



Greater Caribbean for Life
committed to the abolition of the death penalty



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

Suggested List of Issues Prior to Reporting Relating to the Death Penalty

Submitted by The Advocates for Human Rights

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

Greater Caribbean for Life

and

The World Coalition Against the Death Penalty

for the

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The Advocates for Human Rights (The Advocates) is a volunteer-based non-governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law since its founding 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 publication. The Advocates is the primary provider of legal services to low-income asylum seekers in the Upper Midwest region of the United States. The Advocates is committed to ensuring human rights protection for women around the world. The Advocates has published more than 25 reports on violence against women as a human rights issue, provided consultation and commentary of draft laws on domestic violence, and trained lawyers, police, prosecutors, judges, and other law enforcement personnel to effectively implement new and existing laws on domestic violence. 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.

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

EXECUTIVE SUMMARY

1. This report suggests questions that the Committee should pose to the government of Antigua and Barbuda in its List of Issues Prior to Reporting with respect to the death penalty. Antigua and Barbuda maintains a *de facto* moratorium on the death penalty and has not carried out any executions since 1991.¹ No person is currently under sentence of death.²
2. Domestic law authorizes the death penalty for treason, murder, and certain military offenses.³ Prosecutors most recently sought the death penalty in 2011, but the court declined to sentence the defendant to death.⁴
3. Public awareness about the death penalty and human rights concerns about the practice is low.⁵ During its third Universal Periodic Review in 2021, Antigua and Barbuda noted recommendations to increase public awareness, citing the expense.⁶
4. On December 17, 2024, Antigua and Barbuda, for the first time, joined 129 other states in the UN General Assembly to vote in favor of a universal moratorium on the use of the death penalty.⁷

¹ Human Rights Council, Report of the Working Group on the Universal Periodic Review: Antigua and Barbuda, (23 June 2016), U.N. Doc. A/HRC/33/13, ¶ 12. It noted that no executions had taken place in Antigua and Barbuda since 1991, which, in practice, had established a moratorium on the death penalty. Also available online at <https://undocs.org/A/HRC/33/13>.

² Cornell Center on the Death Penalty Worldwide Database, “Antigua and Barbuda”, (2023). Available online at <https://deathpenaltyworldwide.org/database/>.

³ The Advocates for Human Rights, *Antigua and Barbuda – Universal Periodic Review – Death Penalty* (March 25, 2021). Available online at https://www.theadvocatesforhumanrights.org/International_Submissions/A/Index?id=171#:~:text=The%20death%20penalty%20is%20available,executions%20have%20occurred%20since%201991.

⁴ *Views on Conclusions and/or Recommendations, Voluntary Commitments and Replies Presented by the State Under Review*, Antigua and Barbuda, United Nations Human Rights Council, Forty-Ninth Session (December 16, 2021). Also available online at: <https://documents.un.org/doc/undoc/gen/g21/378/67/pdf/g2137867.pdf>.

⁵ Human Rights Council, Report of the Working Group on the Universal Periodic Review: Antigua and Barbuda, (23 June 2016), U.N. Doc. A/HRC/33/13, ¶ 12. It noted that no executions had taken place in Antigua and Barbuda since 1991, which, in practice, had established a moratorium on the death penalty. ¶ Also available online at <https://undocs.org/A/HRC/33/13>.

⁶ *Views on Conclusions and/or Recommendations, Voluntary Commitments and Replies Presented by the State Under Review*, Antigua and Barbuda, United Nations Human Rights Council, Forty-Ninth Session (December 16, 2021). Also available online at: <https://documents.un.org/doc/undoc/gen/g21/378/67/pdf/g2137867.pdf>.

⁷ World Coalition Against the Death Penalty, *Two thirds of the United Nations General Assembly vote in favor of the 10th resolution for a moratorium on the death penalty*, Dec. 20, 2024, <https://worldcoalition.org/2024/12/20/two-thirds-of-the-united-nations-general-assembly-vote-in-favor-of-the-10th-resolution-for-a-moratorium-on-the-death-penalty/>.

