

Protecting the right to life against the death penalty

Written observations to the Inter-American Court of Human Rights on Legislative or Other Measures Denying Judicial or Other Effective Recourse to Challenge the Death Penalty

In the Matter of a Request by the Inter-American Commission on Human Rights for an Advisory Opinion from the Inter-American Court of Human Rights (Article 64(1) of the American Convention on Human Rights)

And in the Matter of Legislative Measures Concerning the Mandatory Imposition of The Death Penalty And Related Matters

I. INTRODUCTION

1. On 8 December 2004, Amnesty International¹ lodged written observations, as a party interested in the subject matter of this request for an Advisory Opinion.
2. Amnesty International Ltd (Amnesty International), 1 Easton Street, London, WC1X 0DW, United Kingdom, is a company limited by guarantee. Amnesty International is a worldwide movement of people who campaign for internationally recognized human rights. Amnesty International is independent of any government, political ideology, economic interest or religion. It does not support or oppose any government or political system, nor does it support or oppose the views of the victims whose rights it seeks to protect. It is concerned solely with the impartial protection of human rights. Amnesty International has a varied network of members and supporters around the world. At the latest count, there were more than 1.8 million members, supporters and subscribers in over 150 countries and territories in every region of the world. Amnesty International is a democratic, self-governing movement. Major policy decisions are taken by an International Council made up of representatives from all national sections.
3. Amnesty International has extensive experience in submitting *amicus curiae* briefs and other third-party submissions in international and national courts to assist them in resolving fundamental questions of international law. For example it has intervened before

¹ This *amicus curiae* brief has been drafted for Amnesty International by: Professor Vaughan Lowe, Essex Court Chambers, and Alison Macdonald, Matrix Chambers, London, United Kingdom.

the European Court of Human Rights, in a number of cases² and the Inter-American Court of Human Rights.³ In addition it has made a number of submissions to national courts, including the UK House of Lords⁴ and the US Supreme Court. Amnesty International submits that it is thus well placed to assist the Court with a wider international perspective.

II. THE COMMISSION'S REQUEST

1. The Inter-American Commission on Human Rights ('the Commission) has requested an advisory opinion from the Court, pursuant to Article 64(1) of the American Convention on Human Rights ('the Convention'). The Commission has asked the Court to consider the following questions:

- (1) Do Articles 25, 2 and 1(1) of the American Convention on Human Rights, interpreted in accordance with Article 29 of the Convention, and in relation to Articles 4, 5 and 8 of the American Convention, prohibit a state from amending its constitution to prevent its domestic courts from finding that the imposition or execution of a death sentence on a person is inconsistent with or in contravention of fundamental rights under the constitution because the death penalty is the mandatory punishment for the person's crime?

² For example, Amnesty International has intervened as *amicus curiae* in the following cases before the European Court of Human Rights: *Acar v. Turkey* (Application No. 26307/95), 6 May 2003 (preliminary issue) 8 April 2004; *Aydin v. Turkey* (Application No 28293/95; 29494/95; 30219/96), 10 July 2001; *Assenov and Others v. Bulgaria* (Application No 24760/94), 18 October 1998; *Kurt v. Turkey* (Application No 24276/94), 25 May 1998; *Chahal v. United Kingdom* (Application No. 22414/93), 15 November 1996; *Akdivar and Others v. Turkey* (Application No. 21893/93), 19 June 1996; *McCann and others v. United Kingdom* (Application No.18984/91), 27 September 1995; *Murray v. United Kingdom* (Application No 18731/91), 28 October 1994; *Brannigan and McBride v. United Kingdom* (Application No 14553/89 and 14554/89), 26 May 1993; *Soering v. United Kingdom* (Application No 14038/88), 7 July 1989.

³ For example, Amnesty International has intervened as *amicus curiae* in the following cases before the Inter-American Court of Human Rights: *Case of Velasquez-Rodriguez*, Judgement of 29 July 1988; *Case of Godinez-Cruz*, Judgement of 20 January 1989; *Case of Fairen-Garbi and Solis-Corrales*, Judgement of 15 March 1989; *Case of Benavides Cevallos*, Judgement of 19 June 1998. Amnesty International has also intervened in the following advisory opinions of the Inter-American Court of Human Rights: "*Habeas Corpus in Emergency Situations (Arts. 27(2) and 7(6) American Convention on Human Rights)*" (OC-8/87 of January 30, 1987); "*Judicial Guarantees in States of Emergency (Arts. 27(2), 25 and 8 American Convention on Human Rights)*" (OC-9/87 of October 6, 1987) and "*The Right to Information on Consular Assistance, in the framework of the guarantees of the Due Process of Law*" (OC-16/99 of October 1, 1999).

