



Cornell Law School  
Cornell Center on the Death Penalty Worldwide



## **Jamaica's Compliance with The Convention on the Elimination of All Forms of Discrimination against Women: The Death Penalty**

**Submitted by The Advocates for Human Rights,**  
a non-governmental organization in special consultative status with ECOSOC since 1996,  
**The Greater Caribbean for Life,**  
**The Cornell Center on the Death Penalty Worldwide,**  
and  
**The World Coalition Against the Death Penalty**

**for the 86th Session of the Convention on the Elimination of All Forms of Discrimination  
against Women  
9 October – 27 October 2023**

**Submitted 11 September 2023**

**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 that was established in Port of Spain, Trinidad on October 2, 2013 to unite Caribbean abolitionist organizations and individuals. The region comprises 25 countries, including 13 Caribbean islands, the Caribbean states of South America (Columbia, Venezuela, and the Guianas), the countries of Central America and Mexico, in addition to Puerto Rico, and the US, British, Dutch and French Caribbean territories. In the struggle against the death penalty, GCL reflects the greatest respect to the right to life. GCL has members in 16 Caribbean States and territories. 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 in Madrid on the Death Penalty in the Greater Caribbean. The Conference was organized by the Community of Sant'Edigio. GCL was constituted with the purpose of campaigning for and working towards the permanent abolition of the death penalty in the Greater Caribbean; supporting Caribbean abolitionist activists and organizations in this region; and collaborating with the international abolitionist community.

**The Cornell Center on the Death Penalty Worldwide** is a US-based research, advocacy, and training center focused on capital punishment and international law. It publishes reports and manuals on death penalty issues, provides transparent data on death penalty laws and practices around the world, trains capital lawyers in best practices, and engages in targeted advocacy and litigation. Its staff and faculty advisors have collectively spent more than eight decades representing hundreds of prisoners facing the death penalty. In 2019 it was awarded the World Justice Challenge Award in recognition for its work on behalf of death-sentenced prisoners in Malawi.

**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. The retention of the death penalty in Jamaica continues to put women at risk of being sentenced to death. Issues pervasive in Jamaica's legal system as a whole, including failure to increase women's literacy of rights and failure to provide free legal aid, put women at risk of facing violations of their rights in potential capital cases. Crimes committed in the context of gender-based violence against women, and Jamaican courts' failure to include gender-based violence as a mitigating factor in capital cases, also puts women victim-survivors of violence at risk of facing the death penalty.
2. While the Jamaican Government's last execution occurred in February 1988,<sup>1</sup> the death penalty by hanging remains as an available penalty for the following offences: 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.<sup>2</sup> Persons convicted of murder under the aforementioned circumstances are faced with either the death penalty or life imprisonment. Judges can take mitigating circumstances into account. In Jamaica, hanging is the method used for state executions.<sup>3</sup>
3. As of 2022, there are no people on death row.<sup>4</sup> Public support for the death penalty remains high in Jamaica, however,<sup>5</sup> and executions are prevented by legal and practical hurdles rather than by an official moratorium. *Pratt and Morgan v The Attorney General for Jamaica and Ors* establishes that where the prisoners are on death row for over 5 years, their sentences are automatically commuted to life.<sup>6</sup> Subsequent cases established that the 5 year rule is not strict but a guideline, and so delays of even 3 years can warrant a commuted sentence.<sup>7</sup> Additionally, Jamaica has not acceded to the Second Optional Protocol to the ICCPR.<sup>8</sup>
4. Jamaica fails to ensure that women have equal and adequate access to justice, which increases the risk that courts will hand down death sentences to women. A pervasive lack of legal literacy

---

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

<sup>2</sup> Jamaica Offences Against the Person Act, arts. 2(1)(a)-(f), 3(1)(a), 3(1A) (2017).

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

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

<sup>5</sup> "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).

<sup>6</sup> The Death Penalty Project, Earl Pratt and Ivan Morgan, Available at <https://deathpenaltyproject.org/story/earl-pratt-and-ivan-morgan/>; Email communication from Greater Caribbean for Life to The Advocates for Human Rights, September 11 2023.

