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# *amnesty international*

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## TRINIDAD AND TOBAGO

### Trying to execute regardless...

#### 1. INTRODUCTION

There have been no executions for the past 14 and-a-half years in Trinidad and Tobago. However, several attempts have been made to resume executions in the last few years, most recently on 24 March 1994. Amnesty International is concerned that in trying to please public opinion which is perceived as generally pro-death penalty, the authorities are violating national and international law. Two Commissions of Inquiry have recommended the abolition of mandatory death sentences. However, no steps have been taken to implement these recommendations.

Amnesty International believes that the authorities should take positive steps by, for example, amending current legislation to - at least - limit the use of the death penalty with a view to abolishing it altogether in the future.

A recent ruling by the Judicial Committee of the Privy Council (JCPC), Trinidad and Tobago's final court of appeal, had a big impact on cases of prisoners who had been under sentence of death for more than five years, and

resulted in the commutation of around 50 per cent of death sentences. The JCPC's ruling will also have a bearing on future capital cases as it sets out certain time limits for legal procedures to be completed. It also acknowledged the importance of allowing time for appeals available under Trinidad and Tobago's international obligations to be pursued.

Amnesty International has the greatest sympathy for murder victims, their relatives and friends. However, based on extensive research, it argues that the use of the death penalty does not provide the protection needed to combat and prevent murder.

There are currently around 60 people on death row in Trinidad and Tobago. The last execution took place in November 1979.

Amnesty International opposes the death penalty in all cases throughout the world and without reservation, on the grounds that it is a violation of the universally guaranteed right to life. No matter what reason governments give for killing prisoners or what method of execution is used, the death penalty cannot be separated from the issue of human rights. Article 3 of the Universal Declaration of Human Rights proclaims that "Everyone has the right to life". Article 5 categorically states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Amnesty International believes that the death penalty violates these rights and calls for its total abolition.

## 2. The judicial process

The *Offences against the Person Act* provides for a **mandatory death sentence** for murder and treason. The death penalty is also available under military law for a number of offences but is not mandatory. A death sentence cannot be imposed on a person who was under 18 at the time of the crime, or on pregnant women.

Murder trials take place in the High Court before a judge and a 12-member jury. In murder cases the jury must reach a unanimous verdict for a death sentence to be imposed. Once the person is found guilty the judge is required to impose a sentence of death.

An appeal must be lodged with the Court of Appeal within 21 days of conviction. If the appeal is dismissed the person can request leave to appeal to the Judicial Committee of the Privy Council (JCPC) in London, which acts as the final court of appeal for Trinidad and Tobago. Such appeals may be brought on questions which involve an interpretation of the Constitution or where in the opinion of the Court of Appeal the question involved in the appeal is one that, by reason of its great general or public importance or otherwise, ought to be submitted to the JCPC.

A further layer of appeal is provided by **Constitutional Motions**. This is a civil procedure heard by the High Court. Its purpose is to examine allegations of violations of the rights and freedoms enshrined in the Constitution, such as the right not to be subjected to cruel and unusual treatment or punishment. If the motion is dismissed the prisoner has a right of appeal to the Court of Appeal and then, if necessary, to the JCPC.

The Prerogative of Mercy is the final possibility of clemency for a prisoner. In Trinidad and Tobago Article 87 of the Constitution vests the power of

pardon in the President. This power may be exercised "in accordance with the advice of a Minister designated by him ... with the advice of the Prime Minister".

The Advisory Committee on the Power of Pardon - composed of the Minister of National Security (who is the Chairman), the Attorney General, the Director of Public Prosecutions and four other members - considers information on prisoners sentenced to death who have exhausted all avenues of appeal. However, it is "the Minister" (currently the Minister of National Security) who makes the final decision on the advice to be provided to the President. The Constitution states that he "shall not be obliged in any case to act in accordance with the advice of the Advisory Committee". In the mid-1980s several prisoners were granted pardons and were either released or had their sentences commuted to prison terms.

The meetings of the Advisory Committee are held in camera and the time of the hearings are not usually revealed beforehand. No reasons for decisions are given or made public. A number of condemned prisoners have criticized this secrecy on the ground that it can lead to arbitrary and discriminatory decisions, which cannot be challenged.

In the last few years prisoners under sentence of death, mainly from Jamaica but also from Trinidad and Tobago and other English speaking Caribbean (ESC) countries, have submitted complaints to the Human Rights Committee (HRC), a body of 18 experts which monitors implementation of the International Covenant on Civil and Political Rights (ICCPR). As a party to the ICCPR and its Optional Protocol, Trinidad and Tobago has provided its citizens the possibility of submitting their cases to the HRC. The HRC will consider cases only after all domestic remedies have been exhausted. A submission to the HRC involves an examination of the case and the framing of arguments to prove that the rights set out in the ICCPR have been violated by the state. It is

therefore necessary to allow a reasonable period of time for this procedure to be initiated, after the case has been decided by the JCPC and for the HRC to produce its final recommendation. HRC consideration of such cases may take more than one year.

