



Jamaica's Compliance with the International Covenant on Civil and Political Rights: Death Penalty and Death Row Conditions

List of Issues Report

Submitted by

The Advocates for Human Rights

a non-governmental organization in special consultative status with ECOSOC
and

The Greater Caribbean for Life

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The Advocates for Human Rights (The Advocates) is a volunteer-based nongovernmental 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.

I. Introduction

1. This List of Issues submission provides an update about death penalty practices in Jamaica and illustrates how death row conditions in Jamaica violate Article 7 of the International Covenant on Civil and Political Rights. The Advocates for Human Rights and the World Coalition Against the Death Penalty submitted a report to the Committee for its 2011 review of Jamaica.¹ Much of the information contained in that report remains relevant today; this report provides an update to that information.

II. Despite a De Facto Moratorium, Jamaica Continues to Embrace the Death Penalty; Conditions on Death Row Violate International Human Rights Standards.

2. The death penalty, while still available, is limited to the following aggravated murder 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.² As a Member State of the Organisation of American States and having adopted the Inter-American Convention on Human Rights, Jamaica is prohibited from adding new capital offenses. The government's report confirms that "[t]he application of the death penalty as a sentence has not been extended to any new legislation or offences in Jamaica."³ The following classes of individuals are exempt from the death penalty: (1) individuals under the age of 18 at the time of the crime;⁴ (2) pregnant women;⁵ (3) the intellectually disabled;⁶ (4) the mentally ill;⁷ (5) the elderly.⁸
3. Jamaica carried out its last execution in February 1988.⁹ There are currently two to six people on death row.¹⁰ Courts continue to sentence people to hang, but in recent years the

¹ The Advocates for Human Rights & the World Coalition Against the Death Penalty, Jamaica, Sept. 2011, http://www.theadvocatesforhumanrights.org/uploads/jamaica_human_rights_committee_iccpr_2011.pdf (last visited Dec. 14, 2015).

² Jamaica Offenses Against the Person Act, arts. 2(1)(a)-(f), 3(1)(a), 3(1A) (2005).

³ Fourth Periodic Report of Jamaica to the Human Rights Committee, 23 March 2015, UN Doc. CCPR/C/JAM/4, ¶ 22.

⁴ Status, Declarations, Reservations, Denunciations, Withdrawals, B-32: Amer. Conv. on Human Rights, Pact of San Jose, Costa Rica, Nov. 22, 1969, available at <http://cidh.oas.org/basicos/english/basic4.amer.conv.ratif.htm> (last visited Dec. 10, 2015).

⁵ Jamaica Offenses Against the Person, art. 3(2) (2005).

⁶ *Id.*, art. 5(1) (2005).

⁷ *Id.*, art. 5(1) (2005).

⁸ Status, Declarations, Reservations, Denunciations, Withdrawals, B-32: Amer. Conv. on Human Rights, Pact of San Jose, Costa Rica, Nov. 22, 1969, available at <http://cidh.oas.org/basicos/english/basic4.amer.conv.ratif.htm>, (last visited Dec. 10, 2015).

⁹ "The Death Penalty in Jamaica," Death Penalty Worldwide, (Mar. 27, 2012) available at www.deathpenaltyworldwide.org/country-search-post.cfm?country=Jamaica (last accessed December 10, 2015); Christopher Serju, *Manchester Custos Reiterates Call for Murderers to Get the Death Penalty*, The Gleaner, Aug. 23, 2015 (last visited Dec. 14, 2015).

¹⁰ See Amnesty International, Death Sentences and Executions in 2014, ACT 50/001/2015, available at <https://www.amnesty.org/en/documents/act50/0001/2015/en/>, (last visited Dec. 10, 2015); see also "The Death Penalty in Jamaica," Death Penalty Worldwide, (Mar. 27, 2012) available at www.deathpenaltyworldwide.org/country-search-post.cfm?country=Jamaica (last accessed December 10, 2015); *Jamaica Hanging by a Thread*, The Gleaner, Apr. 19, 2015, [2](http://jamaica-</p></div><div data-bbox=)

Court of Appeal has converted several death sentences to life imprisonment, concluding their offenses were not the “worst of the worst.”¹¹

a. 2011 Constitutional Amendments Undercut Restrictions on Imposition of the Death Penalty.

4. In 2011, Jamaica amended its constitution to adopt a new Charter of Fundamental Rights and Freedoms, paragraph 8(a) of which appears to void the Privy Council’s ruling in *Pratt & Morgan v. Attorney General of Jamaica*:

The execution of a sentence of death imposed after the commencement of the Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011, on any person for an offence against the law of Jamaica, shall not be held to be inconsistent with, or in contravention of, this section by reason of—

- (a) the length of time which elapses between the date on which the sentence is imposed and the date on which the sentence is executed¹²

As a result, inmates on death row in Jamaica remain at risk of experiencing death row phenomenon.

