



## **JAMAICA:**

### **Submission to the United Nations Human Rights Committee For the 103<sup>rd</sup> Session (17 October – 4 November, 2011)**

**Statement submitted pursuant to ECOSOC Res. 1996/31**

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

#### **1. Introduction.**

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. 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 World Coalition Against the Death Penalty, an alliance of more than 120 NGOs, bar associations, local authorities and unions, was created in Rome on 13 May 2002. The aim of the World Coalition is to strengthen the international dimension of the fight against the death penalty. Its ultimate objective is to obtain the universal abolition of the death penalty. To achieve its goal, the World Coalition advocates for a definitive end to death sentences and executions in those countries where the death penalty is in force. In some countries, it is seeking to obtain a reduction in the use of capital punishment as a first step towards abolition.

This report strives to assist the United Nations Human Rights Committee (the “Committee”) in its review of Jamaica’s country situation. Specifically, this shadow report undertakes to illustrate how death row conditions in Jamaica, both historically and as of today, violate Article 7 of the International Covenant on Civil and Political Rights (the “ICCPR”). Article 7 provides, in pertinent part, that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”<sup>1</sup>

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<sup>1</sup> See <http://www2.ohchr.org/english/law/ccpr.htm>, last viewed September 1, 2011.

An examination of Jamaica's death row conditions is necessarily affected by a number of developments since Jamaica last reported to the Committee in 2003. Since 2003, case law and legislation eliminated the mandatory death penalty for murder convictions and required that a death sentence must be commuted to life imprisonment if the inmate has been on death row for more than five years. As a result, there are now just eight persons on death row. That number, however, has the potential to increase because a Constitutional amendment enacted in 2011 eliminates the five year limit between sentence and execution. A second Constitutional amendment, also passed in 2011, erodes death row inmates' rights to review of their conditions by external bodies. Therefore, this periodic review is particularly important in light of the curtailment of death row inmates' rights to petition and inform independent bodies of human rights violations.

## **2. The Current State of Jurisprudence and Death Row Conditions in Jamaica.**

The Independent Jamaican Council for Human Rights, an NGO that advocates for the abolition of the death penalty in Jamaica and elsewhere in the Caribbean, reports that there are now just eight inmates on death row in Jamaica, all of whom have appeals pending with Jamaica's Court of Appeal. Each of the inmates is housed at the St. Catherine Adult Correctional Centre in the city of Spanish Town. The prison is strikingly 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, but, in 2011, is at nearly twice its capacity, holding 1285 inmates.<sup>2</sup>

### **a. The Jamaican Position in Favor of Retention of Capital Punishment.**

Jamaica's last execution was carried out in February 1988.<sup>3</sup> Nevertheless, there is indication of strong public support of the death penalty and the resumption of hangings.<sup>4</sup> In its response to the Committee's List of Issues, Jamaica stated, "Jamaica does not intend to ratify the Second Optional Protocol to the ICCPR nor to amend the Constitution with the aim of abolishing the death penalty. In November 2008, Parliament voted to retain the death penalty."<sup>5</sup> Recent public statements made by the current Prime Minister, Bruce Golding during his monthly radio program in July 2011 also indicate support of the death penalty as well as a disregard for the inhuman prison conditions:

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<sup>2</sup> Report on Prison Conditions in Jamaica, p. 18 (in press). See *infra* notes 58 and 59 and corresponding text.

<sup>3</sup> *Jamaica: More Executions will not Reduce Crime*, Refworld, November 26, 2008, available at <http://www.unhcr.org/refworld/country...COUNTRYNEWS.JAM..492faf51e.0.html>, last viewed September 16, 2011.

<sup>4</sup> See Center for Capital Punishment Studies Internship Reports 2009, at p. 60, available at [http://www.westminster.ac.uk/\\_data/assets/pdf\\_file/0009/75258/CCPSInternshipReports20092-Copy.pdf](http://www.westminster.ac.uk/_data/assets/pdf_file/0009/75258/CCPSInternshipReports20092-Copy.pdf), last viewed September 15, 2011 (stating that 79% of Jamaicans favor the death penalty).

<sup>5</sup> Replies from the Government of Jamaica to the list of issues (CCPR/C/JAM/Q/3) to be taken up in connection with the consideration of the third periodic report of Jamaica (CCPR/C/JAM/3) (16 May 2011) at para. 75.

I'm anxious to see what are the considerations now that we must find a nice apartment down at the St. Catherine District Prison to house (criminals), feed them, provide medical care for them and allow them to live to a nice ripe old age and when they die, to bury them or do we send a signal that this society is not going to put up with that barbarity.<sup>6</sup>

b. Jurisprudence Since 2003 on Death Row Conditions in Jamaica.

