



**SAINT KITTS AND NEVIS**  
**23<sup>rd</sup> Session of the Working Group on the Universal Periodic Review**  
**Human Rights Council**  
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**Joint Written Statement submitted by**

**The Advocates for Human Rights, a non-governmental organization in special consultative status,  
in collaboration with The Greater Caribbean for Life and The World Coalition against the Death  
Penalty, an alliance of NGOs, bar associations, local authorities and unions**

Founded in 1983, The Advocates for Human Rights (The Advocates) is a volunteer-based non-governmental organization (NGO) committed to the impartial promotion and protection of international human rights standards and the rule of law. 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 is an organization constituted on October 2, 2013 to unite Caribbean abolitionist organizations and individuals, reflecting the highest respect to right to live in the struggle against death penalty. This initiative began 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 Sant' Edigio. The Greater Caribbean for Life was constituted 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.

The World Coalition Against the Death Penalty, an alliance of more than 150 NGOs, bar associations, local authorities and unions, was created in Rome on 13 May 2002. 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. 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.

## I. Executive Summary

1. Saints Kitts and Nevis is the most recent country in the English-speaking Caribbean to carry out an execution; the execution occurred on December 19, 2008. It currently has one inmate on death row, Everson “Blee” Mitcham, who has been on death row for over thirteen years, since his sentencing on June 26, 2001. Mitcham’s lengthy detention puts him at risk of psychological damage and is in violation of court rulings that the sentences of death row inmates should be commuted to life in prison after five years. Mitcham is also held in de facto isolation, elevating his risk for serious and lasting psychological problems. Mitcham’s prolonged detention and isolation constitute cruel and inhuman treatment. In addition to the inhuman treatment of Mitcham, there is no indication that Saint Kitts and Nevis has addressed previously raised issues of access to appeal and adequate resources for the defense in capital cases.

## II. LEGAL FRAMEWORK

### A. *Domestic Legal Framework*

#### 1. *Legal Basis for the Death Penalty*

2. The Constitution of Saint Kitts and Nevis explicitly allows for the use of the death penalty in cases of treason or murder.<sup>1</sup> As a common law country and commonwealth realm, the law is a product of both cases and acts of parliament. The Judicial Committee of the Privy Council (“JCPC”) is the highest court of appeal for several independent Commonwealth countries, the British Overseas Territories and the British Crown dependencies, including Saint Kitts and Nevis,<sup>2</sup> and has an extensive jurisprudence on the death penalty. While not typically binding on courts within the United Kingdom, the JCPC’s judgments are binding on all courts within any other Commonwealth country from which an appeal is heard, including Saint Kitts and Nevis.<sup>3</sup>

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<sup>1</sup> CONSTITUTION OF SAINT CHRISTOPHER AND NEVIS Jun. 23, 1983, Sec. 4(1) (“A person shall not be deprived of his life intentionally save in execution of the sentence of a court in respect of a criminal offense of treason or murder under any law of which he has been convicted.”); *but cf.* CONSTITUTION OF SAINT CHRISTOPHER AND NEVIS Jun. 23, 1983, Ch. 7 (“A person shall not be subjected to torture or to inhuman or degrading punishment or other like treatment.”). There have been no reported prosecutions for treason in St. Kitts & Nevis, and therefore it is uncertain how Ch. 4(1) of the Constitution or subsequent case law would impact such a case, which would presumably be brought under the Treason Felony Act, 1848, 11 & 12 Vict. c. 12.

<sup>2</sup> <https://www.jcpc.uk/>

<sup>3</sup> This fact has led some politicians in Saint Kitts and Nevis to call for abandonment of the JCPC in favor of the Caribbean Court of Justice. (<http://repository.law.umich.edu/cgi/viewcontent.cgi?article=1028&context=mjil>); see [http://www.bbc.co.uk/caribbean/news/story/2009/09/090925\\_forumccjprivy.shtml](http://www.bbc.co.uk/caribbean/news/story/2009/09/090925_forumccjprivy.shtml) (“I understand the fears expressed by most writers, living in the Caribbean is like living in a big village, and the expressed fears of politicians’ interference in the judicial system. Let me say we have to start somewhere and trust our intellectuals. It is obvious Mother Country England (Privy Council) will not entertain us indefinitely, and so we need to hold our judges accountable. Politicians/leaders must lead by example and sign on to the CCJ”). These politicians suggest that retention of a right of appeal to a court located overseas, made up mostly of foreign judges who may be out of touch with local values, as incompatible with the nation’s sovereign status. (<https://www.jcpc.uk/faqs.html#1d>; <http://www.guyanatimesgy.com/2015/01/18/only-three-countries-have-abolished-appeals-to-privy-council/>). Similarly, these politicians are increasing pressure on domestic courts to override previous rulings by the JCPC concerning the death penalty (Death-Row Rule Sours Caribbean on Britain, Larry Rother, New York Times (July 7, 1997); see also <http://www.amnesty.org/en/library/asset/AMR14/001/2006/fr/38135c51-fa0b-11dd-b1b0-c961f7df9c35/amr140012006en.pdf>).

