CCJ rules that the mandatory death penalty in Barbados is unconstitutional

On July 2, 2018, GCL issued the following Media Release on the above issue:

The Greater Caribbean for Life (GCL) welcomes the judgment by the Caribbean Court of Justice (CCJ), Barbados' highest appellate Court, that the mandatory death penalty as stated in section two of the Offences Against the Persons Act (OAPA), Ch.141, for persons convicted of murder in Barbados is unconstitutional.

Convictions under section 2 of the OAPA automatically attract mandatory death sentences without any consideration of the mitigating factors in their cases or their individual circumstances.

The CCJ judgment, which was delivered on Wed 27 June, 2018, related to the consolidated appeal cases of Jabari Sensimania Nervais and Dwayne Omar Severin, who had been convicted of murder. They appealed their murder convictions and the constitutionality of the mandatory death sentence for murder in Barbados.

“Returning violence for violence multiplies violence, adding deeper darkness to a night already devoid of stars”

Martin Luther King Jr.
Mandatory death penalty, continued...

Their appeals against their convictions were dismissed and the CCJ ordered that they be brought before the Supreme Court of Barbados for re-sentencing.

In its judgment, the CCJ stated that it had considered the state of the mandatory death penalty in Barbados for murder and found that it was indisputable that the nation, through its actions, had acknowledged that it had an obligation to remove such mandatory sentences imposed by section 2 of OAPA.

Barbados had also given undertakings to the CCJ and the Inter American Court of Human Rights to rectify the mandatory sentence.

The CCJ held that section 11 of the Constitution, which gives the right to protection of the law, was enforceable. The CCJ found that the mandatory death penalty breached that right as it deprived a court of the opportunity to exercise the quintessential judicial function of tailoring the punishment to fit the crime.

The CCJ stated that savings clauses, which had 'saved' the mandatory death penalty in Barbados, should be condemned. The same savings clause exists in the Constitution of Trinidad and Tobago, and with this CCJ judgment, Trinidad and Tobago remains the only country in the Caribbean that imposes the mandatory death penalty.

GCL invites the government of Trinidad and Tobago to approve the necessary reforms to immediately overrule the mandatory death penalty.

Ms. Leela Ramdeen, GCL's Chair, says:

“Today...there is an increasing awareness that the dignity of the person is not lost even after the commission of very serious crimes. In addition, a new understanding has emerged of the significance of penal sanctions imposed by the state. Lastly, more effective systems of detention have been developed, which ensure the due protection of citizens but, at the same time, do not definitively deprive the guilty of the possibility of redemption...the death penalty is inadmissible because it is an attack on the inviolability and dignity of the...
person, and {the Church} works with determination for its abolition worldwide.”

Ms. Leela Ramdeen, Chair of GCL says:

“To date 141 countries have abolished the death penalty in law or practice. As Ivan Šimonović, UN Assistant Secretary-General for Human Rights, stated in 2014: ‘As long as the death penalty exists, there will be a need to advocate against it.’ GCL will continue to be a tireless advocate, not only for the abolition of the death penalty in the Caribbean region and worldwide, but also for effective systems to be put in place to reduce crime and to support the victims of crime. States have a duty to protect the common good, but we agree with Pope Francis that they can do so without resorting to lethal means. ALL lives matter!”

GCL begins new joint EU funded project in Barbados and the Eastern Caribbean States

GCL has joined forces with The Death Penalty Project, the World Coalition against the Death Penalty, the University of the West Indies, Cave Hill and the Saint Vincent and the Grenadines Human Rights Association on a European Union (EU) funded Project to build civil society engagement on the issue of the death penalty in Barbados and the Eastern Caribbean States. The three-year project, which will run from 2018-2021, entitled: “Building a Platform for Abolition: Strengthening the Anti-Death Penalty Movement in Barbados and the Eastern Caribbean” will be implemented across seven retentionist states: Antigua & Barbuda, Barbados, Dominica, Grenada, Saint Kitts & Nevis, Saint Lucia, and St Vincent and the Grenadines.