**Execution** is by hanging. Death warrants are normally issued on a Thursday for execution on Tuesday; however, there have been cases in the last few years when this practice was not followed (see below).

Defendants who cannot pay for the services of a lawyer are entitled to be granted **legal aid** by the state. The court will appoint a lawyer to defend the case for which s/he is paid a basic fee. This fee has not been increased since 1976. Legal aid is available for the trial and local appeal only.

Decisions on whether to grant legal aid for constitutional motions are made on a case by case basis; it is extremely rare for legal aid to be provided for constitutional motions. In fact, it has been granted to only two prisoners since 1985. Also, at that stage prisoners do not have the right to have a lawyer of their choice.

An appeal to the JCPC is not covered by legal aid and is normally undertaken by lawyers on a *pro bono* basis or else the prisoner seeks leave to appeal as a poor person. In the last few years several law firms in London have organized themselves to provide free representation at the JCPC for death row prisoners from the ESC.

### 3. JCPC decision on Pratt and Morgan v Attorney General for Jamaica

The JCPC is the final court of appeal for all countries in the ESC and the Commonwealth which have retained it as such and, therefore, its decisions are binding on all these countries.

The appeal to the JCPC, submitted by *Earl Pratt and Ivan Morgan v the Attorney General for Jamaica*, is one of the most important death penalty appeals to the JCPC in recent years. It was heard between 28 June and 14 July 1993. Earl Pratt and Ivan Morgan were convicted of murder in 1979 and sentenced to death. Their appeal was dismissed in 1980 but the Court of Appeal took three years and 10 months to put its reasons in writing – a delay which prevented them from lodging an appeal to the JCPC. Although they were later refused leave to appeal, the judges said they were "disquieted by the fact that in a case involving a capital sentence there would be such a long delay between the date of hearing an appeal and the date of the reasons".

Warrants for their executions were issued in February 1987, March 1988 and March 1991. The March 1991 death warrant was issued despite the recommendation of the HRC in 1989 that their sentences should be commuted because of a violation of Article 14 of the ICCPR (the right to a fair trial) because of the delay by the Court of Appeal in issuing its written judgment; and of Article 7 (the prohibition of torture or other cruel, inhuman or degrading treatment or punishment), because the two men had been notified of a stay of execution granted to them on 23 February 1987 only 45 minutes before their execution was due to be carried out, despite the stay being formally granted about 20 hours earlier. The HRC's view was that the two men were entitled to

a remedy for the violations of the ICCPR and that "the necessary prerequisite ... is the commutation of the sentence".

The importance of this appeal to the JCPC was reflected by the fact that seven Law Lords formed the panel which heard the appeal - the usual number for a full hearing is five. This was reportedly because the JCPC was reconsidering the issue of delay which it had decided against in 1982. None of the seven members was part of the panel that considered the 1982 appeal.

In its crucial unanimous decision, issued on 2 November 1993, the JCPC ruled that

**"... in any case in which execution is to take place more than five years after sentence there will be strong grounds for believing that the delay is such as to constitute `inhuman or degrading punishment or other treatment'".**

The JCPC decision acknowledged that it is part of "the human condition that a condemned man will take every opportunity to save his life through the use of the appellate procedure".

It is not unusual for appeals to be determined several years after conviction. For example, Anthony Guerra and Brian Wallen convicted in May 1989 had their appeal rejected in November 1993 - four years and six months later.

As a result of the JCPC decision prisoners all over the ESC (and in any other Commonwealth country retaining the JCPC as their final court of appeal) who had spent over five years under sentence of death became eligible to have their death sentences commuted to life imprisonment. Trinidad and Tobago commuted at least 50 death sentences on 10 December 1993; Grenada, in a most progressive decision, commuted the death sentences of two men even

though they had been on death row for well under five years. However, as of 31 May 1994, The Bahamas, Barbados and Jamaica had not commuted the relevant death sentences, which amounted to at least nine, three and over 100 cases respectively.

The Special Rapporteur on extrajudicial, summary or arbitrary executions<sup>1</sup> referring to the JCPC decision, and a similar decision by the Supreme Court of Zimbabwe, in his report said:

"While welcoming the decisions, the Special Rapporteur wishes to express concern that they might encourage Governments to carry out executions of death sentences more speedily. This might, in turn, affect defendants' rights to full appeal procedures, including new hearing if additional evidence is discovered even years later. The Special Rapporteur feels that these judgements should rather be interpreted in the light of the desirability of the abolition of capital punishment: if, as a first step, it is recognized that awaiting execution for five years constitutes in itself cruel and inhuman punishment, the second, towards the rejection of capital punishment as such, may be easier to take".