5. Despite this amendment, which seems to nullify *Pratt & Morgan*, the Jamaican government in its Fourth Periodic Report continues to rely on that decision as justification for its continued refusal to reconsider re-acceding to the Optional Protocol to the Covenant.¹³
6. An additional 2011 constitutional amendment could bar redress for human rights violations occurring on death row. Paragraph 8(b) of the Charter eliminates as a basis for challenging the legality of an execution “the physical conditions or arrangements under which [a] person is detained pending the execution of the sentence by virtue of any law or

gleaner.com/article/commentary/20150419/jamaica-hanging-thread (last visited Dec. 14, 2015) (“There are very few persons on death row in Jamaica - not more than six.”); *Get Rid of the Gallows! Prison Head Bats for Rehabilitation and Not Execution*, The Gleaner, May 17, 2015, <http://jamaica-gleaner.com/article/lead-stories/20150517/get-rid-gallows-prison-head-bats-rehabilitation-and-not-execution> (last visited Dec. 14, 2015) (“At present, two persons are on death row, with one said to be close to the five-year period during which his sentence is expected to be commuted to life imprisonment based on the 1993 Pratt and Morgan ruling from the United Kingdom-based Privy Council.”).

¹¹ Paul Henry, *Lyn’s Killers Lose Murder Appeals*, Jamaica Observer, July 7, 2013, http://www.jamaicaobserver.com/news/Lyn-s-killers-lose-murder-appeals_14634340 (last visited Dec. 14, 2015); Barbara Gayle, *Cop Killer Escapes the Gallows – Appeal Court Sets Aside Death Sentence of Man Found Guilty of Killing ACP Gilbert Kameka*, The Gleaner, Dec. 1, 2013, <http://jamaica-gleaner.com/gleaner/20131201/news/news5.html> (last visited Dec. 14, 2015).

¹² An Act to Amend the Constitution of Jamaica to provide for a Charter of Fundamental Rights and Freedoms and for connected matters, adopted 7 Apr. 2011, para. 2 available at http://www.japarliament.gov.jm/attachments/341_The%20Charter%20of%20Fundamental%20Rights%20and%20Freedoms%20%28Constitutional%20Amendment%29%20Act,%202011.pdf (last visited Dec. 14, 2015).

¹³ Fourth Periodic Report of Jamaica to the Human Rights Committee, 23 March 2015, UN Doc. CCPR/C/JAM/4, ¶ 22.

practice in force immediately before the commencement of the Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011.¹⁴

7. The Inter-American Commission on Human Rights has expressed “deep[] concer[n] that [these] amendment[s] contradict[t] Jamaica’s current human rights obligations in regards to the death penalty and may result in future violations of human rights.”¹⁵

b. Jamaica Lacks Sufficient Due Process Safeguards in Capital Cases.

8. The Jamaican government’s Fourth Periodic Report concedes that the death penalty may be applied only if domestic law ensures “the relevant safeguards such as the observance of due process.”¹⁶ Yet the Inter-American Commission on Human Rights has criticized the administration of justice in Jamaica, noting “consistent reports that the police and judiciary frequently discriminate against persons from socioeconomically disadvantaged sectors.”¹⁷ The Commission expressed “serious[] concer[n] with the limitations on access to competent representation for people arrested or brought before the courts.”¹⁸ The overcrowded facilities discussed in paragraph 10 below impede due process, as “physical conditions make it extremely difficult, if not impossible, for clients and attorneys to conduct their meetings.”¹⁹

c. Jamaica Could Resume Hangings at Any Time.

9. Despite the de facto moratorium on executions since 1988, public support for the practice remains high,²⁰ and there is a risk that Jamaican authorities will resume hangings. Jamaica’s current Prime Minister, Portia Simpson-Miller, has not publicly discussed her views on these topics since taking office for the second time in January 2012,²¹ but she

¹⁴ An Act to Amend the Constitution of Jamaica to provide for a Charter of Fundamental Rights and Freedoms and for connected matters, adopted 7 Apr. 2011, para. 2 available at http://www.japarliament.gov.jm/attachments/341_The%20Charter%20of%20Fundamental%20Rights%20and%20Freedoms%20%28Constitutional%20Amendment%29%20Act,%202011.pdf (last visited Dec. 14, 2015).

¹⁵ Inter-American Commission on Human Rights, Report on the Situation of Human Rights in Jamaica, 10 Aug. 2012, Doc. OEA/Ser.L/V/II.144, ¶ 199, available at <http://www.oas.org/en/iachr/docs/pdf/Jamaica2012eng.pdf> (last visited Dec. 14, 2015).

