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# Government commitments and human rights in Belize

## I. INTRODUCTION

Belize, a former British colony of around 238,000 people, acquired its independence and enacted its Constitution in 1981. Its system of government is a parliamentary democracy with an executive branch of a Prime Minister and a Cabinet. A 29-member elected House of Representatives and a nine-member appointed Senate form a bi-cameral legislature. In the August 1998 general elections, Said Musa of the People's United Party became Prime Minister; the minority party is the United Democratic Party (UDP). The British monarch, Queen Elizabeth II, is the titular head of state and is represented in Belize by a Governor General, who has a largely ceremonial role.

### **Institutional framework**

After independence, British troops remained in Belize with the mandate of ensuring its defence. In 1994, this responsibility passed from the British Armed Forces Minister to the Belizean government and most British troops were withdrawn. Since then, the Belize Defence Force (BDF), created by the Defence Ordinance of 1977, has been responsible for external security, with support of the civil authority in maintaining order, and with other duties as defined by the Governor General. A separate Police Department, the Belize Police Force, headed by a commissioner of police appointed by the Governor General, has primary responsibility for law enforcement and maintenance of order. Both the police and the BDF report to the Minister of National Security.

With regard to the judiciary, the Constitution of Belize provides for its independence from the executive branch. The judiciary is composed of Magistrates' courts, the Supreme Court and the Court of Appeal. The Judicial Committee of the Privy Council (JCPC), in London, is the final Court of Appeal for about 16 Commonwealth countries, including Belize<sup>1</sup>. Recent efforts to improve the administration of justice have included the publication of "*Delivering Justice: A three year plan of actions for Improving the Administration of Justice in Belize*", the primary goal of which is to make justice more accessible to citizens. The plan was presented by the Attorney General, whose office is responsible for monitoring its implementation. Proposals in the area of criminal justice include improvement of police investigation and evidence-gathering, changes in case presentation and closer collaboration between police and public prosecutors. A part of the plan is also dedicated to improving legal aid with better access to basic and general legal information and legal representation and advice.

On 26 June 1999, the House of Representatives appointed the country's first Ombudsman, Paul Rodríguez, with the role of investigating cases of alleged abuses of power by

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<sup>1</sup>Jamaica, Republic of Trinidad & Tobago, Anguilla, Antigua & Barbuda, Barbados, St. Christopher & Nevis, St. Vincent and the Grenadines, Grenada, St. Lucia, the Bahamas, Dominica and overseas dependent territories such as Bermuda and the Cayman Islands.

authorities. The Ombudsman recently declared that most of the complaints he was receiving were on land issues and allegations of police brutality and he called for transparency in the Police Department.

### **Reporting to the United Nations system for the protection of human rights**

Belize, as a state party to the UN Convention on the Rights of the Child and to the Convention on the Elimination of All Forms of Discrimination against Women, has obligations to submit reports on the implementation of the Conventions. Amnesty International welcomed the government submission of its reports, in 1999, to the UN Committee on the Rights of the Child (CRC) and to the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW).

The report to the CRC, Belize's first, was submitted in January 1999. In its concluding observations, the Committee expressed grave concern that "domestic legislation still does not fully reflect the principles and provisions of the Convention<sup>2</sup>." It pointed out that "corporal punishment is still widely practised within the State party and that domestic legislation does not prohibit its use within schools, the family, the juvenile justice and alternative care systems and generally within society<sup>3</sup>." The Committee raised concerns over the situation of the administration of juvenile justice and in particular the "absence of specific legal provisions for children to remain in contact with their families while in the juvenile justice system (...) the overcrowding in detention facilities; the holding of minors in adult detention facilities; and the lack of reliable statistical data on the number of children in the juvenile justice system<sup>4</sup>." The Committee recommended that Belize undertake a review of its domestic legislation to ensure full conformity with the principles and provisions of the Convention and that particular attention be paid to protecting the rights of the children deprived of their liberty<sup>5</sup>.

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<sup>2</sup>Concluding Observations of the Committee on the Rights of the Child: Belize 10/05/99. CRC/C/15/Add.99 of 10 May 1999, paragraph 7.

<sup>3</sup>Ibid. paragraph 19.

<sup>4</sup>Ibid. paragraph 30.

<sup>5</sup>Ibid. paragraph 7.

