



# **THE DEATH PENALTY IN THE GREATER CARIBBEAN**

## **Detailed Fact Sheet**

### **11<sup>th</sup> World Day against the Death Penalty**

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#### **INTRODUCTION AND METHODOLOGY**

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This memorandum is divided in 7 topics:

- 1. Procedure for imposing the death penalty in the Greater Caribbean**
- 2. Regional mechanisms**
- 3. The status of the death penalty in the Caribbean: different journeys towards abolition**
- 4. Evolution of regional jurisprudence**
- 5. The mandatory death penalty**
- 6. Cruel and unusual punishment**
- 7. Effectiveness of death penalty**

This memorandum draws primarily upon information and jurisprudence from the following sources:

#### **United Nations**

- **Human Rights Committee**
- **Commission on Human Rights (replaced by the Human Rights Council)**
- **Office on Drugs and Crime (UNODC)**
- **Development Program (UNDP)**

#### **Regional appellate courts**

- **Caribbean Court of Justice (CCJ)**
- **Eastern Caribbean Supreme Court (ECSC)**
- **Judicial Committee of the Privy Council (JCPC)**

#### **Regional Human Rights Mechanisms**

- **Inter-American Court of Human Rights**
- **Inter-American Commission on Human Rights**

#### **Non Governmental Organizations**

- **World Coalition Against the Death Penalty**
- **Amnesty International**
- **Death Penalty Worldwide**

## [1] Procedure for imposing the death penalty in the Greater Caribbean

The Greater Caribbean consists of **25 independent nations** and **14 territories** of France, the Netherlands, United Kingdom and the United States and includes: **Anguilla, Antigua and Barbuda, Aruba, The Bahamas, Barbados, Belize, British Virgin Islands, Cayman Islands, Costa Rica, Colombia, Cuba, Dominica, Dominican Republic, El Salvador, French Guyana, Grenada, Guadeloupe, Guatemala, Guyana, Haiti, Honduras, Island of St. Bart's, Jamaica, Martinique, Mexico, Montserrat, Netherlands Antilles, Nicaragua, Panama, Puerto Rico, Saint Kitts and Nevis, Saint Lucia, Saint Martin, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, Turks and Caicos, Venezuela**, and the **U.S. Virgin Islands**. A majority of the countries located in the Greater Caribbean have abolished the death penalty, either in law or in practice. As shown in Table 3 (p.11), only a few of the retentionist countries in the Caribbean have signed or ratified international treaties.

For those countries that maintain the death penalty, the procedure for criminal trial and sentencing is similar throughout the Greater Caribbean. Most death penalty cases in Caribbean countries are tried in the first instance before a local high court. Those who are convicted and sentenced to death may appeal at a local or regional appellate court. Finally, depending on the particular country, the case may be subject to a final appeal to either the **London-based Judicial Committee of the Privy Council** ("JCPC") or the **Caribbean Court of Justice** ("CCJ"),

The CCJ was established on February 14, 2001 by the Agreement Establishing the Caribbean Court of Justice.<sup>1</sup> Its mission is to "protect and promote the rule of law as a court of final appeal" and to guarantee "accessibility, fairness, efficiency and transparency, delivering clear and just decisions in a timely manner."<sup>2</sup> The CCJ is a hybrid institution which settles disputes within the Caribbean Community (CARICOM). It is at the same time the highest court of appeals on civil and criminal matters for Barbados, Belize and Guyana and an international court with exclusive interpretation and application of the Treaty of Chaguaramas establishing the Caribbean Community. The CARICOM Member States are Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname and Trinidad and Tobago. For those countries, the CCJ does not have competence to hear individual complaints of alleged human rights violations. The CCJ heard its first death penalty case, the landmark case of *Boyce and Joseph v. Barbados*, in 2006.

Another regional court is the **Eastern Caribbean Supreme Court** ("ECSC"). The ECSC was established in 1967 by the Organization of Eastern Caribbean States (OECS).<sup>3</sup> The following countries are subject to the jurisdiction of the Court: Anguilla, Antigua and Barbuda, Dominica, Grenada, Montserrat, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines and the British Virgin Islands. Eastern Caribbean Supreme Court is divided into two sections, the High Court and the Court of Appeal. High Court judges are based in each Member State whereas the judges of the Court of Appeal are based in Saint Lucia and move to each territory to hear appeals from the High Court. Final appeals go to the Privy Council in the United Kingdom.<sup>4</sup> The Eastern Caribbean Supreme Court has issued several important decisions regarding the imposition of the death penalty in its member states.

Despite these apparent procedural safeguards, many retentionist countries in the Greater Caribbean struggle with challenges that lead to due process violations for those facing a potential death sentence. For example, Amnesty International notes several factors, including heavy caseloads, insufficient protection for witnesses, juror issues, high levels of crime, weak forensic capacities, and crime lab delays in processing evidence, that contribute to delays in handling cases and appeals.<sup>5</sup>

<sup>1</sup> The Caribbean Court of Justice, About the CCJ, <http://www.caribbeancourtjustice.org/about-the-ccj> (last visited April 25, 2013).

<sup>2</sup> The Caribbean Court of Justice, Mission & Vision, <http://www.caribbeancourtjustice.org/about-the-ccj/mission-vision> (last visited April 25, 2013).

<sup>3</sup> Eastern Caribbean Supreme Court, <http://www.eccourts.org/> (last visited April 29, 2013).

