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Amnesty International is a worldwide voluntary activist movement that works to prevent some of the gravest violation of people’s fundamental rights. The main focus of its campaigning is to:

- free all prisoners of conscience. These are people detained anywhere for their beliefs or because of their ethnic origin, sex, colour, language, national or social origin, economic status, birth or other status - who have not used or advocated violence;

- ensure fair and prompt trials for political prisoners;**
- abolish the death penalty, torture and other cruel treatment of prisoners;**
- end extrajudicial executions and “disappearances”.**

Amnesty International is impartial. It is independent of any government, political persuasion or religious creed. It does not support or oppose any government or political system, nor does it support or oppose the views of the victims whose rights it seeks to protect.

State killing in the English speaking Caribbean: a legacy of colonial times

Introduction

Against the international trend away from the use of the death penalty, ¹ executions have increased in the English speaking Caribbean (ESC) in recent years. Guyana, Trinidad and Tobago, the Bahamas and St. Kitts and St. Nevis and St. Vincent and the Grenadines have all carried out executions in the last seven years. Jamaica, Antigua, Grenada, St Lucia, Dominica, Belize and Barbados all currently have condemned prisoners and continue to impose sentences of death.

“The forfeiture of life is too absolute, too irreversible, for one human being to inflict it on another, even when backed by legal process. And I believe that future generations, throughout the world, will come to agree.”

U.N. Secretary General Kofi Annan, upon receiving 3.2 million signatures of people from around the world seeking an end to executions, 12 September 2000.

The ESC states inherited, at the time of independence, both the death penalty as the mandatory penalty for murder, and many features of the death penalty system that had existed in the former colonial power, the United Kingdom (UK), during the early part of the twentieth century. The UK abolished the death penalty for ordinary crimes in 1965. Ironically, the UK - the former colonial power that introduced hanging to the region - is now viewed as “neo-colonist” by many in the region when it attempts to encourage the abolition of capital punishment.

¹The number of countries that have abolished the death penalty in law or in practice has steadily grown from 63 in 1981 to 109 in 2001. Only 28 countries carried out executions in 2000. For further information see *Death Penalty Developments in 2000*, available at www.amnesty.org

The use of the death penalty declined in most ESC countries during the 1970s. However, like the regions' influential neighbour to the north, the United States of America² (USA), executions resumed as a political response to public concerns about the alarming increase in violent crime.

Politicians in the ESC often point to executions in the USA as justification for their own use of the death penalty. It is ironic that nations comprising citizens predominately of colour should seek to justify their use of the death penalty by citing the USA, a country where capital punishment is administered in a racial manner disproportionately against ethnic minorities.³

The death penalty is one of Amnesty International's many human rights concerns in the region. Others include concerns are appalling prison conditions, including lack of adequate medical care, overcrowding and guard and inmate-upon-inmate brutality; police brutality and police killings in circumstances where the use of lethal force was not justifiable⁴; extrajudicial executions; and the return of asylum seekers to countries where they may be at risk of suffering human rights violations.

This paper seeks to answer the arguments put forward by the proponents of capital punishment in the region and examines the shortcomings in the administration of the death penalty in the ESC.

This paper primarily focuses on Jamaica and Trinidad and Tobago, the two countries with the largest death row populations in the region. However, details of other counties are given and the themes and problems illustrated in Jamaica and Trinidad and Tobago are prevalent in the other nations of the ESC.

The death penalty - an issue of fundamental human rights

The use of the death penalty is the ultimate in cruel, inhuman and degrading punishments.

²The USA did not carry out executions between 1967 and 1977. Between 1977 and 1985, 50 executions occurred. By 2000, executions were averaging 84 per year. It should be noted that executions are currently declining in the USA after public disquiet about the possibility of the execution of those innocent of the crime for which they were sentenced and evidence of racial bias in the use of the death penalty.

³For more details see: *USA: Killing with Prejudice: Race and the Death Penalty*, AI index AMR 51/52/99, published May 1999.

⁴For example, see *Jamaica: Killings and violence by police: How many more killings?* AI index AMR 38/003/01, published April 2001.

Many leaders in the ESC have claimed the death penalty is not a human rights issue. For example, in September 1999, the Prime Minister of Trinidad and Tobago, the Rt. Honourable Basdeo Panday, told the Organisation of American States (OAS): “Any attempt to portray Trinidad and Tobago as a state not committed to the promotion and protection of human rights is to misrepresent the facts. International law allows it [the death penalty] and it is a matter that falls squarely within the domestic jurisdiction of sovereign states.”⁵

Capital punishment cannot be described as being outside of the arena of human rights.⁶ Politicians would not contemplate describing torture - the hanging of someone by their arms causing excruciating pain for example - as not being a human rights issue. Therefore, logic dictates that hanging someone by their neck until dead does constitute a human rights abuse.

Amnesty International believes every execution to be an affront to human dignity and the ultimate in cruel, inhuman and degrading punishments in violation of Article 5 of the Universal Declaration of Human Rights.

Nor is the cruelty of the death penalty limited to the actual execution. Its unique horror - one that cannot be relieved by developing more “humane” methods of killings - is that, from the moment the sentence is pronounced, the prisoner is forced to contemplate the prospect of being put to death.

The effects of the inhumanity and cruelty of execution is not limited to the individual being killed. The relatives and friends of the prisoner also suffer untold anguish at the prospect of their loved one’s life being extinguished by the state (see the appendix of this report). However, the suffering of this section of society is ignored by politicians who advocate the death penalty, usually in the name of murder victims and their relatives.

As illustrated above, political leaders in the ESC have also constantly pointed out that the death penalty is not forbidden by international human rights laws. While this statement is factually accurate, it is fundamentally misleading. The development of human rights law - and the policies of inter-government organisations such as the United

⁵Quoted in the *Caribbean News*, 26 September 1999.

⁶For further information see *Human Rights v the Death Penalty*, AI publication index ACT 50/13/98, December 1998.

Nations (UN) - have steadily moved away from, and encourage abolition of, the death penalty.

Article 6 (Every human being has the inherent right to life) of the International Covenant on Civil and Political Rights (ICCPR) has been interpreted by the UN Human Rights Committee (the expert body that oversees the implementation of the ICCPR) as referring “generally to abolition [of the death penalty] in terms that strongly suggest... that abolition is desirable. The Committee concludes that all measures of abolition should be considered as progress in the enjoyment of the right to life...”

The UN General Assembly called for the scope of the death penalty to be “progressively” restricted with a view to eventual abolition (resolution 32/61, adopted in 1977). Similar resolutions have been passed by the UN Human Rights Commission in 1997, 1998, 1999 2000 and 2001. In all the resolutions the Commission expressed its conviction “that the abolition of the death penalty contributes to the enhancement of human dignity and to the progressive development of human rights.”

The anti death penalty community: working for abolition in a hostile atmosphere

The community working against the death penalty in the ESC, while dedicated, is small and faces regular physical threats and vilification in the media. Members of the public, often encouraged by political leaders, appear to equate opposition to the death penalty with being supportive of violent criminals. A letter typical of such an attitude appeared in the *Barbados Advocate*, stating:

“I will never cease to be amazed at the callous, uncaring, and unsympathetic attitude of those people fighting tooth and nail against capital punishment, for the depraved, brutal and sadistic murderers... What beats me is that I am yet to hear one of these persons who is fighting so hard for these characters [on death row] to express a word of pity, sympathy or human compassion for the victims or their families. All that seems to matter is that these inhuman monsters do not lose their own lives...I believe that these champions of wickedness are simply a carbon copy of the murderers themselves.”

Another article in the *Barbados Advocate* went as far as suggesting that those legally defending death row inmates should themselves be executed: “I am all for hanging those bloody condemned murderers on death row, and if possible, as an added bonus, some of the lawyers who defend them”.⁷

⁷“Looking for glory”, O.C Ward, 20 September 1996.

Such attitudes can manifest themselves into threats of violence. For example, in 1996, when campaigning against a scheduled execution, the Guyana Human Rights Association (GHRA) received telephoned threats of violence against one of its leading members. The caller instructed the staff member to “back off and stop intervening [in the executions]” or the caller would “go for him on the streets”. The threats followed a statement by the Guyana Police Commissioner giving the impression that the GHRA somehow sought to protect criminals from apprehension. The GHRA invited the Commissioner or the media to name one criminal the GHRA had attempted to prevent being arrested. To date, neither have replied to the challenge.



In July 1999, the prime minister of the Bahamas, Hubert Ingraham, made a speech giving his personal opinion that he hoped for the eventual abolition of the death penalty in the Bahamas. Ingraham was continually verbally attacked by callers criticising his opinion while on a radio program shortly after he made the comments. Other politicians attacked his statement as “foolish” and stated the population of the Bahamas was “entitled” to be upset with their prime minister.

The problems faced by the GHRA and Prime Minister Ingraham are typical of those opposing executions in the ESC. Abolitionists are seen as “on the side” of the criminal, when in reality they are trying to break the cycle of killing and lessen violence in society. Amnesty International is far from immune from such accusations. In September 2000, the Prime Minister of Jamaica, the Rt. Honourable P J Patterson, publicly accused the organization as being “preoccupied with the perpetrators of crime” and of having “insufficient” concern for the victims, stating “Human rights cannot be confined to the murderers and rapists and robbers... The innocent on which they trade also have human rights...”

