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Open letter to the Attorney General of Trinidad and Tobago

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The Hon. Ramesh Maharaj
Attorney General and Minister of Legal Affairs
Office of the Attorney General and Minister of Legal Affairs
24-28 Richmond Street
Port-of-Spain
Trinidad and Tobago

20 October 2000

Dear Attorney General,

I am writing to inform you that, having examined the information published earlier this month by your office in *The Facts of the Matter Raised in Amnesty International Annual Report 2000* (hereafter *The Facts of the Matter*), we continue to maintain that the entry in our Annual Report 2000 on Trinidad and Tobago and its human rights situation is correct and accurate.

I can assure you that Amnesty International goes to meticulous lengths to ensure that its information is accurate before being published. I would also like to be clear that, should it be discovered that any of our statements are inaccurate, we will issue a correction.

While the issues addressed in the Annual Report 2000 are dealt with briefly due to the constraints on the space available in the publication (which addresses Amnesty International's concerns in almost 160 other countries), the information gathered on the subjects addressed is comprehensive, having been built up over a number of years. In the next twelve months, Amnesty International intends to publish extensive documentation addressing our concerns regarding the death penalty and police brutality in Trinidad and Tobago. These publications will include numerous examples and make positive recommendations as to how these human rights abuses should be addressed.

Attorney General, let me assure you that Trinidad and Tobago is not held by Amnesty International to a higher or lower standard than any other country, as you have alleged in the past.

Amnesty International does not have any economic interest in Trinidad and Tobago, does not seek to influence the forthcoming elections and does not advocate any religious, economic or political doctrine. The organization's sole concern is the protection and promotion of the population's human rights.

As you are aware, Amnesty International continues to seek to engage in constructive face-to-face dialogue with either you or another appropriate member of the government to discuss these matters of vital importance. I very much hope such dialogue can take place in the near future.

I would like to take this opportunity to deal in detail with the matters you have raised.

The execution of Dole Chadee, Joey Ramiah, Russell Sankerali, Bhagwandeem Singh, Joel Ramsingh, Clive Thomas, Stephen Eversley, Ramkalawan Singh, Robin Gopaul

The Facts of the Matter states *Amnesty International* may have given the impression that due process of law was not observed by the State in executing these nine men.

The only reference to the executions of these men in *Amnesty International's* Annual Report states *Nine* of the men were hanged over three days in June, despite appeals to the government for their sentences to be commuted. There is no mention or inference possible in the Report that due process of law was not followed.

Under this section the government states that *No* other State affords a convicted murderer more opportunities to challenge his conviction and sentence and lists the *Asafeguards* in place for people under sentence of death. *Amnesty International* is concerned that there exist several weaknesses in your system, in particular :

§ in several cases monitored by *Amnesty International* people convicted of capital offences have been detained for excessive periods before they are brought to trial. In many cases, international human rights bodies, including the Human Rights Committee, have determined that the failure to try a detained person within a reasonable time has violated their rights enshrined in the International Covenant on Civil and Political Rights (ICCPR);

§ *Amnesty International* recognises and welcomes the government's recent attempts to improve the legal aid available to people without sufficient means to retain a lawyer of their choice to represent them in criminal cases. Many people currently under sentence of death were not provided with legal advice until the pre-trial hearing, therefore they were not represented during interrogation, a critical phase of any criminal proceeding;

§ *Amnesty International* continues to receive reports of people who are charged with crimes punishable by death appearing in court without legal representation;

§ Under the laws of *Trinidad and Tobago*, legal aid is available for civil actions including constitutional motions alleging that an individual's rights under the constitution have been breached. However, in practice,

this has been found to have been theoretical possibility rather than a reality for many prisoners under sentence of death for the following (amongst other) reasons. First, a number of death row prisoners have been declined legal aid by the Legal Aid Advisory Board in relation to domestic human rights actions. Second, prisoners on death row have not always had the opportunity to apply for legal aid to challenge the constitutionality of their execution primarily due to the short period of time in which they could apply after the reading of a death warrant (there are generally five days between the reading of a death warrant and execution). International human rights bodies (the Inter-American Commission of Human Rights and the UN Human Rights Committee) have held that this system does not provide the condemned prisoner with adequate right of access to the courts.

