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Unacceptably Limiting Human Rights Protection

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In the past 18 months, 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 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 Optional Protocol to the International Covenant on Civil and Political Rights. 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, who urged that this decision be reconsidered, the withdrawal became effective on 23 January 1998.

As a result, as of January 1998, no person may petition the Human Rights Committee seeking redress for alleged violations by Jamaican authorities of their rights under the International Covenant on Civil and Political Rights (ICCPR) .

The cutting off of recourse to international redress and effective protection of the rights guaranteed under the ICCPR to individuals is of particular concern due to continuing evidence that human rights are violated in Jamaica with alarming frequency. Violations noted by the Human Rights Committee in the course of its examination of Jamaica's second periodic report on implementation of the ICCPR in October 1997 included: ill-treatment by police and prison

officers; deaths in police and prison custody; 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 prison conditions described by Committee members 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 lack of provision of qualified legal aid in most cases continue. 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 steps backwards 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 to the ICCPR. Simultaneously, the government deposited an instrument of re-accession with a reservation purporting to preclude the Human Rights Committee 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."

If the government will make good on its undertaking of 26 May 1998 to submit its periodic reports, which are currently several years overdue, the Human Rights Committee will be provided with an opportunity to consider the validity of the reservation .

Second, on the same day, Trinidad and Tobago notified the Secretary General of the Organization of American States of its withdrawal as a state party to the American Convention on Human Rights. Unless rescinded this withdrawal takes effect on 26 May 1999. The government's withdrawal from the American Convention on Human Rights would remove the obligation of the government to guarantee the rights enshrined in that treaty to people within its jurisdiction. It would also preclude the Inter-American Commission on Human Rights from considering whether the Trinidad and Tobago had violated provisions of the American Convention and from referring cases to the Inter-American Court of Human Rights. So long as Trinidad and Tobago remains a member-state of the Organization of American States, the Inter-American Commission on Human Rights 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.

There are currently about 75 men and women under sentence of death in Trinidad and Tobago, where death by hanging is the mandatory punishment for conviction of murder. The government scheduled 20 executions in 1998, including for ten men who had petitions pending with the Inter-American Commission on Human Rights. There are persistent reports that trials, including in capital cases, 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.

Guyana

On 16 December 1998, Guyana also informed the UN Secretary General of its withdrawal as a party to the Optional Protocol to the ICCPR and, like Trinidad and Tobago, simultaneously re-acceded with a reservation purporting to preclude the Human Rights Committee from considering cases brought by people under sentence of death for murder or treason 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.

There are over 20 people under sentence of death in Guyana, where the death penalty remains the mandatory punishment after conviction of murder. This move followed an earlier declaration by the government that it would not follow the recommendations made by the Human Rights Committee upon its consideration of the first case brought by two men under sentence of death in Guyana. In this case, the Human Rights Committee concluded that both men were deprived of a fair trial, as their rights to a defence and trial without undue delay had been violated, and that therefore imposing a sentence of death violated their rights not to be arbitrarily deprived of their life. These conclusions were based, among other things on the fact that one of the men was not represented by counsel for the first four days of a second re-trial. The Committee also concluded that the conditions in which they were detained pre-trial and on death row violated their rights to be treated with humanity and with respect for the inherent dignity of the human person. In addition, there are regular reports of ill-treatment by police and the use of firearms by police in disputed circumstances.

Reservations

Amnesty International believes that the reservations entered by Trinidad and Tobago and Guyana on re-accession to the Optional Protocol to the ICCPR are invalid.

They are incompatible with the object and purpose of the Optional Protocol to the ICCPR which is to further achieve implementation of the ICCPR by enabling the Human Rights Committee to consider "communications from individuals claiming to be the victims of violations of *any* rights set forth in the Covenant" [emphasis added]. (Preamble to Optional Protocol; see also Human Rights Committee, General Comment 24(13); Article 19(c) Vienna Convention on the Law of Treaties).

By its terms the reservation applies only to people who have been sentenced to death. It purports to preclude redress of alleged violations of a non-derogable right: the right to life. According to Article 6 of the ICCPR, to execute someone whose rights under the Covenant have been violated would deprive them of their life arbitrarily. As noted by the Human Rights Committee states may not reserve the right to arbitrarily deprive someone of their life, or any other provision that represents customary law. (General Comment of the Human Rights Committee 24(8)).

Notwithstanding that the reservation is invalid, the Optional Protocol remains in full force (General Comment 24(18)).

As, in accordance with Article 22(1) of the Vienna Convention on the Law of the Treaties, a reservation may be withdrawn in writing at any time, the governments of Trinidad and Tobago and Guyana should be urged to withdraw them immediately. In addition Jamaica and

other states which are not parties should be encouraged to ratify or accede to the Optional Protocol to the ICCPR without reservations.

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

This report summarizes 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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