<sup>4</sup> The Organization of Eastern Caribbean States, Structure and organization. <http://www.oecs.org/about-the-oecs/institutions/eastern-caribbean-supreme-court-ecsc/70-about-the-organisation/purposes-functions>

<sup>5</sup> Amnesty International, *Death Penalty in the Caribbean : A human rights issue*, December 2012, p. 17.

## [2] Regional human rights mechanisms

Both the **Inter-American Court of Human Rights** and the **Inter-American Commission on Human Rights** stem from the American Convention on Human Rights, a regional treaty that came into force on July 18, 1978.<sup>6</sup> The treaty is binding on the twenty-five Caribbean nations that have ratified it (see Table 3, p.11). In 1959, the Organization of American States, pursuant to the treaty, created the Inter-American Commission on Human Rights. The Inter-American Commission has several functions, including analyzing and investigating petitions alleging violations of human rights, recommending measures nations should take to safeguard human rights, and presenting cases to the Inter-American Court. In May 1979, the Inter-American Court was created.<sup>7</sup> The jurisdiction of the Court is not automatic for States having ratified the Convention, as they also need to explicitly recognize the jurisdiction of the Court. Of the English Speaking Caribbean, only Barbados does so. Cases before the Inter-American Court are initiated when a person files a petition with the Inter-American Commission or a nation that is a party to the treaty.<sup>8</sup> The Commission may then file an application with the Court, at which time the case may be heard. As discussed below, the Inter-American Commission and Inter-American Court have been integral in the protection of human rights and development of death penalty jurisprudence in the Great Caribbean.

## [3] The status of the death penalty in the Caribbean: different journeys towards abolition

Before discussing in greater detail the issues regarding capital punishment in the Greater Caribbean, it is important to note that a difference exists between the Spanish- or French-speaking countries and the English-speaking countries in the region. Historically, the Spanish-speaking countries in the region have been at the forefront of abolishing the death penalty worldwide. Venezuela was the first independent country in the world to abolish the death penalty, which it did in 1863. Costa Rica, Panama, Uruguay, and Colombia all followed, with the Dominican Republic and Haiti more recently abolishing the death penalty. Guatemala and Cuba retain the death penalty in law, but both countries have made commitments to eliminating its use.<sup>9</sup>

As shown in Table 3, thirteen countries are retentionist in the Greater Caribbean. All but two of these countries are English-speaking countries. The English-speaking Caribbean votes against the UN General Assembly resolutions entitled moratorium on the use of the death penalty represent more than 1/4 of the total votes opposed to the global moratorium. Most of the Caribbean retentionist states have consistently voted against the resolution and have signed the *Note Verbale*, dissociating them from the moratorium. They have also rejected recommendations by international bodies to reduce the use of or abolish the death penalty.<sup>10</sup> For example, Jamaica, Trinidad and Tobago, and Guyana have withdrawn from the First Optional Protocol to the ICCPR, which allows individuals who have exhausted all domestic remedies to appeal to the United Nations Human Rights Committee.<sup>11</sup> Further, government officials in both Jamaica and Trinidad and Tobago have expressed their desire to increase both the number of death sentences and executions. Recently, St. Kitts and Nevis and Trinidad and Tobago amended legislation that increased the types of evidence admissible in a criminal case, including statements of witnesses who have retracted their statements, or who are not available to testify in court. In 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*.” (See paragraph 4)<sup>12</sup> In Belize, the Eighth

<sup>6</sup> Corte Interamericana de Derechos Humanos, Información, Historia, <http://www.corteidh.or.cr/historia.cfm> (last visited April 25, 2013); see also <http://www.oas.org/legal/english/organiogramaOEAeng.pdf> (diagram showing structure of Organization of American States, including Inter-American Court and Inter-American Commission).

<sup>7</sup> *Id.*

<sup>8</sup> Corte Interamericana de Derechos Humanos, Información, Denuncias & Consultas, [http://www.corteidh.or.cr/denuncias\\_consultas.cfm](http://www.corteidh.or.cr/denuncias_consultas.cfm) (last visited April 25, 2013).

<sup>9</sup> Amnesty International, *Death Sentences and Executions in 2012*, April 2013, p. 8.

<sup>10</sup> Amnesty International, *Death Penalty in the Caribbean : A human rights issue*, December 2012, p. 10.

<sup>11</sup> *Id.* at p. 13. The First Optional Protocol to the ICCPR grants the Human Rights Committee the power to “receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the [ICCPR].” Optional Protocol to the International Covenant on Civil and Political Rights, art. 1, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCCPR1.aspx>.

<sup>12</sup> Amnesty International, *Death Penalty in the Caribbean: A human rights issue*, December 2012, p.25

Amendment Bill was introduced in 2011 and would amend Section 7 of the Belize Constitution prohibiting torture and inhuman or degrading punishment or treatment. The proposed amendment would have precluded constitutional challenges to the death penalty by stating that certain circumstances previously found to violate Section 7 are not unconstitutional.<sup>13</sup> In effect, the proposed amendment would increase the government's authority to execute a person.<sup>14</sup> That bill did not pass. A Ninth Amendment Bill was later proposed that would bar "any challenge in any court of law on any ground whatsoever" any amendment to Belize's constitution. In other words, it would have eliminated any recourse to Belize's domestic courts to protect basic rights.<sup>15</sup> As a result of advocacy efforts, the Ninth (now "Eighth") Amendment Bill passed in late 2011 but without harmful language curtailing courts' jurisdiction to hear such challenges.<sup>16</sup>

Finally, in Guatemala, legislation was passed that expanded the application the death penalty to include a greater number of crimes.<sup>17</sup> Despite this legislation, Guatemala has not carried out executions in recent years. These actions are generally in response to combat high crime rates and drug-related violence in Caribbean nations.<sup>18</sup>

## [4] Evolution of regional jurisprudence

Many retentionist countries have not carried out an execution in several years, and the most recent known execution within the Greater Caribbean was in 2008 in St. Kitts and Nevis. Thus, although persons are sentenced to death in the Caribbean each year, executions have become increasingly rare.