The execution of Anthony Briggs

AThe Facts of the Matter@ states: AAccording to Amnesty International Athe 10th man was hanged in July in violation of an order of the Inter-American Court of Human Rights not to execute him until Asuch time as the court has considered the matter@.

This statement is completely erroneous. The true facts surrounding the execution of Anthony Briggs show clearly that the Inter-American Commission on Human Rights had not referred the case of Anthony Briggs to the Inter-American Court of Human Rights.@

It is a matter of fact that the Inter-American Court of Human Rights had made an order on 25 May 1999 to preserve Anthony Briggs life until Asuch time as the court has considered the matter@.

It is also a fact that Trinidad and Tobago was subject to the jurisdiction of the Inter-American Court and therefore bound to comply with the order.

Amnesty International=s statement that Anthony Briggs was executed in violation of an order of the Inter-American Court is supported

by the Inter-American Commission on Human Rights letter to the government on 27 July 1999, the eve of Anthony Briggs execution, which states:

A to execute Mr Briggs would directly contravene the explicit terms of the Inter-American Court=s binding order and thereby constitute a flagrant breach of Trinidad and Tobago=s international legal obligations...the execution of Mr Briggs under these circumstances might well entail the individual responsibility under international law of those state agents who ordered this illicit act@

The execution of Russell Sankerali

AThe Facts of the Matter@ states: Since the execution of Russell Sankerali a campaign of misinformation has been carried out by Amnesty International and others alleging that Sankerali was wrongly convicted and should not have been executed.

[The Clint Huggins tape] A...was really a matter to be considered by the Executive arm of the State. It was certainly not a matter for either the Judicial or Legislative arms.@

Amnesty International has never stated that Russell Sankerali was innocent. The organisation=s position has been that the Clint Huggins tape, provided to the Attorney General on the eve of Russell Sankerali=s execution, should have at least been supplied to the lawyers representing Russell Sankerali, who then should have been allowed sufficient time to pursue the matter in the courts.

Amnesty International considers that the decision about the legal relevance of the evidence should have been made by a court and not by the Prime Minister, Minister of National Security, the Director of Public Prosecutions and the Attorney General, without notice or presence of Russell Sankerali=s lawyer.

Indravani Pamela Ramjattan

Amnesty International is concerned that the authors of *The Facts of the Matter*, knowing that Indravani Pamela Ramjattan had been found by the Court of Appeal to be suffering from Battered Women's Syndrome at the time of the murder of Alexander Jordan, still seek to portray her as a cold and calculating killer.

Indravani Pamela Ramjattan's common law husband had subjected her to extreme domestic violence which included beating her with his fists and pieces of wood, threatening to shoot her with a shotgun and repeatedly raping her. The psychiatrist concluded that at the time of the killing Indravani Pamela Ramjattan was suffering from such a degree of emotional and cognitive distortions that there was serious doubt whether she could have properly understood or foreseen the consequences of the alleged plan.

It is not the case that the Court of Appeal was prepared to give her the benefit of the doubt as the authors state. The Court of Appeal made a decision that the strong evidence raised in the psychiatrist's report amounted to diminished responsibility.

The authors' account of the case against Indravani Pamela Ramjattan also fails to include mention that she was held in pretrial detention for four years before May 1995 when her case went to trial. In violation of her internationally guaranteed right to a fair trial, she was reportedly held for this time without access to legal advice. Once, a year after her arrest, while in pre-trial detention, she did see a lawyer, when brought to the Magistrates Court for a preliminary hearing. However, she was not able to have more than a passing word with the lawyer during the hearing. The next time she saw a lawyer was when the case went to trial.

Amnesty International concludes the failure to grant Indravani Pamela Ramjattan prompt access to competent counsel, to bring her to trial within a reasonable time or to release her from detention and to allow her adequate time and facilities to prepare a defence, violated international fair trial standards.

The release of three condemned prisoners where their confessions had been coerced

Amnesty International's statement on these men is simply factual. The important matter in this case is not the inference the reader chooses to place on the information, but the fact that three men were sentenced to die - using confessions that were extracted by the use of force - and whose convictions later proved to be unsafe.

