

# DEATH PENALTY IN THE ENGLISH-SPEAKING CARIBBEAN A HUMAN RIGHTS ISSUE

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# CONTENTS

1. INTRODUCTION .....	4
2. BACKGROUND .....	6
3. INTERNATIONAL STANDARDS .....	9
International calls for abolition of the death penalty .....	9
Restrictions and safeguards regarding the use of the death penalty .....	11
Ratifications of international and regional treaties .....	12
4. DEATH PENALTY IN THE CARIBBEAN .....	15
Ban on inhuman or degrading punishment or treatment .....	16
Right to appeal, mercy and due process .....	16
Lack of mental health assessments .....	19
Mandatory death sentences .....	21
5. CRIME AND THE DEATH PENALTY .....	23
Public security .....	23
Caribbean governments' responses to the crime .....	23
The deterrence hypothesis .....	25
The death penalty – a human rights issue .....	27
6. CONCLUSIONS AND RECOMMENDATIONS .....	29
RECOMMENDATIONS .....	30
7. ENDNOTES .....	32

# 1. INTRODUCTION

**“The right to life is the most fundamental of all human rights... The taking of life is too absolute, too irreversible, for one human being to inflict it on another, even when backed by legal process...”**

Ban Ki-Moon, United Nations Secretary-General, New York, 3 July 2012.

Countries of the English-speaking Caribbean (ESC) are bucking a worldwide trend. While an increasing number of countries around the world are turning their backs on the death penalty— Antigua and Barbuda, the Bahamas, Barbados, Belize, Dominica, Guyana, Grenada, Jamaica, St Lucia, St Kitts and Nevis, St Vincent and the Grenadines, and Trinidad and Tobago —continue to support its retention.

Executions are rare in ESC countries; the last executions in the region were carried out in St Kitts and Nevis (December 2008), the Bahamas (2000), and Trinidad and Tobago (1999). Grenada has not carried out any executions since 1978 and no one has been executed in Barbados, Dominica or Jamaica since the 1980s. There have been attempts to carry out executions in several ESC countries during the past decade and some death row prisoners reached the point of having their death warrants read. Even though the intervention of the prisoners’ lawyers prevented the executions from going ahead, the impact of these experiences on both the prisoners and their families are profound.

*“When the death warrant was read I felt emptiness inside. It was a reality check, I thought through my whole life. I prayed. I had an instant diarrhea. I was unable to eat thinking that I was going to die”.*

Wenceslaus James, death row prisoner whose death warrant was read on 28 July 1998

In line with international law and standards, legislation in countries across the region does not allow death sentences to be handed down on people who were under 18 at the time the offence was committed, or with mental disabilities. However, in several countries there is clear evidence that safeguards to protect people with mental disabilities from being sentenced to death are inadequate.

The death penalty remains mandatory for murder in Barbados and Trinidad and Tobago and for treason in Barbados. In violation of international standards, judges passing sentence on people convicted of murder are, therefore, unable to take into account the defendant's personal circumstances or the circumstances in which the offence was committed. In 2009, the Barbadian authorities pledged to abolish the mandatory death penalty in 2009 in order to comply with two Inter-American Court of Human Rights landmark judgments.<sup>1</sup> On 2 October 2011, the Attorney General and Minister of Home Affairs was reported in the local press as saying that he expected necessary legislative changes to be finalized by the end of 2011.<sup>2</sup> However, at the time of writing, the proposed legislation remained pending before Parliament.

The death penalty is the ultimate cruel, inhuman and degrading punishment and violates the right to life. Amnesty International opposes the death penalty in all cases without exception and regardless of the nature of the crime, the characteristics of the offender, or the method used by the state to kill the prisoner.

The UN and regional bodies have adopted a number of standards aimed at regulating and restricting the use

of the death penalty with a view to its abolition. By mid-2012, 140 countries had abolished the death penalty in law or practice and the global trend is unmistakable. In 1945, only eight countries had removed capital punishment from their legislation for all crimes; by 2012 that number had risen to 97.

In December 2007, 2008 and 2010 the UN General Assembly passed resolutions calling upon member states to establish a moratorium on executions with a view to abolishing the death penalty. Several countries in the Americas region have reaffirmed their commitment to the abolition of the death penalty by signing and ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, and the Protocol to the American Convention on Human Rights to Abolish the Death Penalty. ESC countries have consistently opposed such international initiatives for worldwide abolition and continue to do so.

While the world is moving away from the death penalty, decision-makers in ESC countries continue to present the death penalty as a solution to crime while failing so far to effectively address the root causes of rising violent crime and overhaul ailing, inadequate criminal justice systems. Some governments in those countries have even proposed legislation aimed at facilitating the implementation of the death penalty in recent years. However, arguments that the death penalty is necessary to reduce violent crime are not supported by the facts; scientific studies have consistently failed to find convincing evidence that the death penalty deters crime more effectively than other punishments.

This report outlines international human rights laws and standards relating to the death penalty and looks at how ESC countries continue to fall short of their international obligations. It also looks at how the death penalty is not effective in tackling spiralling crime rates and why public support for the death penalty cannot be cited as a reason for perpetuating human rights violations, especially when the debate around the death penalty is dominated by inaccurate information and assumptions.

The report ends with a series of recommendations to governments designed to ensure respect for the right to due process and the right to life of all those living in ESC countries.

## 2. BACKGROUND

### **THE DEATH PENALTY AROUND THE WORLD**

**Belarus is the only country in Europe and Central Asia to execute people.**

**Out of the 54 member states of the African Union, an average of five countries a year are known to have implemented death sentences in recent years.**

**In Asia and the Middle East, regions accounting for the majority of the world's executions, signs of progress towards reducing the use of the death penalty have been recorded year by year.<sup>3</sup>**

**In the Americas, the English-speaking Caribbean, Cuba, Guatemala, Suriname and the USA retain the death penalty in law. The vast majority of countries in the region have either completely abolished the death penalty or retain it only for exceptional crimes (Bolivia, Brazil, Chile, El Salvador and Peru). Only the USA continues to execute people, although even there, four states abolished the death penalty between 2007 and 2012.<sup>4</sup>**

### **THE DEATH PENALTY IN THE ENGLISH-SPEAKING CARIBBEAN**

All ESC countries retain the death penalty for murder. In addition, treason is a capital offence in most ESC countries, while some provide for the death penalty for some military offences and acts of terrorism. In practice, most death sentences are handed down for murder. The method of execution in all ESC countries is hanging.

The majority of ESC countries continue to hand down death sentences; only Antigua and Barbuda, Dominica and Grenada have not sentenced anyone to death in recent years. Amnesty International considers all but one ESC country – Grenada – to be retentionist; that is, they retain the death penalty in their legislation and have not expressed a commitment not to carry out executions. Amnesty International considers Grenada as “abolitionist in practice”, as it has not carried out any executions since 1978 and has an established practice of not implementing death sentences.

The table below shows death sentences handed down from 2007 to 2011. The figures in bold are taken from official sources and “+” indicates that death sentences were imposed but no figure was available at the time of writing. For the purpose of totals calculation, “+” is counted as 2.

	2011	2010	2009	2008	2007
Countries (number of sentences)	Guyana (3) St Lucia (1) Trinidad and Tobago (2)	Bahamas (at least 5) Barbados ( <b>2</b> ) Guyana (at least 1) Jamaica ( <b>4</b> ) Trinidad and Tobago (+)	Bahamas (at least 2) Guyana ( <b>3</b> ) Jamaica ( <b>2</b> ) Trinidad and Tobago (at least 11)	Bahamas (at least 1) Jamaica (1) St Kitts and Nevis (at least 1) St Vincent and the Grenadines (at least 1) Trinidad and Tobago (10)	Bahamas (+) Guyana (+) Jamaica (+) St Kitts and Nevis (+) Trinidad and Tobago (+)
Total number of death sentences	6	at least 14	at least 18	at least 14	at least 10
Number of countries which handed down death sentences	3	5	4	5	5

The size of the death row population varies greatly from one country to another. At the end of 2011, the countries with the most people under sentence of death were Guyana (34) and Trinidad and Tobago (31).

Country	Year of last execution	Year of last sentence of death	Number of people on death row on 31 December 2011
Antigua and Barbuda	1991	2000	0
Bahamas	2000	2010	5
Barbados	1984	2010	4
Belize	1985	2005	0
Dominica	1986	Unknown <sup>5</sup>	0
Grenada	1978	2002	1
Guyana	1997	2011	34
Jamaica	1988	2010	7
St Kitts and Nevis	2008	2008	5
St Lucia	1995	2011	1
St Vincent and the Grenadines	1995	2008	3
Trinidad and Tobago	1999	2011	31

## THE DEATH PENALTY IN THE REST OF THE AMERICAS REGION

Historically, several countries of the Americas have been in the vanguard of the move towards abolition of the death penalty. In 1863 Venezuela became the first independent country in the world to abolish the death penalty for all crimes. It was followed by Costa Rica (1882), Panama (1903), Ecuador (1906), Uruguay (1907) and Colombia (1910). Of the eight countries worldwide that were abolitionist in 1945, six were in the Americas region. The latest countries in the region to abolish the death penalty for all crimes were Mexico (2005) and Argentina (2008).

Two Caribbean countries have abolished the death penalty for all crimes: the Dominican Republic (1966) and Haiti (1987). On signing the American Convention on Human Rights in 1977, the Dominican Republic declared that the country “aspires that the principle pertaining to abolition of the death penalty shall become purely and simply that, with general application throughout the states of the American region”.<sup>6</sup> The death penalty was abolished in Haiti in 1987, at the end of 29 years of authoritarian rule by the Duvalier family. The members of the Constitutional Assembly who drafted the 1987 Constitution unanimously voted for abolition.

In Cuba, which retains the death penalty for a number of crimes, the majority of which are “crimes against state security”,<sup>7</sup> the last executions took place in April 2003.<sup>8</sup> However, there have been indications of a move away from implementation of the death penalty. Most prisoners on death row had their sentences commuted in April 2008 and in December 2010 the sentences of the last three remaining prisoners known to be on death row were also commuted. The Cuban authorities have stated the country “philosophically, is against the application of the death penalty and is favourable to its elimination”.<sup>9</sup> However, they have repeatedly cited the perceived threat of destabilization by external forces as the reason for its retention in law.

Suriname has not carried out any executions since 1982. In 2011, the government of Suriname made a formal commitment during its Universal Periodic Review (UPR) to abolish the death penalty.<sup>10</sup> On the same occasion, Suriname also stated that a draft amendment to the Penal Code removing the death penalty had been presented to the Council of Ministers and would subsequently be presented for approval to parliament.<sup>11</sup>

## 3. INTERNATIONAL STANDARDS

The Universal Declaration of Human Rights recognizes each person's right to life and states that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."<sup>12</sup> Article 6 of the International Covenant on Civil and Political Rights (ICCPR) also guarantees the right to life. While it allows for the use of the death penalty in countries that have not abolished it, it sets out prohibitions and restrictions on its use and states that "[n]othing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant"(Article 6(6)). The UN Human Rights Committee has observed that Article 6 "refers generally to abolition in terms which strongly suggest that abolition is desirable", and that "all measures of abolition should be considered as progress in the enjoyment of the right to life".<sup>13</sup> Similarly, Article 4 of the American Convention on Human Rights allows for the imposition of the death penalty in restricted circumstances and urges countries that have abolished this punishment not to re-introduce it.

The international community has also adopted treaties specifically aiming at the abolition of the death penalty. The Second Optional Protocol to the ICCPR, adopted by the UN General Assembly in 1989; the Protocol to the American Convention on Human Rights to Abolish the Death Penalty, adopted by the General Assembly of the Organization of American States in 1990; and Protocols No. 6 and No. 13 to the European Convention on Human Rights (1983 and 2002 respectively) all prohibit executions and require the abolition of the death penalty.

The UN Economic and Social Council,<sup>14</sup> the UN Human Rights Committee,<sup>15</sup> and the UN Human Rights Council<sup>16</sup> and its predecessor, the UN Commission on Human Rights, have all contributed to the progressive restriction of the use of the death penalty and urged UN member states to move towards its abolition. In particular, the UN Economic and Social Council adopted the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty (resolution 1984/50 of 25 May 1984). These set out the most basic guarantees to be observed in all death penalty cases and were endorsed by the UN General Assembly in 1984 by consensus.

The Rome Statute of the International Criminal Court (ICC), to which 10 of the ESC countries are parties,<sup>17</sup> excludes the death penalty for crimes under international law, including war crimes and crimes against humanity. Parties to the Statute have an obligation to implement ICC principles in domestic law so that anyone prosecuted at the national level for these crimes (under the principle of "complementarity") would not face a death sentence if convicted.<sup>18</sup>

### INTERNATIONAL CALLS FOR ABOLITION OF THE DEATH PENALTY

Various international and regional intergovernmental bodies have recommended establishing a worldwide moratorium on executions as a step towards abolition of the death penalty.