Amnesty International does not believe that the human rights of those accused or convicted of crime are in conflict with the rights of the victims of violence, nor are such rights mutually exclusive. Society does not need to violate the rights of those suspected or guilty of crimes in order to reduce lawlessness. Quite the opposite is true, such violence is most likely to lead to an increase in crime.

As the South Africa Constitutional Court acknowledged in 1995 when it abolished the death penalty: "*it is only if there is a willingness to protect the worst and the weakest amongst us that all of us can be secure that our own rights will be protected*" (emphasis added).

Amnesty International -- as an organization working for the *victims* of human rights violations -- is sympathetic to *all* victims of violence and their families. The organization hopes that its campaign to halt human rights violations, including the death penalty, in the ESC, will lead to a reduction in the level of violent crime.

The Judicial Committee of the Privy Council

The Judicial Committee of the Privy Council (JCPC), which sits in the UK, is the final court of appeal for much of the ESC. An inheritance from colonial times, the JCPC was once the final court of appeal for the countries of the British empire. However, as the vast majority of those countries gained independence, the majority have ceased to have the JCPC as their final court of appeal. Eleven independent countries of the ESC have retained the services of the court.⁸

In recent years, the political leaders of the ESC have repeatedly stated their intention to replace the JCPC by establishing a Caribbean Court of Justice (CCJ), and have taken initial steps to do so.

Amnesty International acknowledges the right of sovereign countries to decide the legal structures appropriate for them, assuming the law is applied in a manner corresponding with international laws and standards such as the International Covenant on Civil and Political Rights.

⁸Antigua and Barbuda, the Bahamas, Barbados, Belize, Dominica, Grenada, Jamaica, St Christopher and Nevis, Saint Lucia, Trinidad and Tobago and Saint Vincent and the Grenadines. More information on the JCPC can be found at the Court's website: www.privacy-council.org.uk

The JCPC has played an active role in reviewing individual death penalty convictions and ensuring basic human rights standards have been met. Amnesty International fears that the motivation for establishing a Caribbean Court of Justice may be to allow executions to take place after lesser legal protections than those currently ensured by the JCPC. Such fears are based on attacks on the rulings of the JCPC by leading politicians such as the prime minister of Jamaica, the Rt. Honourable P J Patterson. Following the JCPC's commutation of the death sentences of six Jamaican death row prisoners in September 2000, Patterson accused the court of being influenced by anti death penalty sentiments: "...in any case involving capital punishment they [the JCPC] will bend the law...and find some way of ensuring capital punishment is not applied."⁹ Such line of argument ignores the fact that the Privy Council has allowed executions to proceed in the Bahamas and Trinidad and Tobago in recent times. The prime minister described the ruling as another "compelling" reason for the establishment of the CCJ.

In 1998, the Attorney General of Barbados, David Simmons, in an address to the Barbados Community College said the JCPC's 1993 decision in the case of *Pratt and Morgan*¹⁰ frustrated the desires of governments in the region to carry out the death penalty for murder in accordance with national laws, stating: "they [the JCPC] have infuriated populations who see their governments rendered virtually powerless by decisions of legal policy set for Caribbean countries by judges sitting in London and applying British and European notions."¹¹

Such arguments ignore that the JCPC has allowed numerous executions to proceed in the ESC, such as the hanging of ten men in Trinidad and Tobago in 1999.

The infliction of the death penalty as a motivation of the establishment of the CCA is strenuously denied by many of those seeking to see the court become a reality.

The CCA took a step closer to becoming a reality on 14 February 2001, when 11 ESC countries formally ratified an agreement to remove the JCPC as their final court of

⁹Quoted in "PM blasts Privy Council", *Jamaican Observer*, 18 September 2000.

¹⁰In *Pratt and Morgan* the JCPC ruled that executing a person who has spent a prolonged period under sentence of death violates the constitutional prohibition of inhuman or degrading punishment or treatment. In practice, the court has found anything over five years from the imposition of a death sentence to be prolonged and prisoners' death sentences have been commuted to a term of imprisonment after that period of time.

¹¹In truth the JCPC rules on the basis of the constitution of the country concerned and does not take "European values" into account.

appeal and replace it with the CCA. The new court is expected to commence hearing cases in 2003.

Amnesty International calls upon all those involved in the establishment of the CCJ to work to ensure the court is free from political interference and that it incorporates and upholds international laws and standards pertaining to capital punishment in all its rulings on death penalty cases.

Justifications for state killings: the deterrence of violent crime, “it’s the will of the people”, “it’s the law of the land”.

Politicians across the ESC primarily cite the above criteria when supporting use of the death penalty. Amnesty International does not accept any of the three reasons as being defensible positions for advocating executions.

“We are not dictators. We are democrats and the Prime Minister of Jamaica, P. J. Patterson, said in a speech to Parliament, June 1998.

Amnesty International also notes that many politicians have regrettably reversed their previous opposition to the death penalty when seeking election, presumably on the assumption that the majority of the population support its use and this would therefore make them more popular.

For example, the Prime Minister of Jamaica, P J Patterson, told an Amnesty International delegation that he had voted against capital punishment in 1979. Although he informed the delegation that he hoped to see a time when Jamaica would not have the death penalty, the prime minister has not made any public statements to this effect. Shortly after the meeting he told supporters at his party’s conference that despite their “pressure and condemning us” laws allowing the death penalty were “here to stay”.¹²

Prior to his appointment as Attorney General of Trinidad and Tobago, Ramesh Maharaj had been actively campaigning against the death penalty. In 1992, in an anti death penalty speech, Ramesh Maharaj was quoted as stating:

¹²“Hanging, anti-gay laws to stay - PM” *Jamaica Gleaner*, 17 September 2000.

“Hanging is irrevocable, which is one of the reasons it should not be resumed. The legal system is not without errors, it is not geared to protect the poor and the weak. As a lawyer, I see where many errors can be made because of poverty, because a person cannot afford a good attorney. Putting the prisoners to work so they can contribute financially to the victim's families would be more constructive than resorting to legal murder. The Government is committing murder under the guise of law. It is a retrograde step. Hanging must be an act of desperation by the Government at its inability to deal with the problem of crime.”

Ramesh Maharaj oversaw the execution of ten men during his spell as attorney general.

The death penalty as a deterrent to violent crime: an erroneous criteria for hanging

“We would be deluding ourselves if we were to believe that the execution of...a comparatively few people each year...will provide the solution to the unacceptably high rate of crime...The greatest deterrent to crime is the likelihood that offenders will be apprehended, convicted and punished. It is that which is lacking in our criminal justice system.” Statement made by the Constitutional Court of South Africa, when abolishing the death penalty as unconstitutional in 1995.

Politicians regularly justify support for executions by claiming the death penalty deters violent crime. For example, the ministry of the attorney general of Trinidad and Tobago wrote to Amnesty International in 1998 stating the government's belief that the death penalty was required for the “maintenance of law and order” and for society to “live in peace and security”.

There is no convincing evidence that capital punishment has any more deterrent effect on the levels of violence in a society than other punishments. On the contrary, the findings of many studies show executions to be a symptom - or even a cause - of violence, as opposed to a preventative measure.

It is a ludicrous proposition that violent criminals contemplate the results of being detected and would decide that risking being hung is not acceptable, whereas a long term of imprisonment would be. Criminals do not think they will be caught when commissioning a crime. Therefore, the best deterrent to violent crime lies in guaranteeing a high chance of capture and conviction, not harsher punishments.

Numerous studies in the USA - which along with China, Saudi Arabia and Iran accounted for 88 per cent of the world's known executions in 2000 - show the death penalty to fail in deterring crime more than other punishments. A survey of experts from the American Society of Criminology, the Academy of Criminal Justice Sciences, and the

Law Association showed that the overwhelming majority did not believe the death penalty is a proven deterrent to homicide.¹³

¹³*Deterrence and the Death Penalty? The Views of the Experts*, M. Radelet and R. Akers, 1995.

Studies in the US states of California, Texas, Oklahoma and countrywide have all come to the same conclusion.¹⁴ In 1997, the average murder rate in states with the death penalty was 6.6 per 100,000 population but only 3.5 in states that did not use the death penalty. These ratios remained when the states bordered each other, as in the case of Wisconsin (no death penalty, murder rate of 4 per 100,000) and Illinois (death penalty, murder rate 8.4 per 100,000).

In January 2000, the Attorney General of the USA, Janet Reno - the government official responsible for approving the seeking of a death sentence at federal level - stated: "I have inquired for most of my adult life about studies that might show that the death penalty is a deterrent. And I have not seen any research that would substantiate that point."

The above findings in the USA have also been substantiated worldwide by a study conducted for the UN Committee on Crime Prevention and Control in 1988 (updated in 1996). After reviewing extensive research findings on the relation between the death penalty and homicide rates, the study concluded that the evidence gives no positive support to the deterrent hypothesis.

"The death penalty will not put an end to violence. Stagnation of 27 women child bega organizations in the Philippines objected to the originality will production of the death penalty, rapists, in turn, will produce more victims. The death penalty will not arrest these violations. Rather, it will perpetuate the culture of violence. The death penalty will desensitize people to killing."

