

ENGLISH-SPEAKING CARIBBEAN: International Community must Say “NO” to attacks on human rights protection

Amnesty International is deeply concerned about unprecedented measures that have been taken by the governments of Trinidad and Tobago, the Bahamas, Jamaica and Guyana, purportedly to facilitate and expedite executions, which threaten the international systems created over the last 50 years by the community of nations for the protection of human rights.

There is reason to fear that these dangerous attacks on the international systems of protection of human rights will spread, as in February 1999, Attorney Generals from 12 Caribbean countries joined in urging their governments to withdraw from the American Convention on Human Rights and the International Covenant on Civil and Political Rights (ICCPR) and re-accede to them with reservations on articles relating to the implementation of the death penalty.

The international community must denounce these measures now, in order to prevent further weakening of the international systems for the protection of human rights. In addition, at this time when the world is moving towards abolition of the death penalty, the OAS must support the call for a moratorium of executions as a first step towards abolition of the death penalty.

Background

Thirteen of the 18 English-speaking countries and territories retain the death penalty as a lawful punishment. They are Antigua and Barbuda; the Bahamas; Barbados; Belize; Bermuda; Dominica; Grenada; Guyana; Jamaica; St Christopher and Nevis; St Lucia; St Vincent and the Grenadines and Trinidad and Tobago. All but Bermuda are member-states of the OAS.

The death penalty is the mandatory punishment after conviction for all forms of murder in all of these countries except, Jamaica, which has classified some forms of murder as non-capital, punishable by life imprisonment

Hanging is the method of execution.

According to the figures available to Amnesty International there are some 220 people currently under sentence of death in the 13 retentionist English-speaking Caribbean countries.¹ The death row population of Trinidad and Tobago alone, currently

¹ It is emphasised that these figures are approximate only, as some governments have failed or refused to provide this information when requested to do so by Amnesty International.

believed to be near 100, is one of the highest known death row populations per capita in the world; it is about six times as high as the United States' death row population per capita.

Amnesty International regularly receives reports of people under sentence of death in these countries, who claim that their internationally protected human rights have been violated in the course of capital proceedings against them. Among the allegations are that they have been ill-treated in the course of arrest or when being questioned by police and that statements made by them after and as a result of ill-treatment were introduced into evidence against them. In many of these countries, people who do not have sufficient means to hire counsel allege that they were not represented by counsel during police questioning and in some cases during preliminary hearings. Many claim that they had inadequate time and facilities to prepare their defence. Legal aid lawyers are paid such small fees that they are unable to hire experts and/or to carry out full investigations. In past years people stated that they met the legal aid lawyer appointed to represent them for the first time on the very day that their trial on capital charges started. Some never even spoke to lawyers who were appointed to represent them on appeal.

Conditions of pre-trial detention are so unsanitary and cells are so overcrowded in several of the countries as to amount to cruel inhuman or degrading treatment. Amnesty International has received reports from men in some English-speaking Caribbean countries which indicate that, prior to trial, they were held along with 5-10 other men in unsanitary, poorly ventilated cells measuring about 9 x 6 feet. The cells were not equipped with a toilet or running water; instead the men were all forced to share a single bucket in which to relieve themselves. Mattresses or bedding are generally not provided and, due to the number of people in one cell, men had to take turns on alternate nights to lie down to sleep. Medical care is difficult to obtain and, in several countries, detainees and sentenced prisoners must pay for required medication or do without it. Long delays between arrest and trial have meant that some men were housed in these conditions for several months and sometimes years. Reports indicate that conditions on death row in several of these countries are little better, though men are usually held alone in a cell once they have been sentenced to death.

The sentences of people who have been held under sentence of death for more than 5 years in all of these countries except Guyana, are generally commuted to terms of life imprisonment in compliance with guidelines set out in the 1993 ruling of the Judicial Committee of the Privy Council² in the case of *Pratt and Morgan*. In this case, the court

² The Judicial Committee of the Privy Council, located in the United Kingdom, is currently the final court of appeal of all of the retentionist English-speaking Caribbean countries except Guyana. It is presided over by Law Lords, who are senior UK judges. Negotiations among Caribbean Community member countries to establish a regional court to replace the Judicial Committee of the Privy Council

ruled that executing a person who has spent a prolonged period under sentence of death violates the constitutional prohibition of inhuman or degrading punishment or treatment. In the last few years, in response to this decision, authorities have taken measures to expedite the administration of justice in the national courts, reportedly without corresponding improvements in the quality of the administration of justice. The governments of Trinidad and Tobago, Jamaica and Guyana have also taken unprecedented measures to expedite or cut off recourse to international human rights bodies, so as to ensure that all remedies at national and international law have been exhausted within 5 years of conviction, to ensure that executions could be carried out.