<sup>7</sup> Email Communication from Greater Caribbean for Life to The Advocates for Human Rights, September 11, 2023.

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

amongst Jamaican women has facilitated structural inequity for women within Jamaica's legal system.<sup>9</sup> This issue disproportionately affects disabled and rural Jamaican women.<sup>10</sup>

5. Many women without sufficient means are unable to access legal aid. The Jamaican economic system has rendered women more likely to lack financial agency than men.<sup>11</sup> In these cases, indigent women do not always receive free legal counsel and are left without access to legal counsel.
6. Crimes committed in the context of domestic abuse may also make women eligible for the death penalty.<sup>12</sup> Many women in Jamaica are subject to gender-based violence without access to justice, including longstanding domestic violence. The lack of resources to prevent this violence may lead women to commit acts punishable by the death penalty as a last resort of self-defense.
7. Sexual abuse and rape are pervasive in Jamaican prisons.<sup>13</sup> If women facing this abuse in Jamaican prisons retaliate against the perpetrators with physical violence that leads to their death, the women can be sentenced to death for murder committed against security forces or other civil servants.<sup>14</sup>

### **Jamaica fails to uphold its obligations under the Convention on the Elimination of All Forms of Discrimination against Women**

#### **I. Gaps in addressing women's access to justice, including promoting literacy of rights and providing free legal aid for women, puts women at risk of facing the death penalty (List of Issues paragraph 2-3).**

##### ***Women's Access to Justice & Literacy of Rights***

8. In its List of Issues in relation to the eighth periodic report of Jamaica (LOI), The Committee requested updated information on how the State Party is working to promote widespread awareness of rights and legal literacy for women throughout Jamaica.<sup>15</sup>

---

<sup>9</sup> Open Government Partnership, *Jamaica Open Government Partnership: National Action Plan 2021 - 2023*, (Washington D.C., January, 2022).

<sup>10</sup> The Convention on the Elimination of All Forms of Discrimination Against Women, *List of issues and questions in relation to the eighth periodic report of Jamaica*, (November 17, 2020), U.N. Doc. CEDAW/C/JAM/Q/8, ¶ 2.

<sup>11</sup> The Convention on the Elimination of All Forms of Discrimination Against Women, *Concluding observations: Jamaica*, (August 6, 2012), U.N. Doc. CEDAW/C/JAM/CO/6-7, ¶ 27.

<sup>12</sup> Cornell Center on the Death Penalty Worldwide, *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty* (Sept. 4, 2018). Available online at <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

<sup>13</sup> "The Death Penalty in Jamaica," Death Penalty Worldwide, <https://deathpenaltyworldwide.org/database/#/results/country?id=35#fn-21422-H48L78W237657> (last visited Apr. 1, 2023).

<sup>14</sup> "The Death Penalty in Jamaica," Death Penalty Worldwide, <https://deathpenaltyworldwide.org/database/#/results/country?id=35#fn-21422-H48L78W237657> (last visited Apr. 1, 2023).

<sup>15</sup> The Convention on the Elimination of All Forms of Discrimination Against Women, *List of issues and questions in relation to the eighth periodic report of Jamaica*, (November 17, 2020), U.N. Doc. CEDAW/C/JAM/Q/8, ¶ 2.

9. Jamaica's 2020 State Party report highlighted the 530 attorneys appointed to the Legal Aid Council to promote effective access to justice for women.<sup>16</sup> The Ministry of Justice commissioned mobile clinics so that these 530 Legal Aid Councilors could serve women in rural communities.<sup>17</sup> The State Party report also called attention to trainings offered to women, primarily in rural areas, that informed them of their legal rights and legislative protections.<sup>18</sup>
10. Women in Jamaica are not afforded comprehensive access to justice, putting women at risk of being sentenced to death without fully exhausting all legal options available to them.<sup>19</sup> This injustice is a product of minimal and inaccessible resources as well as widespread unfamiliarity with one's own legal rights. Global trends show that women sentenced to death face intersectional discrimination. According to Cornell's 2018 report, most women on death row come from backgrounds of severe socio-economic deprivation and many are illiterate, which can reinforce unequal access to effective legal representation.<sup>20</sup> Globally, women on death row are more likely to be illiterate and unaware of their legal rights.<sup>21</sup> Illiteracy and lack of education among poor women leave them more vulnerable to discrimination, coercion, and exploitation.<sup>22</sup> This intersectional discrimination exacerbates the risk that a woman charged with a capital crime will be subjected to an unfair trial. Women with disabilities face these risks at a compounded rate. In Jamaica, retention of the death penalty puts women who face intersectional discrimination disproportionately at risk of a death sentence.