3. As an example of the interaction between parliamentary acts and court rulings, the Offenses Against the Person Act, as amended, imposes a mandatory death penalty for murder, reading “[whosoever is] convicted of murder shall suffer death as a felon.”<sup>4</sup> However, this provision was interpreted by the JCPC in *Fox v. Queen* to instead be read as “whosoever is convicted of murder may suffer death as a felon.”<sup>5</sup> Individuals under 18 years of age are not subject to execution for murder under the Offenses Against the Person Act.<sup>6</sup> Case law has further specified that only the “worst of the worst” should be sentenced to death, and that the merely “cold-blooded, brutal, and brazen” killer should not.<sup>7</sup>

4. There are also procedural restrictions on use of the death penalty. The JCPC requires that psychiatric reports be presented for all defendants in capital cases, though it is not clear that this requirement is strictly adhered to in practice.<sup>8</sup> The Constitution grants the “prerogative of mercy” upon the Governor General, which allows for the granting of pardons, respites, substitution of less severe sentences, or the remitting in whole or in part of forfeitures.<sup>9</sup> The Committee on Prerogative of Mercy is required to provide advice to the Governor-General in all cases (except courts-martial) in which a person is sentenced to death.<sup>10</sup> Free legal assistance is purportedly available for indigent defendants in capital cases.<sup>11</sup> Criminal defendants are constitutionally entitled to a fair, speedy, and public trial by jury, with a presumption of innocence, and the right to confront and question witnesses.<sup>12</sup>

5. The JCPC has also interpreted execution occurring more than five years after the date of sentencing to be a violation of Section 17(1) of the Jamaican Constitution, which provides that “No person shall be subjected to torture or to inhuman or degrading punishment or other treatment.”<sup>13</sup> Although the decision was made in an appeal from Jamaica, in practice the result

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<sup>4</sup> Offenses Against the Person Act, amended 1998 c. 4.21 § 2 (St. Kitts & Nevis).

<sup>5</sup> *Fox v. R*, [2002] UKPC 13, [2002] 2 A.C. 284 [11] (appeal taken from St. Kitts & Nevis) (interpreting section 7 of the St. Kitts & Nevis Constitution to prohibit the mandatory imposition of the death penalty).

<sup>6</sup> Offenses Against the Person Act, amended 1998 c. 4.21 § 3(1) (St. Kitts & Nevis) (“Provided that sentence of death shall not be pronounced on or recorded against a person convicted of an offence if it appears to the court that at the time when the offence was committed he or she was under eighteen years”).

<sup>7</sup> *DPP v. Liburd*, [2009] Eastern Caribbean Supreme Court, Suit No. SKBHCR 2009/0007 (St. Kitts & Nevis), applying *Trimmingham v. R* [2009] UKPC 25 (appeal taken from St. Vincent) (“[I]t fell short of being in the category of the rarest of the rare . . . although the manner of the killing was gruesome and violent”).

<sup>8</sup> See *Pipersburgh & Robateau v. R*, [2008] UKPC 11, 72 WIR 108 (appeal from Belize); see also *Romeo Cannonier v The DPP*, [2012] Eastern Caribbean Court of Appeals, HCRAP 2008/002 (appeal from St. Kitts & Nevis on remand from JCPC) at [134]-[149] (quashing the conviction of a severely brain damaged man far into the appeals process).

<sup>9</sup> CONSTITUTION OF SAINT CHRISTOPHER AND NEVIS Jun. 23, 1983, Sec. 66.

<sup>10</sup> CONSTITUTION OF SAINT CHRISTOPHER AND NEVIS Jun. 23, 1983, Sec. 68(1).

<sup>11</sup> U.S. Department of State, Country Reports on Human Rights Practices for 2013 (last updated Mar. 5, 2014), available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220467>.

<sup>12</sup> U.S. Department of State, Country Reports on Human Rights Practices for 2013 (last updated Mar. 5, 2014), available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220467>.

<sup>13</sup> *Pratt and Morgan v. Jamaica*, [1993] UKPC 37, [1994] 2 AC 1 (P.C.) (appeal from Jamaica) (finding confinement on death row for more than five years presumptively “inhuman and degrading” and commuting sentences to life imprisonment).

has been the imposition of a five-year maximum across the English-speaking Caribbean.<sup>14</sup> The Saint Kitts and Nevis Constitution, echoing that of Jamaica, provides that “A person shall not be subjected to torture or to inhuman or degrading punishment or other like treatment.”<sup>15</sup>

## 2. *Death Penalty in Practice*

6. The most recent execution in the English-speaking Caribbean (ESC) occurred in Saint Kitts and Nevis on Friday, December 19, 2008. On Thursday, December 18, 2008, officials posted a notice on the door of Her Majesty’s Prison in Basseterre announcing the impending execution.<sup>16</sup> That night the prison guards bound Laplace hand and foot, cast him onto his grubby mattress, and proceeded to celebrate the coming execution with a “rum-fuelled gallows party that lasted long into the small hours” within earshot of Laplace.<sup>17</sup> Charles Elroy Laplace was hanged by the neck until dead at 8:00 a.m., December 19, 2008.<sup>18</sup>