Abolition of the death penalty is sometimes followed by a prolonged drop in the homicide rate. Canada abolished the death penalty in 1976. In 1975, the murder rate was 3.02 per 100,000 head of population. Since abolition the rate of homicide has dropped steadily, reaching 1.76 in 1999. These statistics are in contrast with those in the US state of Texas, which accounts for a third of all executions in the USA. Texas experienced a drop in crime of 5.1 per cent between 1995 and 1999, a period during which it executed more prisoners than any other state. However, this compared with a national drop in crime of 10 per cent, almost twice that of Texas.

At least one study has found that executions coincided with a marked increase in the rate of homicide. An analysis of monthly homicide rates in New York, USA, between 1907 and 1963 - a period when New York State was the country's leading executor in

¹⁴For further information, visit the web site of the Death Penalty Information Center, www.essential.org/dpic/deter.html

terms of numbers - found that there had been, on average, two additional homicides in the month after an execution.¹⁵

The death penalty as “the will of the people”.

It is undoubtably true that the death penalty enjoys popular support across the ESC. Opinion polls show the majority of citizens favour the use of capital punishment.

“It is worth reiterating that taking away human life by
Torture by the British State, Foreign and Innocent
People was the Office, speaking in the UK establish
a debate through we sympathize with the Caribbean,
June 1999. American Governments, we fundamentally disagree
that capital punishment is the answer.”

¹⁵New York State Coalition for Criminal Justice, Report 6.

Politicians constantly refer to the popularity of the death penalty when advocating its use. For example, the Jamaican Minister of National Security recently stated, when advocating a resumption of hanging: “The will of the Jamaican people must be regarded and this will form the basis of how the government acts”¹⁶ However, such politicians would not allow other popular views, the implementation of which would constitute a human rights violation or damage the well-being of the state, to influence the way they govern.

Such arguments also ignore the often fickle swings in public opinion. If a simple majority of opinion against the death penalty is all that is needed to achieve its abolition, this may well be within reach. Opinion polls have shown that arguments against the death penalty can be persuasive. In July 2000, an opinion poll conducted for the *Jamaica Observer* found that support for the death penalty had dropped from around 85 per cent to 65 per cent.¹⁷ The number of people who believed the death penalty did not act as a deterrent to violent crime had doubled from previous polls to 35 per cent.

Amnesty International recognises the right of citizens to create laws via their elected representatives. However, such laws must be formulated within the boundaries of respect for human rights. History is littered with human rights violations that had the support of the majority but in modern times are looked upon with horror. Slavery, racial segregation and lynching all had widespread support in the societies where they occurred but constituted gross violations of the victims’ human rights.

Amnesty International delegates and members have had numerous discussions regarding the death penalty with citizens of many ESC countries, leading the organization to conclude that support for the death penalty has two foundations. Motivation for supporting the death penalty primarily comes from a fear of crime, the most common expressed criteria being “we must do something [about violent crime]”. Second is an understandable anger at those who harm innocent members of society. Crime has reached epidemic proportions in many ESC countries, with almost no citizen’s life left unaffected.

In Jamaica, 472 people were murdered in the first six months of 2001. In a population of 2.6 million, this is one of the highest per capita murder rates in the world. News reports in many islands carry daily accounts of heart breaking murders of innocent men, women and children.

¹⁶Quoted in “Hanging deadlock - Unless Jamaican Constitution is changed” *Jamaican Gleaner*, 22 June 2001.

¹⁷“Support for hanging declines”, *Jamaican Observer*, 7 August 2000.

Under such conditions, it is understandable that the population looks to their political leaders to take decisive action, and expresses anger at those guilty of brutal crimes. Amnesty International believes politicians should play a leadership role based on a human rights stance in opposing the death penalty and explaining to their constituents why such actions cannot be undertaken by the state.

Executions as “the law of the land”

Amnesty International also believes that political leaders cannot abdicate their responsibility for committing a human rights abuse by stating they are simply carrying out the law of the land. Such simplistic statements have been made on numerous occasions. For example, in 1998 the former prime minister of Trinidad and Tobago (under whose leadership the illegal execution of Glen Ashby occurred - see page 22 - and who was then the leader of the official opposition), Patrick Manning, stated “[t]he PNM [People’s National Movement] supports hanging. It is the law of the land and that is that”.¹⁸ Numerous laws exist across the globe that allow for human rights abuses to be carried out with impunity by the authorities. In 2000, Amnesty International documented prisoners of conscience - individuals imprisoned for their non-violent beliefs - in 63 countries, the majority of whom would have been incarcerated under those countries’ laws. Apartheid being the law of South Africa did not make the subjugation and abuse of the country’s black and coloured population any less of an abuse of human rights. Politicians put themselves forward for election for the very purpose of introducing new and changing existing laws, therefore the argument that they are powerless to change the laws governing the country’s criminal justice system are not valid.

The ever present danger of executing the innocent

“If statistics are any indication, the [US] system may well be allowing some innocent defendants to be executed.” United States Supreme Court Justice Sandra Day O’Connor, 2 July 2001.

¹⁸Quoted in *The Barbados Advocate*, 2 September 1998.

Any jurisdiction employing capital punishment runs an inherent risk of executing those innocent of the crime for which they were condemned. Numerous countries have released prisoners from death row after newly discovered information exonerated them. For others, the information came too late.¹⁹ The USA continually struggles with the embarrassment of releasing men and women it deemed so positively guilty that it felt the necessity to attempt to judicially kill them.²⁰ Others went to their deaths despite grave doubts concerning their guilt.

ESC countries continue to risk the execution of the innocent. Although very few politicians will admit to the possibility of the innocent being killed (presumably for fear of lessening the popularity of executions and thereby their political advantage) condemned prisoners have been exonerated in the ESC. For example, Augustus John was released from death row in Grenada after his appeal was upheld in July 2001. John was released after one of the main prosecution witnesses retracted his testimony, alleging that he had only implicated John for murder after being threatened and beaten by police officers, and that he was actually out of the country when the crime occurred. The girlfriend of John's co-defendant, Andre Bennett - whose conviction was also overturned - testified in court that: "Someone did frighten me to give evidence" and that she had been detained by police, while four months pregnant, for five days in connection with the murder. Both John and the witness maintained that they had only signed a confession or statement after being beaten, electrocuted and threatened with death by police officers.

Barrington Osbourne was freed from Jamaica's death row in February 1998 after the Court of Appeal overturned his conviction. The court ruled that the identification of Osbourne as the murderer was faulted after defence lawyers produced evidence showing the main witness's testimony to be "clearly unreliable and weak". Immediately after the trial, the prosecutor had voiced concerns about the police investigation into the murder, describing it as deficient.

¹⁹ In 1952, the United Kingdom executed Mahmood Hussein Mattan after he was found guilty of murder in a trial strongly tainted with racism. In 1998, UK courts posthumously overturned the conviction after new evidence was presented.

²⁰ To date, 98 men and women have been released from the death rows of the USA, 20 of them since 1999. On average, they spent 7.5 years on death row before being exonerated. For more information, see *Fatal Flaws: Innocence and the Death Penalty*, AI index AMR 51/69/98, published November 1998. Also see the website of the Death Penalty Information Center: www.deathpenaltyinfo.org

The convictions of those on death row in the ESC are constantly overturned. In 2001, one law firm had ten of its clients' convictions for capital murder quashed on appeal.²¹ Despite the findings of the appeal courts that numerous convictions were obtained in violation of the laws of the country concerned, Amnesty International knows of no politician in the ESC who advocates stronger legal protections for those facing capital trials.

Other inmates who claimed innocence were not so fortunate as those exonerated while awaiting death. On 13 February 1995, Douglas Hamlet was executed in St. Vincent and the Grenadines despite concerns around his guilt. Hamlet was convicted solely upon the evidence of a 14-year-old identification witness who claimed to have seen him from a distance of 150 to 220 yards (125 to 184 metres).

Numerous death row inmates across the ESC have been convicted on eyewitness testimony. However, such eyewitness testimony is notoriously unreliable when the individuals concerned did not know each other prior to the crime. For example, in the USA Jennifer Thompson identified and testified that she was 100 per cent certain Ronald Cotton was the man who raped her at knife point. Cotton received a life sentence. After 11 years, DNA test proved beyond doubt that the real attacker was Bobby Poole and Cotton was freed. At Cotton's appeal court hearing, Thompson testified that she had never previously seen Poole.²²

In Trinidad, at least one prisoner was hung despite the discovery of last minute evidence that may have cast doubt upon his guilt but was not put before the courts by the government.

On 5 June 1999, Russell Sankerali was hung in Port-of-Spain. He had been convicted, along with eight other men know as the "Chadee" gang, of the murder of the Baboolal family. One of the two main witnesses against the men, Clint Huggins, was also involved in the murders but made statements incriminating the others in return for immunity from prosecution. (Huggins left his protective custody on 20 February 1996 and was murdered that night.)

²¹Source: Simons, Muirhead and Burton, annual report for 2001.

²²"I was certain, but I was wrong". By Jennifer Thompson, *New York Times*, 18 June 2000. Thompson was writing to oppose the execution of Gary Graham, who was put to death in Texas on 22 June 2000, despite serious concerns about his guilt. He had been convicted on the basis of the disputed testimony of a single witness. Also see, *Nevada's planned killing of Thomas Nevius*, AI index AMR 51/001/2001, published March 2001.

During an interview with Major General Ralph Brown (the army officer responsible for protecting Huggins) Huggins made statements indicating that Sankerali may have been unaware that the others intended to commit murder on the night of the crime. In the taped interview, Huggins states: "There is... two guys who is involved in this matter that not really linked to the whole thing in any way. That is Lolly... The other guy is...Russell Sankerali. He drove the car too but he didn't go and partake in anything. There are just fellas who lime [laze] around and that kind of thing." Brown sent a copy of the interview to the Prime Minister.