Another important element in the JCPC ruling was its acknowledgement of the role of international bodies. Referring to the HRC and Inter-American Commission on Human Rights (IACHR), the JCPC said that petitions to them:

*"do not fall within the category of frivolous procedures ..."*

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<sup>1</sup>Report by the Special Rapporteur, Mr Bacre Waly Ndiaye, submitted pursuant to Commission on Human Rights resolution 1993/71, 7 December 1993

and added: "It is reasonable to allow some period of delay for the decisions of these bodies [HRC and IACHR] in individual cases...".

Between 1987 and 1993 the HRC had expressed a view in respect of only one case from a prisoner in Trinidad and Tobago. In July 1990 it held that there had been a violation of the obligations under the ICCPR in the case of death row prisoner Daniel Pinto, and that he was "entitled to a remedy entailing his release". The HRC found that Article 14(3)(d) of the ICCPR had been violated, because the legal assistance provided at his appeal did not "adequately and effectively ensure justice". Daniel Pinto had complained about the quality of the court-appointed defence lawyer at his trial and objected to the same lawyer appearing for him at appeal. He had made arrangements for a different lawyer to represent him at his appeal, but these arrangements were ignored by the Court of Appeal. The HRC also concluded that Article 6 of the ICCPR (the right to life) had been violated since the death sentence had been imposed after judicial proceedings which fell short of procedural guarantees protected by Article 14 of the ICCPR.

However, the authorities did not take any action on the case until October 1992 when his sentence was commuted to life imprisonment. He is still serving this sentence despite the HRC's recommendation that he be released.

The Special Rapporteur on extrajudicial, summary or arbitrary executions urged "governments of all states in which the death penalty has not yet been abolished to ensure that ... defendants fully benefit from all safeguards and guarantees set forth in the pertinent international instruments".

#### **4. Attempts to resume executions**

The last execution carried out in Trinidad and Tobago took place in November 1979. Since then warrants of execution have been issued to, at least, the following prisoners:

	<i>Convicted in</i>	<i>Execution scheduled for</i>
Theophilus Barry	April 1981	July 1985
Andy Thomas	May 1975	December 1985
Kirkland Paul	May 1975	December 1985
Boodram Bedassie	April 1976	June 1988
Gayman Jurisingh	June 1982	November 1992
	<i>Convicted in</i>	<i>Execution scheduled for</i>
Fazal Mohammed	February 1982	November 1992
Peter Matthews	February 1982	November 1992
Brian Francois	January 1986	December 1992
Lal Seeratan	April 1986	December 1992
Irving Phillips	June 1988	August 1993
Robinson Lavende	November 1977	October 1993
Ramcharan Bickaroo	April 1978	October 1993
Michael Bullock	May 1983	October 1993
Irving Phillips	June 1988	October 1993
Victor Baptiste	January 1981	October 1993
	Retried and re-sentenced	

	in 1987				
Lincoln Guerra	May	1989	March	1994	
Brian Wallen	May	1989	March	1994	

In the cases of all the prisoners scheduled for execution between November 1992 and October 1993 listed above, it was clear that the executions could only be carried out if the authorities were prepared to ignore legal obligations and recommendations made by a government-appointed Commission of Enquiry into the death penalty (the Prescott Commission, see p 11), accepted by the government, that death sentences imposed over 10 years before should be commuted.

Amnesty International is concerned about the attempts to resume executions and also about the timing of these attempts. They seem to coincide with increases in the rate of violent crime or with particular incidents. The breach of national and international law and the disregard for pending, relevant appeals seem to indicate a determination to execute, regardless of judicial rules and procedures.

4.1. The first prisoner to have a death warrant read to him in the 1980s was Theophilus Barry. The circumstances surrounding the attempt to execute him were to be repeated in later cases.

Barry had been sentenced to death in 1981 for the murder of a man who stole his weekly wages in a bar. He reported the theft to the police but his complaint was allegedly not taken seriously. He returned to the bar where the robber was spending the money. Angered by the situation and armed with a knife Barry confronted the robber who was killed in the ensuing fight. Barry had never had problems with the law before and had a steady job and a family.

His appeal was dismissed in 1983. He had appealed on grounds that the trial judge had erred in law because he did not direct the jury on the questions of self-defence or provocation which may reduce murder to manslaughter. He made an application to the Mercy Committee which rejected it but Barry was never informed about it.

On 8 July 1985 a death warrant was read to him for execution the following day. As noted in *Andy Thomas and Kirkland Paul v the State of Trinidad and Tobago*, delivered on 29 July 1987, a death warrant should be read "on a Thursday for execution the following Tuesday"; to give Barry less than 24 hours notice was a breach of this practice. In a constitutional motion, filed by lawyers in an attempt to have Barry's constitutional rights respected, he argued that it was arbitrary and unfair to execute him before other prisoners who had also exhausted their appeals; that his right of equality of treatment before the law had been violated because his appeal for mercy had been denied while other prisoners had had their sentences commuted. He was granted a stay of execution; legal procedures were still pending in December

Trinidad Guardian, 12 July 1985

country is the decision to resume executions after such a long time and the particular choice of Barry. We can only presume that it was done in response to the national outcry over the rising rate of violent crime in the country..."