⁴ The appeal to the House of Lords of the judgment by the English High Court of Justice, Queen's Bench Division on 28 October 1998 in the cases, *In the Matter of an Application for a Writ of Habeas Corpus ad Subjicendum (Re: Augusto Pinochet Ugarte)* and *In the Matter of an Application for Leave to Move for Judicial Review between: The Queen v. Nicholas Evans et al. (Ex Parte Augusto Pinochet Ugarte)*.

- (2) Do Articles 25, 2 and 1(1) of the American Convention on Human Rights, interpreted in accordance with Article 29 of the Convention, and in relation to Article 5 of the American Convention, prohibit a state from amending its constitution to prevent its domestic courts from finding that the imposition or execution of a death sentence on a person is inconsistent with or in contravention of fundamental rights under the constitution because the person sentenced to death has been detained under conditions that constitute cruel, inhuman or degrading treatment or punishment?
- (3) Do Articles 25, 2 and 1(1) of the American Convention on Human Rights, interpreted in accordance with Article 29 of the Convention, prohibit a state from amending its constitution to prevent its domestic courts from finding that the imposition or execution of a death sentence on a person is inconsistent with or in contravention of fundamental rights under the constitution because that person has a complaint pending before the inter-American human rights system?

III. SUMMARY OF SUBMISSIONS OF INTERESTED PARTY

2. Amnesty International submits that:

- (1) Each of the Commission's three questions should be answered in the affirmative. Each of the hypothetical constitutional amendments set out by the Commission involves violations of the Convention.
- (2) Following the decision of the Court in *Hilaire, Constantine and Benjamin et al v Trinidad and Tobago*, Judgment of 21 June 2002, Ser. C No. 94 (2002), it is settled law that the imposition or execution of a mandatory penalty of death in any circumstances violates the Convention, *inter alia* because it is arbitrary, inhuman and degrading.
- (3) States parties to the Convention are under an obligation not to inflict inhuman and degrading treatment on those within their jurisdiction, whether by the imposition of a mandatory penalty of death or by the holding of a person in inhuman and degrading conditions of detention, or a combination of these factors.
- (4) The requirements of the Convention can restrict the extent to which states are permitted, under international law, to alter their constitutions. Such amendments will be impermissible under the Convention if, *inter alia*, they impede the right of effective redress for violations of constitutional or Convention rights.
- (5) The requirement of effective redress includes the right to petition a domestic court for relief, as well as, in the case of states which recognise

the right of individual petition, the right to bring an application under the Inter-American system, and the right not to be executed while such an application is pending.

3. The Commission's request is for an advisory opinion on the compatibility with the Convention of certain hypothetical constitutional amendments. The Commission has cited actual legislation, for example that of Barbados, as examples of the kind of legislation in issue, but has expressly stated that it does not seek a ruling on any particular case. Accordingly, these submissions consider the Commission's questions in the abstract and not by reference to any actual legislation or any specific state party to the Convention.

IV. SUBMISSIONS

(1) Relevant provisions of the Convention

4. Article 1(1) of the Convention states that:

'The States Parties to this Convention undertake to respect the rights and freedoms recognised herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, colour, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.'

5. Article 2 states that:

'Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.'

6. Article 4 states that:

'(1) Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

(2) In countries that have not abolished the death penalty, it may be imposed only for the most serious crimes and pursuant to a final judgment rendered by a competent court and in accordance with a law establishing such punishment, enacted prior to the commission of the crime. The application of such punishment shall not be extended to crimes to which it does not presently apply.

[...]

(6) Every person condemned to death shall have the right to apply for amnesty, pardon, or commutation of sentence, which may be granted in all cases. Capital punishment shall not be imposed while such a petition is pending decision by the competent authority.’

7. Article 5 states that:

‘(1) Every person has the right to have his physical, mental, and moral integrity respected.