In April 2005, the UN Commission on Human Rights adopted a resolution (2005/59) stating that "the abolition of the death penalty contributes to the enhancement of human dignity and to the progressive development of human rights" and that "the abolition of the death penalty is essential for the protection of [the right to life]".

The UN reaffirmed and strengthened its position against the death penalty in December 2007 when the General Assembly adopted the first of three resolutions calling on all UN member states to establish a moratorium on executions with a view to abolishing the death penalty (62/149). The resolution enjoyed

cross-regional support and was adopted by an overwhelming majority, with 104 UN member states in favour, 54 countries against and 29 abstentions. Two other resolutions were adopted in December 2008 (63/168) and 2010 (65/206). The number of countries voting for the resolution increased from 104 in 2007 to 109 in 2010.

ESC countries have firmly opposed these attempts to move towards abolition of the death penalty. For example, all of them voted against the three UN General Assembly resolutions proposing a global moratorium, with the exception of Dominica, which abstained in the 2010 vote. ESC countries represented more than a quarter of the total number of countries that voted against the resolution in 2010 (11 of 41 countries).<sup>19</sup> In addition, amendments to the resolutions, aimed at weakening the language, were introduced and co-sponsored by ESC countries. All these proposed amendments were supported by a minority of countries and defeated.

ESC countries have also taken a very clear position against the abolition of the death penalty at the UPR. All ESC countries went through the first round of UPR reviews between 2008 and 2011 and all systematically rejected the recommendations related to the abolition of the death penalty. These included recommendations to establish a moratorium on executions, to vote in favour of the UN General Assembly resolution on a moratorium on the use of the death penalty, and to ratify the Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty.

However, during the UPR, some ESC countries made limited commitments in relation to reducing the imposition of the death penalty. In particular, Antigua and Barbuda, St Kitts and Nevis, and St Vincent and the Grenadines accepted some recommendations to respect due process guarantees and minimum safeguards in all death penalty cases. Barbados committed to abolish the mandatory death penalty, and Dominica agreed to consider a moratorium on the imposition of the death penalty.

<b>COUNTRY</b>	<b>YEAR OF REVIEW</b>	<b>UPR RECOMMENDATIONS ACCEPTED IN RELATION TO THE DEATH PENALTY</b>
Antigua and Barbuda	2011	“Whilst death penalty remains in place, rigorously apply international standards for fair trial in all death penalty cases and respect national legal procedures and the standards required by the Privy Council and the United Nations for the protection of the rights of prisoners sentenced to death.” <sup>20</sup>
Barbados	2008	“Subsequent to the review of Barbados under the UPR, the Cabinet of Ministers in Barbados has agreed to the abolition of the mandatory death penalty and is in the process of amending the relevant laws.” <sup>21</sup>
Dominica	2009	“Consider a moratorium on the imposition of the death penalty, as a step towards completely abolishing it.” <sup>22</sup>
St Kitts and Nevis	2011	“Review and investigate the administration of the legal rights of prisoners condemned to death within their judicial system to ensure their access to adequate recourse to appeals and other resources.” <sup>23</sup>
St Vincent and the Grenadines	2011	“Respect international standards on capital punishment, especially the principles stated in resolution 1984/50 of the Economic and Social Council, and in particular ensure that capital punishment is applied only for the most serious crimes.” <sup>24</sup>

In addition, Guyana, while rejecting all recommendations aimed at abolishing the death penalty, voluntarily committed to continue its consideration of this issue for the following two years and to report its findings to the UN Human Rights Council.<sup>25</sup>

## RESTRICTIONS AND SAFEGUARDS REGARDING THE USE OF THE DEATH PENALTY

The UN and several international bodies have set a number of standards aimed at regulating and restricting the use of the death penalty with a view to its abolition. This section details the standards that are most relevant to ESC countries.

### PERSONS AGAINST WHOM THE DEATH PENALTY MUST NOT BE IMPOSED

Under international law and standards death sentences should not be passed on people who were under 18 years of age at the time the crime was committed, or on pregnant women. Nursing mothers, the elderly and people with mental disabilities are also protected.<sup>26</sup>

### DEATH PENALTY AS AN EXCEPTIONAL MEASURE

Article 6(2) of the ICCPR states that "[i]n countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes". The UN Human Rights Committee has stated that "the expression 'most serious crimes' must be read restrictively to mean that the death penalty should be a quite exceptional measure."<sup>27</sup>The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has interpreted the definition of "the most serious crimes" to refer to intentional killing.<sup>28</sup>

### MANDATORY DEATH PENALTY IS IN BREACH OF INTERNATIONAL LAW

The UN Human Rights Committee has said that "the automatic and mandatory imposition of the death penalty constitutes an arbitrary deprivation of life, in violation of article 6, paragraph 1, of the [International] Covenant [on Civil and Political Rights], in circumstances where the death penalty is imposed without any possibility of taking into account the defendant's personal circumstances or the circumstances of the particular offence".<sup>29</sup> The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has stated that the death penalty should under no circumstances be mandatory by law and that "[the] mandatory death penalty which precludes the possibility of a lesser sentence being imposed regardless of the circumstances, is inconsistent with the prohibition of cruel, inhuman or degrading treatment or punishment".<sup>30</sup>

The Inter-American Court of Human Rights ruled in November 2007 and again in September 2009 that mandatory death sentences imposed in murder cases in Barbados violated Articles 4(1) and 4(2) of the American Convention on Human Rights, which respectively prohibit the arbitrary deprivation of life and limit the application of the death penalty to only the most serious crimes. As a consequence, the Barbadian government announced that mandatory death sentence in cases of murder and treason would be abolished in Barbados to comply with the Inter-American Court judgments.<sup>31</sup>

### FAIR TRIAL SAFEGUARDS

Article 14 of the ICCPR sets out standards of fair trial, as does Article 8 of the American Convention on Human Rights.<sup>32</sup> The UN Human Rights Committee has stated that "the imposition of a sentence of death upon conclusion of a trial in which the provisions of the [International] Covenant [on Civil and Political Rights] have not been respected constitutes a violation of article 6 of the Covenant".<sup>33</sup>It has also stated that the "assistance of counsel should be ensured, through legal aid as necessary, immediately on arrest and throughout all subsequent proceedings to persons accused of serious crimes, in particular in cases of offences carrying the death penalty."<sup>34</sup> According to the Human Rights Committee, if counsel shows "blatant misbehaviour or incompetence" or if the authorities "hinder appointed lawyers from fulfilling their task effectively," the state may be responsible for a violation of the right to fair trial under the ICCPR.

The Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, adopted by the UN Economic and Social Council in resolution 1984/50 on 25 May 1984 states that "Capital punishment may only be carried out pursuant to a final judgment rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings."

The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has stated "that proceedings

leading to the imposition of capital punishment must conform to the highest standards of independence, competence, objectivity and impartiality of judges and juries, in accordance with the pertinent international legal instruments. All defendants facing the imposition of capital punishment must benefit from the services of a competent defence counsel at every stage of the proceedings. Defendants must be presumed innocent until their guilt has been proved beyond a reasonable doubt, in strict application of the highest standards for the gathering and assessment of evidence. In addition, all mitigating factors must be taken into account.<sup>35</sup> In another report, the Special Rapporteur has stated that "[b]ecause it is impossible to ensure that wrongful executions do not occur, countries applying the death penalty should undertake regular, independent, periodic reviews of the extent to which international standards have been complied with and to consider any evidence of wrongful execution."<sup>36</sup>

#### PARDON OR COMMUTATION OF A SENTENCE

Article 6(4) of the ICCPR states that "[a]nyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases".

#### CRUEL, INHUMAN AND DEGRADING ASPECTS OF THE DEATH PENALTY

Torture and other cruel, inhuman or degrading treatment or punishment are clearly and unequivocally prohibited under international human rights and humanitarian law.<sup>37</sup> The prohibition is a peremptory norm of general international law which applies to all states, irrespective of their specific treaty obligations. It is also explicitly set out in numerous international and regional treaties. UN and regional mechanisms have recognized that some aspects of the use of the death penalty amount to cruel, inhuman and degrading treatment or punishment, particularly in relation to the conditions of detention of death row inmates; the anguish of being on death row under the constant threat of execution; and the secrecy surrounding the use of the death penalty, which affects both death row inmates and their families.

The UN Human Rights Committee found that detention conditions on death row violated the prisoners' right to be treated with humanity and respect for the inherent dignity of the person in line with Article 10 of the ICCPR<sup>38</sup>, and has called on states to improve these conditions in line with the requirements of the provisions of the ICCPR, including Articles 7 and 10(1) regarding respect for the human dignity of people deprived of their liberty.<sup>39</sup>

The UN Human Rights Committee has also identified unjustified delay in informing a prisoner of a stay of execution as cruel, inhuman and degrading treatment. The Committee has recommended "that inmates on death row and their families are given reasonable advance notice of the scheduled date and time of the execution, with a view to reducing the psychological suffering caused by the lack of opportunity to prepare themselves for this event."

The UN Economic and Social Council has urged UN member states in which the death penalty may be carried out "to effectively apply the [UN] Standard Minimum Rules for the Treatment of Prisoners, in order to keep to a minimum the suffering of prisoners under sentence of death and to avoid any exacerbation of such suffering".<sup>40</sup>

Numerous international, regional and national courts and bodies have recognized that awaiting execution on death row, particularly for extended periods, can amount to cruel, inhuman or degrading treatment. Nevertheless, the same courts and standard-setting bodies have also underlined the right of prisoners under sentence of death to make the maximum use of the judicial processes available.

#### RATIFICATIONS OF INTERNATIONAL AND REGIONAL TREATIES

ESC countries have variously failed to sign up to, failed to comply with their obligations under, or withdrawn from, key international and regional human rights treaties, especially those containing safeguards regarding the use of the death penalty.

Antigua and Barbuda, St Lucia, and St Kitts and Nevis are among the 25 UN member states that have not ratified the ICCPR.<sup>41</sup>

Only two ESC countries, Barbados and St Vincent and the Grenadines, are party to the (first) Optional Protocol to the ICCPR which allows the UN Human Rights Committee to accept petitions from individuals claiming that their human rights under the Covenant have been violated.

None of the ESC countries has signed or ratified the Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty.

Jamaica, Trinidad and Tobago, and Guyana withdrew from the (first) Optional Protocol to the ICCPR in January 1998, May 1998, and January 1999 respectively. In previous years, individual petitions to the UN Human Rights Committee under the Optional Protocol had been cited as one of the reasons why appeals in death penalty cases were taking longer than five years. This is the period after which death sentences should be commuted, following a 1993 ruling by the Judicial Committee of the Privy Council (JCPC), the London-based final court of appeal for most ESC countries, in *Pratt and Morgan v the Attorney General of Jamaica* (see page 16). Guyana and Trinidad and Tobago re-accessed to the (first) Optional Protocol on the day they withdrew, but with a reservation that attempted to exclude all those on death row from taking up the right to make an individual petition to the UN Human Rights Committee. In November 1999 in its views on an individual complaint under the Optional Protocol, the UN Human Rights Committee rejected the reservation by Trinidad and Tobago on the basis that excluding a whole group of people from the right to petition was discriminatory and contrary to the object and purpose of the Optional Protocol to the ICCPR.<sup>42</sup> As a result, Trinidad and Tobago withdrew altogether from the Optional Protocol on 27 March 2000. This move had the effect of denying all individuals subject to the jurisdiction of Trinidad and Tobago, and not only those on death row, the right to make individual petitions to the Human Rights Committee. Guyana has not withdrawn from the Optional Protocol again and is, therefore, still a party to the treaty. However, it has consistently failed to cooperate with the Human Rights Committee on death penalty cases even with regards to those submitted to the Committee before Guyana had entered its reservation.<sup>43</sup>

With regard to regional treaties, only Barbados, Dominica, Grenada and Jamaica have ratified the American Convention on Human Rights and only Barbados recognizes the jurisdiction of the Inter-American Court of Human Rights. In 1998, Trinidad and Tobago used similar arguments to those put forward when withdrawing from the (first) Optional Protocol to the ICCPR to withdraw from the American Convention of Human Rights. This effectively denies death row prisoners the right to submit petitions to the Inter-American Commission on Human Rights. None of the ESC countries has ratified the Inter-American Convention to Prevent and Punish Torture.

