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## Unacceptably Limiting Human Rights Protection

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In the past two and a half years, Jamaica, Trinidad and Tobago and Guyana have taken unprecedented steps of withdrawing from human rights treaties.

There is reason to fear that these dramatic and dangerous backward measures in the protection of human rights will not be isolated, as in February 1999, Attorney Generals from 12 Caribbean countries joined in urging their governments to withdraw from the International Covenant on Civil and Political Rights and the American Convention on Human Rights (American Convention) and then re-accede to them with reservations on articles relating to the implementation of the death penalty.

### **Jamaica**

In October 1997, Jamaica deposited an instrument with the UN Secretary-General withdrawing as a state party to the (first) Optional Protocol to the International Covenant on Civil and Political Rights (Optional Protocol). Despite expressions of concern from the international community (including European Union governments, the European Parliament, the Human Rights Committee and the Special Rapporteur on extrajudicial, summary or arbitrary executions) and members of Jamaica's civil society, urging the government to reconsider its decision, the withdrawal became effective on 23 January 1998.

In July 1999 the Jamaican government announced that it would also consider withdrawing from the American Convention. Prime Minister P.J. Patterson stated that the government was taking this step because the Inter-American Commission on Human Rights (IACHR) - one of the bodies which monitors compliance with the American Convention - was taking too long to consider petitions filed by people under sentence of death.

Amnesty International is greatly concerned by Jamaica's withdrawal from the Optional Protocol and by its possible withdrawal from the American Convention. As a result of withdrawal from the Optional Protocol no person may petition the Human Rights Committee (HRC) seeking redress for alleged violations by Jamaican authorities of their rights guaranteed

by the International Covenant on Civil and Political Rights (ICCPR). If Jamaica proceeds with withdrawal from the American Convention, the obligation of the government to guarantee the rights enshrined in that treaty to people within its jurisdiction will also be removed. This measure would also preclude the IACHR from considering whether Jamaica has violated provisions of the American Convention. If Jamaica remains a member-state of the Organization of American States (OAS), the IACHR will retain the authority to examine petitions alleging violations of the rights set out in the American Declaration of the Rights and Duties of Man.

The government's decision to prevent recourse to international redress and effective protection of the rights guaranteed by international treaties to individuals is of particular concern to Amnesty International because there is continuing evidence that human rights are violated in Jamaica with alarming frequency. In February 2000, Amnesty International delegates conducted a mission in the country which confirmed that violations of human rights continued that had been noted by the HRC in the course of its examination of Jamaica's second periodic report on implementation of the ICCPR in October 1997. They include ill-treatment by police and prison officers; deaths in police and prison custody; the high incidence of the use of firearms by police and security forces (more than 100 people have been shot and killed by police in each of the last several years) and the lack of inquiries into all cases of deaths at the hands of police or security forces; and prison conditions described by some members of the HRC as "appalling". While some measures have been taken to expedite the administration of justice, particularly in death penalty cases, concerns about the quality of the administration of justice and the lack of provision of qualified legal aid continue in the majority of cases. Commenting on the administration of justice, the Chair of the Human Right Committee stated "the justice system is not working properly and they know it".

### **Trinidad and Tobago**

On 26 May 1998 the government of Trinidad and Tobago took two unprecedented, retrogressive steps in the protection and promotion of human rights.

First, the government informed the UN Secretary General that it too was withdrawing as a State Party to the Optional Protocol. Simultaneously, the government deposited an instrument of re-accession with a reservation purporting to preclude the HRC from considering:

" communications relating to any prisoner who is under sentence of death in respect of any manner relating to his prosecution, his detention, his trial, his conviction, his sentence or the carrying out of the death sentence on him and any matter connected therewith."

The HRC rejected Trinidad and Tobago's reservation as being incompatible with the object and purpose of the Optional Protocol. On 31 December 1999, the HRC issued an admissibility decision on a petition filed by Rawle Kennedy (Communication No 845/1999), who is under sentence of death in Trinidad and Tobago. The petition challenged Trinidad and Tobago's reservation to the Optional Protocol. The HRC stated :

"The Committee cannot accept a reservation which singles out a certain group of individuals for lesser procedural protection than that which is enjoyed by the rest of the population ... This constitutes a discrimination which runs counter to some of the basic principles embodied in the Covenant and its Protocols, and for this reason the

reservation cannot be deemed compatible with the object and purpose of the Optional Protocol.”

Concern has been raised that in light of this decision, Trinidad and Tobago may withdraw completely from the Optional Protocol.

Second, also on 26 May 1998, Trinidad and Tobago notified the Secretary General of the Organization of American States of its withdrawal as a state party to the American Convention. This withdrawal took effect on 26 May 1999. The government’s withdrawal from the American Convention has removed the obligation of the government to guarantee the rights enshrined in that treaty to people within its jurisdiction. It has also precluded the IACHR from considering whether Trinidad and Tobago had violated provisions of the American Convention and from referring cases to the Inter-American Court of Human Rights. The IACHR will retain the authority to examine petitions alleging violations of the rights set out in the American Declaration of the Rights and Duties of Man, so long as Trinidad and Tobago remains a member-state of the Organization of American States.