(2) No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

[...]

8. Article 8 states that:

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

[...]

9. Article 25 states that:

‘(1) Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognised by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

(2) The States Parties undertake:

(a) to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;

(b) to develop the possibilities of judicial remedy; and

(c) to ensure that the competent authorities shall enforce such remedies when granted.’

10. Article 29 states that:

‘No provision of this Convention shall be interpreted as:

(a) permitting any State Party, group, or person to suppress the enjoyment or exercise of the rights and freedoms recognised in this Convention or to restrict them to a greater extent than is provided for herein;

(b) restricting the enjoyment or exercise of any right or freedom recognised by virtue of the laws of any State Party or by virtue of another convention to which one of the said states is a party;

(c) precluding other rights or guarantees that are inherent in the human personality or derived from representative democracy as a form of government; or

(d) excluding or limiting the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature shall have.’

(2) The imposition or execution of a mandatory sentence of death in any circumstances violates the Convention

11. In *Hilaire, Constantine and Benjamin et al v Trinidad and Tobago*, Judgment of 21 June 2002, Ser. C No. 94 (2002) this honourable Court considered a Trinidad statute – the Offences Against the Person Act 1925 – which required the imposition of a mandatory sentence of death on all those convicted of murder. The Court found, unanimously, that this statute:

‘automatically and generically mandates the application of the death penalty for murder and disregards the fact that murder may have varying degrees of seriousness. Consequently, this Act prevents the judge from considering the basic circumstances in establishing the degree of culpability and individualising the sentence since it compels the indiscriminate imposition of the same punishment for conduct that can be vastly different. In light of Article 4 of the American Convention, this is exceptionally grave, as it puts at risk the most cherished possession, namely, human life, and is arbitrary according to the terms of Article 4(1) of the Convention.’ (at [103])

12. The Court went on to conclude that:

‘because the Offences Against the Person Act submits all persons charged with murder to a judicial process in which the individual circumstances of the accused and the crime are not considered, the aforementioned Act violates the prohibition against the arbitrary deprivation of life, in contravention of Article 4(1) and 4(2) of the Convention.’ (at [108])

13. The Court also found that the continued existence of the Offences Against the Person Act 1925 constituted a violation of Article 2 of the Convention. (at [117]). In reaching this conclusion, the Court drew on the jurisprudence of other international human rights tribunals and supreme courts, all of whom have found the mandatory death penalty to be arbitrary and/or inhuman punishment.

(3) *Hilaire* applies to the present request for an Advisory Opinion

14. While this Court’s decision in *Hilaire* was directly binding only on the state party concerned – Trinidad and Tobago – it constitutes an authoritative interpretation of the

meaning of the Convention, and in particular the requirements of Article 4. The effect of the Court's judgment is to demonstrate that Article 4 of the Convention prohibits states parties from maintaining in force legislation requiring the penalty of death to be imposed in every case of murder regardless of its specific characteristics. There were no special features of the Trinidad and Tobago legislation at issue in that case which would confine the effect of the Court's judgment to that jurisdiction. The mandatory penalty of death constitutes an arbitrary deprivation of life which must be taken to violate Article 4 of the Convention in all circumstances.

15. This conclusion has implications for the obligation imposed on states parties by Article 1(1) of the Convention, in which the parties 'undertake to respect the rights and freedoms recognised' by the Convention. The Convention is a living and developing text, and the rights and freedoms it recognises include the Court's authoritative interpretations of the text. This includes, now, the interpretation of Article 4 as precluding the imposition or execution of a mandatory penalty of death. This conclusion is reinforced by Article 29, which prohibits states parties from restricting rights to a greater extent than is provided for in the Convention.
16. Amnesty International submits that there is nothing in the request for an Advisory Opinion which would require the Court's conclusion on the mandatory death penalty to be re-opened. Rather, the *Hilaire* judgment forms a starting point for analysis of the three questions posed by the Commission.