Such cases where the police coerced possibly false confessions, or where evidence discovered immediately prior to the execution is withheld from the courts, are graphic examples of how the death penalty could be imposed upon someone innocent of the crime for which they were sentenced to death -- as has happened in numerous countries world wide.

Inter-American Commission on Human Rights

A The Statement of Amnesty International, while basically correct; gives an over simplified account of the matter. In doing so it infers that the State knowingly acted illegally in issuing the execution warrants. This was not the case. @

In 1998 Trinidad and Tobago issued execution warrants for 11 men while their petitions were pending before the Inter-American Commission on Human Rights.

The execution warrants were issued on the basis of time limits the government had unilaterally issued to the Inter-American Commission on Human Rights limiting the time the Commission could take to decide petitions filed by persons under sentence of death. These time limits were challenged in the national courts in the case of Thomas and Hilaire. The Judicial Committee of the Privy Council ruled on the issue that the time limits were Aunlawful@.

Withdrawal from the American Convention on Human Rights

Amnesty International remains steadfast in its concern that the government has withdrawn from the American Convention on Human Rights. In doing so it has removed from all people subject to its jurisdiction the protections available under the Convention.

It is of particular concern that the government states A[t]he denunciation was the result of the total dissatisfaction and frustration felt by Trinidad and Tobago with the performance of the Inter-American Commission on Human Rights and the way in which the Commission has allowed itself to become the tool of those who seek the abolition of the death penalty in Trinidad and Tobago.®

The Inter-American Commission on Human Rights is an independent body created by the Organisation of American States. Its function is to monitor the implementation of the American Convention on Human Rights and the American Declaration on the Rights and Duties of Man. Amnesty International and other organisations that oppose the death penalty do not have any influence over the Commission. Recourse to this international human rights body is sought by people seeking protection of their fundamental rights enshrined in these regional instruments.

Amnesty International notes that Trinidad and Tobago=s Constitution contains provisions to protect the rights of people subject to its jurisdiction, however the Constitution does not contain all the fundamental rights set out in the American Convention on Human Rights.

By seeking to curtail the rights of people under sentence of death the government has weakened human rights protection for all people subject to its jurisdiction. The government of Trinidad and Tobago=s unprecedented withdrawal from international human rights treaties stands in stark contrast to its statements that it seeks to champion of cause of human rights protection. Amnesty International is dismayed that the government has constantly justified these backward steps by erroneously stating that the human rights bodies seek to prevent executions.

Trinidad and Tobago's reservation to the Optional Protocol to the International Covenant on Civil and Political Rights - the case of Rawle Kennedy

Amnesty International's report on the Human Rights Committee's decision in the case of Rawle Kennedy was factually correct. The decision is important because it reiterates the principle of universality of human rights promoted throughout international treaties, including the International Covenant on Civil and Political Rights, that is all people have human rights and are entitled to the protection of those rights, including those under sentence of death.

Trinidad and Tobago's reservation challenged this internationally accepted principle of human rights by seeking to deny a specific group of people access to the protection mechanisms. Condemned prisoners face the severe penalty of losing their lives. It is therefore essential that their rights to due process of law are protected.

The government's statements in AThe Facts of the Matter@ do not justify its decision to withdraw completely from the Optional Protocol thereby denying all its citizens access to the Human Rights Committee to seek protection of their fundamental rights guaranteed by the International Covenants on Civil and Political Rights.

Corporal punishment

AThe Facts of the Matter@ does not dispute the statements of Amnesty International about corporal punishment. The organization welcomes the announcement that no whippings or floggings have occurred to date in 2000.

Amnesty International unconditionally opposes the use of corporal punishments. In line with international human rights law, Amnesty International considers that flogging and whipping amounts to torture or

cruel, inhuman or degrading punishment in violation of the Universal Declaration of Human Rights and the ICCPR.

The Human Rights Committee has stated that the prohibition against torture and cruel, inhuman and degrading treatment in the ICCPR must extend to corporal punishment ordered as punishment for a crime. Under Article 4 of the ICCPR, **no derogation** from Article 7 is permitted at any time. Thus, corporal punishment is prohibited as a form of cruel, inhuman and degrading punishment by the ICCPR and, Trinidad and Tobago as a state party to the ICCPR is bound not to inflict corporal punishment on any person.