Antigua and Barbuda fails to uphold its obligations under the International Covenant on Civil and Political Rights

I. Antigua and Barbuda’s continued retention of the death penalty is not in accordance with international norms.

5. The Constitution of Antigua and Barbuda is the country’s supreme law⁸ and expressly contemplates the death penalty. Section 4(1) provides that “No person shall be deprived of his life intentionally, save in execution of the sentence of a court in respect of a crime of treason or murder of which he has been convicted.”⁹ To amend the Constitution, two-thirds of the members of the House of Representatives¹⁰ and of two-thirds of votes cast in a referendum must support the proposed change.¹¹
6. Domestic law authorizes the death penalty for treason¹² and murder,¹³ as well as certain military offenses under the Defence Act 2006.¹⁴ Both the Treason Act 1984 and the Offences Against the Person Act 1873 provide that a person convicted respectively of treason or murder “shall” be sentenced to death. In 2001, however, the Eastern Caribbean Supreme Court in essence struck down mandatory capital punishment.¹⁵ The Court stressed the importance of sentencing authorities considering evidence in mitigation in individual cases, such that the

⁸ CONSTITUTION OF ANTIGUA AND BARBUDA, section 2. ¶ This Constitution is the supreme law of Antigua and Barbuda and, subject to the provisions of this Constitution, if any other laws is inconsistent with this Constitution, this Constitution shall prevail and the other law shall, to the extent of the inconsistency, be void. ¶ Also available online at <https://pdba.georgetown.edu/Constitutions/Antigua/antigua-barbuda.html>

⁹ CONSTITUTION OF ANTIGUA AND BARBUDA, section 4(1). Also available online at <https://pdba.georgetown.edu/Constitutions/Antigua/antigua-barbuda.html>.

¹⁰ CONSTITUTION OF ANTIGUA AND BARBUDA, section 47(2). ¶ A bill to alter this constitution or the Supreme Court Order shall not be regarded as being passed by the House unless on its final reading in the House the bill is supported by the votes of not less than two-thirds of all the members of the House. ¶ Also available online at <https://pdba.georgetown.edu/Constitutions/Antigua/antigua-barbuda.html>.

¹¹ CONSTITUTION OF ANTIGUA AND BARBUDA, section 47(5). ¶ A bill to alter this section, schedule 1 to this constitution or any of the provisions of this Constitution specified in Part I of that schedule or any of the provisions of the Supreme Court Order specified in Part II of that schedule shall not be submitted to the Governor-General for his assent unless- a) there has been an interval of not less than ninety days between the introduction of the bill in the House and the beginning of the proceedings in the House on the second reading of the bill in that House; b) after it has been passed by both Houses of Parliament or, in the case of a bill to which section 55 of this Constitution applies, after its rejection by the Senate for the second time; and c) the bill has been approved on a referendum, held in accordance with such provisions as may be made in that behalf by Parliament, by not less than two-thirds of all the votes validly cast on that referendum. ¶ Also available online at <https://pdba.georgetown.edu/Constitutions/Antigua/antigua-barbuda.html>.

¹² THE TREASON ACT 1984, section 7. ¶ Everyone who commits high treason is guilty of an offence triable on indictment and on conviction shall be sentenced to death. ¶ Also available online at <https://www.global-regulation.com/law/antigua-and-barbuda/2936284/treason-act.html>.

¹³ THE OFFENCES AGAINST THE PERSON ACT 1873, section 2. ¶ Whosoever is convicted or murder shall suffer death as a felon. ¶ Also available online at <https://www.global-regulation.com/law/antigua-and-barbuda/2935766/offences-against-the-person-act.html>.

¹⁴ THE DEFENCE ACT 2006. Available online at <https://www.global-regulation.com/law/antigua-and-barbuda/2935069/defence-act%252c-2006.html>.