This account would corroborate Sankerali's own version of events. Claiming he was unaware the gang intended to commit murder that night, that he did not witness the killings and was therefore innocent, Sankerali stated: "At no time I knew (sic) about any plan to kill anybody nor was I party to such plans."

The other main prosecution witness, Levi Morris - who was also involved in the murders but testified against the others in return for leniency - did not name Sankerali as one of the eight men given weapons or present when the plan was discussed during his trial statements.

On the eve of the execution, Brown - perturbed that this evidence had not been discussed openly before any court - contacted the Prime Minister regarding the tape. The Prime Minister instructed Brown to meet with the Attorney General and present the tape to him, which Brown did. The Attorney General then called a meeting of the Prime Minister, the Director of Public Prosecutions, the Minister of National Security and himself. The men then played the tape and unilaterally decided that its content did not contradict the prosecution's version of the crime and therefore did not cast doubt on Sankerali's guilt.

Amnesty International is not in a position to enter into conjecture as to whether Russell Sankerali was involved in the murders or was simply duped into driving a car for men he had no idea were about to commit such an appalling crime. However, the organization is appalled that high-ranking government officials obtained evidence that cast doubt on the prosecution's version of events and that had not been examined by the courts, and decided to allow the execution to proceed. The appropriate action of the Attorney General would have been to notify Sankerali's lawyers and the courts of the tape, to allow them to make the decision as to the evidence's impact upon the case.

This was not the first time Trinidad and Tobago had carried out an execution despite doubts around the individual's guilt. In 1971, Kisoan Ramnanan was hung despite his possible innocence. At his first trial, 11 jurors voted that Ramnanan was not

guilty. However, at his second trial - where he was represented by a less experienced lawyer - the jury found him guilty.²³

Beating and ill-treatment of criminal suspects to coerce confessions commonplace

Over recent years Amnesty International has repeatedly received credible reports from the ESC region of the beating of criminal suspects by police officers in order to produce coerced confessions.²⁴ Such practices, as well as being gross violations of the individual's human rights, significantly increase the chances of innocent persons being sentenced to death on the strength of their erroneous confession.

For example, Joseph Reyes was freed on 16 May 2001 in Trinidad after a judge found that his confession was extracted after ill-treatment. Reyes was held handcuffed for eight days and was not allowed to call a lawyer, was denied water and toilet facilities and was given only one meal per 30 hours. He also alleged that he was beaten. His mother was unaware of his whereabouts and attempted to report him as a missing person, only to be turned away at the police station that was holding him. A local newspaper commented: "The issue of police brutality against arrested persons and not informing them of their basic constitutional rights is very real".²⁵

Such statements are supported by the regular overturning of other cases on the grounds of coerced confessions. On 8 June 2000, Darren Baptiste's conviction in Trinidad and Tobago was overturned by the JCPC. Following his arrest and detention, Darren Baptiste had signed a written confession in a police station on 24 January 1989, despite having no lawyer present and despite having difficulties with both reading and writing. Police evidence confirmed that he had been denied his constitutional right to be advised of his right to have a lawyer, to speak to one and to have one present when he was being questioned. At his trial, his defence objected to the statement on the grounds that, according to Baptiste, the police officer had promised him that he would be released if he made a statement. However, in spite of this, the confession was admitted by the judge following a *voir dire* (trial within a trial). In quashing his conviction and sentence, their Lordships stated that they were influenced by the failure on the part of the police to inform Darren Baptiste of his constitutional right to a lawyer. In their judgement they noted

²³For further information see *Trinidad and Tobago: Trying to execute regardless....* AI publication index AMR 49/01/94, published April 1994.

²⁴Also see *Jamaica: Killing and violence by police: How many more victims?* AI index AMR 38/003/01, published April 2001, page 35 *Torture of criminal suspects and witnesses.*

²⁵"Part of culture for cops to beat arrested persons, says former judge" *Trinidad Express*, 26 May 2001.

that: “it is of particular importance where the person is suspected of a capital offence that his rights be fully observed and the significance of any infringement be considered by the judge.”

In Jamaica, Everol Lawrence was freed after the JCPC overturned his 1995 conviction and death sentence for murder. His confession was entered into evidence during his trial. However, Lawrence alleged that he had been forced to sign blank pieces of paper after the police had tortured him by sticking pens into the gunshot wounds on his back and that he had complained of his treatment to the Justice of the Peace who had attended the police station. The Justice of the Peace testified at trial that Lawrence had made the statement voluntarily and had not complained of any ill-treatment. Since the trial, defence attorneys working for Lawrence discovered that the Justice of the Peace had been charged on six counts of fraud, one count of forging documents, and two counts of conspiracy to pervert the course of justice. His commission as a Justice of the Peace had not been renewed. The same charges were also filed against at least one of the police officers involved in Lawrence’s case.

Executions in the ESC: damaging the region’s relations with the rest of the world?

Amnesty International *does not* “I don’t want a moratorium on the death penalty. I advocate economic or other boycotts ~~Desant the Tribunal of the Caribbean for the Cayman, speaking about the US matter towards human rights in Nevada, USA in the 2000~~ of countries on the grounds of that nation’s human rights record. Since the organization currently has concerns -- of varying degrees -- in the vast majority of the world’s countries it would be impossible to decide which nations should be boycotted.”

However, the repugnance felt by nations about the death penalty can affect their attitude in matters concerning their inter-government relations, international trade and the donation of aid. The sanctions may not be overt or acknowledged. An editorial on capital punishment in the Bahamas newspaper *The Tribune* (dated 12 January 2000) stated:

“There have been European diplomats on courtesy calls, who in the privacy of our office, have put the question quite bluntly. The opinion in the European Community is that all grants, loans and aid of any kind should be withheld from any country that has capital punishment on its books. And we can tell you they are serious. To them capital punishment is barbaric.”

The editorial cited an announcement by the Swedish Prime Minister, made at an inter-governmental meeting, urging the European Union to place the abolition of the death penalty high on the agenda as a pre-condition for enhancing trade and investment in the Caribbean.

The link between human rights and relations with ESC countries was also acknowledged by UK member of parliament Chris Mullin in June 1999. Speaking in a debate addressing the use of the death penalty in Jamaica and Trinidad and Tobago, Mullin stated:

“When the high commissioner of Jamaica tells me that his country has a sovereign right to do what it wants, I accept that is so. However, we have a sovereign right not to provide Jamaica with aid, trade preferences and debt relief. The Government has rightly committed to an ethical policy, seeking to forge a clear connection between the countries that we choose to help and the degree of democracy and civilised behaviour in them. That principle should be applied forcefully in the Caribbean.”²⁶

The European Union has been increasingly critical of those countries that carry out executions and now has a policy of blanket opposition to the death penalty.²⁷ For example, in September 2000, the President of the European Union, Mrs Nicole Fontaine, wrote an open letter to the people of the USA calling for an end to executions. The letter stated:

“Within the European Parliament, which is the democratic voice of the 370 million Europeans who now make up the European Union, the vast majority of Members, irrespective of nationality and political persuasion, cannot understand how it is that the United States is now the only major democratic state in the world not to have renounced the use of the death penalty... I am therefore taking the liberty of addressing this open letter to you, not in order to preach to you but simply to engage in an open and frank dialogue, in keeping with the bonds of friendship which exist between Europe and the United States.

“A shared understanding has spread throughout Europe, removing any remaining doubts. This new awareness, which I now call upon the American people to embrace, is based on the following considerations: no objective research has ever shown that the death penalty has acted as a deterrent against serious crime and in none of the European countries that have abolished the death penalty in recent years has such crime increased;...finally, too many of those who have been executed have subsequently been found to be innocent and in those cases it is

²⁶Quoted in *Hansard*, 23 June 1999, in a debate on the use of the death penalty in the Caribbean following the execution of nine prisoners in Trinidad and Tobago.

²⁷For further information see <http://www.eurunion.org/legislat/DeathPenalty/deathpenhome.htm>

society itself, by the very laws that it has established, which has committed an irretrievable crime.”

Members of the United States’ diplomatic community have also made clear their belief that the country’s use of the death penalty is harmful to its international relations. Writing in the *Washington Post*, Felix Rohatyn, a former US ambassador to France stated:

“[America’s] moral leadership is under challenge because of two issues: the death penalty and violence. During my nearly four years in France, no single issue evoked as much passion and as much protest as executions in the United States.”

In October 2000, nine former US diplomats signed a statement calling for North Carolina not to execute Ernest Paul McCarver, an adult with a demonstrated IQ of 67, as the execution:

“Will strain diplomatic relations with close American allies, provide diplomatic ammunition to countries with demonstrably worse human rights records, increase U.S. diplomatic isolation, and impair other United States foreign policy interests.”

Further evidence of the damage a country’s use of the death penalty can inflict to its international relations is illustrated by the decision, in June 2001, of the parliamentary assembly of the Council of Europe, the continent’s largest human rights organization, to pass a resolution saying that the United States and Japan should have their observer status revoked unless they make “significant progress” toward abolishing the death penalty by 2003. Abolition of the death penalty has been a condition of membership since 1994.