### **Charles Elroy Laplace, St. Kitts and Nevis**

Charles Elroy Laplace was the last person executed in the Caribbean. St. Kitts and Nevis hanged Mr. Laplace on December 19, 2008 for the murder of his wife. Mr. Laplace's case illustrates the challenges that retentionist countries face in ensuring adequate legal representation to persons facing a death sentence. The U.N. Human Rights Committee comments that capital defendants should be provided with counsel "at all stages of the proceedings."<sup>19</sup> Yet it appears that Charles Laplace lacked the needed legal representation throughout critical stages of his post-conviction case. The ECSC dismissed his appeal on the grounds that he filed it past the deadline. And although Charles Laplace could have made a final appeal to the JCPC, he did not do so. It appears likely that the government did not provide Charles Laplace with the necessary legal representation to assist him in filing an appeal or with his clemency application. Amnesty International calls attention to the question of whether Charles Laplace's rights to apply for an amnesty, pardon, or commutation were upheld.<sup>20</sup>

As executions have become rarer, regional jurisprudence in the Caribbean has also developed regarding the imposition of the death penalty. The CCJ was inaugurated in April 2005.<sup>21</sup> The CCJ issued its first judgment regarding the death penalty on November 8, 2006 in *Boyce and Joseph v. Barbados*. In *Boyce*, the CCJ found the mandatory death penalty violates the right to life because of its arbitrary nature and its failure to restrict imposition of the death penalty to the most serious crimes.<sup>22</sup>

<sup>13</sup> Details for Belize Constitution (Eighth Amendment) Bill, 2011, available at [http://www.nationalassembly.gov.bz/index.php/hor-lowerhouse/bills-and-resolutions-before-the-house/doc\\_details/176-belize-constitution-eighth-amendment-bill-2011](http://www.nationalassembly.gov.bz/index.php/hor-lowerhouse/bills-and-resolutions-before-the-house/doc_details/176-belize-constitution-eighth-amendment-bill-2011).

<sup>14</sup> See Bar Association of Belize, Review of the Various Bills Tabled by the Government of Belize at The Sitting of the National Assembly on May 13, 2011, p. 16-17; National Assembly of Belize, Details for Belize Constitution (Eighth Amendment) Bill, 2011.

<sup>15</sup> Death Penalty Project, Press Release: Belize- Government Withdraws Bill to Eliminate Constitutional Challenges to Death Penalty – Ongoing Concern Regarding New Proposed Amendments, July 28, 2011.

<sup>16</sup> A. Moore, Pers. Comm., July 11, 2013.

<sup>17</sup> Inter-American Commission for Human Rights report *The death penalty in the Inter American human rights system: from restrictions to abolition*, December 2011, p. 10.

<sup>18</sup> Amnesty International, *Death Sentences and Executions in 2012*, April 2013, p. 18.

<sup>19</sup> Human Rights Committee, Gen. Comm. 32, para. 38 (citing Communications No. 985/2001, *Aliboeva v. Tajikistan*, para. 6.4; No. 964/2001, *Saidova v. Tajikistan*, para. 6.8; No. 781/1997, *Aliev v. Ukraine*, para. 7.3; No. 554/1993, *LaVende v. Trinidad and Tobago*, para. 58).

<sup>20</sup> Amnesty International, *Death Penalty in the Caribbean: A human rights issue*, December 2012, p. 16 ; Amnesty International, *Death Penalty/Legal Concern : St. Kitts and Nevis*, Feb. 12, 2009.

<sup>21</sup> The CCJ: From Concept to Reality, <http://www.caribbeancourtjustice.org/about-the-cci/ccj-concept-to-reality> (last visited March 25, 2013).

<sup>22</sup> *Boyce v. Barbados*, Inter-American Court of Human Rights, November 20, 2007, 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).

The JCPC placed an important limitation on the imposition of the death penalty in the *Pratt and Morgan v. Jamaica* case, where it held that executions carried out over five years after sentencing constitute inhuman or degrading punishment.<sup>23</sup> The ECSC has held similarly, finding that a rebuttable presumption exists that a prisoner may not be executed after serving five years on “death row.”<sup>24</sup> Finally, the Inter-American Court has stated that retentionist countries may not extend the coverage of the death penalty to apply to new, additional crimes.<sup>25</sup>

The human rights bodies of the Inter-American Commission and Inter-American Court have produced many more opinions regarding the imposition of the death penalty in countries that are subject to their jurisdiction. Importantly, the Inter-American Court, and many national courts in the Greater Caribbean, have issued court decisions declaring the mandatory death penalty to be unconstitutional.<sup>26</sup> The Inter-American Court has also held that, while the discretionary application of the death penalty is appropriate in some cases, its application must be limited to only “the most serious crimes.”<sup>27</sup>