As a result of Jamaica's withdrawal from the Optional Protocol to the ICCPR,<sup>7</sup> the Committee has decided only one Communication pertaining to death row conditions since Jamaica last reported to the Committee in 2003. A summary of this and a Privy Council decision are provided below and intended to supply additional information on Jamaica's compliance with Article 7 since its last review.

In the 2004 case of *Lobban v. Jamaica*, the Committee found that the conditions in which Mr. Lobban had been held on death row<sup>8</sup> were cruel and inhuman.<sup>9</sup> Specifically, the Committee found violations of Article 7 (and Article 10) because Mr. Lobban was detained in a cell for 23 hours each day; the cell had no mattress, natural light, or sanitation; the food and drink provided were of very poor quality; Mr. Lobban was not allowed to work or undertake education; and he had no access to medical care, including no treatment for ulcers, gastroenteritis, and hemorrhoids.<sup>10</sup>

In 2004, in the case of *Watson v. The Queen*, the Judicial Committee of the Privy Council declared unconstitutional the mandatory imposition of the sentence of death for capital murder convictions.<sup>11</sup> The Privy Council found that the imposition of the mandatory death sentence subjected the convicted person to inhuman punishment incompatible with Jamaica's Constitution.<sup>12</sup> As the Privy Council reasoned, "[t]o condemn a man to die without giving him the opportunity to persuade the court that this would in his case be disproportionate and inappropriate is to treat him in a way that no human being should be treated."<sup>13</sup>

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<sup>6</sup> *PM Champions Hangings as a Deterrent to Crime*, RJR News, found at <http://rjrnews.com/news/local/pm-champions-hanging-deterrent-crime>, last viewed September 15, 2011.

<sup>7</sup> See <http://www.unhcr.ch/tbs/doc.nsf/887ff7374eb89574c1256a2a0027ba1f/80256404004ff315c125638b005f9c21?OpenDocument>, last viewed September 7, 2011.

<sup>8</sup> Mr. Lobban's sentence was commuted to life imprisonment in 1995, after approximately seven years on death row, likely as a result of the five year limit imposed in *Pratt and Morgan v. The Attorney General for Jamaica*, *supra*. See Comm'n No. 797/1988 (2004), ¶ 2.1.

<sup>9</sup> Comm'n No. 797/1988 (2004), ¶¶ 8.1-8.3.

<sup>10</sup> *Id.* at ¶ 8.1.

<sup>11</sup> [2004] UKPC 34, ¶¶ 34-35, 49 (appeal taken from Jamaica).

<sup>12</sup> *Id.* at ¶ 35; *but see infra* Section 4 for recent amendments to the Jamaican Constitution.

<sup>13</sup> *Id.* at ¶ 33.

At the time of the Privy Council's decision in *Watson*, there were 45 men on death row. Legislation in March 2005 led to the resentencing hearings being held from August 2005 of these 45 death row inmates. Of that number, the sentences of seven men were commuted by the Governor General under *Pratt and Morgan*, before the sentencing re-hearing commenced/<sup>14</sup> ten men were resentenced to death (among these, one man committed suicide, one conviction was quashed, and one sentence was subsequently commuted); and "twenty-eight men were sentenced to life imprisonment, with varying periods of time before parole."<sup>15</sup>

Earlier this year, in *Dougal v. R*, the Jamaican Court of Appeal held that the death penalty should be reserved for only "the worst of the worst" murderers.<sup>16</sup>

c. Recent Constitutional Amendments Significantly Undercut Any Advances Made in Jurisprudence.

In April 2011, Jamaica enacted the Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011 (the "Charter").<sup>17</sup> The Charter replaced Chapter III (Fundamental Rights and Freedoms) of Jamaica's Constitution.<sup>18</sup> While the Charter has the potential to greatly enhance the protection of rights of Jamaican persons, it effectively reverses the Privy Council's decision in *Pratt and Morgan v. The Attorney General for Jamaica* that executions must be carried out within five years of sentencing. Specifically, the Charter provides that execution of a death sentence does not violate the Constitution by reason of the length of time the inmate is on death row.<sup>19</sup> In addition, the Charter also bars any human rights challenges based upon the conditions of confinement on death row.<sup>20</sup> Given the abysmal conditions as reported on Jamaica's death row and the potential for prolonged delays beyond five years, this development places Jamaica's capital inmates at risk of death row phenomenon. See "Appendix A. Relevant Jurisprudence" for a discussion of death row phenomenon.