The use of the death penalty is also a hindrance to the extradition of suspected criminals from non-executing countries to those that have the death penalty. In May 2001, the South African Constitutional Court ruled that the South African government illegally handed over Khalfan Khamis Mohamed, one of the four men convicted for the 1998 bombing of two American embassies in Tanzania and Kenya. The Court held that the government violated Mohamed’s constitutional rights by extraditing him without first obtaining assurances from US authorities that he would not be subject to the death penalty if convicted. “The fact that Mohamed is now facing the possibility of a death sentence is the direct result of the failure of the South African authorities not to secure such an undertaking,” said Judge Arthur Chaskalson, the Court’s president. Another suspect, who will be tried later this year, will not face capital prosecution because the German government secured assurances from the US that if it extradited Mamdouh Mahmud Salim to the US, he would not be subject to the death penalty.

Numerous countries have obtained assurances from the US authorities regarding guarantees that the death penalty will not be sought for criminal suspects, including France, the UK, Mexico and Canada. Italy has refused to extradite a murder suspect to Florida even after obtaining guarantees that he would not be executed, preferring to put the suspect on trial domestically. Such actions are not solely limited to the US: both China and the Philippines have been requested to guarantee the death penalty will not be imposed before an extradition could go ahead.

The use of the death penalty in violation of international laws and standards

International laws and standards do not forbid the use of the death penalty. However, such laws and standards are explicit in only allowing an execution to be carried out after the most meticulous and thorough legal proceedings. The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has stated that: “proceedings leading to the imposition of capital punishment must conform to the highest standards of independence, competence, objectivity and impartiality of judges and juries, as found in the pertinent international legal instruments. All defendants...must benefit from the services of a competent defence counsel at every stage of the proceeding...”²⁸

Authorities in the region have acknowledged that international standards and laws must be adhered to in relation to the death penalty. For example, the attorney general of Trinidad and Tobago is on record as stating:

“...Treaty and customary law do provide certain safeguards and restrictions that must be observed by states wishing to implement the death penalty... In Trinidad and Tobago, for example, all the fundamental minimum international standards associated with the death penalty, binding on states by virtue of their membership of the community of nations, are complied with under domestic law.”

Despite such statements, numerous ESC countries have imposed death sentences and carried out executions after legal proceedings that are clearly in violation of international law and standards.

²⁸Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, UN Doc. A/51/457, 7 October 1996, at para. 111. For further information on international legal standards governing trials see Amnesty International’s *Fair Trials Manual*, AI index POL 30/02/98, ISBN: 0-86210-277-4.

In 1994, Trinidad and Tobago executed Glen Ashby despite his case still being before the appeal courts. The hanging proceeded despite assurances given by the then Attorney General, Keith Sobion, to the Court of Appeal that the execution would not go ahead while proceedings to obtain a stay were in progress. The JCPC issued a stay of execution for Ashby at approximately 6.30 am, in the belief that the execution was scheduled for 7 am. However, the authorities had brought forward the execution and Ashby was hung at 6.42 am. The Court of Appeal was scheduled to hear the case at 6 am and had ordered the Registrar, who would be required at the prison for the execution, to attend the court, thereby preventing the hanging taking place. However, the Registrar, claiming he was working on the instructions of the Attorney General, went to the prison and oversaw the hanging.

Capital punishment shall not be carried out pending any appeal or other recourse procedure or other proceeding relating to pardon or commutation of the sentence.” Article 8, Safeguards guaranteeing protection of the rights of those facing the death penalty (ECOSOC Resolution 1984/50).

In September 2000, an Amnesty International delegation met with the leader of the official opposition, Patrick Manning, who was prime minister at the time of Ashby’s execution, and raised the organization’s concerns with him. Manning vehemently denied that Ashby’s execution was in violation of international law.

Trinidad and Tobago has continued to execute defendants before the completion of the international judicial process. In July 1999, Antony Briggs was executed before the Inter-American Court of Human Rights had an opportunity to consider his appeal.

The authorities have strenuously denied the execution was in violation of international law. In October 2000, the government published a detailed response to that year’s Amnesty International annual report entry on Trinidad and Tobago, *The Facts of the Matter*, in which they stated:

“According to Amnesty International "the 10th man [Briggs] was hanged in July in violation of an order of the Inter-American Court of Human Rights not to execute him until such time as the court has considered the matter". This statement is completely erroneous. The true facts surrounding the execution of Anthony Briggs show clearly that the Inter-American Commission on Human Rights had not referred the case of Anthony Briggs to the Inter-American Court of Human Rights.”

This line of argument ignores the fact that the Inter-American Court of Human Rights had made an order on 25 May 1999 to preserve Anthony Briggs life until "such time as the court has considered the matter".

It is also a fact that Trinidad and Tobago was subject to the jurisdiction of the Inter-American Court and therefore bound to comply with the order.

Amnesty International's statement that Anthony Briggs was executed in violation of an order of the Inter-American Court is supported by the Inter-American Commission on Human Rights' letter to the government on 27 July 1999, the eve of Anthony Briggs execution, which states:

“To execute Mr Briggs would directly contravene the explicit terms of the Inter-American Court's binding order and thereby constitute a flagrant breach of Trinidad and Tobago's international legal obligations.”

Taking life on the cheap: inadequate provision for legal defence in death penalty cases

Many Caribbean nations are experiencing harsh economic conditions. Therefore, financial resources for vital services such as health, education and law enforcement are severely limited. The same is true for legal services. Numerous individuals have faced death or been executed without adequate legal representation and, in some extreme cases, without any representation at all.

“The system is really unfair when you is a nobody, Denise Baptiste, former death row inmate from Trinidad and Tobago, whose trial was found to have been unfair by the ICPC and his conviction overturned in June 2000. Baptiste had signed a confession without the presence of a lawyer and despite the fact that he could not read or write.

The legal resources afforded those facing the death penalty are woefully inadequate and are therefore in violation of international standards of justice. For example, Principle 3 of the United Nations' Basic Principles for the Role of Lawyers requires governments to provide sufficient funding and other resources to provide legal counsel for the poor.²⁹

While attorneys are provided to indigent defendants by the state for the trial and for initial domestic appeals, ESC countries fail to adequately provide legal aid for the entire appeals process. To allege violations of their constitutional rights, condemned

²⁹Numerous other provisions in international laws and standards also set standards for the quality of legal representation. The ICCPR (Article 1(3)(b), states: In order to ensure that the right to defence is meaningful, anyone accused of a criminal offence and their lawyer, if any, must have adequate time and facilities to prepare a defence. For further information see *Fair Trials Manual*, AI publication index POL 30/02/98, ISBN 0-86210-277-4, published December 1998.

inmates *may apply* for legal aid in Trinidad and Tobago, which is then provided at the discretion of the court. Therefore, legal motions to ensure that the constitutional rights of a death row inmate have been protected are seen by the state as a privilege and not a right. *No other ESC country provides legal aid for defendants' constitutional motions.*

Such lack of automatic provision of legal aid has been found to be in violation of international law. The Inter-American Commission on Human Rights ruled in the case of *Donnasson Knights*, sentenced to death in Grenada in 1995, that:

“By failing to make legal aid available to Mr. Knights to pursue a Constitutional Motion in relation to his criminal proceedings, the State has effectively barred recourse for Mr. Knights to a competent court or tribunal in Grenada for protection against acts that potentially violate his fundamental rights under Grenada’s Constitution and under the American Convention [of Human Rights].”³⁰

In the vast majority of cases, those facing the hangman are forced to rely on the goodwill of lawyers willing to donate their services free of charge or to have to forgo such appeals to higher courts such as the JCPC, a court that has found the standards of justice in the ESC wanting on numerous occasions.

No ESC country provides funding for appeals to international human rights courts such as the United Nations Human Rights Committee, thereby reducing those countries’ commitment to these valuable international human rights protection mechanisms to mere public relations exercises.

Both the UN Human Rights Committee and the Inter-American Court of Human Rights have found the legal assistance provided to those facing the death penalty to be inadequate and therefore in violation of international law.

On 13 February 1995, St. Vincent and the Grenadines executed three men, two of whom - Franklin Thomas and David Thomas - were executed despite their not completing the appeals process; an act in violation of international law. Neither men had sufficient funds to employ an attorney to appeal their convictions to the JCPC. Their death warrants were read to them on the afternoon of Thursday 9 February for an execution early the following Monday morning. The world outside of the island did not learn of the execution warrant for Thomas and Thomas until the appeal of the third man

³⁰*Donnasson Knights*, report No. 47/01, case 12.028, 4 April 2001, Annual Report of the Intern-American Commission on Human Rights 2000, volume II.

was denied on the Saturday afternoon. Neither of the men were able to appeal their convictions or death sentences before their execution.

It is common practice in the ESC for execution warrants to be read on a Thursday afternoon for execution the following Monday. This leaves only one full working day for appeals to be launched, assuming the prisoner manages to get word to the outside world of his impending death.

In Guyana, Abdool Saleem Yasseen was not legally represented for the first four days of his trial in 1992. As a result of this, and because of evidence suggesting that police notebooks and diaries that may have contained evidence in his and his co-defendant's favour went missing, thereby impeding the defence of Yasseen and his co-defendant Noel Thomas, the UN Human Rights Committee ordered the men to be released in 1998.

The Guyana government refused to implement the ruling and has attempted to execute both men in recent times. In December 1998, the authorities withdrew from Optional Protocol 1 of the ICCPR, and re-acceded with a reservation precluding condemned prisoners from appealing to the HRC (see page 32).