7. Charles Elroy Laplace’s execution highlights concerns regarding the lack of adequate legal representation and due process, as well as cruel and inhuman treatment or punishment, in Saint Kitts and Nevis.<sup>19</sup> The U.N. Human Rights Committee recognizes that capital defendants should be provided with counsel at all stages of proceedings.<sup>20</sup> It is unclear whether the Saint Kitts and Nevis government had provided Laplace with adequate legal counsel at critical stages of his

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<sup>14</sup> See, e.g., *Moise v. R.*, ECSC Court of Appeal, Criminal Appeal No. 8 of 2003 (appeal from St. Lucia), July 15, 2005, ¶¶ 50-54 (applying *Pratt* five-year standard to St. Lucia); *Ramdeen v. State*, [2014] UKPC 7 (appeal from Trinidad and Tobago) (applying *Pratt* five-year standard to Trinidad and Tobago). See also ROSE-MARIE BELLE ANTIONE, COMMONWEALTH CARIBBEAN LAW AND LEGAL SYSTEMS (2d ed., 2008) (“All Commonwealth Caribbean courts examining subsequent undue delay cases have felt bound to follow *Pratt and Morgan* despite the great dislocation in the system of justice it has caused and the outcry against its effects.”). But see Stanford Conway, *Will the Five Men on Death Row Be Executed?*, SKNVIBES (Nov. 3, 2011), <http://www.sknvibes.com/news/newsdetails.cfm/48933> (indicating that Everson Mitcham “was sentenced to death . . . on June 26, 2001” but was still on death row in 2011).

<sup>15</sup> CONSTITUTION OF SAINT CHRISTOPHER AND NEVIS Jun. 23, 1983, Sec. 7. But see Stanford Conway, *Will the Five Men on Death Row Be Executed?*, SKNVIBES (Nov. 3, 2011), <http://www.sknvibes.com/news/newsdetails.cfm/48933> (stating that although Everson Mitcham “was sentenced to death . . . on June 26, 2001” he was still on death row in 2011, indicating that Saint Kitts and Nevis has not yet applied *Pratt and Morgan* in its own jurisdiction).

<sup>16</sup> *St. Kitts – Nevis Hangs Convicted Murderer*, NEVIS ISLAND NEWS AND NOTES (Dec. 19, 2008), <http://nevisblog.com/st-kitts-nevis-hangs-convicted-murderer.html>. The notice stated, “Pursuant to the warrant under the Hand and Seal of His Excellency the Governor General of the Federation of St. Christopher and Nevis, dated the 15th day of December 2008, the sentence of death pronounced at the Circuit Court on the 28th day of February 2006 on Charles Elroy Laplace will be carried into execution within the walls of the Prison in the town of Basseterre in the island of St. Christopher on the Friday 19th December 2008 at 8 o’clock in the forenoon.” Id.

<sup>17</sup> David Jones, *Return of the Noose: St. Kitts has Just Hanged Its First Man for a Decade and Believes it is the Only Way to Beat Violent Crime*, DAILY MAIL (Jan. 12, 2009), <http://www.dailymail.co.uk/debate/article-1110973/Return-noose-St-Kitts-just-hanged-man-decade-believes-way-beat-violent-crime.html>.

<sup>18</sup> David Jones, *Return of the Noose: St. Kitts has Just Hanged Its First Man for a Decade and Believes it is the Only Way to Beat Violent Crime*, DAILY MAIL (Jan. 12, 2009), <http://www.dailymail.co.uk/debate/article-1110973/Return-noose-St-Kitts-just-hanged-man-decade-believes-way-beat-violent-crime.html>.

<sup>19</sup> See generally *The Death Penalty in the Greater Caribbean: Detailed Fact Sheet*, WORLD COALITION AGAINST THE DEATH PENALTY at 4, available at <http://www.worldcoalition.org/media/resourcecenter/EN-2013WorldDayFactSheet.pdf>.

<sup>20</sup> Human Rights Committee, Gen. Comm. 32, para 38.

appeals.<sup>21</sup> The Eastern Caribbean Supreme Court dismissed his appeal in October 2008 on the grounds that it was filed past the deadline, and although Laplace could then appeal to the JCPC, he was executed before any such appeal was made.<sup>22</sup> It is unclear what, if any, steps have been taken since the execution of Laplace to better protect the right to legal representation in Saint Kitts and Nevis, especially in capital cases. In addition, the Human Rights Committee has found that taunts, among other forms of abuse, can constitute ill-treatment.<sup>23</sup>

8. The government of Saint Kitts and Nevis continues to support use of the death penalty.<sup>24</sup> Public support for hangings likewise remains high.<sup>25</sup> Despite this, the actual imposition of the death penalty in Saint Kitts and Nevis remains relatively rare, and only three people have been executed in the country in the last 30 years.<sup>26</sup> Numerous individuals sentenced to death have had their sentences commuted or vacated through the appeals process.<sup>27</sup> As of December 2014, it appears that only Everson “Blee” Mitcham is currently confined to death row.<sup>28</sup> Mitcham was sentenced to death on June 26, 2001.<sup>29</sup> Despite the government’s stated support for continued

