grenada Court of Appeal has yet to be published or provided to the defendants and their legal counsel, again in violation of Article 8(3) of the Constitution of Grenada. By not issuing a written opinion, the court has committed a major violation of the right to a fair appeals process, by failing to give a full explanation as to the reasoning and law behind its decision. Without a written opinion from a court, it is extremely difficult, if not impossible, to mount an accurate appeal to a higher court, since the defendants are not fully aware of the reasoning behind the denial of the original appeal.

There is some evidence to suggest that the written opinion is in existence. For example, the Grenadian Director of Public Prosecutions, who was part of the prosecution team, told the Political Officer of the United States Embassy, in July 1991, "One judgement [of the decision] alone is over 200 pages".<sup>51</sup> This statement strongly implies that she had seen, or at the very least knew details of, the judgement.

In Grenada, appeals can be taken from the Grenada Court of Appeal to the Judicial Committee of the Privy Council, the highest court of appeal for the majority of English speaking Caribbean nations. This right is protected by Article 104 of the Constitution of Grenada. However, by special legislation these protections were suspended in the case of the Grenada 17.<sup>52</sup> The 17 were thus arbitrarily deprived of their right to appeal to the Privy Council.<sup>53</sup> As a right available to all other Grenadian citizens, this denial constitutes discrimination of a clearly political nature and suggests that the Grenadian authorities' may have wished to avoid scrutiny of the fairness of the trial of the Grenada 17 by a court outside of their political influence.

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<sup>50</sup> Source: *In the Matter of The Constitution of Grenada and In the Matter of an Application by Bernard Coard and Others for Redress Pursuant to Section 16 of the Said Constitution of Grenada for Contravention of Section 3 and 8 of the Said Constitution in Relation to Them*, The Supreme Court of Grenada and the West Indies Associated States High Court of Justice, Affidavit of Petitioners, GDAHCV 2002/0443 (23 September 2002).

<sup>51</sup> Declassified US Department of State document Item No. 00054068, *Subject: July 8 reconfirmed as date for announcement of appellate decision in Bishop case* (July 1991).

<sup>52</sup> See, Constitutional Judicature (Restoration) Act 1991, Act. No. 19 of 1991, Sec. 7(4).

<sup>53</sup> It should be noted that the legal appeals of the Grenada 17 may eventually be heard before the JCPC via legal challenges and constitutional motions. As this report went to press, the situation remained unclear.

In 1991, the Government of Grenada announced that the country would be returning to the Eastern Caribbean Court System (ECCS), a collective arrangement for judicial matters such as appeals for several nations in the eastern Caribbean. The Governor General of Grenada was given the power to decide upon the date of re-entry. The Governor General issued a proclamation on 1 August 1991, just days after the Court of Appeal had denied the appeal of the Grenada 17. The Grenada 17 filed a motion that would be heard by a court of the ECCS. The Government responded by delaying the country's entry into the ECCS, thereby ensuring that the motion was heard in a Grenadian court and further denying the 17 the right of appeal to the Privy Council.

For unknown reasons, the ECCS had pressured the Grenada authorities not to enter the ECCS until the appeal of the 17 had been dealt with. In a letter to the Grenadian Prime Minister sent in March 1988, the Chair of the Court (and Prime Minister of St. Lucia) wrote: "While the Authority welcome such a decision on the part of Grenada [to return to the ECCS], they consider the time for re-admission of Grenada inappropriate until the appeals regarding the murder of Prime Minister Bishop and his colleagues have been disposed of by the Appeals Court of Grenada."

### **The Sentences of Andy Mitchell, Vincent Joseph and Cosmos Richardson: A Misapplication of the Law?**

Three members of the Grenada 17 were not sentenced to death. At the time of the killing Andy Mitchell, Vincent Joseph and Cosmos Richardson were soldiers in the People's Revolutionary Army. Andy Mitchell was convicted of eight counts of manslaughter and Vincent Joseph and Cosmos Richardson were each convicted of eleven counts of manslaughter for taking part in the actual killings that occurred at Fort Rupert in October 1983. Mitchell was sentenced to fifteen years incarceration for each count, with count two to be served consecutively, for a total of thirty years' imprisonment. Joseph and Richardson were sentenced to fifteen years' incarceration for each count, with counts two and nine to be served consecutively, for a total of forty-five years' imprisonment.

On 28 June 2001 Mitchell, Joseph and Richardson appealed their sentences on the grounds that they were unconstitutional. Article 3 of the Constitution of Grenada provides that no person shall be deprived of liberty save as authorised by law while Article 8(4) requires that "no penalty shall be imposed for any criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed." Relevant law is provided by Section 80 of the Criminal Code of Grenada, which requires that a person may only be sentenced with respect to one criminal act, even if that single act resulted in numerous offences. Mitchell, Joseph and Richardson argued that since the maximum penalty for manslaughter was fifteen years imprisonment, any sentence of greater duration must be found to be unconstitutional.