The project is one of nine EU-funded civil society initiatives currently being carried out across the target countries. Whilst it is one of two projects to have been awarded funding under the European Instrument for Democracy and Human Rights (EIDHR), a further seven initiatives are currently being implemented through the EU’s Civil Society Organisations Programme (CSO).

Through a range of outreach, research, and advocacy activities, the project will work to educate and inform opinion leaders and the public about the death penalty as a human rights issue and increase the participation and advocacy capacity of civil society organisations working on the issue of the death penalty in the target countries. In doing so it will help to build a strong civil society movement for the abolition of the death penalty.

The Project has four main strands of work:

1. Create tools for education, awareness raising campaigns, and advocacy
2. Advocacy for reform of the death penalty
3. Conduct education and awareness raising campaigns
4. Capacity building: strengthening local civil society

Members of the panel at the meeting to discuss the abolition of the death penalty in Barbados and the Eastern Caribbean States.

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GCL believes that society has a right to protect itself from persons who commit heinous crimes, and that offenders must be held accountable. However, we are convinced that non-lethal means are sufficient to defend and protect society from offenders.

We reject the notion that capital punishment will act as a deterrent, reduce crime, or foster respect for life in communities. It is inhumane and degrading. The fact that 141 countries in the world have abolished capital punishment in law or practice indicates a global trend, and demonstrates that the death penalty has no place in the 21st century. We will strive to encourage Governments in the target countries to move towards full abolition of the death penalty.

June 22-23, 2018, abolitionists from six Eastern Caribbean countries came together for a meeting at the Faculty of Law, University of the West Indies, Cave Hill, Barbados. This pre-action meeting was the official launch of this EU funded project seeking to build a platform for abolition in Barbados and the Eastern Caribbean States, and helped to set the tone for the road ahead over the next three years.

A keynote address was provided by Mr Ruggles Ferguson, senior counsel in Grenada. Participants also heard from project partners including Dr David Berry, UWI, Ms Leela Ramdeen, GCL’s Chair, Mr Saul Lehrfreund (Co-Executive Director) and Ms Annette So (Deputy Director) of The Death Penalty Project. Mr Luc Patzelt, Programme Manager Security, Human Rights and Civil Society, provided remarks on behalf of the EU delegation.

From left: Ramon Raveneau (St. Lucia), Cara Shillingford (Dominica), Angelina Sookoo-Bobb (St. Kitts) and Ruggles Ferguson (Grenada).

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The following are extracts from Mr Ferguson’s keynote address entitled: “The Evils & Futility of Capital Punishment”

“Many go to the gallows protesting their innocence. They may or may not be innocent. Were they victims of lying or genuinely mistaken witnesses; of bad police investigation; of faulty expert testimony; of badly selected or sleepy jurors or of jurors highly influenced by prejudicial pre-trial publicity; of judges honestly, but mistakenly misdirecting juries on important points of law; of ineffective representation from inexperienced or incompetent counsel; of overzealous prosecutors withholding material evidence favourable to the defence and concerned solely with securing a guilty verdict and not with the justice of the case? And the list goes on and on...

We may never know whether a protesting convict was innocent or not. What we do know, however, is that once executed he or she will never benefit from future developments which may establish that an innocent man or woman was wrongly convicted. No amount of regrets will bring back a life already taken.

Death is permanent and irreversible. Such penalty neither takes into account possible human errors or miscarriages of justice nor the possibility of rehabilitating the offender to become a law-abiding and productive citizen willing and able to pay his dues to society. It excites the passion for revenge and retribution. It plays on the public’s emotion, invoking the spirit of an ‘eye-for-an eye’.

Life, on the other hand, brings hope and the possibility of transformation and reconciliation. It allows for reformation and rehabilitation of the offender. It offers the opportunity to those protesting their innocence to clear their names with the passage of time and accumulation of resources. It allows them to be the actual beneficiaries of any confessions from the real killers or new evidence coming to light, whether DNA or otherwise.