#### ***Availability of Council for Indigent Women***

11. In its List of Issues in relation to the eighth periodic report of Jamaica (LOI), The Committee requested updated information on Jamaica's efforts to ensure that women without sufficient financial means receive free legal services.<sup>23</sup>
12. The State Party report mentioned that when it is "necessary and possible" the Office of the Public Defender will provide financial resources to cover the cost of legal fees as a mechanism

---

<sup>16</sup> The Convention on the Elimination of All Forms of Discrimination Against Women, *Eighth periodic report submitted by Jamaica under article 18 of the Convention, due in 2016*, (September 18, 2020), U.N. Doc. CEDAW/C/JAM/8, ¶ 29.

<sup>17</sup> The Convention on the Elimination of All Forms of Discrimination Against Women, *Eighth periodic report submitted by Jamaica under article 18 of the Convention, due in 2016*, (September 18, 2020), U.N. Doc. CEDAW/C/JAM/8, ¶ 29.

<sup>18</sup> The Convention on the Elimination of All Forms of Discrimination Against Women, *Eighth periodic report submitted by Jamaica under article 18 of the Convention, due in 2016*, (September 18, 2020), U.N. Doc. CEDAW/C/JAM/8, ¶ 116.

<sup>19</sup> Open Government Partnership, *Jamaica Open Government Partnership: National Action Plan 2021 - 2023*, (Washington D.C., January, 2022).

<sup>20</sup> Cornell Center on the Death Penalty Worldwide, *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty* (Sept. 4, 2018), 3. Available online at <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

<sup>21</sup> Cornell Center on the Death Penalty Worldwide, *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty* (Sept. 4, 2018), 3. Available online at <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

<sup>22</sup> Cornell Center on the Death Penalty Worldwide, *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty* (Sept. 4, 2018), 3. Available online at <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

<sup>23</sup> The Convention on the Elimination of All Forms of Discrimination Against Women, *List of issues and questions in relation to the eighth periodic report of Jamaica*, (November 17, 2020), U.N. Doc. CEDAW/C/JAM/Q/8, ¶ 3.

to ensure better access to justice for indigent individuals.<sup>24</sup> Jamaica's 2020 State Party report also mentioned the expansion of the Legal Aid Council and its mobile units that offered legal services to underserved communities.<sup>25</sup>

13. Poverty amongst Jamaican women, compounded with the State's unreliable council for indigent women, puts women at risk of being sentenced to death. Legal aid is not consistently and reliably available to indigent defendants in Jamaica. This issue is disproportionately experienced by women in Jamaica since institutional barriers have afforded them less financial autonomy than their male counterparts.<sup>26</sup> Although state agencies are tasked with providing legal aid to indigent defendants, the State lacks sufficient resources to ensure all legal needs are met. In many cases, indigent individuals are unrepresented at trial.<sup>27</sup> Even when the state does provide legal aid to indigent defendants, they cannot always afford the council which forces attorneys to collect legal fees from indigent defendants themselves.<sup>28</sup>

## **II. Victims of gender-based violence remain at risk of committing death-eligible offences (List of Issues paragraph 8-9).**

### ***Domestic Violence***

14. In its List of Issues in relation to the eighth periodic report of Jamaica (LOI), The Committee requested updated information on Jamaica's amendments to the Sexual Offences Act as well as the Domestic Violence Act.<sup>29</sup> Additionally, The Committee called for information about the trainings regarding domestic violence provided to judicial officers such as; judges, lawyers, and the police.<sup>30</sup> Finally, The Committee called for an update about the review of the marital rape legislation.<sup>31</sup>
15. The State Party report mentioned that Jamaica established a Joint Select Committee to reevaluate the Domestic Violence Act as to strengthen protections for the most vulnerable groups and minimize cases of domestic violence.<sup>32</sup> The State Party expressed their support of

---

<sup>24</sup> The Convention on the Elimination of All Forms of Discrimination Against Women, *Eighth periodic report submitted by Jamaica under article 18 of the Convention, due in 2016*, (September 18, 2020), U.N. Doc. CEDAW/C/JAM/8, ¶ 31.