### **Ernest Lockhart, Bahamas**

Ernest Lockhart was sentenced to death for the premeditated murder of another man. Ernest Lockhart was 21 years of age when he shot Caxton Smith in the back. On Lockhart’s appeal, the JCPC applied a 2-part test as used by the Board in *Trimmingham v. The Queen* (2009) UKPC 25 where, in order for a court to impose a death sentence, two requirements must be met: 1) the crime must be a worst-of-the-worst offense, and 2) there must be no reasonable possibility of reform, and the goals of the punishment cannot be accomplished by any other means. In this case, the JCPC found that Ernest Lockhart’s crime of murder did not constitute the worst-of-the-worst for purposes of applying the death penalty. The Privy Council also commented on the second prong of the test and noted that the evidence relied upon by the lower court judge was insufficient to pronounce a sentence of death. In applying the *Trimmingham* decision, the JCPC affirmed that a psychiatrist report is necessary to properly address the question of reform. In Lockhart, the lower court’s reliance on the probation report was not sufficient to issue a sentence of death. Upon remand, Lockhart was resentenced to 54 years in prison.<sup>28</sup>

## **[5] The mandatory death penalty**

The issue of the mandatory death penalty in the Greater Caribbean arose in the late 1990s, when the Inter-American Commission on Human Rights began receiving a large number of petitions regarding the mandatory death penalty. Through three primary cases, the Commission and the Inter-American Court on Human Rights “established that the automatic imposition of the death penalty without consideration of the individual circumstances of the offender is incompatible with the rights to life, humane treatment, and due process.”<sup>29</sup> The first case was *Hilaire, Constantine, and Benjamin v. Trinidad and Tobago*.<sup>30</sup> In *Hilaire*, the parties were tried and convicted of murder and sentenced to death by hanging, pursuant to Trinidad and Tobago’s Offenses Against the Person Act.<sup>31</sup> Under the Act, the judge or jury had no discretion, following conviction, to consider the particular circumstances of the case for the purpose of determining the appropriate penalty.<sup>32</sup> The Court held that the mandatory imposition of the death penalty constituted an arbitrary deprivation of the right to life, in violation of the American Convention of Human Rights.<sup>33</sup>

<sup>23</sup> *Pratt and Morgan v. Jamaica*, Judicial Committee of the Privy Council, November 2, 1993, p. 11.

<sup>24</sup> *Moise v. Queen*, ECSC Court of Appeal, Criminal Appeal No. 8 of 2003, July 15, 2005, ¶¶ 50–54.

<sup>25</sup> Inter-American Court of Human Rights, *Restrictions to the Death Penalty*, Advisory Opinion OC-3/83, Sept. 8, 1983, Series A, no. 3, ¶¶ 56–59.

<sup>26</sup> Inter-American Commission on Human Rights, *The Death Penalty in the Inter-American Human Rights System: From Restrictions to Abolition*, December 2011, pp. 8–9.

<sup>27</sup> *Raxcoco-Reyes v. Guatemala*, Judgment of September 15, 2005, Series C No. 133, ¶¶ 67–72.

<sup>28</sup> *Ernest Lockhart v. The Queen*, Privy Council Appeal No. 0050 of 2010 (2011) UKPC 33.

<sup>29</sup> Inter-American Commission for Human Rights report *The death penalty in the Inter American human rights system: from restrictions to abolition*, December 2011, p. 8.

<sup>30</sup> *Hilaire, Constantine, and Benjamin v. Trinidad and Tobago*, Inter-American Court of Human Rights, June 21, 2002, available at [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_94\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_94_ing.pdf).

<sup>31</sup> *Id.* at ¶ 60.

<sup>32</sup> *Id.* at ¶ 84.

<sup>33</sup> *Id.* at ¶ 103.

The second landmark case regarding the mandatory imposition of the death penalty was *Boyce v. Barbados*.<sup>34</sup> Similar to *Hilaire*, the issue was the mandatory imposition of the death penalty, this time in Barbados. In *Boyce*, a primary issue was the fact that Barbados had asserted a reservation to the American Convention on Human Rights, precluding review of the country's imposition and method of execution.<sup>35</sup> However, the Court found that the text of the reservation did not preclude the Court from examining the mandatory nature of the death penalty.<sup>36</sup> The Court held that the mandatory imposition of the death penalty violated the American Convention on Human Rights right to life for two reasons. First, because Barbadian law did not distinguish between accidental and intentional killings, it violated the treaty's mandate to limit the imposition of the death penalty to only the "most serious crimes."<sup>37</sup> Second, the Court held that, despite the option to apply to the executive branch for a commuted sentence, the failure to account for the particular circumstances of each case led to the arbitrary deprivation of life.<sup>38</sup>

The third and most recent case was *Cadogan v. Barbados*.<sup>39</sup> In *Cadogan*, the issue again was the convicted person's inability to present mitigating evidence to avoid the death penalty.<sup>40</sup> The Court reiterated the principles it set forth in *Boyce*. Barbados did not argue with the *Boyce* principles that the mandatory imposition of the death penalty violated the American Convention on Human Rights. Rather, the state asserted that it was in the process of amending its law in accordance with *Boyce*.<sup>41</sup> The Court held however, that not only did the law continue to exist, in derogation of the American Convention of Human Rights, but it had been applied to Cadogan by way of judgment and sentence of death.<sup>42</sup> Thus, the Court held that Barbados had violated the treaty by (1) failing to amend its legislation in accordance with *Boyce*, and (2) applying the mandatory death penalty to Cadogan following the judgment in *Boyce*.<sup>43</sup>

Regional appellate courts followed the same jurisprudence and in 2001, the Eastern Caribbean Supreme Court held that the mandatory death penalty in the Constitution of St. Lucia was "inhumane and degrading". The Court applied the same reasoning in a 2004 case in Jamaica (*Watson v. The Queen*) and in a 2006 case in the Bahamas (*Bowe v. The Queen*). In three successive decisions of the Judicial Committee of the Privy Council in 2002 for Belize, Saint Kitts and Nevis, and Saint Lucia, it was established that the mandatory death penalty constituted an inhuman treatment because it did not take into account any mitigating circumstances.