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<sup>14</sup> The Governor General is the Queen of England's representative in Jamaica. See <http://www.royal.gov.uk/MonarchAndCommonwealth/Jamaica/GovGenCan.aspx>, last viewed September 8, 2011.

<sup>15</sup> See Center for Capital Punishment Studies Internship Reports 2009, a p. 51, found at [http://www.westminster.ac.uk/\\_data/assets/pdf\\_file/0009/75258/CCPSInternshipReports20092-Copy.pdf](http://www.westminster.ac.uk/_data/assets/pdf_file/0009/75258/CCPSInternshipReports20092-Copy.pdf), last viewed September 15, 2011.

<sup>16</sup> [2011] JMCA Crim. 13, ¶¶ 15-17 (appeal taken from Jamaica).

<sup>17</sup> Found at [http://www.japarliament.gov.jm/attachments/341\\_The%20Charter%20of%20Fundamental%20Rights%20and%20Freedoms%20\(Constitutional%20Amendment\)%20Act,%202011.pdf](http://www.japarliament.gov.jm/attachments/341_The%20Charter%20of%20Fundamental%20Rights%20and%20Freedoms%20(Constitutional%20Amendment)%20Act,%202011.pdf), last viewed September 7, 2011.

<sup>18</sup> See *Id.*; cf. <http://pdba.georgetown.edu/Constitutions/Jamaica/jam62.html>, last viewed September 7, 2011.

<sup>19</sup> See Section 2, para.8(a), found at [http://www.japarliament.gov.jm/attachments/341\\_The%20Charter%20of%20Fundamental%20Rights%20and%20Freedoms%20\(Constitutional%20Amendment\)%20Act,%202011.pdf](http://www.japarliament.gov.jm/attachments/341_The%20Charter%20of%20Fundamental%20Rights%20and%20Freedoms%20(Constitutional%20Amendment)%20Act,%202011.pdf), last viewed September 7, 2011.

<sup>20</sup> *Id.* at Section 2, para. 8(b).

Also, in April 2011, Jamaica enacted the Constitution (Amendment) Act, 2011 (the “Amendment”),<sup>21</sup> which amended Section 91 of the Constitution. The Amendment requires the Governor General to give notice to the condemned person specifying a date, not less than 18 months after the date of delivery of the notice, by which applications to or consultations with external bodies such as the UN or IACHR shall be commenced and concluded.<sup>22</sup> (In *Lewis v. Attorney General of Jamaica, supra*, the Privy Council had rejected an 18-month period as inadequate to allow for inmate appeals to the IACHR.<sup>23</sup>) The Amendment does not require the Governor General to consider any report from any external body if such report is submitted to the Governor General after the date specified in the notice to the inmate.<sup>24</sup> The Governor General is also not required to consider, in issuing the notice, the period of time within which any external body is likely to issue a report.<sup>25</sup> The result is that executions may be carried out without the benefit of prior, external review.

Both the UN and Inter-American review processes are an important means of assessing violations of the right to be free from cruel, inhuman or degrading treatment or punishment. Again, given past reports of the harsh conditions on death row,<sup>26</sup> it is crucial that inmates have access to a review mechanism to evaluate Jamaica’s compliance with its international obligations, including the right to be free from cruel and inhuman treatment or punishment. The ICCPR guarantees to everyone convicted of a crime the right to his conviction and sentence being reviewed by a higher tribunal according to law.<sup>27</sup> As these review mechanisms generally only allow communications after the exhaustion of domestic remedies, those seeking to petition these external bodies are presumably the inmates who have already met this bar and been unable to claim their right to review by a higher domestic court. Given the recent constitutional amendment effectively barring human rights challenges based upon the conditions of confinement on death row (Section 2, para. 8(b)), access to review by external bodies is more urgently needed than ever to hold the government accountable under Article 7.<sup>28</sup>

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<sup>21</sup> Found at [http://www.japarliament.gov.jm/attachments/341\\_The%20Constitution%20\(Amendment\)%20Act,%202011.pdf](http://www.japarliament.gov.jm/attachments/341_The%20Constitution%20(Amendment)%20Act,%202011.pdf), last viewed September 7, 2011.

<sup>22</sup> *Id.* at § 91 (1) (b).

<sup>23</sup> [2000] All ER (D) 1216 at p. 16.

<sup>24</sup> § 91 (1B) (a), found at [http://www.japarliament.gov.jm/attachments/341\\_The%20Constitution%20\(Amendment\)%20Act,%202011.pdf](http://www.japarliament.gov.jm/attachments/341_The%20Constitution%20(Amendment)%20Act,%202011.pdf), last viewed September 7, 2011.