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In June 1999, Belize presented its initial and second periodic reports to CEDAW. The Committee, in its concluding comments, noted that the Constitution of Belize provides "protection against discriminatory treatment and [the Committee] required State policies to eliminate economic and social privilege and disparity among citizens on grounds that include sex<sup>6</sup>." The Committee also "drew attention to the National Strategic Plan on Gender Equity and Equality, which had been developed to promote implementation of the Government's commitments under the Beijing Declaration and Platform for Action<sup>7</sup>." As part of its concerns and recommendations, the Committee urged the government of Belize to "ensure that women have effective remedies against indirect discrimination and discrimination by non-State actors<sup>8</sup>."

Belize has yet to comply with its obligations as a State Party to the UN Committee against Torture by submitting its second and third reports which have been overdue since 1992 and 1996, respectively.

Amnesty International welcomes the decision expressed by the government, in its 22 February 2000 "briefing", to become a member of the International Criminal Court by ratifying its statute later in the year.

## II. PRIMARY HUMAN RIGHTS CONCERNS

Amnesty International is concerned about numerous reports of human rights violations in Belize including alleged excessive use of force, torture and ill-treatment by police; the existence under Belizean law of the death sentence; and prison conditions which reportedly fell short of the UN Standard Minimum Rules for the Treatment of Prisoners<sup>9</sup>.

Amnesty International has repeatedly expressed its concerns and requested information on specific cases to the government, and welcomes the government's responses and the efforts it has described to address these concerns. At the same time Amnesty International urges the government to implement fully its commitments to protect human rights.

### A. Violations perpetrated by security forces

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<sup>6</sup>Concluding comments of the CEDAW, 21 session, 1 July 1999. Paragraph 4 and 5.

<sup>7</sup>Concluding comments of the CEDAW, 21 session, 1 July 1999. Paragraph 4 and 5.

<sup>8</sup>Ibid. paragraph 21.

<sup>9</sup>Approved by the UN Economic and Social Council, resolution 663C (XXIV) of 31 July 1957 and resolution 2076 (LXII) of 13 May 1977.

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Human rights violations perpetrated by security forces have been a serious concern for Amnesty International in past years. The organisation has received worrying reports of fatal shootings by security forces in disputed circumstances as well as some reports of ill-treatment and torture. In several cases, officials told Amnesty International that investigations were underway, yet never communicated the outcome; in at least one other, Amnesty International expressed doubts to officials regarding findings that police violence was justified by the circumstances.

A local human rights organisation, the Human Rights Commission of Belize, documented more than 30 cases of police brutality in 1999. Belize's Ombudsman declared that between August and November 1999 he received 25 allegations of excessive use of force by police.<sup>10</sup> Most of the alleged violations originated in Belize City, the country's largest town. Nine of the cases were forwarded to the police commissioner for further investigation.

In response to persistent reports of human rights violations by security forces, in 1999 the Minister of National Security stated that the ministry had embarked on a "zero-tolerance" policy towards police abuses.<sup>11</sup> This policy was reported to entail systematically investigating allegations of human rights violations and a training program for security forces including a human rights component provided by a local non-governmental organisation, the Human Rights Commission of Belize (HRCB).

## 2. Fatal shootings by police

Amnesty International has expressed concern to the government of Belize at reports of killings resulting from excessive use of force by members of the police and the BDF. In most cases, victims or their families did not present official complaints, despite the existence of a complaints mechanism, apparently out of fear of reprisals and distrust of the authorities' willingness to investigate.

In the past months, there have been increasing reports by local human rights organisations, Guatemalan officials and media, of alleged excessive use of force by Belize security forces in areas close to the border between Guatemala and Belize. Most recently, at the end of January 2000, members of the BDF reportedly shot a Guatemalan national in the border zone. In an official statement, Belizean authorities

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<sup>10</sup>Belize Reporter, 14 November 99.

<sup>11</sup>Belize Police Department press release of 30 November 99.

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said that the killing occurred when a BDF patrol returned fire after coming under attack by a group of unidentified people.

Amnesty International requested clarification of the death of Mateo Paiz Ramírez who was shot dead in disputed circumstances by members of the BDF in the village of Arenal in June 1999. The police indicated that they had fired in self-defence, claiming that Mateo Paiz Ramírez had attacked them with a machete. This version was contested by eyewitnesses who reported that the soldiers' lives had not been in danger. A Commission of Inquiry established to investigate Mateo Paiz Ramirez's death concluded that the shooting was carried out in self-defence.