<b>RATIFICATION OF INTERNATIONAL AND REGIONAL HUMAN RIGHTS TREATIES RELEVANT TO THE DEATH PENALTY</b>						
COUNTRY	ICCPR	(first) Optional Protocol to the ICCPR	UN Convention against Torture	American Convention on Human Rights	Inter-American Convention to Prevent and Punish Torture	Rome Statute of the International Criminal Court
Antigua and Barbuda			X			X
Belize	x		X			X
Bahamas	x					
Barbados	x	x		x		X
Dominica	x			x		X
Grenada	x			x		X
Guyana	x	X	X			X
Jamaica	x	Withdrawn		x		
St Kitts and Nevis						X
St Lucia						X
St Vincent and the Grenadines	x	x	X			X
Trinidad and Tobago	x	Withdrawn		Withdrawn		X

## 4. THE DEATH PENALTY IN THE CARIBBEAN

“It’s very easy to convict someone under our legal system who may be innocent, and there is no redress, unless you have public campaigns to overturn a decision, and we don’t have that kind of culture in the Bahamas, so given the absence of that sort of activism in our community, the death penalty really is a dangerous weapon in the hands of the legal system.”

Arthur Dion Hanna Jr., Director of the Legal Aid Clinic, Eugene Dupuch Law School, the Bahamas

### ANN MARIE BOODRAM

In 1994 Ann Marie Boodram was sentenced to death by the High Court of Trinidad and Tobago for the murder of her husband in 1989. Her appeal against the conviction was allowed and a retrial started in February 1998.

She wanted the lawyer who assisted her in the previous trial to represent her again in the retrial, but she could not afford to pay his fees. She was, therefore, assigned a lawyer by the Legal Aid Authority. The lawyer was not aware that he was appearing at the retrial until the end of the prosecution case in February. According to the final court of appeal, the Judicial Committee of the Privy Council (JCPC, see below), when the lawyer became aware that there had been an earlier trial, he “did not ask for the transcript or record of the trial which had been prepared for the first appeal, he made no enquiries; he did not raise the matter with the prosecution; he did not alert the judge to it; and did not take instructions about the reason for the quashing of the first verdict.” Ann Marie Boodram was convicted again.

In 2001, the JCPC found that the lawyer’s multiple failures revealed “either gross incompetence or a cynical dereliction of the most elementary professional duties”. The JCPC held that “the breaches are of such a fundamental nature that the conclusion must be that the defendant was deprived of due process” and that it was “the worse case of the failure of counsel to carry out his duties in a criminal case that their Lordships have come across.” It concluded that Ann Marie Boodram did not have a fair trial and quashed her conviction and sentence.

All criminal judicial proceedings in ESC countries start in Magistrates’ Courts. These deal with less serious offences (non-indictable offences) and facilitate preliminary inquiries into indictable offences (that is, serious crimes that will be the subject of jury trials). If the Magistrates’ Court decides that a case is indictable, the person is then tried before the High Court or the Supreme Court, depending on the constitution of the country (Antigua and Barbuda, Dominica, Grenada, St Kitts and Nevis, St Lucia and St Vincent and the Grenadines share a joint Eastern Caribbean Supreme Court).<sup>44</sup>

Most ESC countries have the London-based Judicial Committee of the Privy Council (JCPC) as their final court of appeal. The right to lodge appeals with the JCPC can only be abolished by amending the countries' constitutions.

In April 2005, the Caribbean Court of Justice was created, principally as a court for regional trade disputes, but also to foster the development of indigenous Caribbean jurisprudence by becoming the final court of appeal for member states, including on matters of criminal law. However, to date only Barbados, Belize and Guyana have recognized the Caribbean Court of Justice as their final court of appeal.

This means that most death penalty cases are tried at a local high court in the first instance. They are then subject to a first appeal at a local or regional appeal court, and may be subject to a further and final appeal to either the London-based JCPC, or the Caribbean Court of Justice.

Over the last three decades, the JCPC has developed important jurisprudence in relation to the death penalty, upholding international standards. In its first death penalty ruling, given on 8 November 2006 in the case of *Boyce and Joseph v Barbados*, the Caribbean Court of Justice stated that JCPC decisions would continue to be binding on Barbados until and unless they are overruled by the Caribbean Court of Justice itself, which has not happened so far. Some rulings by national and regional courts of appeal in ESC countries have also further enhanced the protection of people under sentence of death.

This chapter illustrates some of the shortcomings in applying international human rights standards and regional jurisprudence in several death penalty cases in ESC countries.

## BAN ON INHUMAN OR DEGRADING PUNISHMENT OR TREATMENT

The JCPC has ruled that in “any case in which execution is to take place more than five years after sentence there will be strong grounds for believing that the delay is such as to constitute ‘inhuman or degrading punishment or other treatment’ and that the death sentence should be commuted to life imprisonment.” Following this ruling in 1993 in the case of *Pratt and Morgan v the Attorney General of Jamaica*, prisoners within the jurisdiction of the JCPC who have spent more than five years on death row have had their death sentences commuted to life imprisonment. However, some ESC countries have tried to circumvent this judgment either by withdrawing from the JCPC's jurisdiction or by making subsequent changes to their domestic laws.<sup>45</sup>

## RIGHT TO APPEAL AND MERCY PETITIONS

### CHARLES ELROY LAPLACE

Charles Elroy Laplace, who had been on death row for four years, was executed on 19 December 2008 in St Kitts and Nevis. He had been sentenced to death for the murder of his wife. In October 2008, the Eastern Caribbean Supreme Court had dismissed his appeal on procedural grounds. Charles Laplace appears not have been provided with the necessary legal assistance to file an appeal with the JCPC. Although the authorities are not obliged to wait for an appeal to the JCPC to be filed before proceeding with an execution, the Human Rights Committee in its General Comment No.32 stated that in cases involving capital punishment, it is axiomatic that the accused must be effectively assisted by a lawyer at all stages of the proceedings.

It is not clear whether Charles Laplace's right to apply for amnesty, pardon or commutation of his sentence was respected. An Advisory Committee on the Prerogative of Mercy apparently met before the execution to consider his case, but it is not known whether Charles Laplace was told when his clemency plea would be considered or whether he was provided with legal assistance to help compile his application for clemency. The JCPC judgment in the 2001 case of *Neville Lewis and Others v Attorney General of Jamaica* states that condemned prisoners have specific rights regarding clemency procedures, including the right to view documents considered in their mercy plea, and to have the opportunity to make representations before the Mercy Committee. Charles Laplace may not have been granted his right to explore all avenues of appeal available to him before his execution.

Charles Elroy Laplace's execution was the latest to be carried out in the ESC. There are strong indications that it was carried out after a trial that did not meet international standards, in particular, the right to competent legal assistance and the right to apply for amnesty, pardon or commutation.

In a number of rulings, the JCPC established that it is unlawful to proceed with execution before a prisoner's appeals to international human rights bodies have concluded.<sup>46</sup> In 2006, the Caribbean Court of Justice ruled in the case of *Boyce and Joseph v Barbados*<sup>47</sup> that the Barbadian authorities' decision to issue execution warrants for two men convicted of murder, shortly after they had initiated proceedings before the Inter-American Commission on Human Rights, was a contravention of the right to make use of all available avenues of appeal.

In 2001, in the case *Neville Lewis & Others v Attorney General of Jamaica*, the JCPC established the procedures that should be followed in an application for mercy. These included ensuring that the applicant is given sufficient notice of the date on which his case will be considered and ensuring that the Jamaican Privy Council<sup>48</sup> considers all the material placed before it and the representations of the prisoner or his representatives. All prisoners on death row should be granted access to all the material put before the bodies considering mercy petitions and be given an opportunity to make representations to it.

The Inter-American Commission on Human Rights has often pointed to states' obligation to provide legal aid for death row prisoners wishing to file constitutional appeals in relation to the use of the death penalty. In a recent report the Commission stated "in capital punishment cases, where Constitutional Motions directly relate to the right to life and to humane treatment, the effective protection of those rights cannot properly be left to the random prospect as to whether an attorney may be willing or available to represent the defendant without charge. The right to judicial protection of these rights must be guaranteed through the effective provision of legal aid for Constitutional Motions."<sup>49</sup> In the same report, the Inter-American Commission on Human Rights highlighted several cases in which ESC countries had failed to provide legal aid to persons sentenced to death to enable them to file constitutional motions against their sentence.

## INADEQUATE LEGAL REPRESENTATION, SHORTCOMINGS IN FORENSIC SERVICES

The criminal justice systems in many ESC countries are struggling with caseloads that far exceed their capacity. This often results in violation of due process and prolonged delays. Factors contributing to delays include inadequate staffing levels, resources and legal representation; insufficient jurors; inadequate witness protection programmes; and high and increasing crime rates. Weaknesses in forensic analysis and delays in processing evidence in crime laboratories also contribute to systemic delays and errors in trial proceedings and scheduling. In several cases, these delays have meant that defendants who were eventually found not guilty were detained, spent prolonged periods in pre-trial detention or on death row for crimes that they did not commit.

In some ESC countries, lawyers have pointed out a number of weaknesses in the legal representation of people at risk of being sentenced to death.

*"When a person is first placed under arrest in the Bahamas, they don't have guaranteed legal representation at that very early critical stage. Even if people are aware of their legal right to representation, then most of them can't afford it. If a confession is coerced, there is no way to prove it a later stage."*

Arthur Dion Hanna Jr., Director of the Legal Aid Clinic, Eugene Dupuch Law School, the Bahamas

In Trinidad and Tobago, most people charged with murder rely on legal aid. However, the inadequate fees paid to legal aid lawyers, and the long delays in murder trials, are a disincentive to many lawyers to take up these cases. Related to this is that people facing murder charges who apply for legal aid may be assisted by different lawyers at different stages of criminal proceedings.<sup>50</sup> In many cases, courts of appeal and the JCPC have quashed death sentences on the grounds that the incompetence of legal counsel led to miscarriages of justice.

Weaknesses in the justice systems of ESC countries mean that in many cases there are doubts about the safety of convictions. Explaining her opposition to capital punishment, Justice Dame Joan Sawyer, former

President of the Court of Appeal of the Bahamas, said in 2010 that she has never been satisfied that the system of detection in the Bahamas was so foolproof as to guarantee that there was no possibility of error: "And to me, to kill one innocent man for a crime he didn't commit is so serious a crime that I wouldn't want to be party to it".<sup>51</sup>

The poor quality of criminal investigations often results in people being sentenced to death solely on the basis of witness statements or their own confessions. In some cases, defendants claim that confessions were extorted under torture or other ill-treatment, or that confessions and statements were made in the absence of defence lawyers and without the full understanding of the defendant.<sup>52</sup> The Inter-American Commission on Human Rights has recently revealed several cases in which national courts in ESC countries admitted written confessions in trials, when there was clear evidence that they had been obtained through torture or coercion.<sup>53</sup> In many cases, defendants are young people who cannot read or write and do not know their rights.

## **LESTER PITMAN**

Lester Pitman was sentenced to death in July 2004 for the murders of three people. He was charged and sentenced to death mainly on the basis of a statement he signed at the police station. The police claimed that the statement was given voluntarily, but Lester Pitman alleged that he was presented with a written declaration and was asked to sign it, without even having been given the chance to read it. He was held at the police station for interrogation for about 12 hours, during which time he had no access to a lawyer or to a family member. "It was unfair to me not to have a legal adviser", he told Amnesty International.

In 2008, the JCPC remitted the case to the Court of Appeal after admitting fresh evidence on Lester Pitman's mental state showing he is affected by severe mental impairment, with an IQ of 52. Psychiatric tests showed a high degree of suggestibility and compliance, "the effect of which tends to make the subject likely to give misleading and incorrect adverse answers in interrogation and to comply with figures in authority". The JCPC ruled that this new evidence could cast doubt on the admissibility of his confession, especially considering that this was given without the presence of a lawyer or an independent person, and remitted the case to the Court of Appeal of Trinidad and Tobago to determine the safety of the conviction in the light of the fresh evidence. At the time of writing, a ruling by the Court of Appeal was still pending.

In 2011, St Kitts and Nevis and Trinidad and Tobago amended their Evidence Acts to increase the types of evidence admissible in court. In particular, the amendments enable the court to accept as evidence the statements of witnesses who retract their statements, who are reluctant to give evidence in the court, or who are no longer available, for reasons including that they have died. In such cases, the defence cannot test the reliability of the evidence through cross-examination. The amended legislation includes provisions mandating judges to warn the jury about the degree of reliability of the evidence and of the need to exercise caution in determining whether to accept the evidence and the weight that should be given to it. However, there are well-founded concerns that a person could be convicted of murder and sentenced to death solely on the basis of an earlier statement that cannot be tested through cross-examination of the witness.