1993, as a result of repeated postponements, when his sentence was commuted as a result of the Pratt and Morgan decision.

4.2. On 14 August 1993 Commissioner of Prisons Michael Hercules was shot dead outside his home, reportedly in the course of a robbery. His murder brought calls in the *Trinidad Guardian* newspaper for a resumption of hanging. Shortly afterwards warrants were issued for the execution of Michael Bullock and Irvin Phillips on 24 August. Both men had been on death row for over 10 and five years respectively. At the time the warrants were issued there were two judicial challenges pending a final decision which clearly affected them: the *Pratt and Morgan* case and a constitutional motion of three Trinidad and Tobago prisoners arguing similar constitutional claims – namely, that to execute them would be unconstitutional as it would constitute cruel, inhuman and degrading treatment, in view of the time spent on death row.

Bullock's and Phillips' sentences were commuted in December 1993 after the JCPC ruled that to execute anyone who had been on death row for over five years would constitute "inhuman or degrading punishment or other treatment" (*Pratt and Morgan*).

At the time of this attempt to carry out these executions the Minister of National Security was reported in the press calling on the public to protest against "certain persons ... overly concerned with the rights of the criminal ...", clearly referring to lawyers who intervene in death penalty cases. He reportedly added, "So ... when they file their motions to stop the hangings you must get up and let your voices be heard". Amnesty International was concerned that such remarks could result in the intimidation of lawyers, making it more difficult for prisoners to get legal help, and might even have led to actual attacks on the lawyers who do take on such cases. The remarks were

inconsistent with Trinidad and Tobago's obligations under Principle 16 of the United Nations (UN) Basic Principles on the Role of Lawyers, which requires governments to ensure that lawyers "are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference".

4.3. Robinson LaVende and Ramcharan Bickaroo, convicted in 1977 and 1978 respectively, were two of the longest serving death row prisoners in the ESC at the time they were scheduled to be executed in October 1993. It was incomprehensible, therefore, that they should have been given a date of execution when their sentences should have already been commuted according to the Prescott Commission's recommendation relating to sentences imposed more than 10 years before. Furthermore, at the time, they were also under the protection of the two pending decisions on delay mentioned above.

"The executive ... directed that Guerra and Wallen be hanged.

4.4. On the afternoon of 24 March 1994 a warrant was issued for the execution of Lincoln Guerra and Brian Wallen to be carried out on 25 March between 6.00 and 9.00 am.

Lincoln Guerra and Brian Wallen were convicted and sentenced to death on 18 May 1989, for the murder of Mrs Leslie Ann Girod and her baby son Gregg, an extremely serious offence. Their appeal was dismissed in November 1993 by the Court of Appeal and the JCPC rejected their petition for special leave to appeal on 21 March 1994. The death warrant was issued three days later when Her Majesty's Order in Council, the formal document recording the decision of the JCPC, had not yet been issued.

When a death warrant is read to him, a prisoner may file a constitutional motion. An execution should be automatically put on hold pending a hearing of the motion by the High Court. If the court rejects the motion the stay should continue in force if the prisoner intends to appeal the decision; also the Constitution provides the possibility of submitting an appeal to the JCPC.

A state which attempts to carry out an execution before "final judgment [is] rendered by a competent court" of any appeal filed, violates national and international standards, such as the

But Russell Huggins [Minister of National Security] is an attorney, as is Attorney General Keith Sobion; they must have known that it was illegal to try to hang Guerra and Wallen now ... that if they tried it would fail. The law is clear on the matter: condemned men must be given at least five days to get their business in order before being hanged"

Sunday Express, 27 March 1994

"Safeguard 8: Capital punishment

Safeguards guaranteeing protection of the rights of those facing the death penalty (ECOSOC Resolution 1984/50)

*ECOSOC Safeguards guaranteeing protection of the rights of those facing the death penalty (see below). Frantic efforts by lawyers managed to stop the execution despite the obvious determination by the authorities to hang the two men at all cost. But it was not until 22 April that the Attorney General gave an assurance that the executions would not be carried out until the appeals on their constitutional motions had been finally decided.*

*At the time the death warrant was read to them, Guerra and Wallen were two months away from the five year period set out by the JCPC in *Pratt and Morgan* as the maximum time permissible for execution in current cases. Their cases were obviously among the "difficult borderline decisions to be made" mentioned by the JCPC in the decision and the point should have been taken into account by the authorities. There was no time allowed, in practice either, for them to submit their cases to the HRC.*