<sup>25</sup> The Convention on the Elimination of All Forms of Discrimination Against Women, *Eighth periodic report submitted by Jamaica under article 18 of the Convention, due in 2016*, (September 18, 2020), U.N. Doc. CEDAW/C/JAM/8, ¶ 29.

<sup>26</sup> The Convention on the Elimination of All Forms of Discrimination Against Women, *Concluding observations: Jamaica*, (August 6, 2012), U.N. Doc. CEDAW/C/JAM/CO/6-7, ¶ 27.

<sup>27</sup> Marmolejo, Lina Maria. *The Pains of Pretrial Detention in the Caribbean: Exploring Processes and Outcomes*. Diss. George Mason University, 2022.

<sup>28</sup> "The Death Penalty in Jamaica," Death Penalty Worldwide, <https://deathpenaltyworldwide.org/database/#/results/country?id=35#fn-21422-H48L78W237657> (last visited Apr. 1, 2023).

<sup>29</sup> The Convention on the Elimination of All Forms of Discrimination Against Women, *List of issues and questions in relation to the eighth periodic report of Jamaica*, (November 17, 2020), U.N. Doc. CEDAW/C/JAM/Q/8, ¶ 8.

<sup>30</sup> The Convention on the Elimination of All Forms of Discrimination Against Women, *List of issues and questions in relation to the eighth periodic report of Jamaica*, (November 17, 2020), U.N. Doc. CEDAW/C/JAM/Q/8, ¶ 8.

<sup>31</sup> The Convention on the Elimination of All Forms of Discrimination Against Women, *List of issues and questions in relation to the eighth periodic report of Jamaica*, (November 17, 2020), U.N. Doc. CEDAW/C/JAM/Q/8, ¶ 8.

<sup>32</sup> The Convention on the Elimination of All Forms of Discrimination Against Women, *Eighth periodic report submitted by Jamaica under article 18 of the Convention, due in 2016*, (September 18, 2020), U.N. Doc. CEDAW/C/JAM/8, ¶ 54.

the Committee's previous recommendation that all marital rape be criminalized.<sup>33</sup> The new Sexual Offences Act officially criminalized all marital rape.<sup>34</sup>

16. One out of every four Jamaican women have been the victims of domestic violence in their lives.<sup>35</sup> Incidences of domestic violence have increased meaningfully since the start of the COVID-19 pandemic.<sup>36</sup> In fact, the Ministry of National Security reported that cases of domestic violence have risen by nearly 100 percent since 2017.<sup>37</sup> The prevalence of domestic violence in conjunction with women's inability to access justice through the law fosters an environment in which they are more likely to retaliate with violence. This phenomenon renders women susceptible to committing crimes eligible for the death penalty. Women may face the death penalty if they commit two murders.<sup>38</sup> This disproportionately targets incarcerated women who may be in prison for committing a first murder. The violent, abusive, and neglectful conditions within Jamaican prisons facilitate an environment in which women are more likely to commit murder.
17. In a groundbreaking 2018 study, the Cornell Center on the Death Penalty Worldwide found that, in the global context, women are more vulnerable and most likely to be sentenced to death for criminal offenses committed within the context of gender-based violence<sup>39</sup> and manipulative or coercive relationships with male co-defendants.<sup>40</sup> Cornell's data indicate that most women under sentences of death have been sentenced to death for the crime of murder.<sup>41</sup> These women have overwhelmingly experienced prolonged domestic violence at the hands of

---

<sup>33</sup> The Convention on the Elimination of All Forms of Discrimination Against Women, *Eighth periodic report submitted by Jamaica under article 18 of the Convention, due in 2016*, (September 18, 2020), U.N. Doc. CEDAW/C/JAM/8, ¶ 55.