Counsel for the defendants argued that Justice Bryon misinterpreted the law pertaining to the time to be spent in prison, and that the law required the sentences to be served concurrently rather than consecutively. On 14 February 2002, after being presented with the evidence and arguments of the defendants' counsel, the presiding judge, Justice Brian Alleyne, found that the imposition of the sentences had indeed been in breach of Article 8(4), and thus unconstitutional. Since the three had already spent more than fifteen years in prison, Justice Alleyne ordered their immediate release.

However, despite the fact that the government had not originally opposed the appeal, the prosecution immediately filed for a stay of the implementation of the judge's order, in order to stop the release of the three prisoners. The stay was granted by another court and the three remain imprisoned pending further appeals.

### **Conditions in the Richmond Hill Prison: Cruel, Inhuman and Degrading Treatment and Punishment**

For the first eight years of imprisonment, fourteen of the Grenada 17 were imprisoned on "death row". The "death row phenomenon," which refers to the conditions under which persons awaiting execution are detained, has been found to amount to cruel, inhuman and degrading punishment in violation of international human rights law.<sup>54</sup> It is clear that those fourteen of the Grenada 17 under sentence of death were subjected to this phenomenon. Two sets of gallows were constructed in the centre of the prison grounds, in plain view of the prisoners. While on death row, the inmates were confined in cells measuring 3 metres by 2 metres without running water or toilet facilities and with the lights permanently on. Additionally, the prisoners were subjected to food restrictions as a means of punishment, often forced to live on bread and water for weeks at a time.<sup>55</sup>

Even without the death row phenomenon, the general prison conditions in Richmond Hill Prison fall far short of those required by international standards. Constructed in the nineteenth century, the prison was designed to hold 130 prisoners. By 1996, however, 330 persons were incarcerated within its walls. Prisoners are held in cells measuring only 3 meters by 2 meters, often for 23 hours per day, with no windows, natural light or ventilation. The provision of food and medical care was often inadequate.<sup>56</sup> The conditions under which Phyllis Coard was held were particularly bad. As the only woman among the Grenada 17, she

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<sup>54</sup> For example, the death row phenomenon was expressly declared a violation of human rights by the European Court of Human Rights in 1989 (see *Soering v. United Kingdom*, Eu. Ct. of Hum. Rts., App. No. 00014038/88 (7 July 1989)); the Parliamentary Assembly of the Council of Europe reaffirmed this finding in 2001 (see Resolution 1253).

<sup>55</sup> Also see "The Last Prisoners of the Cold War are Black", Rich Gibson, (2001).

<sup>56</sup> See Caribbean Rights, Report on Prison Conditions in the Caribbean (1990) and Caribbean Rights, Report on Prison Conditions in the Caribbean (1991).

was often held in *de facto* solitary confinement with no access to other prisoners, recreation or visitors. Indeed, apart from court appearances, she was allowed no contact with other prisoners, including her husband Bernard Coard, from the time she was arrested in 1983 until late 1991. Even though this level of isolation naturally took a toll on Phyllis Coard's physical and mental health, Grenadian authorities reportedly refused to allow her adequate medical treatment for many years. Again, the treatment of Phyllis Coard and the others clearly contravened the United Nations Standard Minimum Rules for the Treatment of Prisoners.

The Inter-American Commission on Human Rights had the opportunity to consider the conditions of Richmond Hill Prison in a number of cases, including *Donnason Knights v. Grenada (Knights)*<sup>57</sup> and *Rudolph Baptiste v. Grenada (Baptiste)*.<sup>58</sup> In both *Knights* and *Baptiste*, the Inter-American Commission thoroughly examined the conditions of persons living on death row as well as the general conditions of Richmond Hill Prison. After those examinations, the Commission found that the conditions at the prison included confinement with inadequate hygiene, ventilation and natural light; inadequate medical care; and infrequent time outside a cramped and unhealthy cell. These conditions, according to the Commission, violated the physical, mental and moral integrity of those imprisoned and imposed cruel, inhuman or degrading punishment upon the prisoners, in violation of Articles 5(1) and 5(2) of the American Convention.

Other restrictions have been placed on the Grenada 17. Standard 37 of the Standard Minimum Rules for the Treatment of Prisoners states:

*Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits.*<sup>59</sup>

The Grenada 17 have had limited access to the outside world. For example, they receive one sheet of paper per month, on which they are limited to writing on one side, in order to send written correspondence to the outside world. Similarly, they are allowed to receive only one piece of mail per month.