There are currently about 80 men and women under sentence of death in Trinidad and Tobago, where death by hanging is the mandatory punishment for all persons convicted of murder. There are persistent reports that trials, including in cases involving the death penalty, fail to meet international standards for fairness. Conditions of detention, including on remand and in prisons, are reportedly so overcrowded and unsanitary as to constitute cruel, inhuman or degrading punishment. Corporal punishment remains a lawful sentence after conviction for some crimes.

On 4, 5 and 7 June 1999, authorities carried out the first executions for five years; hanging nine men over three days. Amnesty International is deeply concerned that one of those executed may be an innocent man, who was hanged on 5 June 1999, even though on the eve of the execution, the Attorney-General had received previously undisclosed evidence which casts serious doubt as to his guilt and the fairness of his trial.

On 28 July 1999 the government, in violation of its obligations under the American Convention, hanged Anthony Briggs. The IACHR had decided in his case that his rights guaranteed by the American Convention had been violated and recommended that his death sentence be commuted. Furthermore the Inter-American Court on Human Rights had ordered the government of Trinidad and Tobago to preserve Anthony Briggs’ life until “the court has considered the matter.”

## **Guyana**

On 16 December 1998, Guyana also informed the UN Secretary General of its withdrawal as a party to the Optional Protocol and simultaneously re-acceded to the Optional Protocol with a reservation, identical to Trinidad and Tobago’s reservation, purporting to preclude the HRC from considering petitions brought by people under sentence of death.

Guyana’s re-accession followed an earlier declaration by the government that it would not follow the recommendations made by the HRC on petitions filed by Abdool Saleem

Yasseen and Noel Thomas - the first to be brought to this body by people under sentence of death in Guyana. The HRC had decided that both men had been deprived of a fair trial because their right to a defence and to a trial without undue delay had been violated. Consequently it concluded that the imposition of a sentence of death violated the right of both men not to be arbitrarily deprived of their lives. The conclusions of the HRC were based in part on the fact that one of the men was not represented by counsel for the first four days of the re-trial. The Committee also concluded that the conditions under which they were detained whilst on remand and on death row violated their right to be treated with humanity and with respect for the inherent dignity of the human person. An Amnesty International mission to Guyana in February 2000 confirmed that conditions on death row continued to fail to meet internationally accepted standards on the treatment of prisoners.

In September 1999, despite the decision of the HRC, the authorities scheduled the executions of Abdool Saleem Yasseen and Noel Thomas. They were granted stays of execution to challenge the constitutionality of carrying out the sentences before the national courts. The Attorney General has appealed against the decision and the appeal is pending as of writing.

On 30 March 2000, the Human Rights Committee issued its concluding observations of Guyana's second periodic report on implementation of the ICCPR in which it concluded that "the State party is urged to fully implement the Committee's Views in communication no. 676/1996 (Yasseen and Thomas) and to formally withdraw its reservation made on its re-accession to the Optional Protocol.

At the time of withdrawal from the Optional Protocol the government of Guyana gave assurances that it would allow those cases at the time before the HRC to proceed to consider the evidence and give their views. However at least one man, whose petition to the HRC was filed before the withdrawal, has been issued an execution warrant while his petition is still pending. Execution warrants have been issued to people under sentence of death who did not have a petition pending before the HRC at the time of withdrawal. There are 22 people under sentence of death in Guyana, where the death penalty is mandatory for all persons convicted of murder.

Amnesty International continues to receive regular reports of ill-treatment by police and the use of firearms by police in disputed circumstances, which may amount in some cases to extrajudicial executions.

## **Conclusions**

Amnesty International is greatly concerned by the steps taken by Jamaica, Trinidad and Tobago and Guyana to limit human rights protection for individuals. The organisation is particularly concerned that other countries may follow their example.

Consequently, Amnesty International calls on the Commission on Human Rights to adopt a resolution:

- < Urging state parties who have withdrawn from the Optional Protocol to the International Covenant on Civil and Political Rights to re-accede to the Optional Protocol without any reservations;
- < Urging state parties to the (first) Optional Protocol to the International Covenant on Civil and Political Rights to withdraw any reservations which in effect deny or reduce the possibility for individuals to complain to the Human Rights Committee about violations of their rights guaranteed in the Covenant;
- < Urging all states not to make similar withdrawals or reservations;
- < Call upon state parties to the ICCPR formally to object to these incompatible reservations.

**KEYWORDS:** ICCPR1 / ACHR1 / DEATH PENALTY / JAMAICA / TRINIDAD & TOBAGO / GUYANA

This report updates a 4-page document ( words), :Unacceptably Limiting Human Rights Protection (AI Index: AMR 05/01/99) issued by Amnesty International in March 1999. Anyone wishing further details or to take action on this issue should consult the full document.

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