

EXTERNAL

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Death Penalty

11 March 1996

TRINIDAD AND TOBAGO Michael WANZAR, Kenneth TEESDALE, Raffick SAHADATH, Elvis PENNY, Franklyn GONZALES

Warrants for the execution of the five prisoners named above were issued on 8 March 1996. The executions are scheduled for **13 March 1996**.

The Mercy Committee of Trinidad and Tobago rejected appeals for clemency for the five prisoners on 6 March 1996. According to press reports the committee found no grounds for mitigation.

Four of the five prisoners (Michael Wanza, Kenneth Teesdale, Franklyn Gonzales and Elvis Penny) were sentenced to death more than five years ago. Warrants for their execution have been issued despite a 1993 ruling by the Judicial Committee of the Privy Council (JCPC) - the final court of appeal for many English-speaking Caribbean countries - in a Jamaican case that the execution of a prisoner who had spent more than five years on death row would be presumed to constitute "inhuman and degrading punishment". Under the ruling the prisoners in the Jamaican case (Earl Pratt and Ivan Morgan) had their death sentences commuted to life imprisonment

The precedent set by the ruling has led to over 50 prisoners having their death sentences commuted to life imprisonment in Trinidad and Tobago. However, the Attorney General, Ramesh Maharaj, was recently quoted in a newspaper as saying that "persons on death row for five or more years can be executed depending on the particular circumstances in their case."

Kenneth Teesdale, Frank Gonzales and Elvis Penny have appeals pending before the United Nations Human Rights Committee (HRC) alleging that their rights have been violated under the Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR). Trinidad and Tobago acceded to the Optional Protocol on 14 November 1980.

On previous occasions the HRC has written to the government of Trinidad and Tobago and stated that under Rule 86 of the Optional Protocol, executions cannot go ahead while an appeal is under examination by the Committee. Rule 86 states: "The Committee may...inform that State of its views as to whether interim measures may be desirable to avoid irreparable damage to the victim of the alleged violation."

BACKGROUND INFORMATION

The last execution to be carried out in Trinidad and Tobago was of Glen Ashby on 14 July 1994. Ashby, the first person to be hanged in the country for nearly 15 years, was executed despite assurances from the Attorney General that there would be "no execution until all possibility of obtaining a stay of execution," including an appeal to the JCPC, had been exhausted. At the time of Ashby's execution, the JCPC was faxing to the Attorney General its decision to grant a stay of execution. Ashby was hanged at 6.30am; executions are normally scheduled to take place at 7am in Trinidad and Tobago, which would have given enough time for the fax from the JCPC to be received.

On 6 July 1994 Ashby had asked the HRC to consider his case, a process which takes several months. No time was allowed by the government for the HRC to

consider Ashby's case. International standards provide that no execution may "be carried out pending any appeal or other recourse procedure"; these obligations were ignored by the government. In a statement issued the HRC expressed its "indignation" at the failure of the government to allow time to review Ashby's case.

An international commission of inquiry into the execution of Glen Ashby, composed of senior jurists from several Commonwealth countries, concluded that the hanging was illegal under the law of Trinidad and Tobago. The commission also concluded that sufficient evidence existed to cite for contempt of court the Attorney General, the Register of the Court of Appeals and the Commissioner of Prisons.

Public opinion in Trinidad and Tobago favours the use of the death penalty. The *Trinidad Guardian*, in a recent editorial entitled "Execute the Sentence", called for another death row inmate, Clive Smart, to be executed. "We expect this punishment, imposed according to our laws, will now be promptly executed, not only to satisfy the demands of justice but also to send a message to would-be killers that our society is fed up with violence and murder...Prime Minister Basdeo Panday...should be anxious to see that cold-blooded murderers get what they deserve" the paper said. On 8 March 1996 the newspaper *Newsday* used its editorial to call for the execution of the inmates.

RECOMMENDED ACTION: Please send telegrams/telexes/faxes/express/airmail letters in English or your own language:

- expressing concern that five prisoners are scheduled to be executed on 13 March 1996 (please list their names);
- expressing sympathy for the victims of violent crime and their families but stating your opposition to the death penalty;
- referring to arguments against the death penalty (for example, its brutalizing effect on all those involved in the process; the fact that it has never been shown to deter crime more effectively than other punishments);
- pointing out that the execution of Michael Wanza, Kenneth Teesdale, Franklyn Gonzales and Elvis Penny would contravene the Judicial Committee of the Privy Council ruling in Pratt and Morgan; state that no other Caribbean country whose last court of appeal is the JCPC has executed a prisoner who had been on death row longer than five years since the ruling;
- expressing concern that the execution of Kenneth Teesdale, Franklyn Gonzales and Elvis Penny would be in contravention of Trinidad and Tobago's obligations under the Optional Protocol of the International Covenant of Civil and Political Rights.

APPEALS TO:

The Rt Hon Basdeo Panday
 Prime Minister
 Office of the Prime Minister
 Level 19 Eric William Plaza (Twin Towers)
 Independence Square
 Port-of-Spain
 Trinidad and Tobago
Telephone: +1 809 623 2971/4282
Fax: +1 809 627 3444
Salutation: Dear Prime Minister

The Hon Ramesh Maharaj
Attorney General
Ministry of Legal Affairs
Red House
St Vincent St
Port-of-Spain
Trinidad and Tobago
Telephone: +1 809 623 4282
Fax: +1 809 625 0470
Salutation: Dear Attorney General

COPIES TO:

Trinidad Guardian
The Letters Editor
PO BOX 122
22-24 St. Vincent Street
Port-of-Spain
Trinidad and Tobago
Fax: +1 809 625 7211

and to diplomatic representatives of Trinidad and Tobago accredited to your country.

PLEASE SEND APPEALS IMMEDIATELY.