<sup>34</sup> The Convention on the Elimination of All Forms of Discrimination Against Women, *Eighth periodic report submitted by Jamaica under article 18 of the Convention, due in 2016*, (September 18, 2020), U.N. Doc. CEDAW/C/JAM/8, ¶ 139.

<sup>35</sup> Denise E. Antonio, *Strengthening the Legal and Law Enforcement Framework in Jamaica to Protect Women and Girls*, UNDP Multi Country Office in Jamaica, February 28<sup>th</sup>, 2021, <https://www.undp.org/jamaica/blog/strengthening-legal-and-law-enforcement-framework-jamaica-protect-women-and-girls>.

<sup>36</sup> Paul Andrew Bourne, Affia Palmer, Briana Brady, Racquel Swaby, Dwayne Malcolm, James Fallah, Calvin Campbell, Clifton Foster, Caroline McLean, Monique White, *An Evaluation of Domestic Violence Against Jamaican Women during the Coronavirus Disease 19 (COVID-19) Pandemic*, 13 International Journal of Collaborative Research on Internal Medicine and Public Health, 25 (2021).

<sup>37</sup> Lloyd B. Smith, *Domestic Violence: A Scar on Jamaica's Face*, Jamaica Observer, November 4<sup>th</sup>, 2022, <https://www.jamaicaobserver.com/columns/domestic-violence-a-scar-on-jamaicas-face/>.

<sup>38</sup> Jamaica Offences Against the Person Act, arts. 2(1)(a-f), 3(1)(a), 3(1A), 2005.

<sup>39</sup> Cornell Center on the Death Penalty Worldwide, *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty* (Sept. 4, 2018). Available online at <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

<sup>40</sup> <sup>5</sup> Cornell Center on the Death Penalty Worldwide, *"No One Believed Me": A Global Overview of Women Facing the Death Penalty for Drug Offenses* (Sept. 6, 2021), 6. Available online at <https://deathpenaltyworldwide.org/wp-content/uploads/2021/10/No-One-Believed-Me-A-Global-Overview-of-Women-Facing-the-Death-Penalty-for-Drug-Offenses.pdf>.

<sup>41</sup> Cornell Center on the Death Penalty Worldwide, *"No One Believed Me": A Global Overview of Women Facing the Death Penalty for Drug Offenses* (Sept. 6, 2021), 11. Available online at <https://deathpenaltyworldwide.org/wp-content/uploads/2021/10/No-One-Believed-Me-A-Global-Overview-of-Women-Facing-the-Death-Penalty-for-Drug-Offenses.pdf>.

a partner, spouse, or another family member.<sup>42</sup> In many cases, the abuse occurred repeatedly. Many women under sentence of death are survivors of gender-based violence and come from disadvantaged socio-economic backgrounds.<sup>43</sup> At a global level, sentencing courts typically fail to take into account a defendant's experience as a survivor of gender-based violence or a victim of a manipulative or coercive relationship (for example in cases where women are pressured or tricked into transporting drugs) as mitigating factors during sentencing.<sup>44</sup> Research also indicates that courts also fail to account for power dynamics and tactics of coercive control that may affect a woman's involvement in and culpability for a crime.

18. Cases documented by the Cornell Center on the Death Penalty Worldwide have shown violations of women's right to a fair trial. A 2021 follow-up study demonstrated that "fair trial principles dictate that courts should consider all relevant mitigating circumstances before imposing a sentence."<sup>45</sup> In practice, however, many courts, including Jamaica, neglect gender-specific mitigation.<sup>46</sup> Although Jamaica has made some progress since the Committee's previous review, levels of gender-based violence in the country remain high,<sup>47</sup> and therefore women are at an elevated risk of being sentenced to death without consideration of gender-based violence, including domestic violence, as a mitigating factor.
19. Gaps in training for judges leave women vulnerable to being sentenced to death without gender-based violence being considered as a mitigating factor. While Jamaica reported that the Domestic, Sexual and Gender-Based Violence Project provided sensitivity training for police and first responders,<sup>48</sup> Jamaica did not adequately provide training to judges. Jamaica reported that it held six workshops and two "validation sessions" in which civil society organizations and Government Ministries, Departments, and Agencies trained professionals including "members of the justice system" on violence against women, however, Jamaica did not report that specifically judges and prosecutors received any training on gender-based violence.<sup>49</sup> The Supreme Court considers "the pressures under which the offence was committed (such as