(4) The obligations imposed on states parties by the finding that the mandatory death penalty violates the Convention

17. The key provision in this analysis is Article 25. This guarantees the right to 'simple and prompt recourse, or any other effective recourse' to a competent tribunal in cases of violation of an individual's rights under the constitution of a state party, its other laws, *or* the rights enshrined in the Convention. Consistent with the aim of ensuring that human rights are protected at the domestic level, Article 25(2) imposes a direct obligation on states parties to ensure that any individual who claims that his constitutional and/or Convention rights have been violated 'shall have his rights determined by the competent authority provided for by the legal system of the state.' Article 25 clearly envisages that domestic courts and tribunals should be the primary source of redress for such violations.
18. The result of the Court's clear and unqualified judgment in *Hilaire* is that any individual on whom a mandatory sentence of death is imposed suffers a violation of his Convention rights. He or she may also suffer a violation of his or her rights under the constitution of the state party whose authorities posed the sentence. This is not *necessarily* the case: for example, the constitutions of a number of states parties contain clauses immunising from scrutiny certain legislation which predates the constitution. The effect of such clauses in the Constitutions of Barbados, Trinidad

and Tobago and Jamaica has recently been considered by the Privy Council.⁵ The question of interpretation of specific constitutions is not directly relevant to the current request for an Advisory Opinion, firstly since the Court is not asked to deal with the legal provisions of any specific state party, and secondly since Article 25(2) in any event provides a right to effective redress in cases of violation of the rights protected by the Convention, regardless of the content of constitutions and of domestic law.

19. For the reasons given in the previous section, Amnesty International submits that it is now settled law that the imposition of a mandatory penalty of death in any case involves a violation of the Convention, and in particular Article 4. The Commission has found the mandatory penalty to violate other provisions of the Convention, but for present purposes Amnesty International takes as a starting point the proposition that the imposition or execution of a mandatory penalty violates *at least* Article 4 of the Convention.
20. The fact that the mandatory penalty violates the Convention imposes obligations on states parties. These flow from the requirements of Articles 1 and 2 of the Convention. States parties must 'respect', and must 'give effect' to the rights contained in the Convention. Those rights have now been authoritatively interpreted so as to preclude the imposition of the mandatory penalty in any circumstances. Accordingly, any state party which maintained in force such legislation would be failing to ensure, *inter alia*, respect for the right not to be arbitrarily deprived of life. The very existence of such legislation would trigger the obligation in Article 2 to take legislative measures to bring the state party's legal system into conformity with the full requirements of the Convention.
21. The most appropriate means of doing so would be to repeal the relevant legislation. This would ensure that no such penalties were imposed and thus prevent violations of the Convention rights from occurring. In such a case, the issue of effective remedies, and the questions posed by the Commission, would not arise. Repeal of the relevant legislation was the first form of reparation ordered by the Court in the *Hilaire* case:

'the State of Trinidad and Tobago should refrain from future application of the [Offences Against the Person Act], and, within a reasonable time, bring the law into compliance with the American Convention and other international human rights norms, in accordance with Article 2, so that the respect and enjoyment of the rights to life, personal integrity, a fair trial and due process embodied in the Convention are guaranteed. The legislative reforms contemplated should include the introduction of different categories (criminal classes) of murder, in keeping with the wide range of differences in the gravity of the act, so as to take into account the particular circumstances of both the crime and the offender. A system of graduated levels should be

⁵ *Boyce and Joseph v The Queen* [2004] 3 WLR 786; *Watson v The Queen* [2004] 3 WLR 841; *Matthew v State of Trinidad and Tobago* [2004] 3 WLR 812.

introduced to ensure that the severity of the punishment is commensurate with the gravity of the act and the criminal culpability of the accused.’ (at [212])

(5) If the mandatory death penalty is maintained in force, and if this gives rise to an arguable violation of the constitution of a state party, the domestic courts must have jurisdiction to rule on the issue