Following these decisions, Saint Lucia, Dominica, Belize, the Bahamas, Guyana, Jamaica, and Grenada national courts found the mandatory death penalty to be unconstitutional and granted judges the discretion to impose lesser sentences.<sup>44</sup> Barbados has yet to amend its legislation, despite the *Boyce* and *Cadogan* decisions.

Currently, Trinidad and Tobago and Barbados are the only countries in the Greater Caribbean that retain the mandatory death penalty.<sup>45</sup> Barbados has reportedly been in the process of abolishing the mandatory death penalty since it pledged to do so in 2009 to comply with the Inter-American Court's decisions.<sup>46</sup> However, at the time of this publication, the country's legislation remained unchanged. Trinidad and Tobago retains the

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<sup>34</sup> *Boyce v. Barbados*, Inter-American Court of Human Rights, November 20, 2007, 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).

<sup>35</sup> *Id.* at ¶ 13.

<sup>36</sup> *Id.* at ¶ 17.

<sup>37</sup> *Id.* at ¶ 54.

<sup>38</sup> *Id.* at ¶ 62.

<sup>39</sup> *Cadogan v. Barbados*, Inter-American Court of Human Rights, September 24, 2007, 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>40</sup> *Id.* at ¶ 41.

<sup>41</sup> *Id.* at ¶ 67.

<sup>42</sup> *Id.* at ¶ 71.

<sup>43</sup> *Id.* at ¶ 75.

<sup>44</sup> Inter-American Commission for Human Rights report *The death penalty in the Inter American human rights system: from restrictions to abolition*, December 2011, p. 8.

<sup>45</sup> See *id.* p. 9; see also Death Penalty Worldwide, Death Penalty Database, Guyana, <http://www.deathpenaltyworldwide.org/country-search-post.cfm?country=Guyana> (last visited April 25, 2013); Death Penalty Worldwide, Death Penalty Database, Barbados, <http://www.deathpenaltyworldwide.org/country-search-post.cfm?country=Barbados> (last visited April 25, 2013); Death Penalty Worldwide, Death Penalty Database, Trinidad and Tobago, <http://www.deathpenaltyworldwide.org/country-search-post.cfm?country=Trinidad+and+Tobago> (last visited April 25, 2013).

<sup>46</sup> Amnesty International, *Death Penalty in the Caribbean : A human rights issue*, December 2012, p. 4.

mandatory death penalty, despite the fact that the JCPC has ruled the practice a violation of the constitutional right to be free from cruel and unusual punishment.<sup>47</sup>

## [6] Cruel or inhumane punishment

Regional appellate courts and human right bodies have also successfully limited the amount of time a person could spend on death row. Waiting more than five years on death row has been considered a violation of the right not to be subjected to “inhumane and degrading treatment”. In the 1993 judgment of *Pratt & Morgan v. Attorney General of Jamaica*, the Judicial Committee of the Privy Council held that the execution of the death penalty, as a result of an unreasonable delay, violated the right to humane treatment. This decision immediately benefitted 50 prisoners on death row in Jamaica who had their sentences commuted to life imprisonment. In following cases across the Commonwealth Caribbean, the Judicial Committee of the Privy Council relied on the five year principle as a guide. For example, in 1996 in the case of *Guerra v. Baptiste*, the Privy Council found that four years and ten months was too long a delay in Trinidad and Tobago. In 1997 in *Henfield v. Attorney General of the Bahamas*, the Privy Council found that three and a half years was an inappropriate time period.

Another issue with respect to inhumane treatment in the Caribbean is the method of execution. Most Caribbean states utilize hanging to carry out executions.<sup>48</sup> Although cases have been brought to the regional courts regarding whether the method of execution constitutes cruel, inhuman, or degrading punishment, there is yet to be a definitive decision on the issue.<sup>49</sup> Despite what has been described as the “gruesome and degrading nature” of the punishment, many retentionist countries in the Greater Caribbean have immunized the form of punishment from constitutional challenge.<sup>50</sup> However, other international courts, such as the European Court of Human Rights, have found the practice to be inhuman and degrading, as it is “ineffectual and highly painful.”<sup>51</sup>

## [7] Effectiveness of Death Penalty

The death penalty is often favored by those who believe it acts as a deterrent and has a constructive effect on violent crime rates. For example, in Trinidad and Tobago, which has one of the highest murder rates in the world, media often report that the death penalty is widely supported. In a recent survey, 91% of Trinidadians stated their support for the death penalty.<sup>52</sup> Politicians in such countries often publicly voice their support for the death penalty and their disapproval of procedural safeguards that make imposition of the death penalty more difficult and time-consuming.<sup>53</sup> However, studies on public opinion show that while most people initially respond supportively when asked about death sentences, their opinion changes when confronted with practical cases and additional information. In the above-mentioned survey conducted in Trinidad and Tobago, only 49% of the interviewees supported the death penalty in relation to specific scenarios.

<sup>47</sup> See *Balkissoon Roodal v. The State of Trinidad and Tobago*. In 2012, Trinidad and Tobago adopted the CCJ as its final court of appeal, replacing the JCPC. Tax-News, *Trinidad and Tobago Joins Nations Under Caribbean Court*, May 4, 2012, available at [http://www.tax-news.com/news/Trinidad\\_And\\_Tobago\\_Joins\\_Nations\\_Under\\_Caribbean\\_Court\\_\\_\\_55192.html](http://www.tax-news.com/news/Trinidad_And_Tobago_Joins_Nations_Under_Caribbean_Court___55192.html). However, the CCJ has also held the mandatory death penalty is unconstitutional under the St. Lucia and St. Vincent and the Grenadines constitutions.