Forensic services in many of the Caribbean countries suffer from numerous shortcomings. These affect both the availability and the quality of the forensic evidence, including in cases that carry a potential death sentence. For example, in 2011 Amnesty International's research in Jamaica revealed that the Legal Medicine Unit of the Ministry of National Security had only two forensic pathologists on staff. This is an insufficient number for a country with one of the highest murder rates in the world and a very high number of fatal shootings by the police every year. The ballistic laboratory was also under-staffed and an assessment carried out in October 2010 by an international expert revealed that the laboratory had a backlog of 2,000 requests.<sup>54</sup> A study carried out in 2011 on the functioning of the Forensic Pathology Subdivision of the Forensic Science Center in Trinidad and Tobago noted the shortage of forensic pathologists, combined with increasing workload; space constraints; and the dependence on police investigators with no formal training in forensic pathology to carry out death scene assessments. It concluded that these conditions lent themselves to errors in the preservation of evidence and inaccurate autopsy reports. The study also highlighted the lack of a fingerprinting and DNA database, and of a laboratory able to examine arms other than firearms, such as knives and cutlasses.<sup>55</sup>

## LACK OF MENTAL HEALTH ASSESSMENTS

International standards<sup>56</sup> prohibit the imposition of the death penalty on, and the execution of, prisoners affected by mental disabilities.<sup>57</sup> In addition, standards set by the JCPC require psychiatric reports to be presented for all defendants in capital cases. In *Pipersburgh & Robateau v the Queen* (Belize, 2008), the JCPC emphasized the need “to consider the personal and individual circumstances of the convicted person and, in particular, the possibility of his reform and social re-adaptation which makes the social inquiry and psychiatric reports necessary for all such sentence hearings.”

However, in many ESC countries, mental health assessments of suspects or defendants are either lacking or inadequate in many death penalty cases.

### **SHELDON ISAAC**

Sheldon Isaac was sentenced to death in St Kitts and Nevis in January 2008, together with three others, for the murder of Gavin Gilbert, a key witness in a murder trial involving one of Sheldon Isaac's co-defendants.

Following the execution of Charles Elroy Laplace in December 2008 (see above), the NGO Death Penalty Project<sup>58</sup> asked the government to provide an undertaking that it would not carry out death sentences while appeals were pending. Following the government's refusal, Sheldon Isaac and his co-defendants were at imminent risk of execution. The Death Penalty Project filed emergency applications with the JCPC, which granted stays of execution in February 2009.

After the stays were granted, the Death Penalty Project instructed a clinical psychologist and forensic psychiatrist to obtain fresh medical evidence, which was then filed with the JCPC. The medical evidence demonstrated that at the time of his conviction, Sheldon Isaac was severely brain damaged as a result of being shot in the head after the murder of Gavin Gilbert. The JCPC heard the case in May 2010 and remitted the case back to the Court of Appeal on the basis of the new medical evidence.

In March 2012, the Eastern Caribbean Court of Appeal concluded that Sheldon Isaac was unfit to stand trial by reason of his severe brain damage, quashed his conviction and directed his acquittal.

In many cases when a mental health assessment has been carried out during the early stages of the trial, the examining doctors have failed to indicate the forensic implications of the assessment. In many cases, it is only during the final appeal that the mental health assessment of a defendant is carried out at the request of defence lawyers, often after appeals to the Court of Appeal have been dismissed. The JCPC has often voiced its grave concern about the late stage at which mental health reports are undertaken. In many of these cases, the JCPC allowed the appeal on the basis that psychiatric evidence about the defendant's mental state cast doubt on the safety of their conviction for murder and the legality of the sentence of death.

### **NIGEL BROWN**

Nigel Brown was sentenced to death by the High Court of Trinidad and Tobago in February 2007 for the murder of 76-year-old Lloyd Bailey in 2004. On 8 February 2008, the Court of Appeal of Trinidad and Tobago dismissed his appeal and Nigel Brown's case went before the JCPC.

In 2004, following a request from the High Court, a consultant psychiatrist and a clinical psychologist had examined Nigel Brown. The psychiatrist concluded that he did not suffer from any formal psychiatric illness, that there was no evidence of psychosis or mood disorder and that therefore Nigel was fit to stand trial. The psychologist found that the results obtained for Nigel Brown in the intelligence tests placed him in the range of dull normal intelligence. He also carried out a personality test which sought to identify psychopathology, but did not specifically state the results of this test.

However, the results of an assessment carried out by a consultant in forensic psychiatry and a clinical psychologist in 2010 appeared to be very different. Nigel Brown was found to be suffering from a “mild learning disability – a mental disorder in the form of significantly impaired cognitive functioning and impairment in functional skills”. He was also found to fall in the extremely low category of intellectual functioning. They both concluded that Nigel was unfit to plead and stand trial.

In February 2012, the JCPC stated that the doctors' opinions that Nigel Brown "was unfit to plead raises a substantial issue about the fairness of his trial and the safety of his conviction". In the light of this fresh medical evidence, the JCPC concluded that the conviction was potentially unsafe and ordered the Court of Appeal to review it. In general, the JCPC expressed concern about "the fact that these reports have been produced ex post facto and without any explanation as to why medical evidence on the issue of fitness to plead has not been produced before now". At the time of writing, a ruling by the Court of Appeal was pending.

The lack of mental health assessments of defendants means that courts cannot properly assess whether there is a reasonable prospect of reform. As the JCPC established in the case *Trimmingham v the Queen*, lack of prospect of reform is one of the essential criteria for imposing the death penalty. In this ruling, delivered on 22 June 2009 on the case in St Vincent and the Grenadines of *Daniel Dick Trimmingham v the Queen* (Privy Council Appeal No 67 of 2007), the JCPC stated that the death penalty should be imposed only in cases which are "the worst of the worst", or "the rarest of the rare" and where there is no prospect of reform and no other means of achieving the object of punishment.

The JCPC ruling in the case in the Bahamas of *Maxo Tido v the Queen* (Privy Council Appeal No 0003 of 2010) confirmed and applied the "Trimmingham principles" and found that the case did not warrant the punishment of death and that the second condition could not be determined as no psychiatric report had been commissioned by the judge. It concluded by affirming that a sentencing court, whenever contemplating the possible imposition of the death penalty, should require professional advice as to whether the possibility of reform exists.

In an August 2011 ruling in the Bahamas in the case of *Lockhart vs the Queen* (Privy Council Appeal No 0050 of 2010), the JCPC stated that as no psychiatric assessment had been made during the sentencing phase of the trial in the Supreme Court, it was not possible to determine whether there was no reasonable prospect of reform of the offender. "How is a sentencing court to face the task of deciding whether it is satisfied that there is no reasonable prospect of reform unless it has some professional assistance which provides an insight into the character and psyche of the individual whose execution is being contemplated?" As a consequence, the JCPC concluded that "in every case in which the death penalty is being considered, the report of a consultant psychiatrist is needed before the question whether the reasonable possibility of reform can be properly addressed."<sup>59</sup>

Concerns about the lack of mental health assessments in cases where the death penalty might be imposed are particularly acute in countries where capital punishment is mandatory for certain offences. For example, in Barbados and Trinidad and Tobago, where the legal system allows judges no discretion when sentencing those convicted of murder, it is extremely important that any possible factors which could result in diminished responsibility, such as mental disorders, are identified as early as possible in the criminal proceedings.

In Trinidad and Tobago, the law explicitly protects people with mental disabilities: "When a person kills or is a party to the killing of another, he shall not be convicted of murder if he was suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any other inherent cause or induced by disease or injury) as substantially impaired his mental responsibility for his acts and omissions in doing or being a party to a killing." (Article 4A (1) of the Offences against the Person Act.)

Despite this, however, mental health assessments of murder suspects are not compulsory at any stage. In some cases, courts might request an evaluation of the accused. When they do not, it is left to the judgement and the competence of the defence lawyers to request it.

The lack of systematic mental health assessments of prisoners facing capital charges makes it impossible to assess accurately how many people with mental disability have been convicted and sentenced to death. However, according to the Death Penalty Project, between February 2008 and May 2012 at least seven prisoners under sentence of death in Trinidad and Tobago were found to be suffering from some kind of mental disability and consequently had their cases remitted for review to the Court of Appeal by the JCPC.

## STEPHEN ROBINSON

Stephen Robinson was sentenced to death on 12 March 2009 for the murder of Anson John, a security guard, in a pharmacy in Tacarigua, Trinidad and Tobago, in January 2002. Stephen Robinson was a regular visitor to the pharmacy and would normally be given snacks and soft drinks by the owner. On 16 January 2002 he visited twice. On the second occasion, the owner asked him to leave, but he refused. When Anson John approached him and asked him to leave, Stephen Robinson swung a piece of metal he was carrying, brushing Anson John with it. Anson John grabbed Stephen Robinson by the neck of his T-shirt and took out his gun. In the tussle between the two men that followed, Stephen Robinson swung the piece of metal again and Anson John fired his gun. Wounded, Stephen Robinson immediately ran out of the drug store and was found shortly afterwards two streets away sitting on the pavement, trembling and frightened. Anson John died a few days later of his injuries.<sup>60</sup>

At the trial, two psychiatrists provided evidence that Stephen Robinson suffered from schizophrenia. One psychiatrist examined him four months after the incident, the other four and half years after Anson John's death. The records of St Ann's Hospital, to which both psychiatrists were attached, revealed that Stephen Robinson had been admitted on many occasions between 1985 and 2000, and suggested a diagnosis of schizophrenia. In cross-examination the first psychiatrist stated that it was possible that Stephen Robinson was acting perfectly rationally at the time of the offence, but in his opinion this was not the case. The second psychiatrist testified that a break in treatment of schizophrenic patients is likely to result in a relapse. Hospital records show that Stephen Robinson last attended the clinic in December 2000, more than a year before the incident.

Despite the available medical evidence to support it, the jury rejected the claim that at the time of the offence Stephen Robinson was suffering an "abnormality of mind that substantially impaired his responsibility for his actions". As a consequence, Stephen Robinson was convicted of murder and sentenced to death. Although the Court of Appeal dismissed his appeal in July 2010, it concluded: "it is unfortunate that the application of clear legal principles should result in the imposition of the death penalty on an individual who, on the evidence, has a long outstanding mental disability. The apparent harshness of the result of our decision might best be ameliorated, not by a distortion of the law, but rather by petitioning the appropriate authorities, that is, the Mercy Committee." The case was before the JCPC at the time of writing.

## MANDATORY DEATH SENTENCES

The Human Rights Committee and many national courts around the world have ruled mandatory death sentences unconstitutional.<sup>61</sup> In 2001, the Eastern Caribbean Court of Appeal declared the mandatory death penalty to be an inhuman and degrading punishment under the constitutions of St Lucia and of St Vincent and the Grenadines.<sup>62</sup> Following subsequent appeals on the decision, the JCPC ruled that the mandatory aspect of the death penalty was inhuman treatment and therefore inconsistent with the constitutions. Following that decision, a series of challenges to the constitutionality of the mandatory death penalty led most of the ESC countries to modify their national laws and make death sentences discretionary.

The constitutionality of mandatory death sentences in Trinidad and Tobago has been examined by the JCPC several times in recent years. In 2003, the JCPC ruled in the case of *Balkissoon Roodal v The State of Trinidad and Tobago* that the mandatory death penalty was a violation of the constitutional right not to be subjected to cruel and unusual treatment or punishment and that the current legislation should be interpreted to mean that death should be the maximum, but not the only, punishment for murder.

However, in 2004 the JCPC ruled, in the case of *Charles Matthew v The State of Trinidad and Tobago* that although mandatory imposition of death penalty was cruel and unusual punishment, non-discretionary sentencing was constitutional in Trinidad and Tobago as the Offences Against the Person Act 1925 was an existing law when the Constitution was enacted in 1976 and so exempted from the prohibition introduced by the Constitution.<sup>63</sup>

In 2011, the JCPC looked again at the question of the mandatory death penalty. In *Nimrod Miguel v The State of Trinidad and Tobago*, the JCPC found that "it is common ground that the mandatory death sentence is cruel and unusual punishment" and that the Criminal Law (Amendment) Act 1997, which amended the

Criminal Law and introduced the mandatory death penalty for felony murder, had introduced an offence, felony murder, that did not exist in the country's law when the Constitution was enacted. As a result, Nimrod Miguel's conviction was upheld, but his mandatory death sentence was quashed. As a consequence of this ruling, prisoners on death row who had been convicted of "violent arrestable offence murder" (felony murder) and received mandatory death sentences in Trinidad and Tobago must be resentenced.

## 5. CRIME AND THE DEATH PENALTY

**"It is not because the death sentence has been scrapped that crime has reached such unacceptable levels. Even if the death sentence is brought back, crime itself will remain as it is."**

President Nelson Mandela, Voice of America, 9 September 1996

### PUBLIC SECURITY

Levels of violent crime in Caribbean countries remain high.<sup>64</sup> According to a 2007 study by the UN Office for Drugs and Crime (UNODC) and the World Bank, the causes of such high crime rates lie in factors including the easy availability of guns, chaotic urbanization, high levels of income inequality and the prevalence of local gang structures, organized crime and drug trafficking.<sup>65</sup>

The number of homicides in the region increased steadily between 1995 and 2010.<sup>66</sup> And the increase appears to be continuing. For example, in St Kitts and Nevis, the number of murders recorded each year increased from five in 2002 to a record high of 33 in 2011.<sup>67</sup> More than two thirds of murders in the Caribbean are committed using firearms.