Amnesty International recognizes the efforts made by Belizean authorities to investigate allegations of violations, and urges them to take all possible measures to ensure the compliance of law enforcement officials with international standards. In particular, Amnesty International points to the United Nations (UN) Code of Conduct for Law Enforcement Officials (UN Code of Conduct),<sup>12</sup> which states that, "in the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the rights of all persons" (Article 2), using force "only when strictly necessary and to the extent required for the performance of their duty" (Article 3). These principles should be taken particularly into account in reviewing guidelines on the use of force and firearms and in the course of any future training programs for police officers and BDF agents.

With regard to investigations of alleged violations, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials<sup>13</sup> stipulate that the authorities should initiate prompt, impartial and thorough investigations and should make public reports of the scope, method and findings of such investigations.

### 3. Torture and ill-treatment

Amnesty International is concerned at repeated allegations of torture and ill-treatment by security forces. Human rights non-governmental organisations (NGO), lawyers and journalists have reported that ill-treatment and torture by the security forces are widespread but often remain unreported due to victims' fear of retaliation. These violations are often said to occur during questioning of suspects, leading to fears of forced confessions of guilt.

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<sup>12</sup>UN General Assembly, resolution 34/169, annex. 34, U.N. Doc A/34/46 (1979).

<sup>13</sup> adopted by consensus by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders of 7 September 1990.

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It was reported also that in some of these cases, arrest procedures and the constitutionally-guaranteed right to habeas corpus were not respected and that police failed to bring individuals before judicial authorities within 72 hours as required under Belizean law. Articles 5 (2) and 5 (3)<sup>14</sup> of the Constitution of Belize require that detainees be told of the reason for their arrest within 48 hours and brought before a magistrate within 72 hours. These provisions are in conformity with international standards including Article 9 of the Universal Declaration of Human Rights (UDHR)<sup>15</sup> prohibiting arbitrary arrest or detention, and Articles 9, 10 and 11 of the International Covenant on Civil and Political Rights (ICCPR) guaranteeing the right to liberty and security of person as well as the right of detainees to be treated with humanity and respect for the dignity of the person.

Amnesty International has requested information from the authorities in several cases of alleged torture or ill-treatment of detainees by security forces. In one such case, Daniel Tillett died in custody following alleged torture by police. Daniel Tillett was arrested in Independence Park on 21 September 1999 and died in the Belize Police Headquarters in Belmopan on the same day. A post-mortem examination reportedly revealed a ruptured liver, a fractured skull, and water in his lungs, and suggested that these injuries had been sustained in police custody. The Commissioner of Police was subsequently removed from office, a second police official was suspended and a third was charged with murder. Preliminary judicial proceedings are reported to have taken place.

Héctor Balcarcel, Guatemalan national, alleged that he was tortured by members of the BDF, over a period of four days between 26 April 1999 and 29 April 1999. In testimony given to the Human Rights Commission of Belize on the day following his release, Héctor Balcarcel said that he was arrested by the Belize police along with Ricardo Gusmán, another Guatemalan businessman, on 26 April 1999. He said that the two were taken by a group of soldiers in camouflage uniforms, who he believed to be members of the Dragon Unit of the Police Force, to the Belmopan Police station and from there to what seemed to be a private house. He reported being repeatedly beaten, and, after having been blindfolded, burned on his testicles and other parts of his body with what could have been a lighter and a hot metallic object. He said that he was asked to confess to various criminal activities. Héctor Balcarcel

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<sup>14</sup>Constitution of Belize: Chapter II, Article 5 (2) (a): "any person who is arrested or detained shall be entitled to be informed promptly, and in any case no later than forty-eight hours after such arrest or detention, in a language he understands, of the reasons for his arrest or detention;" and (b) " to communicate without delay and in private with a legal practitioner of his choice (..) and to have adequate opportunity to give instructions to a legal practitioner of his choice" . Article 5 (3) (a) and (b) Any person who is arrested or detained- shall be brought before a court without undue delay and in any case not later than seventy-two hours after such arrest or detention."

<sup>15</sup>Adopted and proclaimed by the UN General Assembly, resolution 217 A (III) of 10 December 1948. Article 9: "No one shall be subjected to arbitrary arrest, detention or exile."

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said that the men also rubbed habanero pepper on his testicles, anus and back, wrapped his testicles with a cord and forced him to drink urine and vomit.

On the day following his release, Héctor Balcarcel complained of pain and according to Belize authorities<sup>16</sup>, he was "issued medico-legal forms and directed to a local medical practitioner by the interviewers [police agents including a police officer]." The medical examination identified abrasions on both his wrists and harm to his testicles and penis.

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<sup>16</sup>Letter from the Prime Minister of Belize, Said Musa, of 13 August 1999 in response to Amnesty International letter, ref. AMR 16/99.04 dated 03 August 1999.