<sup>25</sup> *Id.* at § 91 (1B) (b).

<sup>26</sup> See Appendix A. Relevant Jurisprudence for a discussion of death row conditions in Jamaica that have historically been found to constitute cruel and inhuman treatment or punishment.

<sup>27</sup> ICCPR, Art. 14(5).

<sup>28</sup> The relevant amendment states: “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 - ...the physical conditions or arrangements under which such person is detained pending the execution of the sentence by virtue of any law or practice in force immediately before the commencement of the Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011.

d. Death Row Conditions in Jamaica Remain Abysmal.

Jamaica reports plans to build a new adult correctional facility and efforts to improve living conditions of inmates at all institutions.<sup>29</sup> In spite of this, the conditions in Jamaica's prisons, including the conditions for death row inmates, remain deplorable.<sup>30</sup> A 2006 visit to death row by representatives of the Independent Jamaican Council for Human Rights yielded this grim description of conditions:

Death row comprises a concrete block of two floors called Gibraltar 1 and 2, with 52 cells in total. 'Gibraltar' is basically a prison within the prison and barbed wired fences separate the block from the rest of the prison.<sup>31</sup> Each cell is approximately 5ft by 10ft and there is a small air vent providing little daylight. There are no toilets or sinks in the cells. Prisoners slop out and they can wash under a pipe which is outside the block.<sup>32</sup>

Death row inmates are "usually, but not always, supplied with a foam mattress and a blanket." They are allowed to empty their "slop buckets" twice per day and can bathe once each day with a hose.<sup>33</sup> There are two toilets and two washrooms for death row inmates, but none of them are operational, forcing the inmates to use pit toilets and an outside tap to wash themselves and their clothing. The tap is open to the elements with no privacy.<sup>34</sup> Inmates use the same tap for drinking water, and they fill whatever receptacles they can find (for example, empty soda bottles) so that they may have drinking water in their cells.<sup>35</sup> Their cells are unbearably hot during the daytime.<sup>36</sup> While inmates are allowed out of their cells for about five to six hours per day, this includes time to bathe and collect water. Moreover, outdoor space for recreation, which must be shared with prisoners on the "punishment block," is grossly inadequate. There is only a small dirt yard measuring approximately 5 x 10 meters and two other negligibly-sized open spaces.<sup>37</sup> Inmates were abused by prison guards, and do not have adequate access to health care

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<sup>29</sup> Replies from the Government of Jamaica to the list of issues (CCPR/C/JAM/Q/3) to be taken up in connection with the consideration of the third periodic report of Jamaica (CCPR/C/JAM/3) (16 May 2011) at para 59.

<sup>30</sup> Of note, prisons in Jamaica are called Correctional Centres; references in this report to "prisons" refers to Correctional Centres.

<sup>31</sup> As noted *infra*, death row inmates are no longer isolated from the general population at the St. Catherine Adult Correctional Centre.

<sup>32</sup> See Center for Capital Punishment Studies Internship Reports 2006, at p. 45, found at [http://www.westminster.ac.uk/\\_data/assets/pdf\\_file/0010/43579/internship-report-06.pdf](http://www.westminster.ac.uk/_data/assets/pdf_file/0010/43579/internship-report-06.pdf), last viewed September 15, 2011.

<sup>33</sup> See Center for Capital Punishment Studies Internship Reports 2005, at p. 32, found at [http://www.westminster.ac.uk/\\_data/assets/pdf\\_file/0003/82362/ccps\\_internship-report-2005.pdf](http://www.westminster.ac.uk/_data/assets/pdf_file/0003/82362/ccps_internship-report-2005.pdf), last viewed September 15, 2011.

<sup>34</sup> Report on Prison Conditions in Jamaica, pp. 22-23.