The United Nations Commission on Human Rights reminded governments in April 1997 that corporal punishment "can amount to cruel, inhuman and degrading punishment, or even torture."

The UN Special Rapporteur on torture has also held that corporal punishment violates the prohibition against torture and other cruel, inhuman or degrading treatment or punishment.

Prison Conditions

Amnesty International welcomes the building of a new prison that may alleviate the current overcrowding. While the findings of the UN Human Rights Committee that prison conditions amount to cruel inhuman and degrading treatment may have been based on cases from the early 1990s, Amnesty International continually monitors prisons and has found that the situation remains one justifying grave concern. In fact, as the prison population has increased, the situation is most likely to have worsened in the intervening years.

The organization based its statements on numerous sources such as media reports, interviews with recently released prisoners and the statement of the Prison Officers*Association of Trinidad and Tobago (ASpecial Information Circular@ dated 15 September 1999), which detailed their concerns that conditions within the prison were jeopardising the health of both prison officers and inmates.

Amnesty International would welcome the opportunity to tour prisons in Trinidad and Tobago and will request permission to do so in the future.

Police Brutality

As *The Facts of the Matters* states, allegations of police brutality can arise in any country. As police abuse is a matter of concern to Amnesty International, the organization reports on allegations of police brutality in many countries of the world. Amnesty International welcomes the establishment of the Police Complaints Authority but fears the government has not provided the Authority with sufficient resources to fully carry out its mandate.

Regarding the inquest into the killing of three men by police on 5 August 1997, Amnesty International fails to understand how reporting that the lawyers representing the men have publically voiced the allegation that the killings amounted to extrajudicial executions could undermine the legal process. We are confident that all those involved in this legal process are aware of the lawyers' position.

Intimidation and abuse of journalists

Amnesty International is fully in support of the Prime Minister's right to freedom of speech in voicing his views. However, the organization remains concerned that previous statements made by the Prime Minister and other politicians could amount to incitement to commit acts of violence against members of the press. The Prime Minister has made public statements calling upon his supporters to declare a virtual war against those opposed to the government and to do them before they do us.

Amnesty International raises this matter as it believes such phrases could incite politically motivated violence. For example, the possibly politically motivated attack upon the home of journalist and government opponent Professor Selwyn Cudjoe in May 2000 (see AI Urgent Action AMR 49/04/00, issued 19 May 2000).

Amnesty International's concerns are shared by the Media Association of Trinidad and Tobago (MATT). On 14 October 2000, MATT issued a statement urging all political parties to ensure that platform speakers refrain from making remarks that could incite physical and other attacks against media workers covering election events. MATT said in the statement that several incidents that posed such a threat were brought to its attention in the last week. The Statement continued "All such acts are entirely unacceptable, but we hope they were merely the result of platform over-exuberance and not part of any campaign to inflame passions against the media generally or any section of the media community."

Gay men and lesbians

Amnesty International believes that all consenting adults have the right to express their sexuality in private. While AThe Facts of the Matter@ allege that Amnesty International Aproduces no evidence to support the statement that gay and lesbian people were regularly subjected to discrimination and intimidation@, the government does.

By specifically refusing to include gay men and lesbians from the protection from discrimination established by the Equal Opportunities Act, and by refusing to abolish the laws making homosexual acts between adults punishable by imprisonment, the Government of Trinidad and Tobago starkly illustrates the discrimination faced by the gay community.

Amnesty International researchers have met with gay men and lesbians in Trinidad and Tobago who talked vividly about the discrimination and intimidation they faced in day-to-day life and provided examples of it.

Domestic violence

Amnesty International welcomes the introduction of legislation designed to combat domestic violence and also welcomes the reported 35 per cent

decline in domestic violence related murders. The organization remains committed to reporting on developments regarding domestic violence - both positive and negative - as it did in its Annual Report 2000.

I look forward to hearing from you on the above matters and to pursuing this discussion face-to-face.

Yours sincerely,

*Vincent Del Buono
Deputy Secretary General*