Most ESC countries place a cap upon the fees paid to lawyers for defending indigent defendants in capital trials. The amounts payable are usually so limited as to severely effect the ability of the attorney to complete adequate and thorough investigation and preparation for their clients' defence.

In recent times, Trinidad and Tobago has increased its provisions for legal fees from its previously pitifully low allowances - a development welcomed by Amnesty International. Under the Legal Aid and Advice (Amendment) Act, enacted in July 1999, lawyers in capital cases can receive a minimum of TT\$7,500 and a maximum of TT\$10,000 (approximately US\$1,250 and US\$1,660 respectively). Amnesty International believes such fees are still too low to allow the attorney to be sufficiently compensated if they are to adequately investigate the case, prepare the defence and appear in court. The organization fears that many attorneys have taken advantage of the fact that the quicker the defence is prepared and the faster the trial, the higher the pro rata fee.

Trinidad and Tobago has also allowed those facing the death penalty to enter the judicial system without legal representation. Amnesty International has received numerous reports such as that of Sean Parris, who appeared without legal representation before San Fernando Second Court on 20 June 2000 for a preliminary hearing charged with a crime that carries a mandatory death sentence,. Prior to the hearing Parris was reportedly held in a top-security prison while police interrogated him without a lawyer present. Parris was subsequently convicted and sentenced to death.

Politicians in ESC countries have complained of the cost of implementing the death penalty. The attorney general of Trinidad and Tobago, Ramesh Maharaj, stated at a public meeting in August 1998 that the government had spent TT\$20 million (approximately US\$3.3 million) since 1973 on British lawyers to represent the government during condemned inmates' appeals to the JCPC. Maharaj told his audience and the assembled press:

“You have to decide whether you want to spend monies and time...to retain lawyers in England. Monies which could be used in the hospital, for the roads, for education and you want those kinds of money spent to determine whether a prisoner should...get shampoo or not?”³¹

Amnesty International agrees with the attorney general that these government funds could have been put to a much more constructive use than judicially taking lives. However, the organization is appalled at his simplistic representation of the appeals process.

The reference to prisoners and shampoo is referring to appeals by inmates against their execution based on the allegation that the conditions on death row amounted to cruel, inhuman and degrading treatment. Such appeals referred to a prisoner's right to reasonable hygiene. The attorney general will be aware that this was only one issue in the many allegations of violations of the constitution of Trinidad and Tobago raised by prisoners on appeal over the years. As illustrated elsewhere in this paper, the JCPC found the judicial system of Trinidad and Tobago wanting in numerous cases and has overturned many convictions. For the attorney general to suggest to the general public that condemned inmates only appeal on frivolous grounds is misleading in the extreme and can only damage the cause of justice.

³¹Quoted in “T' dad gov't spends millions on legal battles with killers”, *The Daily Observer*, 29 August 1998.

The attorney general of Barbados has also publically complained about the high cost of employing lawyers to represent the State and indigent defendants. Speaking in a parliamentary debate, David Simmons informed his colleagues that it had cost UK£58,000 (approximately US\$84,000) in legal fees to have the appeal of two death row inmates heard. The attorney general announced plans to severely limit the amount available for defendants facing death: "I have decided that in future we will pay £1,000 and no more... The state is now calling the tune. I am going to help but only a certain part of the way."³² The attorney general did not expand on how indigent condemned prisoners were expected to make up any shortfall in their requirements to mount adequate appeals to ensure their rights had been observed before their lives were taken.

In Jamaica, the legal fees available for a capital trial are limited to J\$100,000 (approximately US\$2,200). This is despite the fact that proceedings can become protracted. For example, brothers Kenneth and Floyd Myrie were arrested, charged with murder and remanded in February 1996 but were not brought to trial until October 2001 (Kenneth was convicted and sentenced to death, Floyd was acquitted and released). Such delays are in violation of international standards, including the International Covenant on Civil and Political Rights. The Human Rights Committee had previously ruled on another case in Jamaica that a delay of 16 months was a violation of the right to be tried within a reasonable time or released.³³

Inadequate funding for lawyers representing indigent defendants is a severe impediment to acceptable levels of due process and often leads to appalling standards at trials. For example, in March 2001, Anne Marie Boodram, who had been under sentence of death in Trinidad and Tobago, was freed by the JCPC. Boodram had been tried, convicted and condemned twice for the murder of her husband. At the first trial the judge ruled that statements Boodram made after she alleged she had been beaten and raped by police officers should not be allowed into evidence. However, some evidence relating to those statements was heard by the jury, resulting in the Court of Appeal concluding that the defendant "may not have received a fair trial" and overturning the conviction.

The JCPC found that the performance of the attorney provided by the state at the second trial "reveals either gross incompetence or a cynical dereliction of the most elementary professional duties" and that it was "the worst case of the failure of counsel to carry out his duties in a criminal case that their Lordships have come across".

³²"A.G. GETS TOUGH", *Barbados Advocate*, 23 March 1996.

³³*McLawrence v. Jamaica*, UN Doc. CCPR/c/60/D/702/1996.

In general, no legal aid provisions in the ESC allow for funding for defence attorneys to hire experts to examine ballistic, handwriting or any other types of forensic evidence, or for the hiring of psychologists or psychiatrists to testify regarding mental health matters.

The imposition of the death penalty on those suffering from mental retardation or mental illness

The UN Economic and Social Council (ECOSOC) adopted, in 1984, the *Safeguards Guaranteeing Protection of the Rights of those Facing the Death Penalty*, which protected the insane from execution (safeguard 3).³⁴ In 1989, ECOSOC clarified that Safeguard 3 includes the elimination of the death penalty for “persons suffering from mental retardation or extremely limited mental competence, whether at the stage of sentence or execution.”

The laws and administration of the death penalty in the ESC do not provide sufficient safeguards to meet the requirements of the ECOSOC resolutions. No ESC countries’ constitutions expressly prohibit the execution of the mentally retarded or the mentally ill. However, lawyers are allowed to argue at trial that their client is not fit to plead because of their mental health. Attorneys can also produce medical evidence to show that their clients were suffering from an abnormality of mind at the time of the offence as grounds of a defence of diminished responsibility or in extreme cases insanity.³⁵

The Common Law does prohibit the execution of the insane. If it can be shown that the person is insane immediately prior to their execution, there would be legal avenues open to that individual. However, a mental health evaluation prior to the reading of a warrant for execution is not mandatory. In reality, therefore, the state will not know whether an individual is suffering from any mental health defects prior to execution.

Some ESC countries openly admit that some on their death row suffer from severe mental health problems. In a letter (dated 23 February 2001) to the human rights organization *Caribbean Justice*, Jamaica’s Department of Corrections confirmed that two condemned prisoners suffered from schizophrenia, describing one of the men as “acutely psychotic”.

³⁴UN General Assembly, *Human Rights in the Administration of Justice*, GA Res. 39/118, UN Doc. A/39/700 (1984), at para.2.

³⁵ The laws of Grenada and St. Lucia do not provide for the defence of diminished responsibility.

In February 2000, the Chief Justice of Trinidad and Tobago's Court of Appeal, Michael de le Bastide, told an Amnesty International researcher that he did not think expert witnesses to assess the defendant's mental health should be available in every case as some requests were "frivolous", even in capital cases, and this was a "luxury that was not affordable". The Chief Justice told Amnesty International that there must be a *prima facie* (at first sight) case that the defendant was suffering from mental health problems before funds for an expert could be granted. Such line of reasoning ignores the fact that many severe mental health problems are not immediately apparent to an individual untrained in mental health matters.

Conditions on death row: Cruel, inhuman and degrading treatment

The physical pain caused by the action of killing a human being cannot be quantified. Nor can the psychological suffering caused by foreknowledge of death at the hands of the state. Whether a death sentence is carried out six minutes after a summary trial or years later after lengthy legal proceedings, the person executed is subjected to uniquely cruel, human and degrading treatment and punishment.

Such cruelty is compounded when condemned prisoners are confined in conditions that amount to cruel, inhuman and degrading treatment, as the vast majority of death row inmates are across the Caribbean. Tiny, airless cells, with no natural light, thin mattresses or no bed at all, appalling food and almost no medical care are the norm for death row inmates across the region. Prisoners are usually only allowed out of their cells for one hour's exercise per day.

In Trinidad and Tobago, a consultant psychiatrist who had treated death row prisoners signed an affidavit (cited in a court judgement) stating "prolonged incarceration under such conditions [as those on death row] produces psychological changes of a depressed and euphoric type. Prolonged confinement in such a small area invariably results in claustrophobia, and often results in chronic anxiety and depression. Prisoners tend to become compliant and in some cases, eventually lose the will to live. The prolonged confinement in a small cell with a light kept burning by night could be regarded as a form of psychological torture."³⁶ In its 1987 decision, the Trinidad and Tobago High Court referred to the conditions of the two prisoners who had appealed as constituting "appalling barbarity".

In the interceding years, conditions for condemned prisoners in Trinidad and Tobago do not appear to have improved. In its 1998 decision in the case of Darrin

³⁶Trinidad and Tobago High Court judgement in *Andy Thomas and Kirkland Paul v. Trinidad and Tobago* (1987).