Executions in the Americas since May 1998

Since the last General Assembly of the Organization of American States (OAS) four countries in the Americas, the United States, Cuba, the Bahamas and St. Christopher and Nevis have carried out executions. Amnesty International is concerned that, in the near future, other English-speaking Caribbean countries are likely to join the group of countries throughout the world to that carry out executions and to follow the example of Trinidad and Tobago, Jamaica and Guyana in withdrawing from international human rights treaties and in some instances, re-acceding to them with reservations related to the death penalty.

Most immediately, the Government of Trinidad and Tobago intends to hang nine men on 4,5 and 7 June 1999 .

On 7 July 1998, the government of St Christopher and Nevis hanged David Wilson. He had been convicted and sentenced two years before he was hanged and had not yet appealed to the highest court of appeal, the Judicial Committee of the Privy Council. This was the first hanging to take place in the country since 1985.

The government of the Bahamas hanged two men, Trevor Nathaniel Fisher and Richard Woods on 15 October 1998 notwithstanding the fact that the Inter-American Commission on Human Rights (Inter-American Commission) had requested that the government preserve the men's lives at least for two weeks to enable the Commission to issue its decision on the men's pending petitions. These petitions alleged that the rights of these men to a fair trial had been violated and that a mandatory death penalty violates the American Declaration of the Rights and Duties of Man. Executing these men while their petitions were pending and despite requests from the Inter-American Commission on

(JCPC) as the sub-region's final court of appeal, at least in criminal matters, have been progressing. In the last few years those in favour of establishing this court have argued that a regional court would be more responsive to local views on the death penalty than the JCPC. Authorities in Barbados, Guyana, Jamaica and Trinidad have indicated an intention to be among the initial participants. Negotiations about finances and preparations for necessary constitutional reforms are on-going.

Human Rights to preserve their lives irremediably deprived these two men of scrutiny of their cases by an international human rights body and showed contempt for the Inter-American system for the protection of human rights.

Measures Taken to Facilitate Executions

Regrettably, like the Bahamas, other English-speaking Caribbean countries have taken unprecedented measures to facilitate or expedite executions which are weakening the hemispheric and international mechanisms developed over the last 50 years to protect human rights.

In 1997, the governments of Jamaica and Trinidad and Tobago, acting *ultra vires*, issued identical "instructions" purporting to set time limits for the consideration by the Inter-American Commission on Human Rights and the Human Rights Committee of petitions filed by people under sentence of death in those countries.³ According to these "instructions" if the time limits are not met by the international body or the person under sentence of death, the government could proceed with the execution, even before the international body reaches a decision. The Inter-American Commission has stated that these unilaterally issued time frames blatantly disregard and are inconsistent with the time frames set forth in the regulations and procedures of the Inter-American Commission and the Human Rights Committee.⁴

³ Under these instructions, the Inter-American Commission and the Human Rights were given 8 months to investigate, consider and issue a decision in a case.

⁴ See: Observations of the Inter-American Commission on Human Rights on the Observations of the State Party, Provisional Measures requested by the Inter-American Commission on Human Rights *In the Matter of the Republic of Trinidad and Tobago and Darrin Roger Thomas* (Case no. 12.021), July 1998.

Relying on these instructions, Trinidad and Tobago scheduled the executions of 20 men and Jamaica scheduled the executions of six men in 1998. The Inter-American Court of Human Rights ruled, in a case related to 8 people under sentence of death in Trinidad and Tobago, that if the state proceeded as planned to execute a person, in accordance with these instructions, while their petitions remained pending in the Inter-American system, "it would create an irremediable situation incompatible with the object and purpose of the [American] Convention, would amount to a disavowal of the authority of the [Inter-American] Commission, and would adversely affect the very essence of the Inter-American system".⁵

Rather than altering national practices and laws to meet their treaty obligations as required by international law, or joining the majority of nations in taking steps to abolish the death penalty, the Governments of Trinidad and Tobago, Jamaica and Guyana, have taken additional unprecedented steps - including withdrawing from and restricting the applicability of international human right treaties - in order to facilitate the carrying out of executions.

On May 26 1999, Trinidad and Tobago became the first country ever to withdraw as a State Party from the American Convention on Human Rights.

Furthermore, over the past year, the government of Trinidad and Tobago violated the American Convention on Human Rights and flouted the authority of the Inter-American Court of Human Rights by failing to appear at a scheduled public hearing of the Inter-American Court on 28 August 1998⁶ and by scheduling the hangings of five men notwithstanding orders of the Inter-American Court that the state preserve their lives.⁷ The government also scheduled the hangings of five other men although the Inter-American Commission on Human Rights had not completed its consideration of these men's petitions, which claimed that their rights under the American Convention had been violated in the course of the proceedings against them. These men were all granted reprieves pending determination of constitutional challenges in national courts.

⁵ Provisional Measures Adopted by the Inter-American Court of Human Rights *In the Matter of the Republic of Trinidad and Tobago and James, et al. cases*, Order of the Inter-American Court of Human Rights of August 29 1998, para 9.