According to the 2011 UNODC study, while data shows that the amount of cocaine trafficked via the Caribbean progressively decreased from 1995 to 2010, homicide rates increased in almost all Caribbean countries (with the exception of Cuba) during the same period. It found that the increase in the Caribbean's lethal violence can be traced in part to frenzied competition between drug-trafficking organizations fighting for their share of a diminished drug-smuggling market.<sup>68</sup>

Most criminal activities in the region are attributed to street gangs and organized crime.<sup>69</sup> In many ESC countries, violence and crime are widespread, especially in deprived and excluded inner-city communities where unemployment rates are high and access to basic services, such as water, electricity and security of housing tenure, are often poor. In those communities, gang leaders often take on functions and provide services that are normally fulfilled by the state. In Jamaica, for example, years of neglect by the state have allowed some of these communities to become the fiefdom of gang leaders. Known as "dons", gang leaders "collect taxes" from local businesses through extortion; allocate jobs both in the legal sector and in criminal activities; distribute food, schoolbooks and "scholarships"; and mete out punishment to those who transgress gang rules.<sup>70</sup>

Young people living in marginalized communities are particularly at risk of being recruited into gangs. As the United Nations Development Programme (UNDP) pointed out in its *Caribbean Human Development Report 2012*, youth involvement in criminal activities is linked to development issues, such as levels of unemployment, which are among the highest in the world; poor educational opportunities; and feelings of voicelessness and exclusion from national and regional governance processes.

### CARIBBEAN GOVERNMENTS' RESPONSES TO CRIME

*"Governments like the death penalty, they like to fall back on it because it looks like you are doing something if you hang people but in effect you are not achieving anything".*

Dr Arif Bulkan, Guyanese attorney, quoted in *Stabroek News*, "Death penalty 'spectacular failure in crime fight'", 18 August 2010

Across the region, government responses to crime, including to youth violence and gang crime, have shown an over-reliance on law enforcement and punishment and a reluctance to adopt comprehensive crime prevention strategies. Priority has been given to repressing criminal conduct in the belief that being "tough on crime" is the most effective way to deter crime.<sup>71</sup> For example, many Caribbean governments have passed laws containing provisions for harsher penalties and longer prison terms for certain types of offences, particularly those related to gang crimes.<sup>72</sup> Both Jamaica and Trinidad and Tobago have recently declared states of emergency (in May 2010 and August 2011 respectively) in response to public security concerns.<sup>73</sup> Both the enforcement of new legislation and the declaration of the states of emergency have had a detrimental effect on human rights.<sup>74</sup>

The measures adopted have so far failed to deliver significant improvements in public security. One of the reasons for this lack of progress is that while governments have prioritized law enforcement, they have done little to tackle weaknesses affecting law enforcement agencies. The UNDP *Caribbean Human Development Report 2012* highlighted widespread police corruption as one of the major barriers to the adoption of more effective and efficient crime control methods.<sup>75</sup> The use of a hard-line policing approach in many of the Caribbean countries with the highest homicide rates, far from being effective as a crime-reduction strategy, has, on the contrary, resulted in the public's increased alienation from the security forces.

Police services across the Caribbean have poor detection rates (the proportion of cases in which an arrest was made after criminal investigations), especially for murder cases. For example, in Trinidad and Tobago between 2004 and 2008 the police detection rates in homicide cases remained below 20 per cent.<sup>76</sup> According to police statistics, in St Kitts and Nevis, in only six of the 28 murder cases recorded in the first nine months of 2011 was anyone charged.<sup>77</sup>

The authorities have consistently paid insufficient attention to crime prevention strategies that address the root causes of crime and violence. The UNDP *Caribbean Human Development Report 2012* reports that in some ESC countries a few such initiatives were developed that focused mainly on poverty reduction, empowering communities and groups at risk, and managing conflicts. However, the report also indicates that these initiatives have generally been ad hoc measures and pilot programmes that lacked proper integration, prioritization, resources and coordination.<sup>78</sup>

In recent years, awareness seems to have increased among Caribbean governments that they need to pay more attention to crime prevention strategies and to the design of comprehensive and coordinated public security policies. In January 2011, the Prime Minister of Trinidad and Tobago, Kamla Persad-Bissessar, stated that the escalation in criminal activity "is a multi-dimensional problem to which there is no single answer" and that a multi-faceted crime prevention plan would be implemented, including measures aimed at reducing poverty and inequality.<sup>79</sup> In July 2011, the Jamaican government adopted a National Crime Prevention and Community Safety Strategy. This incorporates a multi-sectoral approach to crime prevention and community safety based on, but not limited to, social development; effective policing and justice processes; and reducing reoffending.<sup>80</sup>

However, faced with spiralling crime rates, decision-makers in ESC countries continue to push forward policies that appear to serve mainly to calm public anxieties and to reassure the electorate that steps are being taken against crime. In this context, and in particular when a murder or a spike in violent crime provoke widespread public anger, politicians often publicly declare their support for the death penalty and the introduction of measures to carry out executions. For example, in February 2011, against the backdrop of an upsurge in violent crime, St Lucia's National Security Minister, Guy Mayers, said that the process of carrying out the death penalty on the island needed to be expedited. A few days later, the Prime Minister invited the Leader of the Opposition to work with the government to remove obstacles to carrying out executions. In September 2011, in response to public concern in St Vincent and the Grenadines about the number and types of homicides, the Prime Minister, Ralph Gonsalves, and the Leader of the Opposition, Arnhim Eustace, both re-emphasized their support for the death penalty. The Prime Minister, who is also Minister of National Security and Legal Affairs, restated his support for capital punishment saying he was "a death penalty man".

Politicians across the region have often tried to pass legislative reforms aimed at circumventing key judicial decisions, in order to facilitate the implementation of the death penalty. In some cases, the proposals were adopted, while in others they were rejected for a variety of reasons, including in one case because the amendments were considered too weak. The following legislative amendments have been adopted:

- Barbados: an amendment to the Constitution passed in 2002 allows limits to be put on the length of time granted to prisoners, including those sentenced to death, to appeal to or to consult external bodies, including international human rights bodies such as the Human Rights Committee or the Inter-American Commission on Human Rights.
- Jamaica: the Charter of Fundamental Rights and Freedoms adopted in April 2011 contains provisions that appear intended to reverse the effects of the landmark 1993 ruling by the JCPC in *Pratt and Morgan v Attorney General of Jamaica*.<sup>81</sup> This had stated that the execution of prisoners who have spent more than five years on death row would constitute inhuman and degrading punishment. The Charter also states that the “physical conditions or arrangements” in which a condemned person is detained prior to execution cannot be considered to be in contravention of the prohibition of torture or inhuman or degrading punishment or other treatment.

The following legislative amendments are among those that were not passed:

- St Vincent and Grenadines: the government put forward a proposal in 2009 to amend the Constitution, including a provision that was presented as “restoring the death penalty and insulating it from further assaults by judges”.<sup>82</sup> The proposed constitutional reform was rejected by nearly 56 percent of voters in a referendum in November 2009.
- Trinidad and Tobago: the government submitted a draft Constitution (Amendment) (Capital Offences) Act to Parliament in January 2011, describing it as “a crucial step to overcoming the hindrances to the implementation of the death penalty arising from the Privy Council’s jurisprudence and, as a consequence, as a necessary measure to fight crime and, in particular, to respond to the high number of murders that each year are committed in Trinidad and Tobago.”<sup>83</sup> The proposed amendments would have allowed, among other things, death sentences to be carried out even if appeals were still pending.<sup>84</sup> The bill was defeated because the Opposition did not support it on the grounds it would not be effective in facilitating the implementation of the death penalty.
- Belize: the government introduced draft legislation into Parliament in May 2011 to facilitate the use of the death penalty. The Belize Constitution (Eighth Amendment) Act, 2011 would have amended Section 7 of the Constitution prohibiting torture and inhuman or degrading punishment or treatment, to allow for the imposition of a death sentence or execution by any means.<sup>85</sup> The proposal was withdrawn following applications by two NGOs – the Death Penalty Project and the Human Rights Commission of Belize – to the Inter-American Commission on Human Rights.

## THE DETERRENCE HYPOTHESIS

*“From the time someone commits a murder, you can’t save him, so we have to save them when they are 10 and 11 and 15...We will always have crime, but what we need to do is to reduce whatever brings and drives people to crime and as a country we are better off spending our time, money and energy trying to tackle these issues”.*

Adriel Brathwaite, Attorney General of Barbados, to the *Barbados Advocate*, 2 October 2011

There is no convincing evidence to support the argument that the death penalty prevents crime more effectively than other punishments. The most comprehensive survey of research findings carried out by the UN on the relationship between the death penalty and homicide rates concluded:

*“[R]esearch has failed to provide scientific proof that executions have a greater deterrent effect than life imprisonment. Such proof is unlikely to be forthcoming. The evidence as a whole still gives no positive support to the deterrent hypothesis”.*<sup>86</sup>

Recent statistics from countries that have abolished the death penalty show that the absence of the death penalty has not resulted in an increase in crime. In Canada, for example, the homicide rate per 100,000 of the population fell from a peak of 3.09 in 1975, the year before the death penalty for murder was abolished, to 2.41 in 1980. The homicide rate in Canada remains significantly lower than prior to abolition.<sup>87</sup>

A study comparing the murder rates in Hong Kong and Singapore, both of which have a similar size of population, for a 35-year period beginning in 1973 found that the abolition of the death penalty in the former and the high execution rate in the latter in the mid-1990s had little impact on crime levels.<sup>88</sup> Similarly in the Greater Caribbean, there is no correlation between retention of the death penalty and low crime rates: six of the ten countries with the highest homicide rates in the region retain the death penalty (the Bahamas, Belize, Guatemala, Jamaica, St Kitts and Nevis, and Trinidad and Tobago).<sup>89</sup> Indeed, in St Kitts and Nevis, the number of murders increased from 23 to 27 in the year following the execution of Charles Elroy Laplace in December 2008.

The figures for Jamaica, which in 2010 was classified by the UN Office for Drug and Crime as the country with the fourth highest murder rate in the world, show a similar lack of correlation between the death penalty and crime levels. As the table below shows, the number of death sentences imposed in Jamaica between 2008 and 2011 is not statistically significant in relation to the number of people murdered, undercutting assertions that capital punishment is a deterrent to crime.

	2008	2009	2010	2011
<b>Number of murders</b>  (Source: Jamaica Constabulary Force)	1611	1683	1442	1125
<b>Number of death sentences imposed</b>  (Source: government and/or Jamaican NGOs)	1	2	4	0

A recent study carried out in Trinidad and Tobago also found no correlation between executions, imprisonment and crime: "over a span of 50 years, during which these sanctions were being deployed in degrees that varied substantially, neither imprisonment nor death sentences nor executions had any significant relationship to homicides. In the years immediately following an appeals court's determination limiting executions, the murder rate fell."<sup>90</sup> In particular, the study showed that between 1950 and 1980, while executions were carried out regularly every year, homicides rates remained fairly stable. In the years since 1980, although courts continued to impose death sentences, executions took place in just two of those years. This dramatic drop in executions had no large, immediate impact on murder rates, which grew slowly for the next 15 years.

*"We would be deluding ourselves if we were to believe that the execution of...a comparatively few people each year...will provide the solution to the unacceptably high rate of crime...The greatest deterrent to crime is the likelihood that offenders will be apprehended, convicted and punished. It is that which is lacking in our criminal justice system".*

Statement made by the Constitutional Court of South Africa, when declaring the death penalty unconstitutional in 1995

A study conducted by the University of the West Indies and the University of Oxford revealed that in Trinidad and Tobago between 1998 and 2002 convictions for murder were obtained – and death sentences imposed – in only 5 per cent of murder cases recorded by the police, and that in 92 per cent of those cases, death sentences were not confirmed on appeal. The study also found that the death penalty was rarely imposed for gang or drug-related crimes (only 5 of the 57 mandatory death sentences imposed involved gang-related murders) “largely because the perpetrators are usually immune from law enforcement”.<sup>91</sup> Another recent study also found that in 2004-2005, 646 murders were recorded by the police in Trinidad and Tobago. These cases resulted in 62 prosecutions and one conviction for murder, and 35 prosecutions for manslaughter and one conviction. Researchers identified a number of causes for such low conviction rates, including: failure to identify suspects, the intimidation and even murder of witnesses, the reluctance of frightened witnesses to testify, and extensive links between law enforcement agencies and criminal gangs.<sup>92</sup>

Another study carried out on murders in the Bahamas between 2005 and 2009 showed that of the 333 cases of murder reported during that period, only 10 resulted in convictions for murder; death sentences were imposed in two cases.<sup>93</sup>

As the UNDP’s *Caribbean Human Development Report 2012* points out, it is a long-standing axiom of criminology that deterrence has three components: certainty, severity and celerity (or swiftness). This means that the sanctions with the greatest deterrent value are sufficiently severe and are administered swiftly and with a strong level of certainty. Capital punishment is clearly severe. However, as stated in the study, the other key factors contributing to deterrence are clearly absent given the low detection rates and procedural delays in the Caribbean.<sup>94</sup>

## THE DEATH PENALTY – A HUMAN RIGHTS ISSUE

Irrespective of any arguments on whether or not the death penalty has a deterrent effect, the death penalty is a human rights issue. Many Caribbean politicians justify their support for the retention and implementation of the death penalty by referring to “the will of the people”. For example, when presenting the Constitution (Amendment) (Capital Offences) Bill to Parliament in 2011, the Prime Minister of Trinidad and Tobago said: “The marked increase in the crime rate, especially the murder rate, has led to a determined desire by the people of this country for the implementation of the death penalty”.

