

AI Index: AMR 15/005/2002

The Hon. Mia Amor Mottley  
Attorney General and Minister of Home Affairs  
Ministry of Home Affairs  
Level 5 General Post Office Building  
Cheapside  
Bridgetown  
Barbados      Ref.: TG. 15.002.2002

27 August 2002

Open letter to the Attorney General and people of Barbados

Dear Attorney General,

I am writing to you to express Amnesty International's concern that the Government of Barbados appears to be taking steps towards the resumption of executions.

Amnesty International understands that the Constitutional (Amendment) Act 2002 -- which is currently being passed into law -- would prevent condemned prisoners from challenging their executions on the grounds of the length of time they have spent under sentence of death and the prison conditions under which they are held. If enacted into law, the provisions of the Act would invalidate previous court rulings currently binding on Barbados.

Such a provision would remove these important issues from examination by future courts as the law and human rights standards evolve. Throughout history, courts of law have ruled to protect human rights by reversing previous decisions in line with "evolving standards of decency". For example, the United States Supreme Court upheld legal provisions allowing for slavery and racial segregation, only to reverse itself in later years when the advancement of the understanding of human rights had made such practices unacceptable.

Under the current provisions of the Constitution (Amendment) Act 2002, those courts' ruling on Barbados would be prevented from taking the advancement of human rights standards into consideration when ruling on matters of vital importance such as the death penalty.

**Time limits on intergovernmental human rights bodies: a backward step in international human rights protections**

The Constitutional (Amendment) Act also seeks to place limits on the length of time allowed for intergovernmental human rights bodies to examine complaints from prisoners.

By placing time limits upon the appeals of condemned prisoners to such bodies as the United Nations Human Rights Committee, the government of Barbados is undermining its own voluntarily made commitments under the International Covenant on Civil and Political Rights (ICCPR) and other human rights treaties.

Prisoners have no control over the length of time taken by bodies such as the Human Rights Committee to examine their complaints. Furthermore, no legal aid is granted to condemned prisoners to utilise human rights protection mechanisms such as those offered by the Inter-American Court of Human Rights, thereby forcing prisoners to rely on the goodwill of attorneys willing to offer their services *pro bono* (free of charge). These two factors render the protections provided by human rights bodies meaningless if the authorities of Barbados carry out the execution of the person before allowing time for their complaints to be examined.

Amnesty International urges the government of Barbados not to implement time limits on appeals to intergovernmental human rights bodies and to continue to abide by the voluntarily agreed human rights protections Barbados has undertaken to uphold.

### **The death penalty and preventing crime**

Attorney General, we are aware that by protecting legal safeguards and preventing many executions taking place, many of the citizens of Barbados and the wider Caribbean may see the Courts as circumventing the “will of the people”. Amnesty International notes that surveys indicate that the majority of citizens support capital punishment.

However, public support for the taking of human life by the State cannot be used as a justification. Numerous human rights abuses committed across the globe have enjoyed the support of the majority of citizens. Slavery, racial segregation and lynching all had widespread support in the societies where they occurred but constituted gross violations of the victims’ human rights. In more recent times, grave violations of human rights in Bosnia, Rwanda and East Timor all had the support of large sections of the population in those countries but were no less unacceptable because of such popularity.

Amnesty International urges the Government of Barbados to play a leadership role based on a human rights stance in opposing the death penalty and explaining to the citizens of the island that such actions as premeditated killing cannot be undertaken by the State.

Amnesty International notes your comments that “The paramount obligation of any government is to protect its citizens, and a government should not appear to be powerless in the face of problems”. However, the organization believes that the death penalty is an ineffective tool in controlling violent crime. Capital punishment has never been shown to be a more effective deterrent to violent crime than other punishments. Evidence from the United States and other countries shows that it is likely that executions cause further violent crime via the brutalisation of society. For example, in the United States, the average murder rate for states that used the death penalty was 6.6 per 100,000 population but only 3.5 in states without capital punishment.

There are numerous measures, other than the death penalty, that governments can take to reduce violent crime. Many criminologists believe that one of the most influential factors on potential criminals is whether they believe they will be detected and punished. It is not a believable proposition that a violent criminal contemplates the results of being detected and decides that risking being hanged is not acceptable, whereas a long term of imprisonment would be. Criminals do not think they will be caught when committing a crime. Therefore, the best deterrent to violent crime lies in guaranteeing a high chance of capture and conviction of criminals, not harsher punishments.

### **International law and the death penalty: steadily moving towards abolition**

You have asserted that “There is no basis for the argument that the death penalty is a violation of the human rights conventions to which Barbados is a signatory. All such conventions do in fact provide for

the death penalty to be applied in serious crimes. Barbados seeks to do no more than this.” This line of reasoning ignores the many statements advocating the abolition of the death penalty made by intergovernmental bodies such as the United Nations.

