

£JAMAICA @MOVES TO RESUME HANGINGS: AMNESTY INTERNATIONAL'S CONCERNS

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The Jamaican authorities have announced that hangings will resume in February, following a review of the cases of more than 130 prisoners under sentence of death, some of whom have been on death row for as long as 15 years. The prisoners are the first to have their cases reviewed under a law passed in October 1992. The law repealed legislation which had provided a mandatory death sentence in all cases of murder, and created new categories of "capital" and "noncapital" murder. Although 47 prisoners have had their death sentences commuted to life imprisonment under the new law, at least 85 prisoners so far have had their offences reclassified as "capital murder". Those who have exhausted all other avenues of appeal, could soon be issued with execution warrants. There have been no executions in Jamaica since February 1988.

Under the new law - cited as the Offences against the Person (Amendment) Act, 1992 - capital murder includes the killing of members of the security forces, judicial and correctional officers and witnesses in criminal and civil cases; murders committed "in the course or furtherance of an act of terrorism"; and murders committed in the course of robbery, burglary, arson or a sexual offence. The death sentence remains mandatory in such cases, with a life sentence imposed in cases of "noncapital" murder. The law also provides that where two or more people are convicted jointly of murder, only the person who actually used violence and caused the death of the victim will receive the death sentence; others involved will be convicted of noncapital murder.

Concerns about the fairness of the review process

There are grave concerns about the fairness of the review process in the cases of those whose offences have been reclassified as capital murder. The law stipulates that these prisoners have 21 days in which to apply for a review of their classification by three judges of the Court of Appeal, whose decision, according to the Act, "shall be final", and "to appear or be represented by counsel". However, most of the prisoners whose cases have been classified as

capital murder have not had an adequate opportunity to consult with their legal counsel. At the time they were notified in December 1992, few of the 85 prisoners concerned had lawyers in Jamaica, as there is no legal aid for representation after the trial and direct appeal. Most prisoners are represented by UK lawyers who handle free of charge appeals to the Judicial Committee of the Privy Council (JCPC) in London, the final appeal court for Jamaica. However, these lawyers received no notification of the classification of their clients until last week - by which time the 21 day period had almost expired in many cases. The Jamaica Council for Human Rights, which finds local lawyers to represent indigent capital defendants, was similarly not informed when the notifications were first issued.

Amnesty International has further learned that the Court of Appeal will start sitting every day as from next week in order to process rapidly prisoners' appeals against their capital murder classifications - despite the fact that few prisoners have apparently yet had time to consult properly with counsel. At the time of writing, lawyers did not even know which prisoners were due to have their cases heard next week.

Amnesty International believes that it is essential that prisoners whose cases are reclassified as capital murder be given an adequate opportunity to have their cases fully reviewed and to be represented by counsel. In a letter to the Jamaica Government last week, Amnesty International said "such a process is vital to ensure that prisoners who should benefit from a reduced sentence are fully identified".

There is particular concern that the retroactive reclassification of offences into "capital" and "noncapital" murder is based on distinctive features which may not have been presented or fully explored at the time of trial. For example, many prisoners were convicted and sentenced to death on the basis of common design, whereby those participating in a crime may be held jointly responsible. Although the new law states that the death sentence shall be imposed only on the actual killer/s in such cases, the record is often unclear as to whether a prisoner was the actual perpetrator or an accomplice only. In fact, some people have had their offences classified as capital murder where Amnesty International's own record suggests that they were not, in fact, the killer and may have played a relatively minor role.

Serious concerns have also been raised about the quality of the evidence in many cases and the adequacy of legal representation at time of trial. Amnesty International believes that this, too, should be taken into account in the review process. In 1989 the JCPC quashed the convictions and death sentences of ten Jamaican prisoners who had been sentenced to death solely on the basis of uncorroborated identification testimony (in each case, by a single witness), on the ground that the trial judges had failed to warn juries of the dangers of convicting on such evidence. Despite this ruling, a number of prisoners whose offences have been classified as "capital murder" appear to have been convicted on similar evidence. In some cases also, there are no written appeal judgements, which have hindered prisoners in their ability to lodge appeals to the JCPC.