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In response to AI's written query on the case, the Prime Minister of Belize replied that "the charges levied at the Belize Police Department [were] gross and vulgar, and [were] unprecedented."<sup>17</sup> However, the response left some outstanding questions, particularly as the findings of the medico-legal examination seem consistent with the allegations of abuse. Therefore, Amnesty International asked for additional information from the government on the nature of the investigation it said had been conducted. In absence of further information, it was still not clear if an independent and thorough investigation had taken place into the allegations of torture.

On 10 September 1999, according to reports, Orvin Myvette, a soldier in the BDF, was repeatedly beaten by law enforcement officials while being held for questioning at the Orange Walk police station. Orvin Myvette's lawyer reportedly made a complaint to the Orange Walk police station and was told by the police that the case would be investigated. In October 1999, Amnesty International received a response to its earlier query about the case from the Attorney General stating that an inquiry into the matter was scheduled to be completed shortly and that the results would be forwarded to the organization. However, no results have been received to date.

Amnesty International has recently received information on two cases which it has not yet raised with authorities. Luis Arturo Villavicencio declared that on 24 October 1999, while working on a farm near the village of Arenal in the Cayo District on the Belize side of the border with Guatemala, four BDF soldiers dressed in uniform and a police officer in blue camouflage approached him, and accused him of involvement in drug trafficking. According to a Guatemalan official, Luis Villavicencio said that the police officer punched him repeatedly in the chest and right ribs. A medical report reportedly revealed that he had bruises on his chest. Following protest by a local human rights organisation and by Guatemalan officials, the police commissioner publicly declared that an investigation was carried out and that officers found guilty would be dealt with accordingly<sup>18</sup>. However, following requests for further information by Guatemalan officials, authorities are said to have rejected the allegations as unfounded.

The second case concerns Miguel Angel Nicola Ayala, a 25 year old Guatemalan national, who was reportedly arrested on 27 December 1999 by the police and taken to San Ignacio police station. After a night in custody, he said he was brought to a small room in the police station office where four policemen allegedly tortured him. He told the HRCB that after being blindfolded and handcuffed with his hands behind a chair back, he was beaten and subjected to electric shocks to his shoulders and back. He also said that he was punched in the stomach and the front and side of the ribs. He alleged that police officers, who accused him of the murder of a woman, forced him to sign a confession that he never read. Two days after his

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<sup>17</sup>Ibid. p.2.

<sup>18</sup>Belize Reporter, 14 November 1999.

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arrest, Miguel Ayala was taken to the magistrates court and was charged with theft, rape and murder, to which he apparently pleaded guilty. He was then sent to Hattieville prison. Talking to the HRCB, Miguel Ayala said that he did not receive any legal advice and he did not mention the beating before because of fear of retaliation.

Following these reports, Amnesty International expressed concerns that security forces may have resorted to cruel, inhuman or degrading treatment in violation of Article 7 of the ICCPR.<sup>19</sup> Such behaviour would contravene the guidelines contained in the UN Code of Conduct for Law Enforcement Officials, of which Article 2 states that "in the performance of their duty, law enforcement officers shall respect and protect human dignity and uphold the rights of all persons."<sup>20</sup>

#### 4. Official investigations of alleged human rights violations

Following reports of police violations, and particularly with regard to the specific cases mentioned below, Amnesty International has requested that the authorities pass on the result of the investigations carried out. While Amnesty International welcomes the answers received from the government and recognises the efforts of the police force to investigate and at times sanction offending officers, the organisation remains concerned about the impartiality and independence of some police investigations and the lack of judicial prosecution.

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<sup>19</sup>ICCPR, Article 7: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment (...)."

<sup>20</sup>Code of Conduct for Law Enforcement Officials, UN General Assembly resolution 34/169, annex, 34 UN GAOR Supp. (No. 46) at 186, UN Doc. A/34/46 (1979).

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The Belize Police Force Revised Command Policy provides for investigation to be carried out into allegations of unprofessional behaviour.<sup>21</sup> The procedure followed in cases of alleged police violations is that the police officer involved is immediately suspended, pending investigation. Depending on the result, disciplinary action can be taken by police authorities. Local human rights lawyers and the Ombudsman of Belize publicly complained about the ineffectiveness of the police complaints system and the lack of independence and impartiality of police investigations into allegations of human rights violations. Under Articles 12, 13 and 16 of the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment,<sup>22</sup> to which Belize is a state party, the government is bound to ensure that "its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture [or ill-treatment] has been committed in any territory under its jurisdiction." The lack of independent investigation into allegations of ill-treatment or torture, coupled with the lack of judicial follow-up, lead to concern about the will of the authorities to punish human rights violations.