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<sup>21</sup> See *The Death Penalty in the Greater Caribbean: Detailed Fact Sheet*, WORLD COALITION AGAINST THE DEATH PENALTY at 4, available at <http://www.worldcoalition.org/media/resourcecenter/EN-2013WorldDayFactSheet.pdf>; Amnesty International, *Death Penalty in the English-Speaking Caribbean: A Human Rights Issue*, AMR 05/001/2012 (Dec. 2012) at 16-18.

<sup>22</sup> *The Death Penalty in the Greater Caribbean: Detailed Fact Sheet*, WORLD COALITION AGAINST THE DEATH PENALTY at 4, available at <http://www.worldcoalition.org/media/resourcecenter/EN-2013WorldDayFactSheet.pdf>. The appeal to the JCPC was reportedly missed “by mistake” as well. See David Jones, *Return of the Noose: St. Kitts has Just Hanged Its First Man for a Decade and Believes it is the Only Way to Beat Violent Crime*, DAILY MAIL (Jan. 12, 2009), <http://www.dailymail.co.uk/debate/article-1110973/Return-noose-St-Kitts-just-hanged-man-decade-believes-way-beat-violent-crime.html>.

<sup>23</sup> *Hylton v. Jamaica*, Comm’n No. 407/1990 (1994).

<sup>24</sup> See, e.g., U.N. Human Rights Council, Report of the Working Group on the Universal Periodic Review: Saint Kitts and Nevis, A/HRC/17/12 (Mar. 15, 2011), at para. 77.

<sup>25</sup> See David Jones, *Return of the Noose: St. Kitts has Just Hanged Its First Man for a Decade and Believes it is the Only Way to Beat Violent Crime*, DAILY MAIL (Jan. 12, 2009), <http://www.dailymail.co.uk/debate/article-1110973/Return-noose-St-Kitts-just-hanged-man-decade-believes-way-beat-violent-crime.html> (“With an election looming, however, and the premier hoping to win a historic fourth term in office, he knows which way the wind is blowing.”).

<sup>26</sup> U.N. Human Rights Council, Report of the Working Group on the Universal Periodic Review: Saint Kitts and Nevis, A/HRC/17/12 (Mar. 15, 2011), at para. 11.

<sup>27</sup> Cf. Jenise Ferlance, *Buncum Among Four No Longer on Death Row*, SKNVIBES (Oct. 11, 2012), <http://m.sknvibes.com/news/newsdetails.cfm/64486> (indicating that on remand from the Privy Council, three of the five individuals on death row obtained commutations to life imprisonment and one, a severely brain damaged man, had his conviction overturned).

<sup>28</sup> See Jenise Ferlance, *Buncum Among Four No Longer on Death Row*, SKNVIBES (Oct. 11, 2012), <http://m.sknvibes.com/news/newsdetails.cfm/64486>. Though documentation remains difficult to obtain, it would appear that there have been no new death sentences or commutations of death sentences since this date. Cf. Amnesty International, *Death Sentences and Executions: 2012*, ACT 50/001/2013 at 14 (“one person remained on death row at the end of the year”); Amnesty International, *Death Sentences and Executions: 2013*, ACT 50/001/2014 at 13 (“No new death sentences were known to have been imposed in Saint Kitts and Nevis, while one person was believed to be on death row at the end of the year.”). Likewise, it does not appear that there has been an execution, commutation of a death sentence, or new death sentence during 2014 to date.

<sup>29</sup> Stanford Conway, *Will the Five Men on Death Row Be Executed?*, SKNVIBES (Nov. 3, 2011), <http://www.sknvibes.com/news/newsdetails.cfm/48933>. The apparent lack of commutation of a death sentence imposed more than a decade ago is not consistent with the principles outlined by the JCPC in *Pratt and Morgan v. Jamaica*, [1993] UKPC 37, [1994] 2 AC 1 (P.C.) (appeal from Jamaica) (requiring commutation of a death sentence imposed more than five years ago) and subsequent cases, including *Moise v. R*, ECSC Court of Appeal, Criminal Appeal No. 8 of 2003 (appeal from St. Lucia), July 15, 2005, ¶¶ 50-54 (applying *Pratt*).

executions, the steady decline of the death row population and the absence of new death sentences imposed are trends welcomed by the international community.