<sup>48</sup> See Amnesty International, *Death Sentences and Executions in 2012*, April 2013, p. 22.

<sup>49</sup> Death Penalty Worldwide, *Methods of Execution*, <http://www.deathpenaltyworldwide.org/methods-of-execution.cfm> (last visited April 25, 2013).

<sup>50</sup> See e.g., *Joseph Thomas v. Jamaica*, ¶ 136, Case 12.183, Report No. 127/01, Inter-Am. C.H.R., Annual Report 2001, OEA/Ser.L/V/II.114 Doc. 5 rev. (2001) (“Given its conclusions . . . to render any subsequent execution unlawful, the Commission does not consider it necessary to determine whether the method of execution employed in Jamaica constitutes cruel, inhuman or degrading punishment or treatment contrary to Article 5(2) of the Convention.”); see also *Benedict Jacob v. Grenada*, ¶ 59, Case 12.158, Report No. 56/02, Inter-American Comm’n, Annual Report 2002, OEA/Ser.L/V/II.117 Doc. 1 rev.1 (2002); *Dave Sewell v. Jamaica*, ¶ 118, Case 12.347, Report No. 76/02, Inter-Am. C.H.R., Annual Report 2002, OEA/Ser.L/V/II.117 Doc. 1 rev. 1 (2002).

<sup>51</sup> *Id.*

<sup>52</sup> *Al-Saadoon and Mufdhi v. The United Kingdom*, ¶ 99 Eur. Ct. H.R., App. No. 61498/08 (2010).

<sup>53</sup> The Trinidad & Tobago Journal, *91% favor death penalty in Trinidad, survey finds — But details paint more complex picture*, February 24, 2011, available at

[http://www.deathpenaltyproject.org/fulltexts/54/original/11.02.25\\_The\\_Trinidad\\_and\\_Tobago\\_Journal.pdf?1298901813](http://www.deathpenaltyproject.org/fulltexts/54/original/11.02.25_The_Trinidad_and_Tobago_Journal.pdf?1298901813).

<sup>54</sup> Amnesty International, *Death Penalty in the Caribbean: A human rights issue*, December 2012, pp. 24–25 (noting, for example, that prominent politicians in St. Lucia, St. Vincent and the Grenadines have publicly voiced support for the increased imposition of the death penalty)

**Five findings support the conclusion that deterrence of others is not, as many politicians in Trinidad and Tobago according to press reports appear to believe, an important reason why members of the public support the death penalty.<sup>54</sup>**

- First, those who favoured the mandatory death penalty placed deterrence of others very low down on their list of reasons: well below retribution.
- Second, when asked what their view would be if the death penalty were shown by new scientific evidence not to have an extra deterrent effect above long imprisonment, the majority of supporters of capital punishment, especially of the mandatory death penalty, said that this information would not make them change their mind.
- Third, that when they were asked to judge scenario cases and to give their reasons for choosing a death sentence as the appropriate punishment only a tiny proportion (just over one per cent) spontaneously mentioned its likely restraining effect on others.
- Fourth, supporters of the death penalty were in favour of retaining it even though three-quarters of them thought that it would be easier to convict persons of murder if it were to be abolished.
- Fifth, when asked which of several policies they thought would be the most effective in controlling violent crime leading to death, only just over a third (36%) of those who favoured the mandatory death sentence stated 'a greater number of executions of murderers', and the proportion among all 1,000 respondents was only about one in five (21%). The most favoured approach was through social policies that would provide better moral education for young people.

Despite public support in many Caribbean countries, there is no positive support to the deterrent hypothesis.<sup>55</sup> This conclusion is supported by murder rates in the Greater Caribbean, demonstrated in Table 1 and 2, below, which show no correlation between murder rates and capital punishment.<sup>56</sup> In the countries with the ten highest murder rates, three are abolitionist and seven are retentionist. In the countries with the ten lowest murder rates, eight are abolitionist and two are retentionists. Thus, a Caribbean nation with a high murder rate is more likely to be retentionist, and a nation with a low murder rate is more likely to be abolitionist.

**Table 1: 10 highest murder rates per 100,000 inhabitants<sup>57</sup>**

Country	Death penalty?	Murder rate
Honduras	no	91.6
El Salvador	yes	69.2
Jamaica	no	52.2
Venezuela	no	45.1
Belize	yes	41.4
U.S. Virgin Islands	yes	39.2
Guatemala	yes	38.5
Saint Kitts and Nevis	yes	38.2
Trinidad and Tobago	yes (mandatory)	35.2

**Table 2: 10 lowest murder rates per 100,000 inhabitants<sup>58</sup>**

Country	Death penalty?	Murder rate
Turks and Caicos	no	8.7
British Virgin Islands	no	8.6
Cayman Islands	no	8.4
Guadeloupe	no	7
Haiti	no	6.9
Anguilla	no	6.8
Antigua and Barbuda	yes	6.8
Cuba	yes	5
Suriname	no (de facto)	4.6
Martinique	no	4.2

Similarly, a recent study of Trinidad and Tobago, a country with the mandatory death penalty for murder, showed that from 1950 to 1980, despite the fact that executions were carried out every year, homicide rates

<sup>54</sup> Roger Hood and Florence Seemungal, *Public Opinion on the Mandatory Death Penalty in Trinidad*, 2011, pp. 34-35

<sup>55</sup> 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 doc. E/AC.57/1988/CRP.7, 1998.