On the basis of these reports, Amnesty International urges that the Belizean authorities take effective legislative, administrative, judicial and all other measures necessary to prevent acts of torture; to conduct impartial and thorough investigations in conformity with international standards; and to ensure that perpetrators are brought to justice.

#### B. Prison conditions

Hattieville Rehabilitation Centre is the main penal institution in Belize. The Prison Ordinance of 1984 and the Prison Rules of 1957, stipulate that prison conditions meet guaranteed minimum standards, and provide guidance on matters such as medical treatment and conditions in the cells. Section 7 of the Constitution of Belize prohibits "torture" and "inhuman or degrading punishment or other treatment."

NGOs, lawyers and foreign diplomats have described the prison conditions as very poor. The main concerns raised included poor sanitation and the lack of water and toilet facilities. These conditions are due in part to overcrowding: Hattieville Rehabilitation Centre, designed for 500 inmates, now houses almost 1,100. Other concerns are the lack of exercise for prisoners in medium and maximum security units, and the lack of facilities for prisoners to have confidential consultations with their lawyers.

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<sup>21</sup>Belize Police Force Revised Command Policy, January to March 1997: Chapter 7.1.f - 3, "the establishment of the Command Desk of Internal Affairs is in consequence of the need to strengthen discipline within the organisation. (...) to prosecute/inquire into allegations of unprofessional behaviour or misconduct in the process of any criminal investigation or major operation."

<sup>22</sup>Adopted by the UN General Assembly, resolution 39/46, of 10 December 1984.

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According to a report published by the NGO Penal Reform International, "in March 1996, a number of prisoners on death row began proceedings in the Supreme Court of Belize, seeking a declaration that the conditions, in which they are being held at Hattieville Rehabilitation Centre, constitute inhuman and degrading treatment and punishment in violations of section 7 of the Belize Constitution<sup>23</sup>." On the same grounds, in 1998, three prisoners sentenced to death presented a constitutional motion<sup>24</sup> to the Judicial Committee of the Privy Council (JCPC) in London. The Supreme Court rejected arguments that conditions of detention in Hattieville prison constituted degrading and inhuman treatment and gave the opinion that Belize's prisons could not be held to the same standards as the prisons in England or other "advanced" countries. This decision was challenged by the defendants and there had been no decision made at time of the writing of this report.

In addition to prison conditions, Amnesty International is concerned about reports that corporal punishment was inflicted, in March 2000, on two prisoners, who respectively received 6 and 12 lashes with a tamarind whip, on their buttocks. The punishment was imposed following charges that they had stabbed other inmates earlier in the year. It was reported that the last time a prisoner was whipped was in 1975. The Belize Prison Rules provide, in Chapter 110, article 53, for sentences of corporal punishment to be imposed and inflicted in prison.

Amnesty International believes that the infliction of corporal punishment on offenders serves no justifiable penal purpose and is brutalizing to all who are involved in the process. Corporal punishment contravenes article 7 of the Constitution of Belize, as well as international standards. Article 31 of the UN Standard Minimum Rules for the Treatment of Prisoners provides that "Corporal punishment (...) and all cruel, inhuman or degrading treatment be completely prohibited as punishments for disciplinary offences." The UN Special Rapporteur on torture, Nigel Rodley, in his report to the UN Commission on Human Rights dated 10 January 1997, stated that "corporal punishment is inconsistent with the prohibition of torture and other cruel, inhuman or degrading treatment or punishment enshrined, inter alia, in the UDHR, the ICCPR, the Declaration on the Protection of All Persons From Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment<sup>25</sup>." Amnesty International is concerned that Belize violates the rights

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<sup>23</sup>Saul Lehrfreund and Keir Starmer, "Prison conditions in Belize", Penal Reform International, January 1997, p.3

<sup>24</sup>In cases involving the interpretation of the constitution, both criminal and civil cases may be appealed by right beyond the Belize Court of Appeal to the Judicial Committee of the Privy Council in London.

<sup>25</sup>UN reference: E/CN.4/1997/7

recognized in Articles 7 and 10(1) of the ICCPR by permitting sentences of corporal punishment to be imposed and inflicted in prison as provided in paragraph 53 of the Prison rules.