<sup>35</sup> *Id.* p. 23.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*



since only three medical doctors provided care to the entire adult prison population on the island.<sup>38</sup>

A report<sup>39</sup> compiled in 2011 by The Death Penalty Project,<sup>40</sup> in conjunction with the Independent Jamaican Council for Human Rights, describes the squalid living conditions on death row:

Each death row cell used to contain a solid concrete cuboid bunk on which the inmates slept. However, at some stage over the past few years, these were all destroyed (apparently due to concerns that inmates were concealing forbidden items in them) and the inmates now place their thin sponge mattresses – if they are lucky enough to possess them – on the stone floor. At the time of the visit, three of the eight condemned inmates were without mattresses, and were forced to sleep on top of either thin sheets, or merely cardboard, which they place on the hard floor. The majority of the mattresses are old and worn, with the sheet covering the sponge coming away; they are often covered in mould and falling apart, reflecting both the dirty and unsanitary conditions in the cells and the inability of the institution to provide new bedding. Whether an inmate possesses a mattress or not, the lack of beds or bunks and the thinness of the mattresses available means that inmates sleep very close to the stone floor, which is invariably dirty. One of the most frequent complaints from inmates is that they are covered in insects, such as cockroaches, ants, and bedbugs, while they sleep, and whilst they are locked down in general.<sup>41</sup>

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<sup>38</sup> See Center for Capital Punishment Studies Internship Reports 2007, at p. 34-35, available at [http://www.westminster.ac.uk/\\_data/assets/pdf\\_file/0009/43578/internship-report-07.pdf](http://www.westminster.ac.uk/_data/assets/pdf_file/0009/43578/internship-report-07.pdf), last viewed September 15, 2011.

<sup>39</sup> Report on Prison Conditions in Jamaica, scheduled for publication in late 2011 or 2012.

<sup>40</sup> The Death Penalty Project works to promote and protect the human rights of those facing the death penalty, with emphasis on those countries that retain the Privy Council. See <http://www.deathpenaltyproject.org/>, last viewed September 17, 2011.

<sup>41</sup> Report on Prison Conditions in Jamaica, p. 21.

In 2008, death row inmates at the St. Catherine Adult Correctional Centre reported they were both stressed and bored. Many had observed prison guards “setting up the room with the gallows.”<sup>42</sup> At that time, the death row inmates reported that their isolation on death row from the general prison population was “the only advantage of death row.”<sup>43</sup> That “advantage,” however, no longer exists, because, as noted above, death row inmates now share facilities with inmates on the “punishment block.” This mean the death row prisoners are now “subject to the mass overcrowding of cells which affects the rest of the prison population, which frequently gets to the point where two or more people in the cell have no space to sleep on the floor.”<sup>44</sup>

The United States Department of State has recognized that Jamaican prisons are overcrowded, have poor sanitary conditions, and lack adequate medical care for inmates.<sup>45</sup> Overcrowding in Jamaica’s prisons is of such chronic concern that that some nonviolent offenders are being released early and will be tracked through the remainder of their sentences with personal identification devices.<sup>46</sup>

Mass rapes have been reported at St. Catherine Adult Correctional Centre where death row inmates are housed.<sup>47</sup> In addition, Dr. Clayton Sewell, a consultant forensic psychiatrist that works with prison inmates in Jamaica, has warned of a “public health nightmare” resulting from the “highly unsanitary conditions in which mentally ill inmates are forced to exist.”<sup>48</sup>

In 2005, the University of Westminster Centre for Capital Punishment Studies profiled Clifton Shaw, who was admitted to death row in June 1996 and had his sentence commuted to life in 2002. Prison guards beat Mr. Shaw with batons, resulting in injuries to his kidneys and his ankle. He was diagnosed with a kidney infection but received no treatment. The effect of death row on Mr. Shaw was apparent:

Now in his tenth year of incarceration, Clifton Shaw is obviously a sick man. The physical and mental effects of the conditions in death row, and in the two main prisons have had devastating effects. His speech is stunted, he is constantly anxious and restless,

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<sup>42</sup> See Center for Capital Punishment Studies Internship Reports 2008, at p. 127, available at [http://www.westminster.ac.uk/\\_data/assets/pdf\\_file/0004/82363/ccps\\_internship-report-2008.pdf](http://www.westminster.ac.uk/_data/assets/pdf_file/0004/82363/ccps_internship-report-2008.pdf), last viewed September 15, 2011.

<sup>43</sup> *Id.*

<sup>44</sup> See Center for Capital Punishment Studies Internship Reports 2005, at p. 32, available at [http://www.westminster.ac.uk/\\_data/assets/pdf\\_file/0003/82362/ccps\\_internship-report-2005.pdf](http://www.westminster.ac.uk/_data/assets/pdf_file/0003/82362/ccps_internship-report-2005.pdf), last viewed September 15, 2011.

<sup>45</sup> <http://www.state.gov/g/drl/rls/hrrpt/2006/78897.htm>, last viewed September 15, 2011.

<sup>46</sup> *Electronic Monitors to Tackle Prison Crowding*, The Jamaica Gleaner, July 6, 2011, available at <http://jamaica-gleaner.com/gleaner/20110706/lead/lead7.html>, last viewed September 15, 2011.