B. *2011 Universal Periodic Review (UPR) of Saint Kitts and Nevis*

1. *Saint Kitts and Nevis's Acceptance of UPR Recommendations*

9. During the 2011 UPR Saint Kitts and Nevis received 13 recommendations requesting the abolition of the death penalty and/or a moratorium on the use of the death penalty, and the country noted these recommendations.<sup>30</sup> However, Saint Kitts and Nevis accepted several other recommendations pertaining to the death penalty more generally. Saint Kitts and Nevis accepted the recommendation to review the administration of legal rights of prisoners condemned to death and ensure access to the appeals process and adequate resources.<sup>31</sup> Saint Kitts and Nevis further accepted the recommendation to “[i]dentify its needs in terms of technical and financial assistance to improve prison conditions and consequently seek assistance from relevant international institutions and programmes competent in this area.”<sup>32</sup> In a supplemental response Saint Kitts and Nevis likewise accepted a recommendation to “[r]eplace the Basseterre facility with a new prison that meets international standards, and explore public/private partnerships and financing arrangements.”<sup>33</sup> Saint Kitts and Nevis further stated that in the interest of examining what core international human rights instruments it should adopt, it had established “a national core committee. . . to review these instruments and to present its recommendations to the decision-making body for consideration.”<sup>34</sup>

2. *Saint Kitts and Nevis's Implementation of UPR Recommendations*

10. It is generally unclear whether Saint Kitts and Nevis has made significant progress towards implementing the recommendations it has accepted.<sup>35</sup> Additionally, by 2014 there were indications that construction of a new correctional facility was in progress.<sup>36</sup> Despite this, the conditions in Her Majesty's Prison in Basseterre remain extremely overcrowded.<sup>37</sup> It is also

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<sup>30</sup> Human Rights Council, Report of the Working Group on the Universal Periodic Review: Saint Kitts and Nevis, U.N. Doc. A/HRC/17/12 (Mar. 15, 2011) ¶ 77 (rejecting recommendations from Germany, Canada, United Kingdom, Norway, Hungary, Sweden, Slovakia, France, Spain, Slovenia, and Australia).

<sup>31</sup> Human Rights Council, Report of the Working Group on the Universal Periodic Review: Saint Kitts and Nevis, U.N. Doc. A/HRC/17/12 (Mar. 15, 2011) ¶ 75.32 (recommendation from Canada).

<sup>32</sup> Human Rights Council, Report of the Working Group on the Universal Periodic Review: Saint Kitts and Nevis, U.N. Doc. A/HRC/17/12 (Mar. 15, 2011) ¶ 75.40 (recommendation from Algeria).

<sup>33</sup> Human Rights Council, Report of the Working Group on the Universal Periodic Review: Saint Kitts and Nevis – Addendum, U.N. Doc. A/HRC/17/12/Add.1 (May 31, 2011) ¶ 31 (recommendation from the United Kingdom).

<sup>34</sup> Human Rights Council, Report of the Working Group on the Universal Periodic Review: Saint Kitts and Nevis – Addendum, U.N. Doc. A/HRC/17/12/Add.1 (May 31, 2011) ¶¶ 3-4 (recommendation from Brazil).

<sup>35</sup> Regarding improved prison conditions, by March of 2013 Saint Kitts and Nevis had opened “New Horizons, a new youth rehabilitation center to house 30 juveniles – 20 boys and 10 girls.” UNITED STATES DEPARTMENT OF STATE, SAINT KITTs AND NEVIS 2013 HUMAN RIGHTS REPORT, 3 (Mar. 5, 2014), available at <http://www.state.gov/documents/organization/220677.pdf>.

<sup>36</sup> UNITED STATES DEPARTMENT OF STATE, SAINT KITTs AND NEVIS 2013 HUMAN RIGHTS REPORT, 3 (Mar. 5, 2014), available at <http://www.state.gov/documents/organization/220677.pdf>.

<sup>37</sup> See BRITISH HIGH COMMISSION BARBADOS, INFORMATION PACK FOR BRITISH PRISONERS IN ST. KITTs AND NEVIS 7 (Feb. 7, 2014) (“HM Prison St. Kitts was built in 1840 and occupies a site in the center of Basseterre. It was

unclear whether Saint Kitts and Nevis's establishment of a national core committee to review international treaties had garnered any appreciable results. There is similarly no indication that Saint Kitts and Nevis has improved access to appeal and adequate resources for death penalty cases.

### III. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

#### A. *Saint Kitts and Nevis's Treatment of Death Row Inmates Constitutes Cruel and Inhuman Treatment.*

11. As of December 2014, it appears that only Everson "Blee" Mitcham is currently confined to death row in Saint Kitts and Nevis.<sup>38</sup> The extended time he has spent on death row and the conditions under which he is held constitute cruel and inhuman treatment.

##### 1. *Length of Time on Death Row.*

12. "Death row phenomenon" is the deterioration of prisoner's mental condition as a consequence of psychological tensions suffered during prolonged detention on death row or due to prolonged delays in the execution of the sentence that can be imputed to States' faulty procedures.<sup>39</sup> The JCPC has attempted to safeguard the rights of inmates against the prolonged mental anguish of death row.<sup>40</sup> It has established a presumptive five-year maximum time limit after sentencing for incarceration on death row before a sentence should be commuted to life imprisonment.<sup>41</sup>

13. Nonetheless, it does not appear that Saint Kitts and Nevis is operating in accordance with these requirements.<sup>42</sup> Instead, according to reports, Saint Kitts and Nevis is still holding Everson "Blee" Mitcham on death row more than 13 years after his sentencing on June 26, 2001.<sup>43</sup>

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initially intended to house 60 inmates. Numbers have significant [sic] increased and overcrowding is a problem. . . . Conditions are cramped and hot, and complaints of poor hygiene standards are common.").