---

<sup>42</sup> Cornell Center on the Death Penalty Worldwide, *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty* (Sept. 4, 2018), 4. Available online at <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

<sup>43</sup> Cornell Center on the Death Penalty Worldwide, *Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty* (Sept. 4, 2018), 4. Available online at <https://www.deathpenaltyworldwide.org/wp-content/uploads/2019/12/Judged-More-Than-Her-Crime.pdf>.

<sup>44</sup> Cornell Center on the Death Penalty Worldwide, "No One Believed Me": *A Global Overview of Women Facing the Death Penalty for Drug Offenses* (Sept. 6, 2021). Available online at <https://deathpenaltyworldwide.org/publication/no-one-believed-me-a-global-overview-of-women-facing-the-death-penalty-for-drug-offenses/>.

<sup>45</sup> Cornell Center on the Death Penalty Worldwide, "No One Believed Me": *A Global Overview of Women Facing the Death Penalty for Drug Offenses* (Sept. 6, 2021). Available online at <https://deathpenaltyworldwide.org/publication/no-one-believed-me-a-global-overview-of-women-facing-the-death-penalty-for-drug-offenses/>.

<sup>46</sup> Supreme Court of Jamaica. "Sentencing Guidelines for Use by Judges of the Supreme Court of Jamaica and the Parish Courts." (2017). <https://supremecourt.gov.jm/sites/default/files/Jamaica%20Sentencing%20Guidelines.pdf>.

<sup>47</sup> Human Rights Council, *Summary of Stakeholders' submissions on Trinidad and Tobago: Report of the Office of the United Nations High Commissioner for Human Rights*, (Aug. 13, 2021), UN Doc A/HRC/WG.6/39/TTO/3, ¶80.

<sup>48</sup> The Convention on the Elimination of All Forms of Discrimination Against Women, *Eighth periodic report submitted by Jamaica under article 18 of the Convention, due in 2016*, (September 18, 2020), U.N. Doc. CEDAW/C/JAM/8, ¶51.

<sup>49</sup> The Convention on the Elimination of All Forms of Discrimination Against Women, *Eighth periodic report submitted by Jamaica under article 18 of the Convention, due in 2016*, (September 18, 2020), U.N. Doc. CEDAW/C/JAM/8, ¶53.



provocation, diminished responsibility, emotional stress or other partial excuse)”<sup>50</sup> as a mitigating factor, but courts may overlook *prolonged* domestic violence as a mitigating factor, leaving victim-survivors vulnerable to facing death sentences.

### ***Violence Against Women in Jamaican Prisons***

20. In its List of Issues in relation to the eighth periodic report of Jamaica (LOI), The Committee also requested information on Jamaica’s efforts to ensure comprehensive investigation of violence against women that promoted protection of the victim contemporaneously with prosecution of the abuser.<sup>51</sup> The Committee also requested information regarding the trainings provided to police officers about combatting sexual violence.<sup>52</sup>
21. Jamaica’s 2020 State Party report highlighted the new Sexual Offences Act that expanded protections for women that experienced sexual violence.<sup>53</sup> The New Sexual Offences Act also created numerous new provisions for the prosecution of rape as well as other sexual violence.<sup>54</sup>
22. Abuse and physical violence is pervasive in Jamaican prisons.<sup>55</sup> Incarcerated women are also faced with the widespread sexual violence.<sup>56</sup> Abuse, both prior to and within prisons, has left two-thirds of women in detention with post-traumatic stress disorder.<sup>57</sup> In contrast to their male counterparts, women are less likely to receive parole<sup>58</sup> and therefore remain in prison. As murder of security members and civil servants are crimes that are punishable by death in Jamaica, the failure to protect women from gender-based violence including sexual assault puts incarcerated women at a heightened risk of being convicted of crimes that eligible for the death penalty.

---

<sup>50</sup> Sentencing Guidelines for Use by Judges of the Supreme Court of Jamaica and the Parish Courts, available at <https://supremecourt.gov.jm/sites/default/files/Jamaica%20Sentencing%20Guidelines.pdf>.