<sup>47</sup> *Investigation into Prison Rapes Launched*, The Jamaica Gleaner, January 22, 2006, available at <http://jamaica-gleaner.com/gleaner/20060122/news/news3.html>, last viewed September 15, 2011.

<sup>48</sup> *Sick State: Consultant Forensic Psychiatrist Warns Of Looming Public-Health Crisis*, The Jamaica Gleaner, January 23, 2011, available at <http://jamaicagleaner.com/gleaner/20110123/news/news1.html>, last viewed September 15, 2011.



he is often depressed and sometimes refuses to communicate with officers. Clifton receives no visitors, has completely lost contact with his family and finds it difficult to maintain conversations.<sup>49</sup>

In another account by the University of Westminster Centre for Capital Punishment Studies, Junior Campbell, an inmate that spent two years on death row (including a two-week period after his successful appeal of his sentence), hanged himself in his cell on August 25, 2009.<sup>50</sup>

The conditions of detention for death row inmates in Jamaica violate obligations under Article 10 of the ICCPR with respect to the humane treatment of persons deprived of their liberty. **Further, many of these conditions on Jamaica's death row, including overcrowding, poor sanitation conditions, inadequate medical care, lack of sanitation, light, ventilation and bedding, and beatings, have been found to constitute cruel, inhuman treatment or punishment under both international and regional jurisprudence.** See "Appendix A. Relevant Jurisprudence" for a brief discussion of the supporting jurisprudence.

## 2. Conclusions.

While Jamaica has made some strides by eliminating the mandatory death penalty and reserving the death penalty only for the "worst of the worst" murderers, it has also eroded the rights of those on death row. Recent Constitutional amendments reverse the headway made in *Pratt and Morgan v. The Attorney General of Jamaica* and allow inmates to be held indefinitely on death row without violating the Constitution; and bar even the most egregious death row conditions from violating the Constitution and set an unreasonably abbreviated period of time within which any external review body may issue a report on behalf of a condemned inmate. The end result of the amendments is that more inmates will likely be held on death row for longer than five years and that inmates may be executed without the benefit of external review body reports. Finally, reports show that conditions on Jamaica's death row not only violate Article 10 obligations regarding humane treatment of persons deprived of their liberty, but also exhibit many of the same characteristics historically found to constitute cruel, inhuman or degrading treatment or punishment, in violation of Article 7 of the ICCPR.

## 3. Recommendations.

The Advocates for Human Rights and the World Coalition against the Death Penalty respectfully suggest that the Committee recommend that Jamaica take the following measures:

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<sup>49</sup> See Center for Capital Punishment Studies Internship Reports 2005, at p. 97, found at [http://www.westminster.ac.uk/\\_data/assets/pdf\\_file/0003/82362/ccps\\_internship-report-2005.pdf](http://www.westminster.ac.uk/_data/assets/pdf_file/0003/82362/ccps_internship-report-2005.pdf), last viewed September 15, 2011.

<sup>50</sup> See Center for Capital Punishment Studies Internship Reports 2009, at pp. 102, 112, found at [http://www.westminster.ac.uk/\\_data/assets/pdf\\_file/0009/75258/CCPSInternshipReports20092-Copy.pdf](http://www.westminster.ac.uk/_data/assets/pdf_file/0009/75258/CCPSInternshipReports20092-Copy.pdf), last viewed September 15, 2011.

1. Abolish the death penalty and commute the sentence of each person on death row to life imprisonment;
2. In lieu of abolishing the death penalty, reinstitute the ruling from *Pratt and Morgan v. The Attorney General of Jamaica* requiring the State to commute the death sentence to life imprisonment for any person on death row for greater than five years;
3. Repeal the provisions of the Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011 that provide that the constitution is not violated regardless of the length of time an inmate is on death row;
4. Repeal the provisions of the Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011 that bar any human rights challenges based upon the conditions of confinement on death row;
5. Repeal the provisions of the Constitution (Amendment) Act, 2011 requiring that all applications to or consultations with external bodies on behalf of the condemned inmate must be commenced and concluded within 18 months of notice of execution;
6. Repeal the provisions of the Constitution (Amendment) Act, 2011 allowing the Governor General, in issuing the notice of execution, to refuse to consider the period of time within which any external body is likely to issue a report on behalf of the inmate;
7. Repeal the provisions of the Constitution (Amendment) Act, 2011 allowing the Governor General to refuse to consider any report from an external review body not received by the Governor General within the 18-month period; and
8. Eliminate the death row conditions that have been identified as comprising cruel or inhuman treatment by the Committee, as described in this report. Take measures to ensure that death row conditions respect international standards and principles on the treatment of prisoners.