¹⁶ Fourth Periodic Report of Jamaica to the Human Rights Committee, 23 March 2015, UN Doc. CCPR/C/JAM/4, ¶ 128.

¹⁷ Inter-American Commission on Human Rights, Report on the Situation of Human Rights in Jamaica, 10 Aug. 2012, Doc. OEA/Ser.L/V/II.144, ¶ 80, available at <http://www.oas.org/en/iachr/docs/pdf/Jamaica2012eng.pdf> (last visited Dec. 14, 2015).

¹⁸ *Id.*, ¶ 86.

¹⁹ *Id.*, ¶ 192 (quoting the Jamaican Justice Reform Task System).

²⁰ Prof. Stephen Vasciannie, *Reflections on the Death Penalty*, Jamaica Observer, Sept. 6, 2015, http://www.jamaicaobserver.com/news/Reflections-on-the---death-penalty_19227461 (last visited Dec. 14, 2015); Carolyn Harris, *Constitutional Monarchy: The Canadian-Jamaican Divide*, Globe & Mail, Oct. 24, 2012, <http://www.theglobeandmail.com/globe-debate/constitutional-monarchy-the-canadian-jamaican-divide/article4632840/> (last visited Dec. 14, 2015).

²¹ “Portia Simpson Miller,” Encyclopaedia Britannica, <http://www.britannica.com/biography/Portia-Simpson-Miller>, (last visited Dec. 10, 2015).

has publicly supported Jamaica's withdrawal from the jurisdiction of the Privy Council, which had curtailed executions in Jamaica.²²

d. Death Row Conditions in Jamaica Remain Inhumane.

10. Despite assertions that it has achieved “a system-wide reduction in overcapacity from 100% to 50%,”²³ the Jamaican government has not reduced overcrowding as it affects people on death row. The government's effort at “averaging” overcrowding in its Fourth Periodic Report masks the fact that “medium and low-security prisons are underpopulated, with these facilities housing inmates 43-51 per cent below maximum capacity,” while maximum-security prisons face high levels of overcrowding.²⁴ Death row prisoners are housed at a maximum-security facility—the St. Catherine Adult Correctional Centre in the city of Spanish Town. The prison is remarkably old—it was built by the British in 1655 to house slaves. With additions constructed in the nineteenth and twentieth centuries, it can accommodate 691 prisoners. As of 2015, however, it is filled to twice its capacity.²⁵ This level of overcrowding is unchanged since 2011,²⁶ contrary to the Jamaican government's assertion to the Committee that it has reduced the number of adults in correctional facilities.²⁷

11. The Fourth Periodic Report does not mention any concrete steps the Jamaican government has taken to ensure conditions of detention that respect the dignity of prisoners.²⁸ Rather, the Jamaican government states that, since 2011, the Cabinet appointed a Sub-committee with three working groups to oversee a consultative process regarding, *inter alia*, “the infrastructure and logistics of the detention facilities.”²⁹ The working groups' recommendations, submitted to Parliament in April 2015, call for the closing of some facilities and the construction of others, but it makes no reference to the health and sanitation concerns described in the following paragraphs.³⁰ The only reference to detention conditions is a recommendation that “[t]he Ministry of National Security and its Agencies should promulgate a set of minimum standards for treatment of

²² Chris Summers, *Jamaica's London Appeal Court Dilemma*, BBC News, 3 Aug. 2012, <http://www.bbc.com/news/world-18668861> (last visited Dec. 14, 2015).

²³ Fourth Periodic Report of Jamaica to the Human Rights Committee, 23 March 2015, UN Doc. CCPR/C/JAM/4, ¶ 37.

²⁴ Jaevion Nelson, *The Degrading and Inhumane Treatment in Our Prisons*, The Gleaner, Apr. 23, 2015, <http://jamaica-gleaner.com/article/commentary/20150423/degrading-and-inhumane-treatment-our-prisons> (last visited Dec. 14, 2015).

²⁵ “Free Prisoners from Dungeons of Torture,” The Gleaner, Oct. 21, 2015, available at <http://jamaica-gleaner.com/article/commentary/20151012/free-prisoners-dungeons-torture> (last visited Dec. 10, 2015).

²⁶ The Advocates for Human Rights & the World Coalition Against the Death Penalty, Jamaica, Sept. 2011, at 2, http://www.theadvocatesforhumanrights.org/uploads/jamaica_human_rights_committee_iccpr_2011.pdf (last visited Dec. 14, 2015).

²⁷ Fourth Periodic Report of Jamaica to the Human Rights Committee, 23 March 2015, UN Doc. CCPR/C/JAM/4, ¶ 180.

²⁸ *Id.*, ¶¶ 177-178.

²⁹ *Id.*, ¶ 177.