Politicians in the region continue to assert that there is overwhelming public support for the death penalty, although the basis for its popularity has never been properly examined. Opinion polls that seem to indicate overwhelming support for the death penalty tend to simplify the complexities of public opinion and ignore the extent to which it is based on an inaccurate understanding of the crime situation in the country, its causes and the means available for combating it. The public is often not fully aware of the reality of the death penalty and how it is applied. Important factors – such as the risk of wrongful execution, the unfairness of trials, how it disproportionately affects defendants living in poverty or people with mental disabilities – are not often considered.<sup>95</sup> In addition, the results of opinion polls can be influenced by how questions are framed.

In a survey carried out in 2010 by the University of the West Indies and the University of Oxford in Trinidad and Tobago,<sup>96</sup> interviewees were shown three scenarios describing a murder: one involving a robbery, another involving a domestic murder by a woman, and a third involving a drugs-related murder. Each of these types of case had two examples, one in which it was possible to perceive a mitigating element and one without the mitigating factor. These six cases were randomly assigned to interviewees so that 500 decisions were made on each case. Interviewees were asked to say what penalty they thought the offender deserved. Thus, 1,000 people made between them 3,000 decisions. When asked simply whether they were in favour of the death penalty, 92 per cent of respondents expressed their support for it. However, when asked to say whether the death penalty was appropriate in the specific scenarios, they said they would have imposed the death penalty in just under half (49 per cent) of the 3,000 decisions they made. In addition, deterrence was cited in only 1.3 per cent as one of the reasons for preferring the death penalty.

As the Director of Public Prosecutions of St Vincent and the Grenadines said in November 2011, the death penalty cannot be applied in an emotional manner: “We have to have the rule of law. The rule of law must be

always maintained and, as a prosecutor, even though you say you are the Director of Public Prosecutions and you are looking into the public interest, you are not into a popularity contest or to satisfy the yearning of people for blood and this kind of thing".<sup>97</sup>

The death penalty is a human rights issue and should be examined from a human rights perspective. In line with UN General Assembly resolution 65/206, governments should make available relevant information with regard to their use of the death penalty, which can contribute to informed and transparent national debates on this issue.

## 6. CONCLUSIONS AND RECOMMENDATIONS

**“Hanging is but a simplistic solution designed more for revenge than deterrence... The anger that rages within those affected by these gruesome killings is understandable... This is where level-headed leadership is needed to direct us away from our most primitive, animalistic instincts and towards effective solutions for a perplexing problem.”**

Din Duggan, Jamaican attorney, quoted in the *Jamaica Gleaner*, “Wait. Hang who?”, 3 August 2011

Although executions are rare in ESC countries, death sentences continue to be imposed, often in circumstances that violate international human rights law and standards. In particular:

- In Barbados and Trinidad and Tobago, the death penalty remains mandatory for murder.
- In several countries people sentenced to death do not have access to adequate legal assistance.
- Inadequate criminal investigations have meant that in many cases people have been sentenced to death solely on the basis of witness statements or their own confessions, without any corroborating evidence. In some of these cases, defendants allege that confessions were extorted under torture. In others, statements were reportedly taken in the absence of defense lawyers or without the full understanding of the person making the statement.
- People with mental disability continue to be sentenced to death as a result of the failure to carry out adequate mental health assessments at an early stage.
- Weaknesses in the justice systems of ESC countries mean that in many cases where death sentences are imposed there are significant doubts about the safety of convictions.

While the world is moving away from the death penalty, policy-makers in ESC countries appear to have no political will to take steps towards abolition. On the contrary, some have proposed legislation aimed at facilitating the implementation of the death penalty.

In many countries around the world, abolition of the death penalty has been achieved through courageous political decisions that have gradually encouraged a shift in public opinion. In ESC countries, however, politicians faced with spiralling crime rates continue to support the death penalty as an attempt to quick fix to public security concerns. Claiming to reflect the will of the people and public support for the death penalty, governments are failing to ensure that people have enough information on the death penalty and other

related issues to be able to develop an informed view about its failures and ineffectiveness. They have also singularly failed to show political leadership in terms of drawing attention to the human rights issues inherent in any discussion of the death penalty.

The following recommendations highlight the measures that need to be taken with urgency in ESC countries to ensure protection of human rights and prevent the violations detailed in the report from being perpetuated. They call on policy-makers in ESC countries to ensure that the public has access to information about human rights issues, and by taking swift steps to abolish the death penalty.

## RECOMMENDATIONS

Amnesty International calls on the governments of the English-speaking Caribbean countries to undertake the following measures:

### **ESTABLISH A MORATORIUM ON EXECUTIONS**

Immediately establish a moratorium on executions with a view to abolishing the death penalty, in line with UN General Assembly resolutions 62/149 of 18 December 2007, 63/168 of 18 December 2008 and 65/206 of 21 December 2010;

Commute without delay all death sentences to terms of imprisonment;

Support calls to abolish the death penalty nationally and internationally, including by voting in favour of UN General Assembly resolutions on a moratorium on the use of the death penalty.

### **RESPECT INTERNATIONAL AND REGIONAL HUMAN RIGHTS LAW AND STANDARDS ON THE DEATH PENALTY**

Pending full abolition of the death penalty:

- Immediately remove all provisions in national laws that violate international human rights law, in particular by abolishing all provisions that allow the death penalty for crimes other than intentional killing and, in the laws of Barbados and Trinidad and Tobago, that provide for mandatory death sentences;
- In all capital cases, ensure rigorous compliance with international standards for fair trial, at least equal to those contained in Article 14 of the ICCPR, including: the right to be tried before an independent, impartial and competent tribunal; the right to competent defence counsel at every stage of the proceedings; the right to adequate time and facilities to prepare one's defence; the right to be presumed innocent until guilt has been proved beyond a reasonable doubt; the right to appeal to a higher court; the right to seek pardon and commutation of sentence;
- Ensure that the death penalty is not imposed on people with mental disability, by making adequate and comprehensive mental health assessments mandatory in all cases where the suspect is at risk of being sentenced to death;
- Ensure that all death row inmates are aware of, and enabled to make use of, all avenues of appeal available to them;
- Review the cases of all prisoners currently under sentence of death with a view to commuting death sentences and, in the case of those who did not have a fair trial, ensuring they have a fair retrial in accordance with international and regional standards;
- Publish information with regard to the use of the death penalty and relevant related issues, which can contribute to informed and transparent national debates on its abolition, including statistics on the number of executions, death sentences imposed, people on death row, sentences commuted and pardons granted.

## **RATIFY AND IMPLEMENT INTERNATIONAL AND REGIONAL TREATIES**

- Ratify the International Covenant on Civil and Political Rights;
- Ratify (or, in the case of Jamaica and Trinidad and Tobago, re-accede to) the (first) Optional Protocol to the International Covenant on Civil and Political Rights;
- Ratify without reservations and ensure early implementation in national legislation the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty;
- Ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- Ratify (or, in the case of Trinidad and Tobago, re-accede to) and implement the American Convention on Human Rights and recognize the jurisdiction of the Inter-American Court of Human Rights;
- Ratify the Protocol to the American Convention on Human Rights to Abolish the Death Penalty;
- Ratify the Inter-American Convention to Prevent and Punish Torture.

## **REFORM AND IMPROVE CRIMINAL JUSTICE SYSTEMS**

- Ensure that the criminal justice system is sufficiently resourced and capable of investigating crimes effectively; supporting victims; and ensuring that suspects have a fair trial without recourse to the death penalty, also with a view to building people's confidence in the institutions of the criminal justice system to address the crime situation meaningfully without resort to the death penalty and other human rights violations, and in particular:
  - Exclude evidence extracted under torture or other ill-treatment;
  - Enhance oversight and accountability mechanisms for all criminal justice institutions in order to minimize abuses;
  - Improve access to competent legal representation, in particular by enhancing legal aid programmes;
  - Ensure that all prisoners are given comprehensive medical including mental health assessments at the time of their arrest and regularly afterwards.

## 7. ENDNOTES

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- <sup>1</sup> The 2007 ruling in the case *Boyce et al v Barbados* (available at [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_169\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_169_ing.pdf)) and the ruling on the case *Da Costa Cadogan v Barbados* (available at [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_204\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_204_ing.pdf)).
- <sup>2</sup> *The Barbados Advocate*, "Death penalty review", 2 October 2011.
- <sup>3</sup> For instance, the government of Singapore announced on 9 July 2012 that legislative measures would be introduced to eliminate mandatory death sentences for drug trafficking and most murder cases, and that a moratorium on executions would be in place until proposed changes in the law are enacted. In the Middle East and North Africa the number of countries executing and passing death sentences in 2011 slightly decreased in comparison to 2010, while the total number of death sentences recorded in the region in 2011 decreased by approximately a third. The authorities of Algeria, Jordan, Kuwait, Lebanon, Morocco/Western Sahara and Qatar imposed death sentences in 2011, but continued to refrain from carrying out executions. Bahrain did not carry out any executions in 2011.
- <sup>4</sup> Connecticut, Illinois, New Jersey and New Mexico. In 2004, in New York State, the death penalty was declared unconstitutional under the state Constitution and in 2007 the last death sentence in the state was commuted.
- <sup>5</sup> Authorities in Dominica were unable to confirm the date of the last death sentence.
- <sup>6</sup> See the list of declarations, reservations, denunciations and withdrawals made by the State on the American Convention on Human Rights available at [http://www.oas.org/dil/treaties\\_B-32\\_American\\_Convention\\_on\\_Human\\_Rights\\_sign.htm](http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights_sign.htm)
- <sup>7</sup> Código Penal, Libro II, Título I and Ley 93 de 2001 "Ley contra actos de terrorismo".
- <sup>8</sup> In April 2003, three young men were executed for their involvement in the hijacking of a passenger ferry in order to flee the island. They were tried and found guilty under anti-terrorism legislation and had their appeals denied all within the space of one week, raising concerns about the fairness of the judicial procedure to which they were subjected.
- <sup>9</sup> Responses provided by Cuba on the recommendations listed under para. 131 of the report of the Working Group on the Universal Periodic Review of Cuba, 10 June 2009, A/HRC/11/22/Add1/CUB/E.
- <sup>10</sup> See A/HRC/18/12/Add.1, paras 73.33-73.38. The Universal Periodic Review (UPR) is a mechanism of the UN Human Rights Council under which it reviews, each four and a half years, the fulfilment by all 193 UN Member States of their human rights obligations and commitments. It is a co-operative mechanism, based on objective and reliable information, and equal treatment of all States. The reviews are carried out by the UPR Working Group of the Human Rights Council. It consists of an interactive dialogue between the State under review and other States. In their interventions, States can raise issues, ask questions and make recommendations for action by the State under review. All UN Member States, both Member States of the Human Rights Council and observer States, may participate in the inter-active dialogue; NGOs may attend the Working Group sessions, but may only contribute with written submissions; oral interventions can be made at the regular sessions of the full Council when the outcome report on a country is adopted. The issue of the death penalty is regularly raised during the review of retentionist states.
- <sup>11</sup> See A/HRC/18/12 para. 14.
- <sup>12</sup> Universal Declaration of Human Rights, Articles 3 and 5.
- <sup>13</sup> Human Rights Committee, General Comment No. 6: The Right to Life, 27 July 1982, para. 6.
- <sup>14</sup> The UN Economic and Social Council (ECOSOC) is a founding UN Charter body established in 1946. The Council is the place where world's economic, social and environmental challenges are discussed and debated and policy recommendations issued. See <http://www.un.org/en/ecosoc/index.shtml>
- <sup>15</sup> The Human Rights Committee is the body of independent experts that monitors implementation of the International Covenant on Civil and Political Rights by its state parties. State must submit regular reports to the Committee on how the rights are being implemented. The Committee examines each report and addresses its concerns and recommendations to the state party in the form of concluding observations.
- <sup>16</sup> The Human Rights Council is an inter-governmental body within the UN system made up of 47 states responsible

for the promotion and protection of all human rights around the globe. It has the ability to discuss all thematic human rights issues and situations that require its attention throughout the year. The Council was created by UN General Assembly on 15 March 2006 by resolution 60/251.