22. For the reasons given above, states parties must repeal any legislation requiring a mandatory penalty of death, in order to respect and give effect to the Convention rights as currently interpreted. However, if a state party should chose *not* to repeal such legislation, the question of effective remedies would become a live issue. Each of the Commission’s questions presupposes that a state party has maintained the mandatory death penalty. This would in itself be a violation of the Convention; the three questions posed by the Commission require the Court to examine the extent to which each of the three legislative amendments would put a state party in *further* breach of the Convention.
23. The first of the Commission’s questions asks the Court to consider a situation where the domestic courts of a state party are precluded from holding the imposition of a mandatory death penalty to violate the constitution of that state party, not the Convention itself. It is absolutely clear from the text of Article 25 that to deny redress under the domestic constitution for violations of constitutional rights is to breach Article 25. That Article does not prescribe any specific content for a national constitution, but it does mean that the available remedies must mirror the available rights. If a state party had a constitution which prohibited, for example, arbitrary, inhuman or degrading treatment, then that state party would, without more, violate Article 25 if it passed legislation barring any category of person from arguing that treatment imposed on them violated those constitutional rights.
24. Further, if the state party did *not* have a constitution or other domestic law which prevented such treatment, this may in itself violate article 25, when read with Article 2, since those subject to such treatment may be unable to find a legal basis on which to seek redress. This is not necessarily the case, since a state party may be able to ensure effective redress by recognising the direct effect of the Convention without enshrining the Convention rights in specific legislation. This would depend on the constitutional arrangements of the state party concerned.

(6) The relevance of conditions of detention

25. If a person was held in inhuman and degrading conditions, in a state party where the constitution protected against inhuman and degrading treatment, then the above analysis would apply: any constitutional amendment which prevented them from enforcing their constitutional rights before the domestic courts would violate Article 25 of the Convention.

26. The Commission's second question raises a more specific issue, namely whether a state party would violate the Convention by amending the constitution to prohibit those who have been sentenced to a mandatory sentence of death from arguing that they should not be *executed* because they had been held in cruel, inhuman or degrading conditions which violated the constitution.
27. The analysis in the previous section showed that the Convention requires states parties to make not only the Convention rights, but the rights in their own constitutions and other laws, properly enforceable. In the case of constitutional rights, the only way of doing so is to ensure the jurisdiction of domestic courts or tribunals over such complaints. It follows, therefore, that the Convention requires that mandatory death sentence prisoners who are held in cruel, inhuman or degrading conditions of detention, in states where such conditions are forbidden by the constitution be able to raise that issue in the domestic courts. Further, when Article 25 is read with Articles 1(1) and 2 of the Convention, this shows that states are under a further obligation to ensure that their laws do indeed prohibit the imposition of such conditions.
28. It does not follow from this simple textual analysis of the Convention that such prisoners must have the right to argue for a *specific remedy* for the constitutional violation, namely that they not be executed. The Commission's question requires consideration this further issue in light of the case-law of the Court.
29. The Court has recognised that there is a connection between the imposition of a mandatory sentence of death and the experience of cruel, inhuman and degrading conditions of detention. These are not just a contingent effect of the conditions of detention in different prisons, but flow directly from the psychological effect of the imposition of an arbitrary sentence of death. In *Hilaire*, the Court noted that:

‘in *Soering v United Kingdom*, the European Court found that the ‘death row phenomenon’ is a cruel, inhuman and degrading treatment, and is characterised by a prolonged period of detention while awaiting execution, during which prisoners sentenced to death suffer severe mental anxiety in addition to other circumstances, including, among others: the way in which the sentence was imposed; lack of consideration of the personal characteristics of the accused; the disproportionality between the punishment and the crime committed; the detention conditions while awaiting execution; delays in the appeal process or in reviewing the death sentence during which time the individual faces extreme psychological tension and trauma; the fact that the judge does not take into account the age or mental state of the condemned person; as well as continuous anticipation about what practices their execution may entail.

In the present Case, as a result of legislation and judicial procedures that are contrary to the American Convention, all of the victims in the present Case live under the constant threat that they may be taken to be hanged at any

moment. According to the report submitted by the expert Gaietry Pargass, the procedures leading up to the death by hanging of those convicted of murder terrorize and depress the prisoners; others cannot sleep due to nightmares, much less eat. (at [167] to [168])