¹⁵ *Spence & Hughes v The Queen*, Criminal Appeals Nos. 20 of 1998 and 14 of 1997 (ESCS Court of Appeal, St Vincent and the Grenadines), (2 April 2001). Also available online at <https://www.eccourts.org/newton-spence-v-the-queen-and-peter-hughes-v-the-queen/>.

death penalty should be imposed only in exceptionally severe cases.¹⁶ In 2008, the High Court of Justice in Antigua and Barbuda applied this ruling in *The Queen v Monelle*.¹⁷ The death penalty is therefore now discretionary, and courts sentence people to death only for aggravated murder or, presumably, for treason.¹⁸ The Judicial Committee of the Privy Council, the final court of appeal for Antigua and Barbuda,¹⁹ has also found that courts should sentence people to death, if at all, only in the most egregious cases.²⁰ During the 2021 interactive dialogue for the country’s third Universal Periodic Review, the delegation from Antigua and Barbuda stated that “[t]he Eastern Caribbean Supreme Court, in its most recent practice direction and sentencing guidelines on the matter (2020), had established the threshold of violence necessary for consideration of the death penalty, requiring the crime in question to be ‘the worst of the worst’ and ‘the rarest of the rare.’”²¹

7. The Defence Act 2006 also authorizes the use of the death penalty in relation to military offenses not resulting in death, such as aiding the enemy,²² military espionage/communicating with the enemy,²³ obstructing operations,²⁴ or mutiny.²⁵ Some of these provisions may be incompatible with the Constitution, which expressly limits the death penalty to treason and murder, as set forth in paragraph 5 above.
8. In 2021, Antigua and Barbuda provided a written response to 19 UPR recommendations concerning the death penalty, stating that “[f]or a convicted person to be sentenced to the death penalty, the national court must be satisfied that the murder must rank among the worst of the worst and the rarest of the rare. . . . Given that this test is impossible to satisfy, and given that

¹⁶ *Spence & Hughes v The Queen*, Criminal Appeals Nos. 20 of 1998 and 14 of 1997 (ECSJ Court of Appeal, St Vincent and the Grenadines), (2 April 2001). ¶ 54. A procedure which provides for no opportunity to offer personal mitigation before imposing a mandatory death penalty is, not reasonable, not just and not fair and is therefore inconsistent with section 2(1) of the Constitution. ¶ Also available online at <https://www.eccourts.org/newton-spence-v-the-queen-and-peter-hughes-v-the-queen/>.

¹⁷ *The Queen v Monelle*, Criminal Case No. 0015/2007 (ECSJ High Court of Justice, Antigua and Barbuda), (18 September 2008). Also available online at http://www.worldcourts.com/ecsc/eng/decisions/2008.09.18_Queen_v_Monelle.pdf.

¹⁸ Cornell Center on the Death Penalty Worldwide Database, “Antigua and Barbuda”, (2021). Available online at <https://deathpenaltyworldwide.org/database/>.

¹⁹ *Commonwealth Caribbean Court Systems: Privy Council*, The University of the West Indies, <https://libguides.uwi.edu/Court-Systems/Privy-Council> (last visited Dec. 15, 2024).

²⁰ *Trimmingham v The Queen*, Appeal No. 67 of 2007 (JCPC) (22 June 2009). ¶ 23. . . . It was undeniably a bad case, even a very bad case, of murder committed for gain. But in their judgment it falls short of being among the worst of the worst, such as to call for the ultimate penalty of capital punishment. The appellant behaved in a revolting fashion, but this case is not comparable with the worst cases of sadistic killings. Their Lordships would also point out that the object of keeping the appellant out of society entirely, which the judge considered necessary, can be achieved without executing him. ¶ Also available online at [https://www.bailii.org/cgi-bin/format.cgi?doc=/uk/cases/UKPC/2009/25.html&query=\(trimmingham\)+AND+\(v\)+AND+\(queen\)](https://www.bailii.org/cgi-bin/format.cgi?doc=/uk/cases/UKPC/2009/25.html&query=(trimmingham)+AND+(v)+AND+(queen)).

²¹ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Antigua and Barbuda* (Dec. 20, 2021), UN Doc. A/HRC/49/15, ¶ 34.

²² THE DEFENCE ACT 2006, section 37. Available online at <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/75265/87561/F1568778991/ATG75265.pdf>.

²³ THE DEFENCE ACT 2006, section 38. Available online at <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/75265/87561/F1568778991/ATG75265.pdf>.

²⁴ THE DEFENCE ACT 2006, section 44. Available online at <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/75265/87561/F1568778991/ATG75265.pdf>.