Let the public know of the benefits of reconciliation and rehabilitation; of the evils of revenge and retribution; and of the futility of pursuing capital punishment as a method of solving crime.

We need to remind the public that capital punishment represents an archaic and barbaric system of punishment, reminiscent of the dark days of slavery, with the poor and dispossessed always being the main victims. Inequality inevitably leads to injustice.”

Leela Ramdeen, Chair of GCL.

Participants gather around the Project Poster

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Get Involved

GCL are seeking to identify individuals, organisations and groups based in the target countries - Antigua & Barbuda, Barbados, Dominica, Grenada, St Kitts & Nevis, St Lucia, and St Vincent and the Grenadines - who are interested in being involved in the project. Financial assistance will be made available each year for organisations seeking to hold events or activities to raise awareness and promote the abolition of the death penalty.

For further information or if you wish to be involved in any way, please write to GCL at gclvdp@gmail.com.

Appointment of Ms. Nancy Anderson as Project Manager

GCL welcomes Ms. Nancy Anderson, Attorney-at-Law, who joined GCL as Project Manager in June 2018. Nancy lives in Jamaica and has a wide range of expertise. She has been working in the field of human rights for many years and is committed to working towards the abolition of the death penalty in the Caribbean region and worldwide. She will certainly be an asset to GCL as we embark on a 3-year EU funded Project in Barbados and the Eastern Caribbean States.

Resources for the 16th World Day against the Death Penalty: Theme for World Day - Living conditions on death row

On 10 October 2018, the 16th World Day against the Death Penalty will focus on: Living conditions on death row. GCL is a member of the World Coalition against the Death Penalty (WCADP), and agrees with this organisation that there should be dignity for all.

As WCADP states: “The conditions of detention of the people sentenced to death might differ from one country to another, but affect us all. From solitary confinement in the United States, to the overcrowded prisons in several countries in Africa and Asia, the living conditions for people sentenced tend to
dehumanize them and take away their dignity as individuals. In addition, death row prisoners have very little contact with their family and lawyers, as access to death row is often very limited. The conditions of detention affect not only the persons sentenced to death but also their families, relatives and legal teams.”

Inter alia, World Day aims at raising awareness of the inhumane living conditions of people sentenced to death. The conditions of detention of a person sentenced to death might differ from one country to another, but they affect us all.

Death row prisoners will frequently cease to be treated as 'human beings'. They have very little contact with their families, religious advisors and lawyers, as access to deathrow is often very limited. Therefore, the conditions of detention affect not only the person sentenced to death but also their families, relatives and legal teams.

We urge GCL Members to access, disseminate, and use the resources produced by WCADP for World Day – see:  
http://www.worldcoalition.org/worldday.html

The resources include:
* A leaflet
* Facts and Figures 2018
* A Poster
* A Mobilisation Kit – including things that you can do to observe World Day
* The report of World Day 2017
* A detailed factsheet on living conditions on death row
* Factsheet for Prison Staff
* Factsheet for Lawyers
* Factsheet on how to conduct a prison visit

The Death Penalty Worldwide
It is important to note progress towards global abolition to date:
• 107 countries have abolished the death penalty for all crimes
• 7 countries have abolished the death penalty for ordinary crimes
• 28 countries are abolitionist in practice
• 56 countries are retentionist
• 23 countries carried out executions in 2017
• In 2017, the top five executioners were China, Iran, Saudi Arabia, Iraq and Pakistan.

Each year the World Coalition Against the Death Penalty chooses a theme for World Day Against the Death Penalty. On 10 October 2013, the 11th World Day Against the Death Penalty was dedicated to the Greater Caribbean: our Region. While there are few executions taking place in Caribbean countries, a core of countries in the Region remain strongly opposed to abolition.