Conditions in Richmond Hill Prison fall far short of the minimum requirements established by the United Nations standard Minimum Rules for the Treatment of Prisoners. Such circumstances also violate the American Convention and the International Covenant on Civil and Political Rights.<sup>60</sup> The Inter-American Commission on Human Rights and the UN

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<sup>57</sup> IACHR *Donnason Knights v. Grenada*, Report No. 47/01, Case 12.028 (4 April 2001).

<sup>58</sup> IACHR *Rudolph Baptiste v. Grenada*, Report No. 38/00, Case 11.743 (13 April 2000).

<sup>59</sup> Standard Minimum Rules for the Treatment of Prisoners, Std. 37, *adopted* 30 August 1955 by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, UN Doc. A/CONF/611, annex I, ESC Res. 663C, 24 UN ESCOR Supp. (No. 1) at 11, UN Doc. E/3048 (1957), *amended* ESC Res. 2076, 62 U.N. ESCOR Supp. (No. 1) at 35, U.N. Doc. E/5988 (1977).

<sup>60</sup> *See, Antonaccio v. Uruguay*, UN Human Rights Committee, Communication No. 63/1979, UN Doc.

Human Rights Committee have both found that the Minimum Rules apply regardless of a state's level of development.<sup>61</sup>

## **Conclusions: fair trial guarantees have been denied to the Grenada 17**

The events of 19 October 1983 marked a tragic and brutal episode in Grenada's history. The killings no doubt traumatised many in the population of the small island state. The bodies of Maurice Bishop and the others killed have never been recovered, thereby adding to the grief of their loved ones. The fact that there is no comprehensive list (known to Amnesty International) of those killed or missing after the violence of October 1983 should also be addressed by the authorities.<sup>62</sup> To Amnesty International's knowledge, no compensation has ever been paid by the governments of Grenada or the USA to those injured or the relatives of those killed; this matter should be addressed by the respective governments as a matter of urgency.

Those accused of the killings should have been brought before a court and subjected to a fair trial under domestic and international laws and standards. However, the trial of the Grenada 17 manifestly failed to reach such standards. As the trial was unfair, it was inherently unreliable as a mechanism to establish the true facts of the events of 19 October 1983, as well as ensuring that justice was done.

Stressing the difficulty of finding a jury in Grenada that had not already formed an opinion on the conduct of the defendants, the 17 unsuccessfully filed a legal motion requesting the trial be moved to another country where the atmosphere was more conducive to a fair and impartial establishing of events and guilt.

The hostile atmosphere towards the 17 in Grenada continues to this day and reaches the highest level of authority. The current Prime Minister of Grenada, Dr. Mitchell, in a radio broadcast of 21 February 2002, was extremely critical of the decision of the Appeal Court to release three of the 17. Dr. Mitchell stated that the "judiciary cannot operate against the interests of society" and that the people of the country will have to be involved in such a major decision as it involves a security risk. Such arguments ignore that justice should not be conducted on the grounds of its popularity and that the very purpose of a court is to uphold a country's constitution even when such decisions may be opposed by the majority. The Prime

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CCPR/C/14/D/63/1979 (28 October 1981); *De Voituret v. Uruguay*, UN Human Rights Committee, Communication No. 109/1981, UN Doc. CCPR/C/21/D/109/1981 (10 April 1984). Article 7 of the ICCPR provides: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment" while Article 10(1) provides: "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."

<sup>61</sup> See, IACHR *Donnason Knights v. Grenada*, Report No. 47/01, Case 12.028 (4 April 2001) at para. 41; *Mukong. v. Cameroon*, UN Human Rights Committee, Communication No. 458/1991.

<sup>62</sup> Many of those killed were buried without ceremony in St. George's Cemetery, which is now overgrown with weeds.

Minister repeated his belief to the media that freeing the Grenada 17 was a decision “for the people of the country” in August 2003.

Amnesty International believes the trial of the Grenada 17 was fatally flawed and did not meet international standards. In line with international human rights standards, Amnesty International believes that the Grenada 17 cannot continue to be incarcerated on the grounds of a conviction that was obtained via a process that was in gross violation of international standards governing the fairness of trials.

The organization calls on the Grenadian authorities to establish an independent judicial review of the convictions of the Grenada 17 in the light of the irregularities documented above. This should review the proceedings within the framework of applicable human rights standards, covering all alleged irregularities from the moment of detention to the appeals process to date. The review should be empowered to recommend all appropriate judicial measures to remedy any proven irregularities, including the quashing of convictions deemed to be unsafe. It should be granted all necessary powers to obtain and consider all the available evidence, including evidence that has come to light since the original trial took place. The review should be undertaken by individuals of renowned credibility and independence with expertise in national and international human rights law.

If the Grenadian authorities prove unwilling to put into place a review of this nature, the only alternative action that would satisfy the demands of international human rights standards would be the release of the Grenada 17.