*Of all the prisoners in the list above only Guerra and Wallen remain on death row; the death sentences of Andy Thomas and Kirkland Paul were quashed by the Court of Appeal in July 1987 and they were released shortly afterwards. The rest had their sentences commuted in December 1993 as a result of the JCPC ruling on *Pratt and Morgan*.*

## **5. The death penalty debate**

### **5.1 International standards**

ICCPR, Article 6:

The resumption of executions would be contrary to the spirit of international human rights instruments, including treaties, to which Trinidad and Tobago is a party, which encourage governments to restrict their use of the death penalty with a view to abolition. The International Covenant on Civil and Political Rights states in Article 6: "Nothing in this article shall be invoked to delay or prevent the abolition of capital punishment by any State Party..." with a view to the desirability of abolishing this punishment". The HRC has stated in General Comment 6 that states parties are obliged to limit the use of the death penalty and has recommended that they "consider reviewing their criminal laws in that light". The Committee has explained that Article 6 "also refers generally to abolition in terms which strongly suggest that abolition is desirable". It has concluded that "all measures of abolition should be considered as progress in the enjoyment of the right to life".

"Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life"

Article 14(5):

"Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law"

bly has state

Further measures favouring abolition have been adopted by the international community, including a Second Optional Protocol to the ICCPR and a Protocol to the American Convention on Human Rights to Abolish the Death Penalty. Trinidad and Tobago ratified the ICCPR in 1978, the first Optional Protocol in 1980 and the ACHR in 1991.

In May 1984, in recognition of the need for particular care when imposing an irreversible sentence, the UN Economic and Social Council (ECOSOC) adopted

the Safeguards guaranteeing protection of the rights of those facing the death penalty (annexed to ECOSOC Resolution 1984/50).

## 5.2 Risks involved in the use of the death penalty

The fallibility which leads to the discriminatory or arbitrary imposition of the death penalty makes the execution of some prisoners who have been wrongly convicted inevitable. A poorly prepared defence, missing evidence, or even a decision of the investigating authorities to pin the guilt falsely on the accused can all result in wrongful conviction. Such convictions are difficult to reverse as appellate courts will often not consider new evidence, confining themselves only to points of law.

The Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions he says in his report:

"In summary, judicial errors can no longer be remedied once a death sentence has been carried out. The Special Rapporteur urges the Governments of all States in which the death penalty has not yet been abolished to ensure that proceedings which may lead to the imposition of the death penalty are conducted in accordance with the highest standards of due process...".

Prisoners have been executed in various parts of the world despite strong doubts over their guilt. One such case appears to have happened in Trinidad and Tobago in 1973.

## 5.3 The case of Kisoan Ramnanan

Kisoon Ramnanan, a 29-year-old fish vendor, was charged with the murder of Police Inspector Kenneth Cooke, of the Police Mounted Branch, Port of Spain, who was shot dead on 12 September 1970. He was sentenced to death on 21 July 1971 and executed on 13 September 1973.

Inspector Cooke was allegedly killed outside a supermarket in St James, Port of Spain, when he allegedly tried to foil an attempted robbery by three men. According to a Police Superintendent involved in the investigation of the murder, "it was a hard case to crack, but once we gathered the evidence it was clear, clear and straightforward. I was satisfied from the evidence that there was a strong case [against Ramnanan]". Ramnanan came under suspicion after the police received a "tip-off that he was involved". From there the "police gathered what evidence was required to prove the case".

Kisoon Ramnanan was brought to trial on the murder charge and was represented by then attorney-at-law Dr Aeneas Wills, now a judge. Ramnanan had said that he was at a wedding in Plum Mitar at the time Inspector Cook was killed in St James. He claimed that at one point during the evening it had started raining and as he tried to take cover from the rain he accidentally pushed someone and a dispute started. Another guest, a constable, intervened to stop the dispute. Dr Wills investigated this story and established that there had been a wedding and that it had started to rain in the course of the evening. He tried to contact the constable and found that he was a patient at the Sangre Grande Hospital.

"Safeguard 4: Capital

Safeguards guaranteeing protection of the rights of those facing the death penalty (ECOSOC Resolution 1984/50)

alternative explanation of the facts".

Unfortunately he died before he could testify on the events involving Ramnanan.

At the end of the trial the jury was divided in their verdict: 11 found him not guilty and one found him guilty. A retrial was ordered.

At the second trial Dr Wills offered to take on the case free of charge. He requested an adjournment, because he was appearing on another case, but it was denied; so, a different, less experienced lawyer was assigned to represent Ramnanan. The main witness identified Ramnanan as one of three men running away from the scene of the crime. Under cross-examination he said that he had not reported what he had seen to the police immediately even though he passed the Police Headquarters on his way home. He reportedly contacted the police two days later and gave a statement. His testimony, however, was contradicted by someone who said that both had been somewhere else on the night of the incident. Also, none of the other witnesses claimed to have seen him that night at the scene of the crime. At the end of a five-day trial Ramnanan was found guilty and sentenced to death on 21 July 1971.