In 1999, the authorities announced a series of measures to improve conditions of detention. These measures included the opening of a new medical facility and the recruitment of a prison psychiatrist. In January 1999, the government introduced legislation to Parliament regarding juvenile offenders, which included provisions for the separation of children from adults in prison. This year, the Attorney General presented a plan for improvement of prisons and announced the appointment of a board of governors, to address general detention conditions, such as overcrowding and security. These measures are to be welcomed.

Amnesty International urges the government to pursue its efforts to improve detention conditions and evaluate alternative measures to detention in the case of pretrial detention.

### C. Death penalty

Death by hanging is mandatory for the crime of murder in Belize. Since the Criminal Justice Act of 1994, it has been possible to pass a sentence of life imprisonment instead of death where there were special extenuating circumstances. The last execution for murder was that of Kent Bowers carried out in June 1985, despite a petition for clemency. There have been no executions since then but three more people were sentenced to death in 1999.

Amnesty International opposes the death penalty in all cases and works for its abolition on the grounds that it is a violation of the right to life as well as the right not to be subjected to cruel, inhuman or degrading treatment or punishment as proclaimed in the UDHR.

Amnesty International is aware of the gravity of the crimes committed and appreciates the problems involved in controlling violence in any given society, but believes there is no clear evidence that the death penalty deters crime more effectively than other punishments. 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, concluded that the evidence gives no positive support to the deterrent hypothesis.

The abolition of the death penalty is now firmly entrenched internationally, 105 countries worldwide having abolished capital punishment in law or in practice. Over 30 countries and territories have abolished the death penalty for ordinary crimes or

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for all crimes since 1990. In 1971 the UN General Assembly adopted a resolution<sup>26</sup> in which it affirmed that ..". in order fully to guarantee the right to life, provided for in Article 3 of the UDHR, the main objective to be pursued is that of progressively restricting the number of offences for which capital punishment may be imposed, with a view to the desirability of abolishing this punishment in all countries." On 3 April 1997, the UN Commission on Human Rights called on States that have not yet abolished the death penalty to, among other things, "consider suspending executions, with a view to completely abolishing the death penalty."<sup>27</sup> More recently, in March 1999, the UN Commission on Human Rights called upon all States that still maintain the death penalty "to establish a moratorium on executions, with a view to completely abolishing the death penalty"<sup>28</sup>.

### **Appeal process in cases of sentence of death**

Since Belize has retained the practice of appeals to the JCPC in London, people sentenced to death in the country have the right to appeal to the Belize Court of Appeal but also to present their final appeal to the JCPC<sup>29</sup>. In July 1999, the Caricom heads-of-government summit in Trinidad adopted a decision to set up a Caribbean Court of Justice which will replace the JCPC as a Court of final appeal for those Caribbean countries that still recognise its jurisdiction. It is not known when this decision will be implemented.

The Attorney General of Belize proposed in May 1999 to remove or limit criminal appeals to the JCPC. Amnesty International wrote to the government expressing its concern that this could lead to an immediate resumption of executions, which would be a retrograde step contrary to the worldwide trend towards abolition of the death penalty. Amnesty International was also concerned that such a decision could lead to a reduction in the standard of guarantees for fair trial for citizens of Belize, particularly if no adequate measures are taken to replace this final court of appeal. The JCPC's role has been to preserve the highest standards of fair trial and to ensure that irrevocable injustices are rectified in capital cases in order to ensure the ultimate respect for the right to life. Amnesty International notes the

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<sup>26</sup>Resolution 2857 (XXVI) of 1971 and see also resolution 32/06 of 8 December 1977.

<sup>27</sup> Resolution 1997/12.

<sup>28</sup>Resolution 1999/61 of 28 April 1999.

<sup>29</sup>"Appeals in death penalty cases are initiated either by special leave or when the matter is regarding the interpretation of the Constitution of the country. Constitutional appeals are 'as of right.'" Death Watch, "Caribbean Commonwealth: a review of the appeals process for death row inmates", June 1995, p.10.

recommendation made by the Political Reform Commission that the JCPC remain the ultimate court of appeal until a suitable replacement is identified<sup>30</sup>.

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<sup>30</sup>Final Report of the Political Reform Commission, January 2000. Recommendation 61: Privy Council. The Commission recommends that, until a suitable replacement final court of appeal is identified, that the Privy Council remain as Belize's final court of appeal.