<sup>56</sup> See also, United Nations Office on Drugs and Crime, *Global Study on Homicide* (2011), pp. 9–10 (noting that homicide rates in the Caribbean, Central America, and South America are the highest in the world and have reached "crisis point").

<sup>57</sup> UNODC Homicide Statistics 2012, available at [http://www.unodc.org/documents/data-and-analysis/statistics/crime/Homicide\\_statistics2012.xls](http://www.unodc.org/documents/data-and-analysis/statistics/crime/Homicide_statistics2012.xls).

<sup>58</sup> *Id.*



were relatively unchanged.<sup>59</sup> Similar studies in the United States and elsewhere show no positive correlation between executions and homicide rates.<sup>60</sup> Regardless of public opinion regarding the efficacy of capital punishment as a deterrent to violent crime, there is no evidence to support this view.

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“Across the region, public opinion polls and newspaper headlines continue to reflect the sentiments of a populace that is being forced to adjust to the problem of crime and violence. One of the attitudes most consistently reported, found through research and mentioned by policy makers is support for the death penalty. [...] This preference for severe penalty can be explained by rising crime rates and the politicization of crime. As the UNDP Citizen Security Survey 2010 shows, 63.2 percent of respondents across the region support the death penalty. The support is strongest in the six British Commonwealth countries. In the outlier, Suriname, only 35.7 percent of the respondents support the death penalty. This former colony of the Netherlands more closely reflects the position of the European Union in its rejection of the death penalty. Caribbean citizens overwhelmingly support the death penalty. Politicians therefore tend to view support for the death penalty as a vote winner and continue to advocate for its return.”<sup>61</sup>

“The UNDP Citizen Security Survey 2010 demonstrates that, despite the ambiguities in public opinion, support for crime prevention policies such as increased investment in education, youth development, job creation and poverty reduction is fairly universal across the Caribbean. The findings of the UNDP Citizen Security Survey 2010 show that, despite a desire to see perpetrators punished, citizens also expressed strong support for methods that emphasize social intervention.”<sup>62</sup>

## **CONCLUSION: campaigning and next steps**

Civil society working on the abolition of the death penalty in the Greater Caribbean often faces strong opposition to abolitionist ideas of both the governments and public opinion. In a collaborative effort to reduce the use of the death penalty in the Greater Caribbean, in October 2011, the First International Conference on the Death Penalty in the Greater Caribbean took place in Madrid, Spain.<sup>63</sup> During this meeting, a working committee of the Greater Caribbean for Life composed by members of abolitionist organizations of Belize, Guatemala, Jamaica, Puerto Rico and Trinidad and Tobago was created.

The Working Committee of the Greater Caribbean for Life has since been working on the issue and for example, it issued several joint statements with Amnesty International and co-hosted the conference “Not the solution: moving beyond the death penalty debate in Trinidad and Tobago” at the University of the West Indies in October 2012.

In 2013, the eleventh annual World Day Against the Death Penalty on October 10 is focused on capital punishment in the Caribbean and will see the organization of a conference to formally establish the Greater Caribbean for Life Network. The members of the Working Committee of the Greater Caribbean for Life and of all the interested members of civil society will meet. The meeting will also seek to reinforce local civil society in the region through capacity building activities, the creation of ready-to-use tools and the launch of a regional network to coordinate actions and strategies. Only the creation of a strong abolitionist movement could further the abolitionist cause.

[End]

<sup>59</sup> Amnesty International, *Death Penalty in the Caribbean : A human rights issue*, December 2012, p. 26 (citing David F. Greenberg and Biko Agozino, *Executions, imprisonment and crime in Trinidad and Tobago*, British Journal of Criminology (2011)).

<sup>60</sup> See e.g., Death Penalty Information Center, Facts about Deterrence and the Death Penalty, <http://www.deathpenaltyinfo.org/facts-about-deterrence-and-death-penalty> (last visited April 25, 2013); see also Death Penalty Information Center, Deterrence: States Without the Death Penalty Have Had Consistently Lower Murder Rates, <http://www.deathpenaltyinfo.org/deterrence-states-without-death-penalty-have-had-consistently-lower-murder-rates#stateswithwithout> (last visited April 25, 2013).

<sup>61</sup> UNDP, *Caribbean Human Development Report 2012, Human Development and the Shift to Better Citizen Security*, pp. 154-155

<sup>62</sup> Id. pp. 159-160

<sup>63</sup> International Commission against the Death Penalty, <http://www.icomdp.org/2011/10/international-conference-on-the-death-penalty-in-the-great-caribbean-17-19-october-2011/> (last visited March 25, 2013); see also <http://www.nodeathpenalty.santegidiomadrid.org/> (last visited March 25, 2013).

### The World Coalition Against the Death Penalty

The World Day against the Death Penalty was created in 2003 by the World Coalition Against the Death Penalty to help activists worldwide rally to oppose the death penalty and unite behind the struggle for universal abolition. The World Coalition Against the Death Penalty is an alliance of more than 145 NGOs, bar associations, local authorities and unions. The aim of the World Coalition is to strengthen the international dimension of the fight against the death penalty. Its ultimate objective is to obtain the universal abolition of the death penalty. The World Coalition gives a global dimension to the sometimes isolated action taken by its members on the ground. It complements their initiatives, while constantly respecting their independence. For more information about World Day: [www.worldcoalition.org/worldday](http://www.worldcoalition.org/worldday)



**The Advocates for Human Rights** helps individuals fully realize their human rights in the United States and around the world. For over 30 years, The Advocates' innovative programming has touched the lives of refugees and immigrants, women, ethnic and religious minorities, children, and other marginalized communities whose rights are at risk. The Advocates strengthens accountability mechanisms, raises awareness, and fosters tolerance. Adapting traditional human rights methodologies to conduct cutting-edge research, The Advocates has produced 75 reports documenting human rights practices in 25 countries. More than two decades ago, The Advocates adopted a formal commitment to oppose the death penalty worldwide. The Advocates works toward death penalty abolition through research and advocacy.