<sup>17</sup> Bahamas and Jamaica have yet to ratify the Rome Statute of the International Criminal Court.

<sup>18</sup> Every international or internationalized court set up since 1993 with the backing of the UN, including the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda, the Special Panels for Serious Crimes in Timor Leste and the Special Tribunal for Lebanon, has excluded the death penalty for the crimes under their jurisdiction.

<sup>19</sup> Of the other Caribbean countries which retain the death penalty, Suriname voted against the resolution in 2007 but abstained in 2008 and in 2010, while Cuba abstained in all three votes.

<sup>20</sup> A/HRC/19/5 para. 67.24.

<sup>21</sup> A/HRC/10/73/Add.1, para. 8.12

<sup>22</sup> A/HCR/13/12 para. 70.36.

<sup>23</sup> A/HRC/WG.6/10/L.10, para. 75.32.

<sup>24</sup> A/HRC/18/15, para. 77.6.

<sup>25</sup> See A/HRC/15/14/Add.1, para. 34. In March 2012, the government announced that a process of public consultation would be held on the issue of the abolition of the death penalty (along with issues of decriminalization of consensual same-sex relations and corporal punishment) in order to respect the engagement taken at the UPR in 2010. The objective of the consultation is to analyse public opinion before deciding whether it will submit any bills to revise current laws. In August, Parliament decided that a special parliamentary committee would be in charge of coordinating the consultation process.

<sup>26</sup> The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has stated that “international law prohibits the capital punishment of mentally retarded or insane persons, pregnant women and mothers of young children” and that governments that continue to enforce capital punishment legislation “with respect to minors and the mentally ill are particularly called upon to bring their domestic legislation into conformity with international legal standards. States should consider the adoption of special laws to protect the mentally retarded, incorporating existing international standards” (Extrajudicial, summary or arbitrary executions: Report by the Special Rapporteur, UN document E/CN.4/1998/68, 23 December 1997, para.117). The Special Rapporteur has also expressed the hope that similar protection would also be extended to the elderly, pending a total abolition of the death penalty. (Extrajudicial, summary or arbitrary executions: Note by the Secretary-General, UN document A/55/288, 11 August 2000, para. 32.)

<sup>27</sup> Human Rights Committee, General Comment No.6: The Right to Life, 27 July 1982.

<sup>28</sup> Special Rapporteur on extrajudicial, summary or arbitrary executions, A/67/275, 9 August 2012.

<sup>29</sup> *Pagdayawon Rolando v Philippines*, Views of the Human Rights Committee, Communication No. 1110/2002, UN document CCPR/C/82/D/1110/2002, 8 December 2004, para. 5.2.

<sup>30</sup> Extrajudicial, summary or arbitrary executions: Report of the Special Rapporteur, UN document E/CN.4/1999/39, 6 January 1999, para. 63.

<sup>31</sup> *Boyce et al v Barbados* (delivered on 20 November 2007). *Da Costa Cadogan v Barbados* (delivered on 24 September 2009). The Inter-American Court of Human Rights also found that Mr Cadogan's right to a fair trial had been violated as his mental health status at the time of the offence was never fully evaluated and stated that “the State shall ensure that all persons accused of a crime whose sanction is the mandatory death penalty are duly informed, at the initiation of the criminal proceedings against them, of the right to obtain a psychiatric evaluation carried out by a state-employed psychiatrist”.

<sup>32</sup> These include the right of anyone facing a criminal charge to: a fair and public hearing by a competent, independent and impartial tribunal; be presumed innocent until proved guilty; informed promptly and in detail in a language which they understand of the nature and cause of the charges against them; adequate time and facilities to prepare a defence; communicate with counsel of their choosing; to free legal assistance if they are unable to pay for it; to examine witnesses for the prosecution and to present witnesses for the defence; to free assistance of an interpreter if necessary; not to be compelled to testify against themselves or to confess guilt; and to appeal to a higher court.

<sup>33</sup> *Maryam Khalilova v Tajikistan*, Views of the Human Rights Committee, Communication No. 973/2001, UN document CCPR/C/83/D/973/2001, 13 April 2005, para. 7.6.

<sup>34</sup> Concluding observations of the Human Rights Committee: Trinidad and Tobago, UN document CCPR/CO/70/TTO, 3 November 2000, para. 7.

<sup>35</sup> Extrajudicial, summary or arbitrary executions: Report by the Special Rapporteur, UN document E/CN.4/1997/60, 24 December 1996, para. 81.

<sup>36</sup> Extrajudicial, summary or arbitrary executions: Report of the Special Rapporteur, UN document E/CN.4/2005/7, 22 December 2004, para. 88.

<sup>37</sup> The right not to be subjected to torture or other ill-treatment is recognized, among other international instruments, in Article 5 of the Universal Declaration of Human Rights and Article 7 of the ICCPR. Regional treaties for the protection of human rights also recognize this right, such as Article 5(2) of the American Convention on Human Rights.

<sup>38</sup> *Shaw v Jamaica*, Communication No. 704/1996, U.N. Doc. CCPR/C/62/D/704/1996, at para 7.2 (June, 1998); *Berry v Jamaica*, Communication No. 330/1988, Views adopted 1994, Un Doc: CCPR/C/50/D/330/1988, t para 11.2; *Bennet v. Jamaica*, Communications No. 590/1994, views adopted May 1999, UN Doc CCPR/C/65/D/590/1994, at parax 10.7 and 10.8; *Kennedy v. Trinidad and Tobago*, Communication No. 845/1998 26 March 2002 CCPR/C/74/D/845/1998.

<sup>39</sup> Concluding observations of the Human Rights Committee: Japan, UN document CCPR/C/79/Add.102, 19 November 1998, para. 21; Concluding observations of the Human Rights Committee: Uzbekistan, UN document CCPR/CO/71/UZB, 26 April 2001, para. 10; and *Safarmo Kurbanova v Tajikistan*, Views of the Human Rights Committee, Communication No. 1096/2002, UN document CCPR/C/79/D/1096/2002, 12 November 2003, para. 7.8.

<sup>40</sup> Resolution 1996/15, adopted on 23 July 1996. The UN Standard Minimum Rules for the Treatment of Prisoners was adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

<sup>41</sup> 167 states out of 192 UN member states had ratified the ICCPR by the time of writing.

<sup>42</sup> UN Human Rights Committee's decision in case No. 845/1999 (*Kennedy v Trinidad and Tobago*) of 2 November 1999 available at <http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/d6af4d2245abf9828025686d0055ab50?Opendocument>

<sup>43</sup> The Human Rights Committee issued its findings on a few death penalty cases in Guyana since Guyana's reservation took effect on 5 April 1999. However all those cases had been introduced before the date in which the reservation took effect. In none of those cases did the government engage in the process and the Committee adopted its views on the basis of the information provided by the petitioner only. No individual petition on death penalty cases was introduced after the reservation took effect.

<sup>44</sup> Bahamas, Belize and Jamaica have a Supreme Court and a Court of Appeal. Barbados, Guyana and Trinidad and Tobago have a Supreme Court made up of a High Court and a Court of Appeal. Antigua and Barbuda, Dominica, Grenada, St Kitts-Nevis, St Lucia, St Vincent and the Grenadines share a joint Eastern Caribbean Supreme Court (ECSC) as their Supreme Court. The ECSC consists of two divisions, a Court of Appeal and a High Court of Justice. The Court of Appeal is itinerant, travelling to each of the Member States and territories.

<sup>45</sup> Jamaica adopted such an amendment within the new Charter of Fundamental Rights and Freedoms in April 2011 (see page 25). Belize, St Vincent and the Grenadines and Trinidad and Tobago tried to pass similar constitutional reforms but these were not adopted (please see page 25).

<sup>46</sup> *Thomas v Baptiste* ([1999] 3 WLR 249); *Neville Lewis v Attorney General of Jamaica and Another* ([2001] 2 A.C. 50 PC.

<sup>47</sup> *CCJ Appeal No CV 2 of 2005*, delivered on 8 November 2006-Barbados.

<sup>48</sup> The Privy Council of Jamaica is appointed by the Governor-General, after consultation with the Prime Minister. The functions of the Privy Council are usually limited to advising the Governor-General on the exercise of the Royal Prerogative of Mercy and the discipline of the civil service, local government officers, and the police, in cases where appeals are made.

<sup>49</sup> Inter-American Commission on Human Rights, *The death penalty in the Inter-American Human Rights System: from protection to abolition*, OEA/Ser.LN/II., Doc. 68, 31 December 2011, page 139. The report is available at <http://www.oas.org/en/iachr/docs/pdf/deathpenalty.pdf>

<sup>50</sup> Recently, in an attempt to address some of these issues the Parliament of Trinidad and Tobago passed the Legal Aid and Advice (Amendment) Act, 2012, introducing mechanisms to facilitate immediate access to legal representation and advice to all minors from the moment they are detained. The same facility will be made available to adult offenders detained on suspicion of having committed certain indictable offences. The Act also provides specifically for an increase in the fees payable to attorneys.

<sup>51</sup> *The Nassau Guardian*, "Dame Joan 'fundamentally' opposed to death penalty", 26 November 2010.

<sup>52</sup> Caribbean governments have only recently started to provide for the video-taping of witness statements and confessions. In the Bahamas, in April 2011 journalists reported that the police had started video-taping witness statements in response to a growing number of allegations of abuses (see *Nassau Guardian*, "Police videotaping witness statements", 12 April 2011). In St Kitts and Nevis, the Evidence Act, which entered into force in January 2012, includes provisions requiring confessions to be recorded in order to be admitted as evidence in court.

<sup>53</sup> The Inter-American Commission on Human Rights has recently highlighted several cases in which national courts in ESC countries admitted written confessions in trials, when there was clear evidence that they had been obtained through torture or coercion. See Inter-American Commission on Human Rights, *The death penalty in the Inter-American Human Rights System: from protection to abolition*, OEA/Ser.LN/II., Doc. 68, 31 December 2011, pages 130-138.

<sup>54</sup> See Amnesty International, *Jamaica: A long road to justice? Human rights violations under the state of emergency* (Index: AMR 38/001/2011).

<sup>55</sup> *Trinidad Guardian*, "Certain practises can create room for flaws", 24 January 2012.

<sup>56</sup> Among others, Commission on Human Rights, Resolution 2005/59, adopted 20 April 2005; UN Economic and Social Council (ECOSOC), "Safeguards guaranteeing protection of the rights of those facing the death penalty", Resolution 1984/50, 25 May 1984; and ECOSOC, "Implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty". Resolution 1989/64, 24 May 1989.

<sup>57</sup> Mental disorders – including intellectual disability, delusions, hallucinations, depression -- as well as temporary mental changes, such as those induced by forms of medication, alcohol or substances affecting a person's mental state, may be relevant to the commission of a crime and the competence of the accused to stand trial; the capacity of the person to withdraw legal appeals; and the fitness of the prisoner to be executed. They may also be relevant in understanding the vulnerability of the accused to police interrogation and pressure to confess. See also World Health Organization. ICD-10: International Classification of Mental and Behavioural Disorders. Geneva, and M Mello. "Executing the mentally ill: when is someone sane enough to die?" *Criminal Justice* 22(3), Fall 2007..

<sup>58</sup> The Death Penalty Project is an international human rights organization. It provides free legal representation and assistance to those individuals who are facing the death penalty and promotes the restriction of the death penalty in line with international minimum legal requirements. For more details, see [http://www.deathpenaltyproject.org/content\\_pages/1](http://www.deathpenaltyproject.org/content_pages/1)

<sup>59</sup> *Lockart v The Queen* ([2011] UKPC 33, Privy Council Appeal No 0050 of 2010, delivered on 18 July 2011-Bahamas.

<sup>60</sup> The account of the incident can be found in the sentence of the Court of Appeal, available at [http://webopac.ttlawcourts.org/LibraryJud/Judgments/coa/2009/weekes/CrA\\_09\\_12DD29jul2010.pdf](http://webopac.ttlawcourts.org/LibraryJud/Judgments/coa/2009/weekes/CrA_09_12DD29jul2010.pdf)

<sup>61</sup> In 2010, the Supreme Court of Bangladesh ruled mandatory death sentences for murder after rape unconstitutional and instructed legislators to remove all relevant provisions in law. The Indian Supreme Court has ruled such sentences for murder unconstitutional, and in June 2011 the Bombay High Court ruled that mandatory death sentences for repeat offences under the 1988 Narcotics Drug and Psychotropic Substances Act violated the right to life. In January 2009, the Supreme Court of Uganda upheld a judgment of the Ugandan Constitutional Court in the case of *Susan Kigula & 417 others v A.G.* (Constitutional Appeal no.3 of 2006), which held that the mandatory application of the death penalty is unconstitutional. In July 2010, the Court of Appeal of Kenya declared Section 204 of the Penal Code, which provides for a mandatory death sentence in murder cases, "antithetical to the Constitutional provisions on the protection against inhuman or degrading punishment or treatment and fair trial".