Thomas and Haniff Hilaire, the JCPC described Trinidad's death row conditions as "unacceptable in a civilised society". Prisoners are housed in tiny "foul-smelling" cells measuring 9 x 6 feet (approximately 2.7 x 1.8 metres) and were deprived of exercise and fresh air for prolonged periods. When they were allowed to exercise, prisoners were handcuffed.

Medical care is also insufficient. In June 2001, the Court of Appeal freed 75-year-old George Moore, after his conviction for murder was overturned and replaced with one of manslaughter on the grounds of diminished responsibility. Moore had spent nine years on death row. The Chief Justice of the Court criticised the prison authorities for allowing Moore to go blind during his incarceration, describing the medical attention he received as "apathetically bad" and "unforgivable".

Conditions in the prisons of Trinidad and Tobago have also been criticised by others, both domestically and internationally. On 15 September 1999, the Prison Officers' Association of Trinidad and Tobago issued a "Special Information Circular", detailing their concerns that conditions within Frederick Street Prison (which houses death row) were jeopardising the health of prison officers and inmates. The circular described the preponderance of infectious diseases, including tuberculosis. The United Nations Human Rights Committee and the United States annual State Department's country reports on human rights practices have both been highly critical of prison conditions.

In September 2000, an Amnesty International delegation, which included the organization's secretary general Pierre Sané, visited the unit which houses condemned prisoners in St. Catherine's District Prison, Jamaica. The delegation witnessed the appalling conditions under which the men were incarcerated in tiny cells.

The unit has insufficient ventilation in the searing heat of Jamaica. Each cell has a small window at the back and the two story block has one small door at the end of each corridor. An appalling smell was present, presumably caused by the food rotting in the gutter that runs approximately .5m from each cell. Each prisoner has a "slop bucket" for his body waste; prisoners claimed they were only allowed to empty their buckets once a day. Numerous prisoners told the delegation of problems they encountered with brutality from the guards and lack of sufficient medical care. Upon leaving the facility, Pierre Sané, commented:

"I do not seek to defend the terrible deeds of which many of these men are guilty of, or to detract from the appalling suffering they will have caused many in Jamaican society. But whatever they have done, no human being should be subjected to the appalling conditions I have just witnessed. Death row is a squalid, inhuman and disturbing place not fit for inhabitation. That their fellow

human beings are treated in such an intolerable manner should be of concern to all Jamaicans, no matter what they think of the men concerned.”

Public servants: asked to do horrendous deeds

Many advocates of capital punishment claim they would be happy to “pull the lever” that sends their fellow human being to their death. However, in reality, involvement in executions is a horrendous experience that has left many prison guards and officials distraught and traumatised.

“Sometimes I wonder whether people really understand what goes on in the prison, the effect it has on the people who are involved. It is a heinous business, is a gruesome business, and it takes a harsh toll... I have no doubt it’s disturbing for all of us. You don’t ever get used to it.”

Fred Allen, a guard who participated in executions in Texas, USA, attributed his nervous breakdown and retirement from the prison service to the stress endured while putting people to death. In an interview, Allen stated:

“All of a sudden something just triggered in me, and I started shaking... my wife asked ‘What’s the matter?’ And I said ‘I don’t feel good.’ And tears, uncontrollable tears, was coming out of my eyes and I said ‘I just thought about that execution that I did two days ago, and everybody else’s that I was involved in... all of these executions just sprung forward’³⁷

Such brutalising effects have also been acknowledged in the Caribbean. In Trinidad and Tobago a report by a commission on prison reform, submitted to the parliament in 1980, stated that when it is announced that a death sentence is to be carried out “the effect on the whole prison is traumatic. The prison officers and inmates are in a state of shock for well over 24 hours after the announcement. The Chaplains and officers present at the execution deeply desire that such a task not be required of them...”³⁸

³⁷“Executions’ impact stays with witnesses”, *New York Times*, 9 October 2000.

³⁸Trinidad and Tobago Commission of Enquiry appointed to Enquire into the Existing Conditions at the Prisons and to Make Recommendations for the Reform in the Light of Modern Concepts of Penal Practice and Rehabilitation Methods, *Final Report*, Government Printery, 1980, page 49.

Such sentiments were echoed after the hanging of nine men in June 1999. In a newspaper article entitled “Save us from the gallows: *Prison officers can't cope with more hangings*”³⁹, prison officers spoke of the emotional trauma of being involved with executions and the need for psychological counselling following the hangings. The article stated that many of the officers directly involved with the executions did so after drinking heavily because of the stress involved. One officer was quoted as stating that the execution has changed his life: “When you walk with a man in life and you know that you're walking with him in death and you're still alive, you tend to see life in a different light. A lot of prison officers are depressed but you can't show it because we're men and we have an ego to feed. We drown a lot of our depression in alcohol.”

Reducing international accountability: ESC countries withdraw from international human rights instruments

Inter-governmental human rights bodies, such as the Inter-American Commission on Human Rights, are vital mechanisms, created over the last 50 years by the community of nations, for the protection of human rights. Despite this, many ESC governments have chosen to ignore, belittle or weaken important human rights protections.⁴⁰

Under the First Optional Protocol to the 1966 United Nations' International Covenant on Civil and Political Rights (ICCPR), individuals who believe that their internationally protected human rights have been violated can petition the UN Human Rights Committee (HRC).

In the past, such petitions to the HRC have been cited as being one of the causes of the appeals process taking longer than five years, thereby qualifying the prisoner's death sentence for commutation under the ruling in *Pratt and Morgan v. the Attorney General of Jamaica* (see footnote 10). This has led to frustration amongst those advocating capital punishment and accusations of “interference” from “outside bodies” and the withdrawal from international human rights treaties. The withdrawals brought condemnation from numerous sources, including members of the religious community. In November 2000, 21 Archbishops and Bishops from the region stated:

³⁹*Trinidad Express*, 13 June 1999.

⁴⁰For further information see *ESC: International Community must sat “NO” to attacks upon human rights protection*, AI index AMR 05/02/00, published June 1999.

“[the withdrawals] represent a serious lack of national transparency and accountability in the international sphere, reducing the protection of citizens against the possibility of isolated cases of injustice, or in extreme cases, even the rise of tyranny.”⁴¹

In January 1998, Jamaica became the first country ever to withdraw from the First Optional Protocol of the ICCPR, thereby depriving all of its citizens of the option of appealing that their rights had been violated to the HRC.

On 26 May 1998, the Government of Trinidad and Tobago withdrew from the First Optional Protocol. On the same day it re-acceded to the Covenant, subject to a reservation to exclude any communication: “*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.*”

Amnesty International was appalled that Trinidad and Tobago sought to exclude the very people who the government seeks to do the most harm - by judicially taking their lives - from seeking redress for the alleged violation of their rights guaranteed under the ICCPR. If any sector of society is in greater need of protection from the abuse of their rights, it is those from whom the state seeks to take life. Yet because of the unpopularity of these individuals, the government appears to deem it acceptable to lessen their access to redress from violations.

The argument that allowing condemned prisoners to appeal to international bodies prevents executions from taking place because it prolongs cases, causing them to take longer than the five-year limit is clearly erroneous since prisoners have been executed after using such mechanisms. For example, all of the nine men hung in Trinidad and Tobago in June 1999 had appealed to the HRC, where their appeal was denied.

In February 1999, Attorney Generals from 12 Caribbean countries joined in urging their governments to withdraw from the American Convention on Human Rights and the ICCPR and re-accede to them with reservations similar to those entered by Trinidad and Tobago. Others have refused to contemplate joining human rights treaties for fear that it would stop them being able to carry out executions. For example, in the Bahamas, the minister for foreign affairs, Janet Bostwich, stated in June 1999: “We will not ratify the [American] Convention on Human Rights while capital punishment is still on our books.”

⁴¹*Antilles Episcopal Conference Pastoral Letter On Capital Punishment, Jubilee 2000.*

On 31 December 1999, the HRC ruled 9-4 that the reservations entered by Trinidad and Tobago were invalid. The Committee stated:

“...the Committee cannot accept a reservation which singles out a certain group of individuals for lesser procedural protection than that which is enjoyed by the rest of the population. In the view of the Committee, this constitutes a discrimination which runs counter to some of the basic principles embodied in the Covenant and its Protocols...”⁴²

Following the Committee’s ruling, Trinidad and Tobago withdrew entirely from the First Optional Protocol of the ICCPR in June 2000.

The government of Trinidad and Tobago had previously shown its contempt for international human rights protection treaties in 1998 during a hearing before the Inter-American Commission on Human Rights. A government representative told the commission “It is open to the Trinidad and Tobago Government whilst a [prisoner’s] petition is pending before the commission to carry out the sentence of death...”⁴³ The representative went on to explain to the commission that if it was found that the prisoner’s rights had been violated, the Government would be prepared to pay monetary compensation to the family. A lawyer present at the hearing described the policy as “kill and pay”.

On 26 May 1999, Trinidad and Tobago became the first country ever to withdraw from the American Convention of Human Rights.

Guyana has also withdrawn and re-acceded to the First Optional Protocol of the ICCPR with the similar reservations.

⁴²*Rawle Kennedy v The Republic of Trinidad and Tobago*, Communication No. 845/1999, submitted by Simons Muirhead and Burton and Interights.

⁴³Quoted in “Govt: Hang them then pay”, *Trinidad Express*, 24 April 1998.