The Death Penalty in the Caribbean
The Greater Caribbean is composed of 25 countries:
- 11 countries are abolitionist in law: Colombi, Costa Rica, El Salvador (for ordinary crimes only), Haiti, Honduras, Mexico, Nicaragua, Panama, Dominican Republic, Venezuela and Suriname.
- 1 country is considered abolitionist in practice: Grenada
- 13 countries are retentionist: Antigua and Barbuda, Bahamas, Barbados, Belize, Cuba, Dominica, Guatemala, Guyana, Jamaica, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, and Trinidad and Tobago.
Many countries in the Caribbean region continue to retain the death penalty as part of their criminal justice system. The use of capital punishment, however, has dramatically declined in these retentionist countries, highlighting an apparent disparity between policy and practice. The last execution in the Caribbean took place in December 2008 in St. Kitts and Nevis when Charles Elroy Laplace was hanged. Death row is empty in Antigua and Barbuda, Dominica, and St Lucia. Very few countries in the region have imposed death sentences since 2008.

However, at the international level, Caribbean votes against the UN General Assembly resolutions on a moratorium on the use of the death penalty represent more than a quarter 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.

The Inter-American Court of Human Rights, the Caribbean Court of Justice, the Eastern Caribbean Supreme Court, the UN Human Rights Committee, and the Judicial Committee of the Privy Council (the highest court of appeal for many Commonwealth countries) have all taken positive steps to restrict and reduce the application of the death penalty in practice across the Caribbean. Together, these bodies have successfully limited the amount of time a person could spend on death row and have abolished the mandatory death penalty. Trinidad and Tobago is the only country continuing to apply the mandatory death penalty for murder. Guyana abolished the mandatory death penalty for murder in 2010. The death penalty, however, remains applicable for certain categories of murder.
GCL is recruiting new members!

Cultural and social changes are long term processes. Individuals and organisations can contribute incremental change in our countries and promote the establishment of more just societies without resorting to the death penalty. GCL believes that we can all speak much louder if we speak with one voice.

Therefore, we are recruiting new members from the Greater Caribbean region to join our organization. You, your friends, and/or organisations wish to join GCL, please write to gclvdp@gmail.com.

ORGANIZATIONS
- Amnistía Internacional Puerto Rico
- Bahamas Bar Association
- Bahamas Human Rights Network
- Cátedra UNESCO de Educación Por la Paz (Puerto Rico)
- Catholic Commission for Social Justice (Trinidad and Tobago)
- Comisión Cubana de Derechos Humanos Greaves y Reconciliación Nacional, Cuba
- D'Infinite (Dominica)
- Frazer, Housy & Yearwood, Attorneys at Law (Guyana) - sfraser@fhylaw-gv.com
- Grupo de Apoyo Mutuo (Guatemala)
- Human Rights Commission of Belize
- Human Rights for All (Antigua and Barbuda)
- Jamaica Independent Council for Human Rights
- Main Parade Chambers (Belize)
- Movimiento Pro Justicia (Guatemala)
- Puerto Rico Coalition Against Death Penalty
- St. Vincent and the Grenadines Human Rights Association

INDIVIDUALS
- Rev. Peter Espeut, Jamaica
- Madeeta Branche
- Dr. Anthony Nicholas Carter (Barbados)
- Brian Clarke (Barbados)
- Joey Leon Fox (Bahamas)
- Mary Frances (St. Lucia)
- Rev. Gwendolyn Ruth (Trinidad)
- Melinda Janki (Guyana-Justice Institute)
- Janet P. Kemp (Bahamas)
- James McGregor Millington (Barbados)
- Antoinette Moore, Human Rights Commission of Belize
- Nefaste Morris (Guyana)
- Ayana Nelson (Grenada)
- Jackie Leanna Pinder (Bahamas)
- Crystal Annastacy Robinson (Guyana)
- Fernando Saavedra (Mexico)
- Godfrey P. Smith, Marine Chambers (Belize)
- Selwyn Strachan (Grenada)
- Shellen Collins (Guyana)
- Carmen Aida Ibarra
- Cara Shillingford (Dominica)
- Angelina Sookoo-Bobb (St. Kitts)
- Nancy Anderson (Jamaica)

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