<sup>62</sup> *Newton Spence v The Queen (Court of Appeal, Criminal Appeal No. 20 Of 1998)* in St Vincent and the Grenadines; and *Peter Hughes v The Queen (Court of Appeal, Criminal Appeal No.14 of 1997)* in St Lucia.

<sup>63</sup> A "savings clause" in Chapter I, Part II of the Constitution, makes an exception to prohibitions and protections of fundamental rights and freedoms for laws in existence when the Constitution was promulgated in 1976 and for enactments that alter an existing law but do not derogate from any fundamental right guaranteed in the Constitution "in a manner in which or to an extent to which the existing law did not previously derogate from that right."

<sup>64</sup> According to the *Global Study on Homicides 2011* published by the United Nations Office on Drugs and Crime, the Caribbean, along with Central America, South America and Southern Africa, has a considerably higher homicide rate than other sub-regions.

<sup>65</sup> *United Nations Office on Drugs and Crime and the Latin America and the Caribbean Region of the World Bank*, "Crime, Violence and Development: Trends, Costs and Policy Options in the Caribbean", March 2007, available at [https://www.unodc.org/pdf/research/Cr\\_and\\_Vio\\_Car\\_E.pdf](https://www.unodc.org/pdf/research/Cr_and_Vio_Car_E.pdf)

<sup>66</sup> United Nations Office on Drugs and Crime, "Global Study on Homicides 2011", p. 26.

<sup>67</sup> *Jamaica Observer*, "Caribbean islands struggling to dismantle gangs", 24 October 2011 and *Saint Kitts and Nevis Observer*, "Saint Kitts-Nevis ends 2011 with recording-high murder toll", 30 December 2011.

<sup>68</sup> United Nations Office on Drugs and Crime, "Global Study on Homicides 2011", pp. 52-53.

<sup>69</sup> UNDP, "*Caribbean Human Development Report 2012. Human Development and the shift to better citizen security*". The police in Jamaica identified 268 gangs and approximately 3,900 gang members in 2010. In Trinidad and Tobago the police identified 95 gangs and approximately 1,269 gang members in 2006. Law enforcement officials in Antigua and Barbuda reported 15 gangs and estimated that there were between 264 and 570 gang members in 2008. Barbados reported 150 gangs and 4,000 gang member in 2008. However research suggests that gang homicides might be more prevalent than official police statistics suggest. For example, a study conducted in Trinidad and Tobago in 2006 examined the nature of the homicides in the Besson Street Station District, a station district with one of the worst homicide rates in the country. The researchers determined that, while the police classified about 25 per cent of the district's homicides as gang related, interviews and document reviews revealed that at least 62.5 per cent of the homicides were actually gang related.

<sup>70</sup> See for example, Amnesty International, "Let them kill each other": Public security in Jamaica's inner cities (Index: AMR 38/001/2008).

<sup>71</sup> See Packer, "Two Models of the Criminal Process", in *Criminal Justice in America: Theory, Practice and Policy*, ed. B.W. Hancock and P.M. Sharp, 169-180. Upper Saddle River, NJ: Prentice Hall.

<sup>72</sup> For example, in Jamaica six so called Anti-Crime Bills came into effect on 23 July 2010, providing, among other things, for harsher conditions for obtaining bail for certain offences and extending police powers of arrest and detention. In Trinidad and Tobago, the Anti-gang Act and the Amendment of Bail Act, which entered into force on 15 August 2011, provided for people arrested under the Anti-Gang law to be detained for 72 hours (instead of the normal 48 hours) without charge and to be held for up to 120 days before being able to apply for bail.

<sup>73</sup> In Jamaica a state of emergency was declared on 23 May 2010 in Kingston and St Andrew. This followed an outbreak of gang violence as armed supporters of Christopher "Dudus" Coke protested against his extradition to the USA on drug-related charges. The Emergency Power Regulations gave the security forces sweeping powers to arrest without warrant and authorised the security forces to "take photographs, descriptions, measurements and fingerprints of any person" during their detention and to keep this information after the person had been released. The state of emergency remained in force until 22 July. The government of Trinidad and Tobago introduced a state of emergency on 21 August to address an unspecified "threat to national security" related to organized crime. This granted the security forces powers of search and arrest without a warrant, prohibited public marches or meetings without the permission of the Commissioner of Police and introduced a night-time curfew. The state of emergency was lifted on 5 December.

<sup>74</sup> See for example, *Jamaicans for Justice Newsletter*, "Legislation affecting citizens' rights", 6 February 2011 (available at [http://www.jamaicansforjustice.org/nmcms.php?snippets=news&p=news\\_details&id=2432](http://www.jamaicansforjustice.org/nmcms.php?snippets=news&p=news_details&id=2432)) and *Yvonne Sober McCalla*, "Anti-gang legislations, more cons than pros" (available at <http://ijchr.org/2012/03/01/anti-gang-legislation-more-cons->

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[than-pros/](#); Amnesty International, *Jamaica: A long road to justice? Human rights violations under the state of emergency* (Index: AMR 38/001/2011); and CIVICUS, "CIVICUS urges parliamentarians of Trinidad and Tobago to reject extension of state of emergency", 1 September 2011 (available at <https://www.civicus.org/en/media-centre/press-releases/591-civicus-urges-parliamentarians-of-trinidad-and-tobago-to-reject-extension-of-state-of-emergency>).

<sup>75</sup> Police corruption also erodes public trust and people's willingness to co-operate with the police. The UNDP Citizen Security Survey 2010 conducted in Antigua and Barbuda, Barbados, Guyana, Jamaica, St Lucia, Suriname, Trinidad and Tobago revealed that, with the exception of Barbados, police in the region are widely perceived as corrupt and lacking legitimacy.

<sup>76</sup> UNDP, "*Caribbean Human Development Report 2012. Human Development and the shift to better citizen security*", p. 123.

<sup>77</sup> *Saint Kitts and Nevis Observer*, "St. Kitts and Nevis ends 2011 with record-high murder toll", 30 December 2011.

<sup>78</sup> UNDP, "*Caribbean Human Development Report 2012. Human Development and the shift to better citizen security*", p. 146 and Amnesty international, "*Let them kill each other: Public Security in Jamaica's inner-cities*", p. 32 (Index: AMR 38/001/2008).

<sup>79</sup> Statement by the Honourable Prime Minister on the Constitution (Amendment) (Capital Offences) Bill, 2011 in the House of Representatives, 14 January 2011.

<sup>80</sup> Stakeholders consulted for the formulation of the strategy agreed on the following definition of crime prevention and community safety: "preventing, reducing or containing the social, environmental and intimidatory factors which affect people's right to live without fear of violence and crime and which impact upon their quality of life, and includes preventive measures that contribute to violence and crime reduction and tackle anti-social behaviour."

<sup>81</sup> The judgment held that a delay in more than five years in carrying out an execution constitutes "inhuman or degrading punishment or other treatment."

<sup>82</sup> *SVG Today*, "Feature: New constitution will facilitate capital punishment", 6 September 2009. Clause 29 of the proposed constitutional reform would have allowed executions to be carried out within one year of all rights of appeals having been exhausted, without this being held by any court as in contravention of the prohibition of torture and other cruel and inhuman treatment.

<sup>83</sup> Statement by the Honourable Prime Minister on the Constitution (Amendment) (Capital Offences) Bill, 2011 in the House of Representatives, 14 January 2011.

<sup>84</sup> Another amendment specified that the execution of a sentence of death should not be held inconsistent with or in contravention of human rights on any grounds whatsoever, including a delay in the hearing or determination of a charge for a capital offence; a delay in executing the sentence of death; the conditions or arrangements under which the person is held in prison, or otherwise lawfully detained, pending the execution of the sentence of death; or the effect of reading to the person, more than once, a warrant for the execution of the sentence of death on them.

<sup>85</sup> The draft legislation also specified that the use of the death penalty should not be held inconsistent with or in contravention of the Constitution "on any grounds whatsoever", including a delay in the hearing or determination of a charge for a capital offence; a delay in executing the sentence of death; the conditions under which a person is held in prison, pending the execution of the sentence of death; or the effect of reading to the person, more than once, the warrant for the execution of the sentence passed on them.

<sup>86</sup> See Roger Hood, "The question of the death penalty and the new contributions of the criminal sciences to the matter: a report to the United Nations Committee on Crime Prevention and Control", UN document E/AC.57/1988/CRP.7, 1988. The survey was last reviewed and published commercially in 2008 (see endnote 86).

<sup>87</sup> Roger Hood, "The Death Penalty: A World-wide Perspective", Oxford, Clarendon Press, Fourth edition, 2008, p. 325.

<sup>88</sup> Franklin E. Zimring, Jeffrey Fagan, David T. Johnson, "Executions, deterrence and and homicide: a tale of two cities", 31 August 2009.

<sup>89</sup> United Nations Office on Drugs and Crime, "Global Study on Homicides 2011", page 95. According to the study, in 2010 the homicide rates per 100,000 inhabitants were: Jamaica (52.1, Belize (41.7), Guatemala (41.4), Saint Kitts and Nevis (38.2), Trinidad and Tobago (35.2) and the Bahamas (28).

<sup>90</sup> David F. Greenberg and Biko Agozino, "Executions, imprisonment and crime in Trinidad and Tobago", *British Journal of Criminology*, 2011.

<sup>91</sup> Roger Hood and Florence Seemungal, "A rare and arbitrary fate. Conviction for Murder, the Mandatory Death Penalty and the Reality of Homicide in Trinidad and Tobago", University of the West Indies Faculty of Law and University of Oxford Centre for Criminology, 2006.

<sup>92</sup> David F. Greenberg and Biko Agozino, "Executions, imprisonment and crime in Trinidad and Tobago", *British Journal of Criminology*, 2011.

<sup>93</sup> Chaswell A. Hanna, *Reducing murders in the Bahamas*, 2011.

<sup>94</sup> UNDP, "*Caribbean Human Development Report 2012. Human Development and the shift to better citizen security*", p. 132.

<sup>95</sup> See for example Saul Lehrfreund, *International Legal Trends and the Death Penalty in the Commonwealth Caribbean*, Conference on International Law and the Abolitions of the Death Penalty, Galway, September 2001, page 18.

<sup>96</sup> Roger Hood and Florence Seemungal, "Public opinion on the mandatory death penalty in Trinidad", the Death Penalty Project and University of the West Indies Faculty of Law, 2012.

<sup>97</sup> *Caribbean News Now*, "Death penalty hasn't gone anywhere, says St Vincent DPP", 16 November 2011.



WHETHER IN A HIGH-PROFILE CONFLICT OR A FORGOTTEN CORNER OF THE GLOBE, **AMNESTY INTERNATIONAL** CAMPAIGNS FOR JUSTICE, FREEDOM AND DIGNITY FOR ALL AND SEEKS TO GALVANIZE PUBLIC SUPPORT TO BUILD A BETTER WORLD

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# DEATH PENALTY IN THE ENGLISH-SPEAKING CARIBBEAN

## A HUMAN RIGHTS ISSUE

The death penalty is the ultimate cruel, inhuman and degrading punishment and violates the right to life. The UN General Assembly has adopted resolutions calling on member states to establish a moratorium on executions with a view to abolishing the death penalty. However, the countries of the English-speaking Caribbean – Antigua and Barbuda, the Bahamas, Barbados, Belize, Dominica, Guyana, Grenada, Jamaica, Saint Lucia, Saint Kitts and Nevis, Saint Vincent and the Grenadines, and Trinidad and Tobago – have consistently opposed such international initiatives for worldwide abolition.

Although executions are rare in the English-speaking Caribbean, death sentences continue to be handed down. This report counters the myth that the death penalty is an effective deterrent by highlighting the lack of any convincing evidence that it reduces violent crime. It also looks at how countries of the English-speaking Caribbean continue to fall short of their international human rights obligations and indeed of their own laws, for example by sentencing people with mental disability to death. It also examines how people facing the death penalty are denied due process, including through the use of the mandatory death sentence in Barbados and Trinidad and Tobago. The report ends with a series of recommendations to the authorities, calling on them to fulfill their international human rights obligations.

Amnesty International has produced a toolkit for activists, *Turning the tide in the Caribbean – towards an end to the death penalty* (Index: AMR 05/002/2012), to accompany this report.

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