³⁰ Ministry Paper, Proposals of Cabinet Sub-Committee Convened to Review the Detention System (Police Lock-Ups and Correctional Facilities), 28 Apr. 2015, available at http://japarliament.gov.jm/attachments/article/1475/1475_2015%20Ministry%20Paper%2089.pdf (last visited Dec. 14, 2015).

detainees to be reviewed annually, and provide the necessary resources to maintain these standards.”³¹

12. Moreover, the Fourth Periodic Report concedes that “[t]he human and financial resources available to supervise and operate lock-ups and prisons are woefully inadequate,” but the Sub-committee working group recommendations do nothing to address these “significant challenges.”³²
13. The U.S. State Department has recognized that Jamaican prisons are overcrowded, have poor sanitary conditions, and lack adequate medical care for inmates.³³ Prisoners are required to provide for all of their own basic health and hygiene needs while in custody, including clothes and soap.³⁴ Medical care in the prisons is subpar, with only three full-time doctors and one nurse serving prisoners throughout the medical care system.³⁵ Food is meager and inmates’ dietary restrictions are rarely met, with most meals consisting of rice, chicken neck, and slices of bread.³⁶
14. An Inter-American Commission delegation visited the building which houses death row inmates, observing that the cells have “ragged mattresses on the floor, no electrical light or toilets inside them. The inmates use buckets when they are locked down, or the outside toilets which are covered with flies and cleaned infrequently. Death row is a very dark area, with a strong odor from the unsanitary conditions and the extreme heat. The IACHR finds that the conditions of detention for persons convicted to death in Jamaica are in serious violation of the right to humane treatment.”³⁷
15. Allegations of guards’ abuse of prisoners continue, but a specialized department investigates all reports of abuse by prison officers.³⁸ Prisoners can also file complaints to the Public Defender’s Office. Despite these improvements, a high turnover rate in the post of Commissioner in the Department of Correctional Services—three in a span of a mere fifteen months—has hindered administrative reforms.³⁹
16. Additionally, the United Kingdom will be contributing about \$38 million to help build a new prison in Jamaica, scheduled to open in 2020. However, the new prison will not fully

³¹ *Id.*, ¶ 3.3(l).

³² Fourth Periodic Report of Jamaica to the Human Rights Committee, 23 March 2015, UN Doc. CCPR/C/JAM/4, ¶ 178.

³³ United States Department of State. “Jamaica 2014 Human Rights Report.” July 2, 2015.

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dclid=236700>, Last visited Dec. 10, 2015.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ Inter-American Commission on Human Rights, Report on the Situation of Human Rights in Jamaica, 10 Aug. 2012, Doc. OEA/Ser.L/V/II.144, ¶ 201, available at <http://www.oas.org/en/iachr/docs/pdf/Jamaica2012eng.pdf> (last visited Dec. 14, 2015).

³⁸ United States Department of State. “Jamaica 2014 Human Rights Report.” July 2, 2015.

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dclid=236700>, Last visited Dec. 10, 2015.

³⁹ *Id.*

alleviate prison overcrowding, because up to 600 Jamaican nationals imprisoned in the United Kingdom will likely be deported to this new 1500-person facility.⁴⁰

III. Suggested questions

17. The Advocates for Human Rights and the Greater Caribbean for Life respectfully suggest that the Committee request the following information from the Jamaican government in the Committee's List of Issues:

- How many people are currently on death row? What are the crimes for which they were convicted? How long have they been imprisoned on death row?
- What measures does the government take to ensure the adequacy of the quality of legal representation for people accused of capital offences?
- What concrete steps is the government taking to reduce overcrowding at the St. Catherine Adult Correctional Centre and to ensure that adequate medical care and food are available to inmates, including persons on death row?
- Given the conflict between the Privy Council's ruling in *Pratt & Morgan v. Attorney General of Jamaica* and paragraph 8(a) of the 2011 Charter of Fundamental Rights and Freedoms, do people on death row for more than five years have their death sentences commuted to life terms? If so, is that process automatic? And if *Pratt & Morgan* is no longer good law in Jamaica, why does Jamaica continue to refuse to reconsider its decision not to re-accede to the first Optional Protocol to the Covenant?
- What is the timeline for the Ministry of National Security and its Agencies to promulgate a set of minimum standards for treatment of detainees, as recommended by the third working group of the Sub-committee referenced in paragraph 177 of the Fourth Periodic Report, and to establish policies and procedures to ensure that those standards are enforced?
- How many complaints has the Office of the Public Defender received concerning detention conditions and abuses by guards on death row? What has been the nature of those complaints, and how have they been addressed?

⁴⁰ Dockterman, Eliana. "U.K. Building Prison in Jamaica for Foreign Criminals," TIME (Sept. 29, 20105), *available at* <http://time.com/4055146/uk-jamaica-prison/>, (last visited Dec. 10, 2015).