<sup>38</sup> See Jenise Ferlance, *Buncum Among Four No Longer on Death Row*, SKNVIBES (Oct. 11, 2012), <http://m.sknvibes.com/news/newsdetails.cfm/64486> ("The men, now no longer on death row, leave one person, Everson 'Blee' Mitcham, still awaiting the date of his hanging."). Though documentation remains difficult to obtain, it would appear that neither death sentences nor commutations have been obtained since this date. Cf. Amnesty International, *Death Sentences and Executions: 2012*, ACT 50/001/2013 at 14 ("one person remained on death row at the end of the year"); Amnesty International, *Death Sentences and Executions: 2013*, ACT 50/001/2014 at 13 ("No new death sentences were known to have been imposed in Saint Kitts and Nevis, while one person was believed to be on death row at the end of the year."). Likewise, it does not appear that there has been an execution, commutation of a death sentence, or new death sentence during 2014 to date.

<sup>39</sup> *Francis v. Jamaica*, Comm'n No. 606/1994, U.N. Doc. CCPR/C/54/D/606/1994 (1995), para. 9.2 (finding violations of Articles 7 and 10(1) where the Jamaican Court of Appeal failed to issue a written judgment for more than 13 years despite several requests by prisoner and the prisoner was exposed to humiliating treatments by warders, inadequate prison conditions, and lack of adequate psychological treatment).

<sup>40</sup> *Pratt and Morgan v. Jamaica*, [1993] UKPC 37, [1994] 2 AC 1 (P.C.) (appeal from Jamaica) ("The death row phenomenon must not become established as a part of our jurisprudence.").

<sup>41</sup> See *Pratt and Morgan v. Jamaica*, [1993] UKPC 37, [1994] 2 AC 1 (P.C.) (appeal from Jamaica).

<sup>42</sup> See Stanford Conway, *Will the Five Men on Death Row Be Executed?*, SKNVIBES (Nov. 3, 2011), <http://www.sknvibes.com/news/newsdetails.cfm/48933> (reporting "[a]t this time, Mitcham's death sentence can be commuted to life imprisonment" and offering no explanation for why it is not).

## 2. Everson “Blee” Mitcham Is Held in De Facto Indefinite Isolation

14. Saint Kitts and Nevis locates its death row in Her Majesty’s Prison in Basseterre, where the country houses serious offenders.<sup>44</sup> Since 2012, Everson “Blee” Mitcham has been the only inmate of death row.<sup>45</sup> Mitcham is the only prisoner with his own cell in the otherwise overcrowded prison.<sup>46</sup> “The lone death row inmate is not allowed to mingle with the other prisoners,” “is not allowed to go out[side the prison] on projects,” and although he receives recreation time, he is separated and by himself.<sup>47</sup> Visits are allowed, but are subject to the regulation and convenience of the prison officials.<sup>48</sup> Mitcham is thus de facto being held in isolation on an indefinite basis. Isolation is a severe form of punishment for the general prison population in many countries, Saint Kitts and Nevis included.<sup>49</sup>

15. A growing number of health professionals, legal scholars, and international human rights organizations recognize that holding an inmate in long term isolation is “cruel and unusual punishment” or cruel and degrading treatment.<sup>50</sup> Long term isolation can have serious and lasting effects, as “[i]solated prisoners have difficulty separating reality from their own thoughts, which may lead to confused thought processes, perceptual distortions, paranoia and psychosis. In addition to the worsening of pre-existing medical conditions, offenders may experience physical effects, such as lethargy, insomnia, palpitations and anorexia.”<sup>51</sup> Those held in isolation are at

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<sup>43</sup> See Stanford Conway, *Will the Five Men on Death Row Be Executed?*, SKNVIBES (Nov. 3, 2011), <http://www.sknvibes.com/news/newsdetails.cfm/48933> (reporting “[a]t this time, Mitcham’s death sentence can be commuted to life imprisonment” and offering no explanation for why it is not).

<sup>44</sup> The number of prisoners at HMP in Basseterre varies, but prisoners consistently experience significant overcrowding. In September of 2012 there were over 390 prisoners housed in the facility, designed for 60. See Jenise Ferlance, *Life as an Inmate at Her Majesty’s Prison*, SKNVIBES (Sept. 10, 2012), <http://m.sknvibes.com/news/newsdetails.cfm/63114>.

<sup>45</sup> See Jenise Ferlance, *Buncum Among Four No Longer on Death Row*, SKNVIBES (Oct. 11, 2012), <http://m.sknvibes.com/news/newsdetails.cfm/64486>.