**The Greater Caribbean for Life** is the working name of the efforts to constitute an organization to unite Caribbean abolitionist organizations and individuals, reflecting the highest respect to right to live in the struggle against death penalty. This initiative was constituted on October 19, 2011, by a group of organizations and individuals from countries of the Greater Caribbean opposed to the application of the capital punishment that participated in the International Conference on the Death Penalty in the Great Caribbean organized in Madrid by the Community of Saint Edigio.

The purpose of this network is to share relevant information of the campaign to end capital punishment in the Caribbean. The Working Committee of Greater Caribbean for Life is constituted by:

- Mr. Simeon Sampson SC, President of the Human Rights Commission of Belize – Belize
- Mr. Mario Polanco, Director of Grupo de Apoyo Mutuo – Guatemala
- Dr. Lloyd Barnett, attorney-at-law – Jamaica
- Mrs. Leela Ramdeen, Chair of the Catholic Commission for Social Justice – Trinidad & Tobago
- Mr. Carmelo Campos, member of the International Affairs Committee of the Puerto Rican Coalition against the Death Penalty – Puerto Rico

The Puerto Rican Coalition was designated as the Secretariat of the Working Committee



**Amnesty International** is a global movement of more than 3 million supporters, members and activists in more than 150 countries and territories who campaign to end grave abuses of human rights. Its vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards. The organization is independent of any government, political ideology, economic interest or religion and is funded by its membership and public donations. As part of its action to support abolition of the death penalty in the Caribbean, Amnesty International has published the report "Death Penalty in the English-speaking Caribbean-A human rights issue" (AI Index AMR 05/001/2012, <http://bit.ly/12qEnaF>) and the toolkit for activists "Turning the tide in the Caribbean: towards an end to the death penalty" (AI Index AMR 05/001/2013, <http://bit.ly/17StdQO>).

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**Table 3: Status of Death Penalty and International Commitments**

Country	DP Status	CCJ	ECSC	JCPC	ACHR	P ACHR	ICCPR	OP1	OP2
Anguilla (UK)*	Abolitionist		x	x			x	x	x
Antigua and Barbuda	Retentionist		x	x					
Aruba (NL)*	Abolitionist						x	x	x
Bahamas	Retentionist			x			x		
Barbados	Retentionist	x			x		x	x	
Belize	Retentionist	x					x		
British Virgin Islands (UK)*	Abolitionist		x	x			x	x	x
Caymans Islands (UK)*	Abolitionist			x			x	x	x
Colombia	Abolitionist				x		x	x	x
Costa Rica	Abolitionist				x	x	x	x	x
Cuba	Retentionist						x		
Dominica	Retentionist		x	x	x		x		
Dominican Republic	Abolitionist				x		x		
El Salvador	Abolitionist				x		x	x	
French Guyana (FR)*	Abolitionist						x	x	x
Grenada	Abolitionist in practice		x	x	x		x		
Guadeloupe (FR)*	Abolitionist						x	x	x
Guatemala	Retentionist				x		x	x	
Guyana	Retentionist	x					x	x	
Haiti	Abolitionist						x		
Honduras	Abolitionist				x	x	x	x	x
Island of St. Bart's (FR)*	Abolitionist						x	x	x
Jamaica	Retentionist			x	x		x	Withdrawn (1997)	
Martinique (FR)*	Abolitionist						x	x	x
Mexico	Abolitionist				x		x	x	x
Montserrat (UK)*	Abolitionist		x	x			x	x	x
Netherlands Antilles (NL)*	Abolitionist						x	x	x
Nicaragua	Abolitionist				x	x	x	x	x
Panama	Abolitionist				x	x	x	x	x
Puerto Rico (USA)**					Signed		x		
Saint Kitts and Nevis	Retentionist		x	x					
Saint Martin (FR)*	Abolitionist						x	x	x
Saint Vincent and the Grenadines	Retentionist		x	x			x	x	
Saint Lucia	Retentionist		x	x			x		
Suriname	Abolitionist in practice				x		x	x	
Trinidad and Tobago	Retentionist			x	Withdrawn (1998)		x	Withdrawn (2000)	
Turks and Caicos (UK)*	Abolitionist			x			x	x	x
US Virgin Islands (USA)*	Retentionist				Signed		x		
Venezuela	Abolitionist				x	x	x	x	x

\* Territories of the United States, United Kingdom, Netherlands and France for which the application of the death penalty and ratification of International treaties depend on the country to which they are related

\*\* Puerto Rico is abolitionist in its Constitution, but as it is also a Commonwealth of the USA, US Federal death penalty applies

**Regional Appellate Courts:**

CCJ : Caribbean Court of Justice

ECSC: Eastern Caribbean Supreme Court

JCPC: Judicial Committee of the Privy Council

**Inter-American Commission on Human Rights**

ACHR: American Convention on Human Rights

P ACHR: Protocol to the American Convention on Human Rights to abolish the death penalty

**Human Rights Committee**

ICCPR : International Covenant on Civil and Political Rights

OP1 : Optional Protocol to the International Covenant on Civil and Political Rights

OP2 : Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty