

Jamaica's Compliance with the International Covenant on Civil and Political Rights

Suggested List of Issues Prior to Reporting Relating to the Death Penalty and Death Row Conditions

Submitted by

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a non-governmental organization in special consultative status with ECOSOC since 1996,

The Greater Caribbean for Life,

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and

The World Coalition Against the Death Penalty

for the

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The Advocates for Human Rights (The Advocates) is a volunteer-based non-governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. Established in 1983, The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publications. In 1991, The Advocates adopted a formal commitment to oppose the death penalty worldwide and organized a death penalty project to provide pro bono assistance on post-conviction appeals, as well as education and advocacy to end capital punishment. The Advocates currently holds a seat on the Steering Committee of the World Coalition against the Death Penalty.

The Greater Caribbean for Life (GCL) is an independent, not-for-profit civil society organization, incorporated under the laws of the Commonwealth of Puerto Rico. GCL was constituted on October 2, 2013 with the purpose of campaigning for and working towards the permanent abolition of the death penalty in the Greater Caribbean and supporting Caribbean abolitionist activists and organizations in this region (comprised by the Caribbean Islands, Mexico, Central America, Colombia, Venezuela and the Guyanas) and collaborating with the international abolitionist community. This initiative began on October 19, 2011, when a group of organizations and individuals, from countries of the Greater Caribbean opposed to the application of capital punishment, participated in an International Conference on the Death Penalty in the Great Caribbean organized in Madrid by the Community of Sant' Edigio.

Independent Jamaica Council For Human Rights (IJCHR) (formerly known as the Jamaica Council for Human Rights) is the oldest human rights non-governmental organization in the

Caribbean, having been formed in 1968 on the 20th anniversary of the Universal Declaration of Human Rights.

The World Coalition Against the Death Penalty is a volunteer-based non-government organization committed to strengthen the international dimension of the fight against the death penalty. Established in 2002, its ultimate objective is to obtain the universal abolition of the death penalty. To achieve its goal, the World Coalition advocates for a definitive end to death sentences and executions in those countries where the death penalty is in force. In some countries, it is seeking to obtain a reduction in the use of capital punishment as a first step towards abolition.

EXECUTIVE SUMMARY

1. This report suggests questions the Committee should pose to the government of Jamaica in its List of Issues Prior to Reporting, particularly with respect to the death penalty, death row conditions, and due process protections in capital cases. The Advocates for Human Rights, along with the World Coalition Against the Death Penalty and the Greater Caribbean for Life, submitted reports to the Committee for its 2011¹ and 2016² reviews of Jamaica. Much of the information contained in those reports remains relevant today.
2. In Jamaica, hanging is the method used for state executions.³ While the Jamaican Government's last execution occurred in February 1988,⁴ the death penalty by hanging remains as an available penalty for the following offenses: murder of security forces or judicial officers, jurors, or civil servants; murder for hire; double murders or repeat murders; or murder in the furtherance of a serious crime.⁵ There is no mandatory death penalty, however, and judges can take mitigating circumstances into account.
3. Since its last review in 2016, the Jamaican Government has refused to abolish the death penalty⁶ and maintains inhuman conditions of detention.⁷
4. As of 2022, there are no people on death row.⁸ But public support for the death penalty remains high in Jamaica,⁹ and hangings could resume at any time.¹⁰
5. The current administration has made clear its commitment to hanging as a purported response to high levels of criminality, particularly murders across the island. Underfunded human rights

¹ The Advocates for Human Rights & World Coalition Against the Death Penalty, Jamaica, Sept. 2011, https://www.theadvocatesforhumanrights.org/Res/jamaica_human_rights_committee_iccpr_2011.pdf (last visited Apr. 1, 2023).

² The Advocates for Human Rights & The Greater Caribbean for Life, Jamaica, Jan. 2016, https://www.theadvocatesforhumanrights.org/Res/jamaica_list_of_issues_iccpr_death_penalty_january_2016.pdf (last visited Apr. 1, 2023).

³ "Jamaica," World Coalition Against the Death Penalty, <https://worldcoalition.org/pays/jamaica/> (last visited Apr. 1, 2023).

⁴ "The Death Penalty in Jamaica," Death Penalty Worldwide, <https://deathpenaltyworldwide.org/database/#/results/country?id=35#fn-21422-H48L78W237657> (last visited Apr. 1, 2023).

⁵ Jamaica Offences Against the Person Act, arts. 2(1)(a)-(f), 3(1)(a), 3(1A) (2017).

⁶ Permanent Mission of Jamaica to the United Nations, *Statement by His Excellency Brian Wallace Permanent Representative on Amendment A/C.3/77/L.54 To Draft Resolution A/C.3/77/L.44 on Moratorium on the Death Penalty*, 77th Session of the United Nations General Assembly Third Committee, Nov. 11, 2022, 2, https://www.un.int/jamaica/sites/www.un.int/files/Jamaica/death_penalty_statement.pdf (last visited Apr. 7, 2023).

⁷ See, e.g., "Proposed one-size-fits-all mandatory minimums," Jamaica Observer, <https://www.jamaicaobserver.com/columns/proposed-one-size-fits-all-mandatory-minimums/> (last visited Apr. 9, 2023).

⁸ "The Death Penalty in Jamaica," Death Penalty Worldwide, <https://deathpenaltyworldwide.org/database/#/results/country?id=35#fn-21422-H48L78W237657> (last visited Apr. 1, 2023).

⁹ "To the Gallows," The Gleaner, Aug. 21, 2022, <https://jamaica-gleaner.com/article/lead-stories/20220821/gallows#:~:text=Seven%20in%2010%20Jamaicans%20are,would%20be%20an%20effective%20deterrent> (finding that 72% of Jamaicans support the death penalty).

¹⁰ Human Rights Committee, *Concluding observations on the fourth periodic report of Jamaica, adopted by the Committee at its 3330th meeting* (1 November 2016), U.N. Doc. CCPR/C/JAM/CO/4, ¶ 35 (noting that despite a "de facto moratorium since 1988 . . . [Jamaica] does not intend to abolish the death penalty.").

organizations have struggled to respond, particularly in light of polls showing majority support for hanging.

Jamaica fails to uphold its obligations under the International Covenant on Civil and Political Rights.

I. Jamaica’s continued retention of the death penalty is not in accordance with international norms (2016 Concluding Observations Paragraphs 35 and 36).

Jamaica has not abolished the death penalty or acceded to the Second Optional Protocol to the Covenant.

6. In 2016, the Committee noted “with regret that [Jamaica] does not intend to abolish the death penalty.”¹¹ Further, it recommended that Jamaica “consider abolishing the death penalty and acceding to the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty.”¹²
7. Seven years after the Committee published its Concluding Observations and Recommendations, Jamaica has made little progress in implementing these recommendations.¹³
8. According to a Jamaican representative, the State party has no intention of meeting its international obligations under the Covenant. In a recent statement made before the UN General Assembly Third Committee, Permanent Representative of Jamaica Brian Wallace said, “[w]e note and duly respect that some Member States have implemented a moratorium on or abolished the use of the death penalty. Jamaica, on the other hand, is grappling with an epidemic of crime and violence that threatens the safety and security of those who are most vulnerable, as well as national efforts towards the achievement of sustainable development. Therefore, as a deterrent to violent crimes and as part of our efforts to maintain socio-economic stability, Jamaica continues to exercise its sovereign right to retain capital punishment as the ultimate penalty for the most egregious crimes, as provided for in our statutes and as determined through our judicial processes.”¹⁴

¹¹ Human Rights Committee, *Concluding observations on the fourth periodic report of Jamaica, adopted by the Committee at its 3330th meeting* (1 November 2016), U.N. Doc. CCPR/C/JAM/CO/4, ¶ 35 (noting that despite a “de facto moratorium since 1988 . . . [Jamaica] does not intend to abolish the death penalty.”).

¹² Human Rights Committee, *Concluding observations on the fourth periodic report of Jamaica, adopted by the Committee at its 3330th meeting* (1 November 2016), U.N. Doc. CCPR/C/JAM/CO/4, ¶ 36.

¹³ Jamaica Offences Against the Person Act, arts. 2(1)(a)-(f), 3(1)(a), 3(1A) (2017); United Nations Human Rights Treaty Bodies, *Ratification Status for Jamaica*, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=86&Lang=EN.

¹⁴ Permanent Mission of Jamaica to the United Nations, *Statement by His Excellency Brian Wallace Permanent Representative on Amendment A/C.3/77/L.54 To Draft Resolution A/C.3/77/L.44 on Moratorium on the Death Penalty*, 77th Session of the United Nations General Assembly Third Committee, Nov. 11, 2022, 2, https://www.un.int/jamaica/sites/www.un.int/files/Jamaica/death_penalty_statement.pdf (last visited Apr. 7, 2023).

Despite a de facto moratorium, recent legislative efforts show hangings could resume at any time.

9. While no person was on death row as of 2022,¹⁵ there is growing public support for the death penalty.¹⁶ Jamaica's Prime Minister, Andrew Holness, has spoken openly about his support for the resumption of state executions.¹⁷
10. This wave of support has led to an influx of legislation aiming to introduce harsher punitive measures.¹⁸ For example, there is currently an effort to amend the Offences against the Person Act.¹⁹ Prime Minister Holness noted that these amendments would "make it clear . . . that the penalty for capital murder is the death penalty."²⁰

II. Jamaica's conditions of detention are not in accordance with international norms (2016 Concluding Observations Paragraphs 31-33 and 35-36).

11. In its 2016 Concluding Observations, the Committee expressed its ongoing concern about the deplorable condition in Jamaica's prisons and detention facilities, including overcrowding, poor sanitary conditions and lack of medical care.²¹

Overcrowding

12. Jamaica's responses to the Committee's List of Issues in the previous review cycle noted that, by reclassifying inmates and transferring them from higher security facilities to lower security centers, the Department of Correctional Services (DCS) has reduced the overcrowding in Jamaica's two maximum-security prisons, Tower Street Adult Correctional Centre (T.S.A.C.C) and St. Catherine Adult Correctional Centre (ST.C.A.C.C).²² Additionally,

¹⁵ "The Death Penalty in Jamaica," Death Penalty Worldwide, <https://deathpenaltyworldwide.org/database/#/results/country?id=35#fn-21422-H48L78W237657> (last visited Apr. 1, 2023).

¹⁶ "To the Gallows," The Gleaner, Aug. 21, 2022, <https://jamaica-gleaner.com/article/lead-stories/20220821/gallows#:~:text=Seven%20in%2010%20Jamaicans%20are,would%20be%20an%20effective%20deterrent> (finding that 72% of Jamaicans support the death penalty).

¹⁷ "Amendments to Offences Against the Person Act Will Re-Enforce Death Penalty for Capital Murder," Jamaica Information Service, Jan. 16, 2023, <https://jis.gov.jm/amendments-to-offences-against-the-person-act-will-re-enforce-death-penalty-for-capital-murder/> (last visited Apr. 3, 2023).

¹⁸ See, e.g., "Jamaica to discuss legislation to impose stricter penalties for murder," Caribbean National Weekly, Feb. 24, 2023, <https://www.caribbeannationalweekly.com/news/caribbean-news/jamaica-to-discuss-legislation-to-impose-stricter-penalties-for-murder/>; "Amendments to Offences Against the Person Act Will Re-Enforce Death Penalty for Capital Murder," Jamaica Information Service, Jan. 16, 2023, <https://jis.gov.jm/amendments-to-offences-against-the-person-act-will-re-enforce-death-penalty-for-capital-murder/> ("Prime Minister, the Most Hon. Andrew Holness, says . . . we will make it clear in the amendments that the penalty for capital murder is the death penalty.") (last visited Apr. 3, 2023).

¹⁹ See "Amendments to Offences Against the Person Act Will Re-Enforce Death Penalty for Capital Murder," Jamaica Information Service, Jan. 16, 2023, <https://jis.gov.jm/amendments-to-offences-against-the-person-act-will-re-enforce-death-penalty-for-capital-murder/> (last visited Apr. 3, 2023).

²⁰ "Amendments to Offences Against the Person Act Will Re-Enforce Death Penalty for Capital Murder," Jamaica Information Service, Jan. 16, 2023, <https://jis.gov.jm/amendments-to-offences-against-the-person-act-will-re-enforce-death-penalty-for-capital-murder/> (last visited Apr. 3, 2023).

²¹ Human Rights Committee, *Concluding observations on the fourth periodic report of Jamaica, adopted by the Committee at its 3330th meeting* (1 November 2016), U.N. Doc. CCPR/C/JAM/CO/4, ¶ 31.

²² Replies from the Government of Jamaica to the list of issues (CCPR/C/JAM/Q/4) in relation to the fourth periodic report of Jamaica (CCPR/C/JAM/CO/4).

Jamaica's 2018 follow-up report noted that there has been a significant reduction in the population at the ST.C.A.C.C, where death row inmates were usually housed.²³

13. Despite these purported advances, according to recent reports, both T.S.A.C.C and ST.C.A.C.C are "currently operating above capacity, 200% of its 850-inmate capacity and 107% of its 850-inmate capacity, respectively."²⁴ Other reports have also noted that the correctional facilities in Jamaica are significantly overcrowded.²⁵ Jamaica's declaration of a state of emergency in December 2022, in response to a surge in gang violence, may lead to an increase in the incarcerated population and may exacerbate the already significant problem of overcrowding in prisons and detention centers.

Torture

14. Jamaica's 2018 follow-up report suggested that the Jamaica Constabulary Force (JCF) "consistently takes steps to ensure that members are properly trained with respect to procedures of arrest or detention . . . to ensure that every effort is made to protect the rights of all citizens, whether they are victims, potential victims or being arrested"²⁶
15. The Independent Commission of Investigations (INDECOM), however, investigated reports of alleged abuse committed by police and prison officials and found that officials used intimidation and excessive physical force in restraint. The INDECOM also found evidence of "severe beating . . . of two inmates at the Horizon Adult Remand Centre in what the media reported may have been retaliation for the killing of a corrections officer employed at the facility."²⁷ The INDECOM also investigated the complaints of the abuse of power by police, including wrongful deaths, assaults, and mistreatment, but members of the security forces rarely face charges for abuses.²⁸

Lack of access to medical care

16. Jamaica's 2018 follow-up report suggested that "all inmates and children in facilities operated by the DCS have access to medical, psychiatric and psychological services within the institutions . . . efforts are currently being made to increase the number of medical professionals available."²⁹

²³ Information received from Jamaica on follow-up to the concluding observations (19 July 2018), U.N. Doc. CCPR/C/JAM/CO/4, ¶ 10.

²⁴ "Proposed one-size-fits-all mandatory minimums," Jamaica Observer, <https://www.jamaicaobserver.com/columns/proposed-one-size-fits-all-mandatory-minimums/> (last visited Apr. 9, 2023).

²⁵ "2022 Country Reports on Human Rights Practices: Jamaica," United States Department of State, <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/jamaica/> (last visited Apr. 9, 2023).

²⁶ Information received from Jamaica on follow-up to the concluding observations (19 July 2018), U.N. Doc. CCPR/C/JAM/CO/4, ¶ 15.

²⁷ "2022 Country Reports on Human Rights Practices: Jamaica," United States Department of State, <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/jamaica/> (last visited Apr. 9, 2023).

²⁸ "2022 Country Reports on Human Rights Practices: Jamaica," United States Department of State, <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/jamaica/> (last visited Apr. 9, 2023).

²⁹ Information received from Jamaica on follow-up to the concluding observations (19 July 2018), U.N. Doc. CCPR/C/JAM/CO/4, ¶ 17.

17. Nonetheless, the UN Joint Program on HIV/AIDS recently concluded that prisoners in facilities sometimes did not receive required medication, including medication for HIV.³⁰ Although two full-time and four part-time psychiatrists represent an increase in the number of available medical professionals, these psychiatrists cared for at least 262 inmates diagnosed as persons with psycho-social disabilities.³¹

Poor sanitary conditions

18. In its 2016 Concluding Observations, the Committee urged Jamaica to improve conditions of detention, particularly with regard to sanitary conditions.³²

19. The INDECOM investigated the conditions of Jamaica's correctional facilities and identified decaying infrastructure, regular bug infestation, poor sanitary conveniences and, in some locations, very poor sleeping conditions.³³

III. Jamaica's lack of sufficient due process safeguards in capital cases is not in accordance with international norms (2016 Concluding Observations Paragraphs 41 and 42).

20. Jamaica's Fourth Periodic Report asserted that the death penalty may be applied only if domestic law ensures "the relevant safeguards such as the observance of due process,"³⁴ yet Jamaica's death penalty system continues to violate due process rights, including: inadequate legal representation for defendants, lengthy delays in the appeal process, the use of confessions obtained through coercion, and lack of transparency and oversight.³⁵

21. The Inter-American Commission on Human Rights has stated that, "contrary to the current practice in Jamaica, . . . imposing the death penalty in a manner which conforms with Articles 4, 5 and 8 of the Convention requires an effective mechanism by which a defendant may present representation and evidence to the sentencing court as to whether the death penalty is a permissible or appropriate form of punishment in the circumstances of their case. In the Commission's view, this includes, but is not limited to, representations and evidence as to

³⁰ "2022 Country Reports on Human Rights Practices: Jamaica," United States Department of State, <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/jamaica/> (last visited Apr. 9, 2023).

³¹ "2022 Country Reports on Human Rights Practices: Jamaica," United States Department of State, <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/jamaica/> (last visited Apr. 9, 2023).

³² Human Rights Committee, *Concluding observations on the fourth periodic report of Jamaica, adopted by the Committee at its 3330th meeting* (1 November 2016), U.N. Doc. CCPR/C/JAM/CO/4, ¶ 32.

³³ "INDECOM concerned about state of Correctional facilities," Radio Jamaica News, <http://radiojamaicanewsonline.com/local/indecom-concerned-about-state-of-correctional-facilities#:~:text=INDECOM%20says%20the%20investigation%20highlighted%20failings%20which%20if,and%20C%20in%20some%20locations%20C%20very%20poor%20sleeping%20conditions> (last visited Apr. 9, 2023).

³⁴ Fourth Periodic Report of Jamaica to the Human Rights Committee, 23 March 2015, UN Doc. CCPR/C/JAM/4, ¶ 128.

³⁵ See Amnesty International, *Death Penalty in the Caribbean: A human rights issue*, December 2012, 16, 17, 18 available at <https://www.amnesty.org/en/wp-content/uploads/2021/06/amr050012012en.pdf> (last visited Apr. 9, 2023).

whether any of the factors incorporated in Article 4 of the Convention may prohibit the imposition of the death penalty.”³⁶

22. With respect to due process violations, inordinate delays in the provision of transcripts for use in appeals remains a significant challenge. There are delays in obtaining access to timely justice—for example, inadequate investigation of criminal matters, inability to obtain early court dates, and slow delivery of outcomes including judgments on appeal. There is also inadequate representation by legal aid counsel including impeding attorney access to clients.
23. In addition, officials have made worrying statements relating to a possible review of rights protected in the Charter of Fundamental Rights and Freedoms (Chapter III of the Constitution).

IV. Suggested questions for the Government of Jamaica

24. The coauthors respectfully suggest that the Committee request the following information from the Jamaican Government in the Committee’s List of Issues Prior to Reporting:
 - What concrete standards and guidelines do judges in Jamaica use when determining whether an offense is one of the “most egregious crimes” deserving of the death penalty?
 - What efforts have been made to educate the public and hold awareness-raising campaigns in Jamaica about the death penalty, including the death penalty in international human rights law and its alternatives?
 - What data are officials relying upon when asserting that the death penalty is a meaningful deterrent to violent crime?
 - What safeguards does Jamaica enact to prevent discrimination in sentencing and to ensure members of minority and low-income groups are not at greater risk of being sentenced to death?
 - Does the government provide defendants in death penalty cases with competent counsel at all stages of the proceedings, including at the State’s expense?
 - If so, do the defense attorneys have appropriate training and experience to represent a defendant in a death penalty case, including in preparing and presenting mitigation evidence at the penalty phase? If not, what actionable measures is the government taking to develop an adequate legal aid system necessary to ensure fair trial rights?
 - To what extent do law enforcement, prosecutors, and defense counsel in capital cases receive training on criminal procedure, including post-conviction processes?
 - Please confirm if the new block constructed at Tamarind Farm Adult Correctional Centre that was scheduled to open in March 2018 is now operating and whether it has reduced the population at ST.C.A.C.C and T.S.A.C.C.
 - What steps has Jamaica taken to comply with the Nelson Mandela Rules especially with regard to sanitary installations in correctional facilities?

³⁶ Inter-American Commission on Human Rights report, 2, available at <http://www.cidh.oas.org/annualrep/99eng/merits/Jamaica12.023c.htm> (last visited Apr. 9, 2023).

- What mitigating factors does the court currently consider when determining whether a person should be sentenced to death? Are there any cases in which a judge is prohibited from considering mitigation evidence?