⁶ Provisional Measures Adopted by the Inter-American Court of Human Rights *In the Matter of the Republic of Trinidad and Tobago and James, et al. cases*, Order of the Inter-American Court of Human Rights of August 29 1998, para 13.

⁷ The five men who were scheduled to be executed even though the Inter-American Court had ordered the government of Trinidad and Tobago to preserve their lives while their cases were pending in the Inter-American System are: Denny Baptiste, Anthony Briggs, Anthony Garcia, Wencelaus James and Anderson Noel.

Similarly, Jamaica violated its obligation to co-operate with the Inter-American Commission and undermined the Commission's authority by scheduling the executions of six men, who were moved to death cells adjacent to the gallows to await imminent execution, despite the fact that all had petitions pending before the Inter-American Commission alleging that their rights under the American Convention had been violated. All six of these men received stays of executions from the national courts pending determination of constitutional motions which challenged, among other things, the validity of the above-mentioned time limits. The constitutional motions and the Inter-American Commission's decisions on these petitions and challenges to the time limits are still pending.

In addition to weakening the Inter-American mechanisms for the protection of human rights, Jamaica became the first country ever to withdraw as a State Party to the Optional Protocol to the International Covenant on Civil and Political Rights with effect from January 1998.⁸ The government of Jamaica explained that it took this measure because the Human Rights Committee had failed to meet the time limits which the government had unilaterally set for the Committee's consideration of petitions brought by people sentenced to death. The government stated that this step was necessary to ensure that the government could carry out executions within the five year guideline set by its highest court.⁹ This never-before-taken step came as a shock to the international community, although the government had more subtly undermined the authority of this international treaty body by repeatedly failing to respond fully to requests by the Committee for information about individual cases and by routinely failing to implement recommendations for remedies made by the Human Rights Committee after it had concluded that the rights of a person sentenced to death had been violated.

Amnesty International's caution that, unless reversed, or at least isolated, Jamaica's unprecedented step could undermine the system of international human rights

⁸ The (first) Optional Protocol to the ICCPR is a treaty which grants jurisdiction to the Human Rights Committee, (the treaty body of independent experts which monitors states' implementation of the ICCPR), to consider communications brought by individuals who claim that a state party to the ICCPR has violated their rights guaranteed under the ICCPR. The Human Rights Committee considers such communications along with its other business during the course of its bi-annual meetings which last three weeks.

⁹ Aide Memoire of the Jamaican Government: Withdrawal from the Optional Protocol to the International Covenant on Civil and Political Rights, 23 October 1997. The government also noted that taking this step was preferable to cutting off recourse to the Inter-American Commission on Human Rights, as the requisite denunciation of the American Convention as a whole "would be too drastic a solution having regard to Jamaica's commitments to the Inter-American system."

protection has regrettably been borne out, as other countries in the sub-region have taken and threatened to take similar measures.

For example in 1998, Trinidad and Tobago and Guyana both informed the Secretary General of the United Nations of their withdrawal as parties to the Optional Protocol to the ICCPR and then simultaneously re-acceded to that treaty with reservations purporting to preclude the Human Rights Committee from considering cases brought by people under sentence of death who allege that their rights under the ICCPR have been violated in the course of the capital proceedings against them or in the carrying out of their sentence. Amnesty International joins other non-governmental organizations and legal scholars in the view that these reservations are invalid.

Conclusion

The above-described actions taken by governments of English-speaking Caribbean countries repudiate the international community's efforts to strengthen and enhance the international systems for the protection of human rights.

The refusal of the Government of Trinidad and Tobago, to date, to reverse its decision to withdraw as a party to the American Convention on Human Rights challenges the resolution made by the General Assembly of the Organization of American States last year, which called on countries which have the intention to denounce Inter-American human rights treaties, to re-consider their decisions.

The General Assembly of the Organization of American States must send a loud and clear message to all countries that actions which threaten the hemispheric system for the protection of human rights which has been created over the last 50 years are of grave concern.

Amnesty International therefore urges the General Assembly to:

- call on all member states which have withdrawn from Inter-American human rights treaties to re-accede to them, without reservations which are incompatible with the object and purpose of a treaty
- call on countries to withdraw reservations which are incompatible with the object and purpose of Inter-American human rights treaties
- call on countries which are contemplating withdrawing from Inter-American human rights treaties, with or without re-accession with reservations, not to take such action
- call on all OAS member - states which retain the death penalty to establish a moratorium on executions
- call on OAS member - states which have retained the death penalty, to take measures to abolish the death penalty as a lawful punishment and, as an interim measure, to

ensure that punishment for even the most serious crimes includes non-capital alternatives

- call on OAS member - states to ratify the Protocol to the American Convention on Human Rights to Abolish the Death Penalty