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In past years, the JCPC has received Petitions for Special Leave to Appeal as a Poor Person on behalf of a number of prisoners under sentence of death. In several appeals<sup>31</sup>, convictions for murder have been overturned and prisoners have either been released or the murder charge has been replaced by one of manslaughter, which does not carry the death penalty. More recently, on 23 March 1999, in the case of Pasqual Bull, the JCPC reduced his conviction from murder to manslaughter; the JCPC ruled that the trial judge had misdirected the jury regarding the burden of proof. Subsequently, Pasqual Bull's sentence was commuted to 25 years' imprisonment by the Court of Appeal of Belize. The same court ordered the retrial of Marco Tulio Ibañez in February 1999 and commuted his sentence to 25 years.

### **Prisoners currently under sentence of death in Belize**

There are currently 11 people under sentence of death in Belize.

Two people have been convicted of murder and sentenced to death so far in 2000. Robert Hill was sentenced to death on 10 April, Aurelio Pop on 31 March. Three men were sentenced to death in 1999: Patrick Reyes was sentenced to death for murder on 16 April and Alan Carl and Estevan Sho were convicted of murder and sentenced to death on 2 December.

The remaining seven people have appeals pending before the Court of Appeal in Belize or the Judicial Committee of the Privy Council (JCPC). Dean Tillett had his 1996 conviction quashed. In May 1999 the JCPC ordered that the matter be remitted to the Court of Appeal of Belize to consider whether a re-trial ought to be ordered as there were concerns that Dean Tillett was deprived of a fair trial by the conduct of the prosecuting counsel. The case against Dean Tillett was thrown out on 1 March 2000 and he was subsequently released.

Wilfred Lauriano was sentenced to death on 2 December 1994. On 17 December 1998, the JCPC remitted his appeal to the Court of Appeal of Belize as new evidence had come to light that could lead to the conclusion that a substantial and grave miscarriage of justice had occurred. The JCPC were convinced that the matters raised in the petition required further investigation and asked the Court of Appeal of Belize to investigate and pronounce on the matters raised by the fresh evidence. On 11 November 1999, the Court of Appeal dismissed the appeal and a petition against this decision was filed to the JCPC.

Norman Shaw sentenced on 12 November 1997 and Cleon ("Tush") Smith sentenced in April 1997 were granted Special Leave to Appeal as poor persons<sup>32</sup> by the JCPC on 16 December 1999. Their cases will be examined this year by the Court of Appeal of Belize.

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<sup>31</sup>Dean Vásquez, Catalino O'Neil, Ellis Taibo, Linsberth Logan and Alfred Codrington

<sup>32</sup>"Petition for Special Leave to Appeal as a poor person or Special Leave of Her Majesty in Council: "this appeal is against either the legality of the sentence or the conviction, and occurs when the trial and Court of Appeal judgment from the domestic court has been received." in *Death Watch*, see above (note 29), p.10.

The Constitutional motion presented in the cases of Nicolás Antonio Guevara, Adolph Harris and Herman Mejía is still pending before the Court of Appeal. Nicolás Antonio Guevara was sentenced to death on 16 December 1993, Adolph Harris on 21 February 1995, and Herman Mejía on 11 November 1994.

### **Efforts to contest the constitutionality of the death penalty**

There have been judicial proceedings by prisoners on death row in Belize, questioning the constitutionality<sup>33</sup> of the mandatory death sentence and its conformity with international standards for the respect of human rights.

Since 1995, a number of prisoners sentenced to death have made appeals to the Court of Appeal and to the JCPC, arguing that the mandatory death sentence was unconstitutional. Constitutional proceedings on this issue have been commenced in Belize and are currently before the Court of Appeal in the case of Meheia, Bull and Guevara v the Attorney General of Belize<sup>34</sup>. More recently, in December 1999, in a petition for Special Leave to Appeal presented to the JCPC, solicitors for Cleon Smith have argued that the sentence of death by hanging violates the Constitution of Belize because it amounts to cruel, inhuman and degrading treatment contrary to section 7<sup>35</sup>. It was submitted to the JCPC, in that petition, that death by hanging constitutes inhuman and degrading treatment because hanging does not result in instantaneous death.

In another recent petition, the solicitors representing a prisoner sentenced to death argued that the mandatory imposition of the death penalty in murder convictions was unconstitutional because it deprives prisoners of any opportunity to present individual mitigation concerning their personal circumstances before a judicial authority entrusted with the power to determine sentence<sup>36</sup> and therefore is arbitrary, inhuman and degrading.

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<sup>33</sup>"Appeals under the Constitutional Motion relate to specific provisions protecting fundamental rights and freedoms of the individual contained within their domestic constitution, and therefore do not necessarily relate to the legality of the conviction or sentence." In *Death Watch*, see above (note 29), p.11.