Cases examined by the United Nations (UN) Human Rights Committee

In six of the cases classified as "capital murder" under the new law, the United Nations (UN) Human Rights Committee had recommended that the death sentences be commuted or that the prisoners be released, on finding that their rights under the International Covenant on Civil and Political Rights (ICCPR) had been violated. Cases include those of Earl Pratt and Ivan Morgan, sentenced to death in 1978: in 1989 the Committee found, among other things, that a four-year delay in the issuing of a written appeal judgment in their cases had deprived them of the right to a fair trial without undue delay. (Pratt and Morgan still have an appeal to the JPCP pending on a constitutional motion so are not in imminent danger of execution.) The Committee also found violations of the right to a fair trial in the case of Clifton Wright, sentenced to death in 1983, in whose case important exculpatory forensic evidence had been overlooked at the trial. The Committee concluded in 1992 that Clifton Wright was entitled to "an effective remedy ... entailing his release". The Committee has also found violations of fair trial and other provisions of the ICCPR in the cases of Paul Kelly, Carlton Reid and Leroy Simmonds.

All the above prisoners had their convictions classified as "capital murder" in December 1992. Amnesty International urges the Jamaica Government to act on the recommendations of the Human Rights Committee in these cases, in accordance with its obligations as a State Party to the ICCPR.

Other concerns

Amnesty International also believes that other factors, which may not be directly linked to the reclassification process, provide strong grounds for clemency in capital cases. These factors include possible mental illness in some cases, mitigating circumstances in the background of condemned prisoners, many of whom come from acutely deprived backgrounds, and the length of time condemned prisoners have spent on death row.

Several prisoners whose offences have now been reclassified as "capital murder" were sentenced to death during the late 1970s when executions were suspended while parliament and, subsequently, a government-appointed committee (the Fraser Committee) reviewed the death penalty. The Fraser Committee, which submitted its report to the government in December 1981, expressed the view that "death as a penalty for murder should be abolished" but recommended, as a first step, restrictions in the circumstances in which it should be imposed as part of reforms "which should commence without delay". The Fraser Committee further recommended that all death sentences passed prior to 31 March 1981 be commuted to life imprisonment. This recommendation has never been acted upon.

Amnesty International opposes the death penalty in all cases as a violation of the right to life and the right not to be subjected to cruel, inhuman or degrading punishment as proclaimed in the Universal Declaration of Human Rights. While Amnesty International welcomes moves to restrict the application of the death penalty and commute the death sentences of many of the condemned prisoners, it urges that the death sentences of all those on death row be commuted, for all the reasons given above.

Amnesty International is aware of the serious problem of violent crime in Jamaica and shares the deep concern of the Jamaican people for the victims and their families. However, there is no evidence that the death penalty deters crime more effectively than other punishment or that it serves any useful penological purpose. Indeed, the death penalty is brutalising to all involved in the process and can encourage a climate of violence and disrespect for human life. Measures already being undertaken by the Jamaican authorities to improve police training and technology in the detection and prevention of crime and reforms of the criminal justice process are likely to have a greater impact on the crime rate than any moves to resume executions.

Abolition of the death penalty is being increasingly adopted by countries throughout the world and only a minority of countries carry out executions each year. Countries which have abolished the death penalty for all offences since 1989 include former Czechoslovakia, Romania, Hungary, New Zealand, Cambodia, Ireland, Mozambique, and Namibia, while Nepal abolished it for murder. South Africa has suspended all executions since February 1990 while a new constitution is being drafted. Paraguay abolished the death penalty for ordinary crimes in June 1992.

The death penalty has also become increasingly rare within the Caribbean region. It was abolished in Anguilla, Cayman Islands, Montserrat, Turks and Caicos and the Virgin Islands in May 1991. There have been no executions since 1991 in the English-speaking Caribbean and none for more than five years in most countries of the region. In Grenada, the death sentences of all prisoners who had exhausted their appeals were commuted in 1991 - a move which was welcomed by churches, human rights groups and others around the world.

Additional background on the death penalty in Jamaica is contained in an Amnesty International report published in 1989 - **Jamaica: The Death Penalty (AI Index: AMR 38/01/89)**. The report includes the findings of a review of the cases of some 120 prisoners on death row, most of whom came from the very poorest sectors of society. More than 60 per cent of the prisoners were under 25 at the time of the crime, the largest group aged between 18 and 20, and most had no previous criminal convictions. While many were illiterate, a considerable number had taught themselves to read and write while on death row. The report described concerns about the fairness of capital trials and lack of adequate legal representation in many cases due to very low legal aid fees; lawyers were often assigned to

cases at short notice, spent little time preparing cases and often failed to investigate alibi evidence or interview witnesses. There was evidence of mental illness in a number of cases of those on death row.