## **Appendix A. Relevant Jurisprudence**

### **1. Death Row Conditions in Jamaica Historically Have Been Found to Comprise Cruel, Inhuman, or Degrading Treatment.**

Through a number of communications spanning several years, the Committee has found several physical and psychological conditions endured by inmates on death row in Jamaica comprise cruel, inhuman, or degrading treatment in violation of Article 7 of the ICCPR.<sup>51</sup>

- A lack of sanitation, light, ventilation, and bedding;<sup>52</sup>
- A refusal of the State to protect inmates from beatings from fellow inmates;<sup>53</sup>
- Unsanitary conditions, inadequate quantity and quality of food, inadequate medical attention, and the denial of access to non-legal mail;<sup>54</sup>
- Beatings and death threats by prison guards, denial of medical care, and unhygienic and unsanitary conditions;<sup>55</sup>
- Isolation in total darkness for 22 hours each day, without opportunity for work or education; beatings and verbal abuse by prison guards; and inadequate medical care;<sup>56</sup>
- Severe beating with a riot club by prison guards and a strip search conducted in front of other inmates as well as guards, soldiers, and police officers;<sup>57</sup>
- A 20 hour delay by the State in informing inmates of a stay of their execution;<sup>58</sup>
- Repeated death threats and taunts by guards about the inmate's impending hanging;<sup>59</sup> and
- A mock execution staged by the prison guards.<sup>60</sup>

In addition, the Judicial Committee of the Privy Council (the "Privy Council"), Jamaica's final court of appeal, has issued key judgments impacting death row conditions in Jamaica.

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<sup>51</sup> This report does not attempt to set out all Jamaican death row conditions Communications decided by the Committee, but instead provides examples of representative Communications. See also International Jurisprudence: The Death Penalty and the Prohibition of Cruel,

Inhuman or Degrading Treatment or Punishment, World Coalition against the Death Penalty, 2011, available at <http://www.mediastroika.com/hosting/coalition/media/resourcecenter/EN-FactsheetInhumaneDP.pdf>.

<sup>52</sup> *Daley v. Jamaica*, Commc'n 750/1997 (1998), ¶ 7.6.

<sup>53</sup> *Id.*

<sup>54</sup> *Smith and Stewart v. Jamaica*, Commc'n 668/1995 (1999), ¶ 7.5.

<sup>55</sup> *Leehong v. Jamaica*, Commc'n 613/1995 (1999), ¶¶ 3.9-3.11, 9.2.

<sup>56</sup> *Freemantle v. Jamaica*, Commc'n 625/1995 (2000), ¶¶ 3.3, 6.2, 7.1-7.3.

<sup>57</sup> *Collins v. Jamaica*, Commc'n 240/1987 (1991), ¶¶ 2.12, 8.6-8.7.

<sup>58</sup> *Pratt and Morgan v. Jamaica*, Commc'n No. 210/1986 and 225/1987 (1989) ¶ 13.7. The State waited to inform the inmates of the stay until just 45 minutes remained before their scheduled execution was to take place.

<sup>59</sup> *Hylton v. Jamaica*, Commc'n No. 407/1990 (1994) ¶¶ 8.1, 9.3.

<sup>60</sup> *Linton v. Jamaica*, Commc'n No. 225/1987 (1992) ¶¶ 2.6, 8.5.

While the Privy Council is not authoritative source for UN jurisprudence, it can shed light on and elaborate on how other judicial bodies have interpreted the inhumanity of the death penalty. Each of these judgments, however, has been recently abrogated by Constitutional amendment, as described in Section 4 of this report:

1. A delay of greater than five years between death sentence and execution comprised cruel or inhuman treatment;<sup>61</sup> and
2. A condemned inmate was entitled to submit a human rights petition to the Inter-American Court of Human Rights (the “IACHR”)<sup>62</sup> and to a stay of execution until the IACHR’s report has been considered by the Privy Council in the inmate’s application for mercy.<sup>63</sup>

These decisions have been eliminated or curtailed by recent Constitutional Amendments, as discussed above, pp. 3-4.

## **2. The Death Row Phenomenon Comprises Cruel or Inhuman Treatment.**

The “death row phenomenon;” that is, the condition arising from a prolonged period of time on death row, while not a *per se* violation of Article 7,<sup>64</sup> may rise to cruel, inhuman, or degrading treatment depending upon the facts of each case.