Kisoon Ramnanan's appeals to the Court of Appeal and JCPC were dismissed on 20 December 1971 and 20 December 1972 respectively. On 14 August 1973 the Mercy Committee recommended that the execution should go ahead. Ramnanan was executed on 13 September 1973.

Throughout his years in prison Ramnanan proclaimed his innocence, although he allegedly admitted involvement in previous car thefts. Just before his execution he asked that

No amount of justified

Dr Geoffrey Frankson  
Trinidad Express, 18 March 1990,  
referring to the case of Kisoon  
Ramnanan

guaranteed to be fair; it is  
humanly impossible.

Catholic Archbishop Anthony Pantin witness his execution. Ramnanan repeated to him his claim of innocence minutes before being hanged.

Attorney-at-law Vernon de Lima visited Ramnanan in prison at the request of another prisoner who was convinced of Ramnanan's innocence. Mr de Lima said in a press interview that "...two prisoners later confessed to killing Cooke. They are now residing in the United States". Mr de Lima has tried on several occasions to get a posthumous pardon for Kisoan Ramnanan but the authorities have so far taken no action on his petition. As a result of this case Mr de Lima also called for laws to regulate identification parades so that they would be conducted in the "proper manner". Justice Aeneas Wills has also been reported as saying that he is convinced this was a case of mistaken identity and that he believes Ramnanan was innocent.

## **6. Studies on the death penalty**

The death penalty has been the subject of recurrent debate in Trinidad and Tobago over the past decade. In 1984 a coalition backed by more than 40 national organizations, including churches and trade unions, petitioned the government to abolish the death penalty and commute the sentences of those then on death row to life imprisonment. Two Commissions of Enquiry<sup>2</sup> looked into the issue of capital punishment in Trinidad and Tobago between 1973 and 1990.

### **6.1. Commission of Enquiry into Prisons**

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<sup>2</sup>The Commission of Enquiry appointed to enquire into the existing conditions at the prisons and to make recommendations for reform in the light of modern concepts of penal practice and rehabilitation measures (The Abdulah Commission); and the Commission of Enquiry into the Death Penalty (the Prescott Commission).

A commission was established on 11 September 1972 to study prison conditions in Trinidad and Tobago. The six-member Commission was headed by the Anglican Bishop Clive Abdulah.

In its final report, submitted in February 1980, the Commission devoted a chapter to capital punishment. The Commission reported that, apart from looking at the situation regarding capital punishment in other countries it had "looked at the people and the peculiar circumstances in Trinidad and Tobago where the death penalty is the sentence handed down by the court".

The Commission pointed out that the pros and cons of capital punishment were still unresolved as they had found that "not only is there a wide variety of opinions among experts, but that there is no clear statistical evidence that the death penalty does inhibit persons from committing murder".

In considering the two general groups of murders - the premeditated and the crime of passion - they concluded that the first group will not be deterred by the retention of the death penalty nor will any penalty imposed by the law may have any effect on them. On the second group they came to a similar conclusion, that the "murder rate ... is not likely to be affected or controlled by any penalty which the law may impose". They found that, during the period from 1970 to 1975, 53 of those convicted of murder had committed "crimes of passion". They agreed with the conclusion of the *Royal Commission on Capital Punishment in Great Britain (1949-1953)* which studied the issue in Great Britain in 1953, that "murder is not, in general, a crime of the so-called criminal classes".

The Commission also referred to the question of diminished responsibility of persons who suffer from mental illness and are found guilty of criminal offences.

They advised that a principle to cover this area should be urgently implemented in Trinidad and Tobago.

The final conclusion of the Commission was that the majority of its members favoured the retention of the death penalty. However, they noted the need to provide a better system to differentiate between the various kinds of murder ie murder, manslaughter, excusable homicide and justifiable homicide. They recommended, among other things, that:

- the use of the death penalty should be restricted to those kinds of homicide "where the act is particularly heinous and/or where the killing takes place with premeditation and malice aforethought"
- for crimes of passion penalties varying from life imprisonment to lesser penalties depending on the circumstances of the crime should be imposed.

They suggested that these changes be instituted for a trial period of five years, after which the situation should be reviewed. They specified that the majority view had been influenced by "the belief that the public at large and the law makers, at this stage, would support the retention of the death penalty". A minority, however, were of the opinion that the death penalty should be abolished for a trial period of five years, with life imprisonment being the punishment for "murder in the first degree".