<sup>34</sup>Petition for leave to appeal, Cleon Smith and the Queen, in the Privy Council on appeal from the Court of Appeal of Belize (ck reference) p.13.

<sup>35</sup>*Ibid.* p.12.

<sup>36</sup>Petition for Special Leave to Appeal *in forma pauperis* between Norman Shaw and the Queen, in the JCPC on appeal from the Court of Appeal of Belize, p.20.

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In accordance with previous jurisprudence of the JCPC, death sentences of individuals who have served five years or more on death row should be commuted to life imprisonment. In 1993 the Judicial Committee of the Privy Council decided, in the case of Pratt and Morgan v. the Attorney General of Jamaica<sup>37</sup>, that executing a person who has spent a prolonged period on death row violates Section 17 of the Constitution of Jamaica, which prohibits "inhuman or degrading punishment or other treatment."

The government of Belize, as a state party to the ICCPR, is obliged to ensure that the procedural safeguards established to protect the rights of individuals under sentence of death are respected. Article 6 of the ICCPR mandates strict guarantees for people sentenced to death, including the right to apply for amnesty, pardon or commutation. Article 14 of the ICCPR specifies the international norms for the right to a fair trial, including the right to appeal to a court of higher jurisdiction. Those international standards are also reiterated in Safeguards 5 and 6 of the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, adopted by the UN Economic and Social Council in 1984, stating that "capital punishment may only be carried out pursuant to a final judgement rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in Article 14 of the ICCPR, including the right to anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings." Article 2 of the ICCPR provides for the right to judicial protection through an effective recourse.

The respect of such safeguards is essential, as the death penalty is irrevocable and any error in the criminal justice system fatal. In his report submitted to the UN Commission on Human Rights on 7 December 1993, the Special Rapporteur on Extrajudicial, summary or arbitrary executions, reminding that "judicial errors can no longer be remedied once a death sentence has been carried out", urged the governments of all States 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 and that defendants fully benefit from all safeguards and guarantees set forth in the pertinent international instruments."

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<sup>37</sup>Pratt-v-A.G. for Jamaica 1993. In this case, in which Earl Pratt and Ivan Morgan had been convicted of murder and remained on death row for 14 years, the JCPC stated 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 committee also stated that "the convictions of all those who had been on death row for longer than five years should have their sentences commuted to life imprisonment." Cited in Death Watch, see above (note 29), p.12.

## RECOMMENDATIONS

### Regarding the security forces

(i) The government of Belize should ensure that in response to all allegations of violations by security forces, authorities initiate prompt, impartial and thorough investigations and make public reports of the scope, method and findings of such investigations, as provided by the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials<sup>38</sup>. On the basis of findings, those responsible must be brought to justice.

(ii) The government should issue instructions to the security forces to use force only in accordance with the provisions of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials<sup>39</sup>.

(iii) The government should improve mechanisms which allow complaints of torture to be lodged and independent investigations to take place promptly.

(iv) All defendants must have regular access to doctors throughout their detention.

(v) In order to implement its commitments to human rights, Amnesty International urges also that the government comply with its obligations as a State Party to the UN Convention against Torture and submit its second and third reports which had been overdue on 1992 and 1996.

(vi) The government should ensure that statements and other evidence obtained through torture may not be invoked in any proceedings, except against a person accused of torture.

(vii) Amnesty International strongly urges the government to repeal the use of corporal punishment as soon as possible and in particular, to amend paragraph 53 of the Prison rules.

### Regarding the death penalty

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<sup>38</sup>Adopted by consensus by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders of 7 September 1990.

<sup>39</sup>Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

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Amnesty International is opposed to the death penalty in all cases, as the ultimate violation of the right to life, guaranteed by Article 3 of the UDHR and Article 6 of the ICCPR. The organization urges the government of Belize to reconsider its position on the death penalty and to take the following immediate urgent steps:

(i) The government should ensure that all defendants facing the death penalty are tried in accordance with international fair trials standards, including Article 14 of the ICCPR and the safeguards guaranteeing the protection of the rights of those facing the death penalty.

(ii) The government should work progressively towards the abolition of the death penalty, in line with resolution 1999/61 of the Commission on Human Rights, question of the death penalty and in due course should ratify the Second Optional Protocol to the ICCPR Aiming at the Abolition of the Death Penalty.

(iii) Pending abolition the government should commute outstanding death sentences and refrain from imposing further death sentences.