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<sup>61</sup> *Pratt and Morgan v. The Attorney General for Jamaica* [1993] Appeal No. 10 (P.C. 1993) (appeal taken from Jamaica), available at <http://graduateinstitute.ch/faculty/clapham/hrdoc/docs/privycouncilpratt.doc>, last viewed September 6, 2011. As a result, the sentences of Mr. Pratt and Mr. Morgan, — who, at the time of the Privy Council’s decision, had been on death row for nearly fourteen years — were commuted to life imprisonment. The Privy Council based its decision upon the then Article 17 (1) of Jamaica’s Constitution, which provided that “No person shall be subjected to torture or to inhuman or degrading punishment or other treatment.” See <http://pdba.georgetown.edu/Constitutions/Jamaica/jam62.html>, last viewed September 6, 2011. See Section 4 *infra* for discussion of recent changes to the Jamaican Constitution affecting human rights.

<sup>62</sup> Jamaica withdrew from the Optional Protocol to the United Nations International Covenant prior to decision in *Lewis*, removing the ability of individuals to petition the Committee regarding violations by Jamaica.

<sup>63</sup> *Lewis v. Attorney General of Jamaica*, [2000] All ER (D) 1216 (P.C. 2000) (appeal taken from Jamaica). *Lewis* pertains to the petitions of six death row inmates: Neville Lewis, Patrick Taylor, Anthony McLeod, Christopher Brown, Desmond Taylor, and Steve Shaw. While the Privy Council also considered the conditions in which the inmates were held on death row — recognizing beatings, lack of medical care, and, in one inmate’s case, mental suffering incurred when his death warrant was read to him on three separate occasions, each time before appeals had been exhausted — it was “not prepared” to say that such conditions violated Jamaica’s Constitution. *Id.* at p. 17. The Privy Council instead held that the conditions alleged should have been investigated to determine whether they amounted to inhuman and degrading treatment. *Id.* The death sentence of each *Lewis* inmate was commuted to life imprisonment because each of the inmates had been, or soon would be, on death row for longer than the five-year period set out in *Pratt and Morgan*, an advance later eliminated by a Constitutional amendment, as discussed *infra* in Section 4 of this shadow report.

<sup>64</sup> The death row phenomenon may also violate Art. 10 of the ICCPR. See, e.g., *Francis v. Jamaica*, ¶ 9.2; *Williams v. Jamaica*, Comm’n No. 609/1995 (1997) ¶¶ 6.4-6.5.

In *Francis v. Jamaica*,<sup>65</sup> the Human Rights Committee found that the physical and psychological conditions of Mr. Francis's detention on death row comprised the death row phenomenon.<sup>66</sup> During his twelve years on death row, Mr. Francis was held in a 10 foot by 10 foot cell that was dirty and infested with cockroaches and rats. He was allowed out of the cell for just minutes per day; on some days, he was not allowed out at all. He was regularly beaten by guards but denied medical treatment for his injuries, including a severe head wound that resulted in chronic headaches.<sup>67</sup> As to the psychological conditions, Mr. Francis was held in the death cell (the penultimate scene in a death row inmate's life), located adjacent to the gallows, for five days. During this time, he was under surveillance 24 hours per day and could hear the gallows being tested. The guards weighed Mr. Francis to determine the necessary "drop" on the hanging rope; and the executioner taunted Mr. Francis about his impending hanging and the length of time it would take for Mr. Francis to die.<sup>68</sup> Mr. Francis's mental condition deteriorated significantly while on death row.<sup>69</sup>

Subsequently, in *Williams v. Jamaica*,<sup>70</sup> the Human Rights Committee found the death row phenomenon<sup>71</sup> based upon the length of time on death row (seven years), together with Mr. Williams' obvious mental impairment (which existed at the time of trial and which deteriorated further while on death row), and the State's refusal to provide "any or ... inadequate medical treatment for his mental condition while detained on death row."<sup>72</sup>

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<sup>65</sup> Commc'n No. 606/1994 (1995).

<sup>66</sup> *Id.* at ¶¶ 9.1-9.2.

<sup>67</sup> *Id.* at ¶ 4.5.

<sup>68</sup> *Id.* at ¶ 4.4.

<sup>69</sup> *Id.* at ¶ 3.7.

<sup>70</sup> Commc'n No. 609/1995 (1997).

<sup>71</sup> The UNHRC found violations of both Article 7 and Article 10 of the ICCRP. *Id.* at ¶¶ 6.4-6.5.

<sup>72</sup> *Id.* at ¶¶ 2.3, 6.3-6.5.