<sup>46</sup> Jenise Ferlance, *Life as an Inmate at Her Majesty’s Prison*, SKNVIBES (Sept. 10, 2012), <http://m.sknvibes.com/news/newsdetails.cfm/63114>.

<sup>47</sup> Jenise Ferlance, *Life as an Inmate at Her Majesty’s Prison*, SKNVIBES (Sept. 10, 2012), <http://m.sknvibes.com/news/newsdetails.cfm/63114>.

<sup>48</sup> Jenise Ferlance, *Life as an Inmate at Her Majesty’s Prison*, SKNVIBES (Sept. 10, 2012), <http://m.sknvibes.com/news/newsdetails.cfm/63114> (“Most visits are regulated by the Registrar or the Provost Marshal. To visit with a person on death row, one has to go to the High Court and the Registrar will issue a letter addressed to the Superintendent [*sic*] of the Prison and at our convenience, we will schedule a visit.”).

<sup>49</sup> Jenise Ferlance, *Life as an Inmate at Her Majesty’s Prison*, SKNVIBES (Sept. 10, 2012), <http://m.sknvibes.com/news/newsdetails.cfm/63114> (“if a prisoner ‘disturbs the peace’, he is isolated as a form of punishment.”).

<sup>50</sup> See, e.g., Diane Kelsall, *Cruel and Unusual Punishment: Solitary Confinement in Canadian Prisons*, CANADIAN MEDICAL ASSOCIATION JOURNAL (Nov. 17, 2014), available at <http://www.cmaj.ca/content/early/2014/11/17/cmaj.141419.full.pdf>; Tessa Murphy, *Solitary Confinement Is Cruel and All Too Usual*, THE GUARDIAN (Oct. 13, 2014), <http://www.theguardian.com/commentisfree/2014/oct/13/solitary-confinement-us-prisoners-rehabilitation>; Martin Garbus, *Cruel and Usual Punishment in Jails and Prisons*, L.A. TIMES (Sept. 29, 2014), <http://www.latimes.com/opinion/op-ed/la-oe-garbus-prison-cruel-and-unusual-20140930-story.html>.

<sup>51</sup> Diane Kelsall, *Cruel and Unusual Punishment: Solitary Confinement in Canadian Prisons*, CANADIAN MEDICAL ASSOCIATION JOURNAL (Nov. 17, 2014).

greater risk of self-harm and suicide.<sup>52</sup> Extended terms without social contact can result in long-term or even permanent effects such as “impaired memory, confusion, depression, phobias and personality changes.”<sup>53</sup>

16. For these reasons, and others, the UN Special Rapporteur on Torture and Cruel, Inhuman, and Degrading Treatment stated that solitary confinement “can amount to torture or cruel, inhuman and degrading treatment or punishment when used as a punishment, during pretrial detention, *indefinitely or for a prolonged period*, for persons with mental disabilities or juveniles.”<sup>54</sup> Mitcham’s indefinite isolation, a result of Saints Kitts and Nevis’ policies towards death row inmates, constitutes such cruel and inhuman treatment.

## B. *Improvements in Saint Kitts and Nevis*

### 1. *Saint Kitts and Nevis Has Not Executed Anyone Since Its Last UPR and the Number of Prisoners on Death Row is Declining.*

17. Saint Kitts and Nevis was the last English-speaking Caribbean country to carry out the death penalty, executing Charles Laplace in 2008.<sup>55</sup> The country has not executed another prisoner in the last six years.<sup>56</sup> Saint Kitts and Nevis held five people on death row at the end of 2011, but this number has since declined to one due to commutations of the sentences of four individuals and the fact that no new death sentences have been imposed in the last three years.<sup>57</sup> In addition, Saint Kitts and Nevis adheres to the JCPC’s directive that only the “worst of the worst” should be given a sentence of death, decreasing the number of death sentences imposed.<sup>58</sup>

## IV. RECOMMENDATIONS

18. The Advocates and the World Coalition against the Death Penalty commend Saint Kitts and Nevis for not imposing the death penalty in the last three years, and further commend Saint Kitts

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<sup>52</sup> Diane Kelsall, *Cruel and Unusual Punishment: Solitary Confinement in Canadian Prisons*, CANADIAN MEDICAL ASSOCIATION JOURNAL (Nov. 17, 2014) (adding that “[o]ver the past three years, nearly half of suicides (14/30) in [Canadian] federal prisons occurred in segregation cells[.]”).

<sup>53</sup> Diane Kelsall, *Cruel and Unusual Punishment: Solitary Confinement in Canadian Prisons*, CANADIAN MEDICAL ASSOCIATION JOURNAL (Nov. 17, 2014).

<sup>54</sup> *Solitary Confinement Should Be Banned in Most Cases, UN Expert Says*, UN NEWS CENTER (Oct. 18, 2011), <http://www.un.org/apps/news/story.asp?NewsID=40097#.VKFyanD2YFM>, citing Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, U.N. Doc. A/66/268 (Aug. 5 2011).