The Commission's conclusions, reported in 1980, are still fully applicable. They said, for example:

"... there has recently come on the scene, the gun-wielding burglar, who on being challenged or on meeting any resistance to his/her arms, shoots with intent to kill. Such offenders appear and will continue to appear in the

society, motivated into a life of crime as a result of socio-political factors, and therefore will not be deterred by the retention of the death penalty. Indeed, no penalty that the Law may impose is likely to have any effect on their actions".

The increase in the use and trafficking of drugs and the economic problems faced by Trinidad and Tobago are two of the main factors in the increase in crime rate. The existence or absence of the death penalty has no effect on the issue of crime control.

The recommendations of the Commission have never been implemented.

## 6.2 Commission of Inquiry into the Death Penalty (the Prescott Commission)

In March 1988 independent Senator Dr Ramesh Deosaran presented a motion to the Senate calling for the appointment of a commission of inquiry into the effectiveness of the death penalty. The Senate debated the motion in April and on 12 April voted 22 to 3 in favour of setting up such a commission.

The three-member Commission, chaired by attorney-at-law Elton A Prescott, was appointed in March 1989 and it invited members of the public and organizations to present memoranda to them for their consideration by 9 June 1989. It held public hearings during March and April 1990 in Port of Spain, San Fernando, Arima and Tobago.

The Commission also interviewed 30 death row prisoners and met with various government and judicial officials. The survey of the prisoners revealed that they were, in general, poorly educated and had a below average income. The number of murders which seem to have been planned as part of a felony was relatively low: eight out of 37. Most were spontaneous, arising out of

quarrel or a dispute (18) or appeared to have been planned but spurred by emotive elements of jealousy, revenge or retaliation (7).

The Commission submitted its report to President Hassanali in September 1990. Its main conclusions were:

- the death penalty for murder and treason should be retained
- the death penalty should not be imposed for killings involving provocation, insanity or self-defence
- prisoners sentenced to death over 10 years ago should have their sentences commuted to life imprisonment
- executions of those who had exhausted their appeals should be resumed.

At the request of Amnesty International the Commission's report was studied by Dr Roger Hood, FBA<sup>3</sup>. He found it to be "unsatisfactory as a basis on which to decide the issue of whether or not the death penalty should be retained in Trinidad and Tobago". He concluded that "... the Commission have reached entirely the wrong conclusion from the data at its disposal and rendered poor advice to His Excellency Noor Mohamed Hassanali".

A second review<sup>4</sup>, from a legal perspective, also found serious flaws in the argumentation on provocation, diminished responsibility and self defence. For example, on provocation it puts the onus of establishing this defence on the accused; however, the norm is that the prosecution should negative provocation beyond reasonable doubt – it is not for the defendant to bear the burden of proof.

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<sup>3</sup>Director of the Centre for Criminological Research and Fellow of all Souls College, Oxford. Author of "The Death Penalty: A World-Wide Perspective, a report to the United Nations Committee on Crime Prevention and Control

<sup>4</sup>carried out by Daniel Crowley, Barrister, Gray's Inn, London.

Although the Cabinet accepted the report of the Commission and its recommendations, it seemed to implement the recommendation to "resume hangings immediately of those persons whose legal remedies have been exhausted" but ignored others including the recommendation to "commute the sentences of persons who were convicted ten (10) or more years ago to life imprisonment or to a term commensurate with the term already served".

## 7. Statistics on the use of the death penalty in Trinidad and Tobago

### 7.1 Executions

During the 1970s there were at least 24 executions in Trinidad and Tobago, 1974 being the worst year with 11 hangings. The last execution took place on 6 November 1979; Bobby Gransaul was the last person to be hanged.

### 7.2 Sentences and numbers on death row

In the mid-1980s there were on average 25 prisoners under sentence of death in any given year. However in the late 1980s the number of death sentences imposed soared and reached at least 41<sup>5</sup> in 1988 and 24 in 1989. This brought the total number of people on death row to over 90. By the early 1990s there were just under 110 people under sentence of death.

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<sup>5</sup>Source: Annual Statistical Digest 1988, Republic of Trinidad and Tobago, Central Statistical Office

On 10 December 1993 the Attorney General, Keith Sobion, announced that the Mercy Committee had met on 8 December and had decided to advise the President to commute the sentences of all those prisoners sentenced to death over five years before, following the recommendation in the JCPC ruling in *Pratt and Morgan*. Over 50 sentences were commuted representing about 50 per cent of the death row population at the time. The sentences were to be commuted to "a term of imprisonment for the remainder of [their] natural life". However, the JCPC ruling had suggested "commutation to life imprisonment"; according to Justice James Davis "A life sentence, in practice, normally means imprisonment for less than ten years ..." (ruling on *Thomas and Paul* delivered on 29 July 1987). The Mercy Committee's advice appears, therefore, to contradict the practice and could result in "unusual treatment" of these prisoners, contrary to the Constitution.