30. The Court concluded at [169] that such conditions impinged on the applicants' physical and psychological integrity and therefore constituted cruel, inhuman and degrading treatment.
31. The Court is not required, in providing this Advisory Opinion, to consider the actual conditions on death row in any of the states parties. Those conditions may differ across the region. However, Amnesty International notes that the Court's analysis in *Hilaire* drew out some features of the detention of those under mandatory sentence of death which are likely to apply across the board. In each case, the prisoner has experienced the arbitrary imposition of the most serious possible sentence. They have not been allowed to make any arguments why it should not be imposed. They have, therefore, not been treated as individuals under the law, but as part of a group. They experience huge tension about appeal processes. These may or may not involve delays: again, actual practice in states parties is not relevant to the present Opinion. They experience continual fear about the actual imposition of the sentence.
32. These features suggest that there is, if not a necessary, then a likely link between the imposition of a mandatory death penalty and the experience of cruel, inhuman and degrading conditions of detention.
33. This link is relevant in considering the next issue, namely what would be an appropriate remedy for such prisoners. The Court considered reparation at [201] to [217] of its judgment in *Hilaire*. Taking into account all its findings of violations of the Convention – Articles 4(1), (2) and (6), 5(1) and (2), 7(5), 8(1) and 25, read with Articles 1(1) and 2 – the Court ordered the state of Trinidad and Tobago to refrain from executing any of the applicants. In coming to this conclusion, the Court applied the following principles:

‘Reparation of harm caused by a violation of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists of restoring the situation that existed before the violation occurred. When this is not possible, as in the present Case, it is the task of this international Tribunal to order the adoption of a series of measures that, in addition to guaranteeing respect for the rights violated, ensure that the damage resulting from the infractions is repaired, and order the payment of an indemnity as compensation for the harm caused in that case. The obligation to make reparations, which is regulated in all its aspects (scope, nature, modalities, and designation of beneficiaries) by international law, cannot be tempered or breached by the violating State through the invocation of provisions of its domestic law.’ (at [203])

34. It is clear from the Court's analysis that the question of remedy for inhuman and degrading conditions of detention cannot be entirely separated from the fact that, where those conditions flow from the imposition of a mandatory sentence of death, they flow from a sentence which violates the Convention in any event, regardless of the conditions of detention.
35. However, in order to answer the Commission's second question in the affirmative, the Court would not need to find that the conditions of detention of mandatory death penalty prisoners necessarily entitle the prisoner, without more, to commutation of sentence (although Amnesty International would support such a conclusion). The Court need only find that, given the analysis in *Hilaire*, commutation is one possible response to the issue of prison conditions, and becomes a necessary response when the other violations of the Convention inherent in the imposition of the mandatory penalty are taken into account.
36. Amnesty International submits that it follows from this analysis that a domestic law which precluded those under mandatory sentence of death from even raising the possibility of commutation in the domestic courts would violate the right to an effective remedy, guaranteed by Article 25.

(7) The carrying out of a mandatory sentence of death on an individual with an application pending under the Inter-American human rights system

37. It is clear from the Court's analysis in *Hilaire* that the execution of any person sentenced to the mandatory penalty would involve an arbitrary deprivation of that person's right to life. This means that states parties cannot in any circumstances either impose or carry out such a sentence.
38. The Commission's third question involves a further issue, namely whether a state party could amend its constitution in order to prevent the domestic courts from finding that the imposition or execution of such a sentence is unconstitutional when the individual has a complaint pending under the Inter-American system.
39. For the reasons given above, Amnesty International submits that the clear effect of Article 25 is to require effective domestic remedies for any violation of constitutional rights. The constitution of a state party may or may not in fact protect the right not to be executed while an international application is pending. However, in this context the Convention is not neutral as to the content of domestic law. On this issue there are international law obligations which must be effectively translated into domestic law. The content of those obligations can be seen from the case-law. In the case of *James*⁶, the Court held that the execution of an individual with a complaint pending before the Inter-American system would:

⁶ Case of *James et al vs. Trinidad & Tobago*. Order of the Inter-American Court on Human Rights of 29 August, 1998; para 9 of the considerations of the Court.

‘create an irremediable situation incompatible with the object and purpose of the Convention, would amount to a disavowal of the authority of the Commission, and would adversely effect the very essence of the Inter-American system.’

40. The serious consequences of legislation preventing an individual from obtaining judicial protection from the domestic authorities while his or her complaint was pending before the Inter-American system would be compounded if the type of legislation contemplated by the Commission’s first question was in force. In such a case, redress at the international level would be the person’s *only* opportunity to enforce their Convention rights.

CONCLUSION

41. For the reasons given above, Amnesty International respectfully submits that the honourable Court should give the Advisory Opinion sought, and should answer each of the Commission’s three questions in the affirmative.