For example, the United Nations Human Rights Committee, the expert body that oversees the implementation of the ICCPR, has stated that Article 6 (protecting the right to life):

“refers generally to abolition [of the death penalty] in terms which strongly suggest...that abolition is desirable. The Committee concludes that all measures of abolition should be considered as progress in the enjoyment of the right to life...”

The United Nations General Assembly and Human Rights Commission have both advocated the abolition of the death penalty. Such sentiments are also illustrated by the number of countries that have abolished the death penalty in law or in practice. One hundred and eleven countries no longer use the death penalty. Only 31 countries actually carried out executions in 2001; the only country to carry out an execution in the Americas during 2001 was the United States of America.

### **The Judicial Committee of the Privy Council: erroneously criticised**

Many of the leaders of the English-speaking Caribbean are currently proposing changing the final court of appeal away from the Judicial Committee of the Privy Council (JCPC) to the Caribbean Court of Justice, to be located in Trinidad and Tobago. Amnesty International recognises the right of sovereign nations to decide the final court of appeal most appropriate to them. However, many of the criteria put forward by those advocating the replacement of the JCPC are clearly erroneous. Amnesty International fears that the establishment of the Caribbean Court of Appeal may be motivated by a belief that such a court would allow executions to proceed without the current legal safeguards.

Numerous Caribbean leaders have stated that the JCPC is opposed to the death penalty in all cases and that the Court has deliberately placed insurmountable legal obstacles in the way of executions taking place. However, such a claim is shown to be false by the executions the JCPC has allowed to proceed. For example, the Court allowed 10 executions to be carried out in Trinidad and Tobago in 1999 and two in the Bahamas in 2000. In those cases, the Court ruled that the legal obligations of the countries concerned had been met and allowed the executions to be carried out. This was not the act of a Court opposed to the death penalty in all cases.

The JCPC is also often cited as basing its ruling on “European values”.

The claim that the JCPC incorporates the laws or values of other jurisdictions into its decisions is unfounded. The law upon which the JCPC bases its rulings is clear. The Court rules on compliance with the Constitution of the country from which the appeal originated, and on *no other law*.

The many cases of defendants from the Caribbean who have had their convictions or death sentences overturned by the JCPC demonstrate the findings of the Court that capital punishment is being imposed in violation of the constitutional rights of those men and women concerned. These deficiencies of the judicial systems of many Caribbean countries are comprehensively documented in Amnesty International’s recent publication *State killing in the English speaking Caribbean: a legacy of colonial times*.

Regrettably, rather than addressing the inadequacies of their judicial systems, many Caribbean nations have chosen to attempt to change their final court of appeal, presumably in the hope that the

new court will accept lesser standards of justice when making decisions on capital cases under the guise of upholding the “local values” of the Caribbean. However, the organization does not believe that the “local values” of the Caribbean include allowing individuals to be executed after legal procedures that violated that nation’s constitution or international laws and standards governing the use of the death penalty. Caribbean states have expressed repeatedly their commitment to the human rights standards agreed by the community of nations. There is no reason to believe that such standards are “foreign” to the region.

## **Summary**

I would like to stress that Amnesty International’s opposition to the death penalty does not in any way seek to distract from the sympathy the organization and others feel towards the victims of violent crime and their loved ones. As an organization dedicated to working for the victims of human rights violations, Amnesty International is fully aware of the suffering caused by violent crimes. We believe that everyone in society should work to lessen violent crime and that all those impacted by such appalling acts as murder, rape and other crimes should be supported and helped as they rebuild their lives after suffering such trauma.

The death penalty is the ultimate cruel, inhuman and degrading punishment. It violates the right to life. It is irrevocable and can be inflicted on the innocent. It has never been shown to deter crime more effectively than other punishments and brutalises those involved in the process of executions and wider society as a whole. Executions create another set of victims of violence via the suffering inflicted upon the relatives and loved ones of the individual killed at the hands of the state.

In recent years, the governments of South Africa, Chile, East Timor, Ukraine, Cote d’Ivoire and Angola have abolished the death penalty. In 2002, the President of Guatemala committed himself to working to end capital punishment and the parliament of Turkey voted to abolish the death penalty for peace time offences.

I urge the Government of Barbados to embrace the international trend away from the use of capital punishment and join the majority of the world’s nations who have turned their backs on the use of the death penalty. The resumption of hanging would be a retrograde step and I further urge Barbados not to take that path.

I thank you for your time and look forward to hearing from you on this vital human rights issue.

Yours sincerely,

For Irene Khan  
Secretary General