²⁵ THE DEFENCE ACT 2006, section 45. Available online at <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/75265/87561/F1568778991/ATG75265.pdf>.

the prosecution has failed previously to satisfy this test, it is highly unlikely any court will impose death penalty in the future. Hence, in these circumstances, it is unnecessary to abolish it via the national law as a penalty since de facto it is not applied.”²⁶ In further response to a similar recommendation, Antigua and Barbuda stated: “the last time the prosecution sought the death penalty and did not succeed was in 2011. There is no need for a moratorium if in fact the penalty is not being applied.”²⁷

9. In noting UPR recommendations to “[s]trengthen an awareness-raising campaign on the death penalty and public debates on the subject with a human rights focus, including in parliament, with a view to enabling its formal abolition,” to “[d]evelop awareness-raising campaigns regarding the absence of dissuasive effects in the application of the death penalty,” and to “[i]nitiate a process for a State review and discussion on the relevance of the death penalty to Antigua and Barbuda, with a view to considering the imposition of a moratorium,”²⁸ Antigua and Barbuda stated: “[i]t is likely to be costly to run both anti-death penalty campaigns and national referendums on the issue, given that financing is an issue at this time, owing to the pandemic.”²⁹
10. On December 17, 2024, the UN General Assembly voted in favor of the biannual resolution calling for a global moratorium on the death penalty, with a record 130 UN Member States supporting the resolution.³⁰ Notably, Antigua and Barbuda voted in favor of the resolution for the first time.³¹
11. Presently, Antigua and Barbuda’s laws related to murder speak generally to the offence of murder and do not classify murder by degree. Arguably, this approach does not align with the Covenant’s requirement that the death penalty be limited to the most extreme of crimes, as not all murders are alike. A lack of classification by degree or severity also prevents the court from being able to consider mitigating circumstances. For example, the law would treat equally as murder and subject to imposition of the death penalty a case in which a woman kills her husband in self-defense due to a domestic violence attack and a case in which an individual premeditates and then kills another, even though the circumstances of the offenses vary significantly.³²

²⁶ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Antigua and Barbuda: Addendum* (December 16, 2021), UN Doc. A/HRC/49/15/Add.1, at 1-2.

²⁷ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Antigua and Barbuda: Addendum* (December 16, 2021), UN Doc. A/HRC/49/15/Add.1, at 2.

²⁸ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Antigua and Barbuda* (Dec. 20, 2021), UN Doc. A/HRC/49/15, ¶¶ 88.24, 88.75, 88.78.

²⁹ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Antigua and Barbuda: Addendum* (December 16, 2021), UN Doc. A/HRC/49/15/Add.1, at 2.

³⁰ World Coalition Against the Death Penalty, *Two thirds of the United Nations General Assembly vote in favor of the 10th resolution for a moratorium on the death penalty*, Dec. 20, 2024, <https://worldcoalition.org/2024/12/20/two-thirds-of-the-united-nations-general-assembly-vote-in-favor-of-the-10th-resolution-for-a-moratorium-on-the-death-penalty/>.

³¹ *Ibid.*

³² See Offences against the Person Act, Section 2 (“Whosoever is convicted of murder shall suffer death as a felon.”), <https://laws.gov.ag/wp-content/uploads/2018/08/cap-300.pdf>.

II. Suggested questions for Antigua and Barbuda

12. The coauthors of this report suggest the following questions and requests for information for Antigua and Barbuda:

- What efforts has the State Party made to facilitate Parliamentary debates, inquiries, or motions on the subject of the death penalty?
- What efforts has the State Party made to collaborate with civil society to raise public awareness about the death penalty in international human rights law and its alternatives? What steps has the State Party taken to seek technical support for such efforts?
- What guidance do sentencing judges receive for determining whether a crime is “the worst of the worst” and “the rarest of the rare” in capital cases?
- Does the law of Antigua and Barbuda presently authorize the death penalty for treason or for offenses specified under the Defence Act 2006 as eligible for the death penalty? What measures are in place to ensure that no person can be sentenced to death for a crime that does not rise to the level of “most serious” as the Committee has defined in General Recommendation 36?
- In light of representations made during the most recent Universal Periodic Review, will the State Party consider directing prosecutors not to seek the death penalty under any circumstances?
- What steps has the State Party taken to move toward formal abolition of the death penalty and ratification of the Second Optional Protocol to the Covenant?