<sup>51</sup> The Convention on the Elimination of All Forms of Discrimination Against Women, *List of issues and questions in relation to the eighth periodic report of Jamaica*, (November 17, 2020), U.N. Doc. CEDAW/C/JAM/Q/8, ¶ 8.

<sup>52</sup> The Convention on the Elimination of All Forms of Discrimination Against Women, *List of issues and questions in relation to the eighth periodic report of Jamaica*, (November 17, 2020), U.N. Doc. CEDAW/C/JAM/Q/8, ¶ 8.

<sup>53</sup> The Convention on the Elimination of All Forms of Discrimination Against Women, *Eighth periodic report submitted by Jamaica under article 18 of the Convention, due in 2016*, (September 18, 2020), U.N. Doc. CEDAW/C/JAM/8, ¶ 138.

<sup>54</sup> The Convention on the Elimination of All Forms of Discrimination Against Women, *Eighth periodic report submitted by Jamaica under article 18 of the Convention, due in 2016*, (September 18, 2020), U.N. Doc. CEDAW/C/JAM/8, ¶ 138.

<sup>55</sup> “The Death Penalty in Jamaica,” Death Penalty Worldwide, <https://deathpenaltyworldwide.org/database/#/results/country?id=35#fn-21422-H48L78W237657> (last visited Apr. 1, 2023).

<sup>56</sup> “The Death Penalty in Jamaica,” Death Penalty Worldwide, <https://deathpenaltyworldwide.org/database/#/results/country?id=35#fn-21422-H48L78W237657> (last visited Apr. 1, 2023).

<sup>57</sup> Caribbean Policy Research Institute, *10 Things to Know about Women in Prison*, (Kingston, Jamaica: 2022). [https://www.capricaribbean.org/sites/default/files/public/documents/briefing\\_paper/10\\_things\\_to\\_know\\_about\\_women\\_in\\_crime.pdf](https://www.capricaribbean.org/sites/default/files/public/documents/briefing_paper/10_things_to_know_about_women_in_crime.pdf).

<sup>58</sup> Dacia Latoya Leslie, *Reassessing Conditions of “Prison” in Jamaica*, 32 *International Criminal Justice Review* (2020). <https://journals.sagepub.com/doi/10.1177/1057567720922283>.

## VII. Recommendations for the Government of Jamaica

23. The Government of Jamaica should:

- Abolish the death penalty in all circumstances and replace it with a penalty that is fair, proportionate, and consistent with international human rights standards, and in the meantime adopt a *de jure* moratorium on judicial executions.
- Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights.
- Ensure that all women accused of capital crimes have access to free and effective legal representation by attorneys who specialize in death penalty cases and who have specific training on gender-sensitive defense strategies. Ensure access to counsel at all times, from the start of the investigation through trial and any appeals, and ensure that the defense team has sufficient funding to conduct a thorough investigation and to secure relevant expert witnesses, particularly regarding gender-specific defenses.
- Codify gender-specific defenses and mitigation in capital cases, encompassing women's experiences of trauma, poverty, and gender-based violence.
- Ensure that all judicial officers responsible for sentencing in capital cases receive comprehensive training on gender-based discrimination, gender-based violence, and tactics of coercive control that may lead to women committing death-eligible offenses. Ensure that law enforcement, prosecutors, and defense counsel in capital cases receive training on gender sensitivity as it relates to criminal procedure and sentencing outcomes, with a particular emphasis on gender-based violence and gender stereotypes.
- Provide training to all defense counsel who take on capital cases regarding gender-specific mitigation and how to raise discrimination against clients on the basis of their gender, when appropriate.
- Ensure that all prison authorities adopt gender-sensitive policies in relation to women's detention, based on the Bangkok Rules and the Nelson Mandela Rules, ensuring women's safety and security pre-trial, during admission to any detention facility, and while incarcerated.
- Collaborate with civil society organizations with expertise on women in conflict with the law to conduct and publish research on root causes and structural, systemic discrimination against women that may lead to women's increased likelihood of coming into conflict with the law, particularly in capital cases.