## **8. The death penalty around the world**

More and more countries across the world have abolished the death penalty. Recent abolitionist countries include Angola, Mozambique, Namibia and Gambia in Africa; the Czech and Slovak Republics, Hungary, Ireland, Romania, Slovenia and Switzerland in Europe, and Cambodia and Hong Kong in Asia. A majority of the countries in the Americas are abolitionist for all or ordinary crimes. By June 1993, 52 countries worldwide had abolished the death penalty for all offences, and 15 for all but exceptional crimes. A further 19 countries, while retaining the death penalty in law, have not carried out any executions for at least ten years.

The move to resume executions in Trinidad and Tobago is out of line not only with world trends, but also with developments in the Caribbean region, where

executions have become increasingly rare. The death penalty was abolished in Anguilla, Cayman Islands, Montserrat, Turks and Caicos and the British Virgin Islands in May 1991. There have been no executions since 1991 in the English-speaking Caribbean and none for more than five years in most countries of the region. Jamaica has passed legislation to limit the death penalty (see below). In Grenada, all death sentences were commuted in 1991, a move welcomed by churches, human rights groups and others around the world; also in late 1993 the only two prisoners under sentence of death had their sentences commuted.

## 9. The way forward

Amnesty International calls on Trinidad and Tobago's authorities not to issue any more death warrants but to consider, instead, introducing legislation to end the mandatory use of the death sentence for murder. Eventually the death penalty should be totally abolished.

Amnesty International believes that the use of the death penalty is irrelevant to the control of violent crime. It is widely recognized that as long as a country's socio-economic conditions do not improve crime rates will continue to increase.

The increased traffic and use of drugs and economic problems in the Caribbean, among other things, have brought an increase in criminal activity in the region. An increase in the crime rate brings immediate calls for the implementation of the death penalty. But does it really cause a decrease in crime and, more specifically, murder?

A good example of how irrelevant to crime the use of the death penalty is can be found in the case of Texas, USA. Texas has executed more people than any

other state in the USA: 76 between 1982 and 31 May 1994. However, Texas has one of the highest violent crime rates in the USA. According to crime statistics in the USA, in states which retain the death penalty the average murder rate is 7.8 per 100.000 people, while in those which do not it is 4.9 per 100.000.

Amnesty International notes that the two studies undertaken on the use of the death penalty in Trinidad and Tobago (outlined above) clearly identified different types of murders and recommended that the death penalty should not be mandatory, as at present, but that the law should be changed to restrict it to certain kinds of murder only. Such a move would not be a controversial one since even people who strongly favour the death penalty in Trinidad and Tobago agree that not all murders should be punished with death.

A Tobago man, supporter of the retention of the death penalty, appearing before the Prescott Commission in April 1990

Such a step was taken by Jamaica where legislation was approved limiting the use of death sentences. The Offences against the Person (Amendment) Act was passed by Parliament and became law in October 1992. It repealed legislation which had provided a mandatory death sentence in all cases of murder and redefined murder as "capital" and "non-capital" murder. Capital murder under the Act includes the killing of members of the security forces, judicial and correctional officers, witnesses in civil and criminal cases, and murders in the course of other crimes. The death sentence remains mandatory in such cases. Other murders, for example "crimes of passion", carry a sentence of life imprisonment. The law was applied retroactively to all those under sentence of death at the time; this reduced the death row population by around

40 per cent. It has also resulted in a reduction in the number of death sentences imposed.

## 10. Recommendations

Amnesty International urges the government to take the following steps without delay:

- not to issue further death warrants
- to put legislation before Parliament to restrict the use of the death penalty as soon as possible
- to take appropriate measures to ensure that prisoners are given the time and facilities to pursue all avenues of appeal open to them, including appeals to relevant international bodies, as stated in the JCPC *Pratt and Morgan* decision.
- to do nothing which would undermine international standards ratified by Trinidad and Tobago.

## WHAT YOU CAN DO

Amnesty International believes the death penalty to be the ultimate cruel, inhuman and degrading form of punishment and seeks its worldwide abolition. Everywhere experience shows that executions have a brutalizing effect on those involved in the process. Nowhere has it been shown that the death penalty has any special power to reduce crime or political violence. In country after country it is used disproportionately against the poor. It is an irrevocable punishment, resulting inevitably in the executions of people innocent of any crime. It is a violation of fundamental human rights.

\_ Write to the diplomatic representative of Trinidad and Tobago in your country:

- Expressing your concern about the use of the death penalty in Trinidad and Tobago;
- Calling for a change to the legislation which makes the death penalty mandatory for murder;
- Requesting that prisoners under sentence of death be given the time and facilities to pursue all avenues of

appeal open to them, including appeals to relevant international bodies, as stated in the JCPC *Pratt and Morgan* decision;

- Calling for the abolition of the death penalty and the commutation of all death sentences;
- Requesting that your concerns be conveyed to the authorities in Trinidad and Tobago.