<sup>55</sup> See generally *The Death Penalty in the Greater Caribbean: Detailed Fact Sheet*, WORLD COALITION AGAINST THE DEATH PENALTY, available at <http://www.worldcoalition.org/media/resourcecenter/EN-2013WorldDayFactSheet.pdf>.

<sup>56</sup> See *The Death Penalty in the Greater Caribbean: Detailed Fact Sheet*, WORLD COALITION AGAINST THE DEATH PENALTY at 4, available at <http://www.worldcoalition.org/media/resourcecenter/EN-2013WorldDayFactSheet.pdf>.

<sup>57</sup> Compare Stanford Conway, *Will the Five Men on Death Row Be Executed?*, SKNVIBES (Nov. 3, 2011), <http://www.sknvibes.com/news/newsdetails.cfm/48933> (five prisoners on death row) with Jenise Ferlance, *Life as an Inmate at Her Majesty’s Prison*, SKNVIBES (Sept. 10, 2012), <http://m.sknvibes.com/news/newsdetails.cfm/63114> (one prisoner on death row).

<sup>58</sup> *DPP v. Liburd*, [2009] Eastern Caribbean Supreme Court, Suit No. SKBHCR 2009/0007 (St. Kitts & Nevis), applying *Trimmingham v. R* [2009] UKPC 25 (appeal taken from St. Vincent) (“[I]t fell short of being in the category of the rarest of the rare . . . although the manner of the killing was gruesome and violent”).

and Nevis for limiting death sentences to the most extreme cases. The Advocates and the World Coalition against the Death Penalty recommend that Saint Kitts and Nevis take the following measures:

1. **Regularly publish and update statistics on the number of executions, number of death sentences imposed, number of people on death row, number of sentences commuted or otherwise reduced, the identities of all death row inmates, dates of conviction and sentencing, and any other pertinent information.** Saint Kitts and Nevis should make publicly available reliable information regarding the death row population and any changes in its composition. Reliable, easily accessible information would help to ensure compliance with applicable human rights principles.
2. **Amend any prison policies which result in the indefinite isolation of death row inmates.** Saint Kitts and Nevis should immediately reexamine its detention policies for death row and ensure that none of these policies will result in an inmate being confined without social contact for an indefinite period, including during periods in which only one inmate is present on death row.
3. **Implement appropriate training and disciplinary protocols to prevent abuse of inmates, including death row inmates, by prison guards and officials.** Prison guards in Basseterre reportedly bound Charles Elroy Laplace and celebrated a “rum-fueled gallows party” near his cell on the night before his execution took place.<sup>59</sup> Although it is reported that prison staff receive periodic training in human rights, prisoners still complain of harsh treatment from guards.<sup>60</sup> Saint Kitts and Nevis should take appropriate action to prevent such occurrences in the future, including efforts to further improve training or strengthen disciplinary procedures to ensure compliance with standards of appropriate conduct.
4. **Remain within the jurisdiction of the JCPC.** The JCPC helps promote consistency and stability in the judicial system in Saint Kitts and Nevis, and better aligns the country with international standards concerning the death penalty.
5. **Immediately conduct a review of the status of all prisoners on death row and commute to life imprisonment the death sentence of any inmate sentenced more than five years ago.** Saint Kitts and Nevis should immediately ensure that it adheres to the requirements outlined by the Judicial Committee of the Privy Council in *Pratt and Morgan v. Jamaica*, which presumptively forbid as inhuman and degrading the execution of inmates who have remained on death row for more than five years.
6. **Impose a moratorium on the death penalty, effective immediately going forward and for persons currently on death row.** Saint Kitts and Nevis should impose a country-wide moratorium on the death penalty that immediately halts all sentences and executions, with a view toward complete abolition of the death penalty.

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<sup>59</sup> See fn. 17 and accompanying text, *supra*.

<sup>60</sup> UNITED STATES DEPARTMENT OF STATE, SAINT KITTS AND NEVIS 2013 HUMAN RIGHTS REPORT, 2-3 (Mar. 5, 2014), *available at* <http://www.state.gov/documents/organization/220677.pdf>.

7. **Abolish and replace the death penalty with a sentence that is fair, proportionate and respects international human rights standards.** Saint Kitts and Nevis should eliminate the death penalty from its penal code and Constitution and replace it with a sentence that is fair, proportionate and respects international human rights standards. Further, current death sentences should be commuted.

## V. QUESTIONS

1. **During the 2011 Universal Periodic Review the government accepted a recommendation to “Review and investigate the administration of the legal rights of prisoners condemned to death within the judicial system to ensure their access to adequate recourse to appeals and other resources.” What were the results of this investigation, and what actions have been taken to ensure that all prisoners condemned to death have adequate access to the appeals process?**
2. **What additional steps has Saint Kitts and Nevis taken to prevent abuse of inmates, including death row inmates, by prison officials since the last UPR?**
3. **How does Saint Kitts and Nevis reconcile the mandate that all death row inmates have their sentences commuted to life imprisonment after five years with Everson “Blee” Mitcham’s continued detention?**
4. **How does Saint Kitts and Nevis alleviate the effects of prolonged detention and isolation on death row inmates?**