Conclusion: human rights leadership desperately needed

The debate surrounding the use of the death penalty in the ESC is unconstructive and often ill informed. While the majority, including Amnesty International, would agree that violent crime is one of the most serious and pressing problems of the region, the debate around the use of the death penalty does nothing to towards lessening the murder rate.

“In the case of the call by some politicians for the *abolition of capital punishment, we have grave concerns that this is being done in the light of a desire for revenge in order to promote political agendas... We severely reproach, therefore, politicians who employ populist rhetoric, at the expense of moral order and genuine social development... The gravity of state execution makes political posturing of his kind a grievous offence against the common good.*”

Like their counterparts in the USA and elsewhere, Caribbean politicians have found the death penalty a useful tool in appearing to be “tough on crime”. In reality, the death penalty simply acts as a distraction to the core issues or as a sound bite response for politicians when addressing the problem of crime. It also acts as a lightning rod for the population’s understandable anger at those who rob, rape and murder innocent citizens.

The leadership of the Caribbean urgently needs to examine what positive impact executions would have upon the levels of violent crime in particular and society in general. Any meaningful examination of capital punishment will come to the conclusion that executions serve no useful purpose in the modern world, hence the majority of the world’s nations have abandoned the death penalty. Judicial killings brutalise society, create more victims in the loved ones of the person executed, risk putting the innocent to death and constitute a violation of the most fundamental human right - the right to life.

Therefore, the political leadership of the Caribbean urgently needs to de-politicise the issue of capital punishment. It is understandable that the populations they represent feel anger towards those that commit violent crimes and react in an emotional rather than a considered manner, in their support for the death penalty. However, it is incumbent on politicians not to pander to such emotions simply for the sake of political popularity. Those in power and opposition should agree that the taking of human life should not be part of the political process. Once such agreement has been made, all parties should mount a public awareness exercise that the death penalty is not the answer to a country’s crime problem.

Once completed - and it is important to note that there will always be opposition to the abolition of capital punishment - the laws allowing for the death penalty should be repealed and executions consigned to the history books.

While the above process is undertaken, those in power should impose a moratorium on executions.

The authorities should also undertake action to ensure that death sentences are not imposed in a manner that violates international law. The current situation where the states in the ESC seek to take life without providing adequate funding for defence lawyers is unacceptable. Provisions to increase the level of funding for those facing the death penalty should be implemented immediately and action taken to ensure that competent legal representation is available for the entire process, commencing as soon after the defendant's arrest as is practically possible and before police interrogation in all cases.

“The state should not assume the right which only the Almighty has -- to take a human life. That is why I can say firmly -- I am against Russia reinstating the death penalty.” Russian President Putin, in televised remarks, assures the world that Russia should uphold its five-year-old moratorium on the death penalty despite widespread calls to reinstate executions, 9 July 2001.

Appendix - the relatives of those facing execution - the forgotten victims

Politicians and others who promote capital punishment often do so in the name of the murdered victims and their loved ones, claiming it to be “justice” on their behalf. However, such people conveniently forget that those who they seek to

have killed are also loved. The mothers, fathers, siblings, children and others close to condemned prisoners have to go through the emotional and devastating agony of contemplating the death of their loved one. Knowing that someone special to you will be killed by the state at a pre-decided time, place and by a pre-decided method is an appalling trauma no human being should be put through by their government.⁴⁴

“You'll never hear another sound like a mother wailing
Media while watching her son being executed. The USA,
speaking on National Public Radio, October 2000.
You can't get away from it. That wail surrounds the
room. It's definitely something you won't ever forget.”

In February 2000, Amnesty International interviewed the mother of death row inmate Darren Baptiste. Below she gives her account of the devastation caused to her and her family by the state condemning her son to death.

“They came on a Friday. I was sweeping the yard. When I looked up, I heard a ‘good morning’. I saw five grown men, but they did not look like policemen. They had guns and I found this so strange. They said ‘Where is Darren?’ I told them I didn’t know and they left. We went to church that evening. When I got there I was told that Darren was arrested and that they had him in the police station.

“I went to the police station and asked about him. They were very rude. I was not given any information. Eventually they told me it was in connection with a murder. All the time I was dying inside. A policeman told us to go home and come back the next day. That night was the worst night of all, no one slept that night. I cried and cried and no one knew what to do. My husband went back in the morning and they told him to come back later and bring some food and a change of clothes but when we arrived back they told us he was not there and to wait. While we were waiting he arrived in a car. Darren was in handcuffs walking between two plain clothes officers. I tried to ask him a question, but it looked like he was crying so one of the policeman said ‘make it quick because we are on inquiries’. I told him ‘we are trying to set you free’. They then took him away and we went home. My husband was in contact with them on the telephone and they told us not to come, they would call us.

⁴⁴For further information see *USA: State cruelty against families*, AI index AMR 51/132/001, published September 2001.

“The next evening they sent him home and we asked him what happened. He was in a limbo, withdrawn and he told me what happened to him that night. They questioned him extensively about a murder and then about two other murders and he told them he knew nothing about them and they released him. We were very concerned, after taking advice from several people we hired an attorney to go and speak to Darren. It was the first time any of us had been in trouble with the law. We did not know where to go, who to turn to. Darren told us he had signed three statements and the attorney asked why. Darren said it was because they beat him.

“Darren appeared in court a few days later. When we went there we saw him handcuffed. He was formally charged and later he was tried for three murders. I did not know what to do or who to turn to. It was a nightmare.

“The hardest thing about all this is we did not know anything about the law. We did not know how to deal with the attorney. We did not know anything about the death sentence. We were told he was a murderer. This is my son. I wanted to be close to him. I almost died. I was so tired. Worn out and haggard. At night I could not sleep. I felt that if I just closed my eyes something terrible would happen to him and there was nothing I could do.

“When he went to death row, I went to see him and I continue to go. They bring him out to me in handcuffs. It is hard, very hard, my whole life is changed. All our lives have changed, everyone, the lives of Darren’s children and his brother, all our whole lives have been changed by this nightmare.

“Darren has two daughters aged 17 and 6. They cry all the time. They are always very upset and have not really come to terms with their father being under sentence of death.

“I feel so alone and worn out. I did not have much energy and sometimes I feel like I can’t go on. After a long time I asked Darren ‘did you kill these two souls’ and he said ‘no, mammy I did not do anything to anybody’.

“At the trial, when the judge summed up, deep down inside, I knew he was going to hang Darren. He had nothing good to say about Darren, I thought this is really happening at a murder trial and then the jury went out I was just crying and crying. We were summoned back by the court when the jury came back. During the trial there were only a few people inside the court room, but that day everyone from all over the globe was there and the courtroom was filled. The judge asked the jury if they had the verdict, ‘yes they had’, they replied and then Darren had to stand and he was told ‘You have been found guilty of murder and you will have to die by hanging’. I just stood there. I felt I

was going to faint and I do not know how I just stood there. I had a friend and I could hear her crying and I could hear Natasha [Darren's daughter] crying, and then when I looked Darren was crying. I do not know how I got downstairs but when I did, I was just crying. Then a man came and asked me if I wanted to see Darren for a few minutes. I went in there, he was crying and he was saying 'mummy, what am I going to do?' I was said I didn't know. He was crying, everyone was crying. I stayed with him for as long as I could but the prison guard came and took him away. It was a terrible sense of separation. It felt like he didn't belong to us anymore. The prison guards told me he belonged to the state now. They could do with him as they pleased, that he is no longer my child.

"When we went home and that night it was worse than when they arrested him because the phone kept ringing and everyone had heard about it. People came, all the family, the brothers, everyone, everybody was crying. I just cried all night.

"When I next saw Darren I nearly didn't recognise him. He had no hair on his head. They had cut off all his hair. I asked what happened to his hair and told me that when they condemn you they trim all your hair. He was inside a room with a wire mesh inside of the door and then another door with a tiny hole and he was locked away from me. I asked him and he said he had two visits per week for 15 minutes each.

"I tried once to hate him, thinking, if I hated him, I would not feel the pain. But because I love him I feel all this pain. He says 'mammy, I am going to come out of prison one of these days. I am going to be set free because I am innocent of this crime and one day it will all be over'. He doesn't forget anything, particularly anniversaries, Christmas, Valentines. He makes cards for everyone.

"Darren and his sister have a beautiful relationship. This has affected her really badly. When he was convicted she was doing her mock exams. She failed all of them. She went to pieces. Now she is going back to school and is pulling herself together.

"The first time I went in and saw him in a cell, another mum came out crying after seeing her son and I did not understand what she was saying or why she was crying. When I went in I realized we were in a corridor it was terrible and we had to speak in the corridor and I'm looking at him in a cell. I went in and I saw Darren and he was in this tiny dark cell. I sat down there and I tried holding my breath because it had this smell, which seemed like it was trying to take over. It was so strong. I felt if I stopped breathing, I would conquer this smell. When I got up I was shaking, shaking. When I got out of prison I began to cry and I said today I am going to die. To see him in there was hard. To see him there in that state.

"Where he is now it is a little better. They have moved him from downstairs and now he is upstairs, but he is very near the gallows. They have five divisions and he has

been in four divisions already. The same size of cell, but the doorway is much larger, iron bars instead of this small thing like chicken wire. But it is something we will never get used to. Darren is a strong child. When you go sometimes he is like, everything is going to be alright, don't cry, everything is going to be alright. I know he is lying. When you look in his eyes, you can see everything is not alright.”