



ANTIGUA AND BARBUDA
Joint Stakeholder Report for the United Nations Universal Periodic Review

Submitted by The Advocates for Human Rights,
a non-governmental organization in special consultative status

The World Coalition Against the Death Penalty
and
The Greater Caribbean for Life
for the 38th Session of the Working Group on the Universal Periodic Review
November 2021

Submitted 25 March 2021

Founded in 1983, **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 publication. The Advocates is the primary provider of legal services to low-income asylum seekers in the Upper Midwest region of the United States. 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 (World Coalition), an alliance of more than 160 NGOs, bar associations, local authorities and unions, was created in Rome on May 13, 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.

The Greater Caribbean for Life (GCL) is an independent, not-for-profit civil society organisation, incorporated under the laws of the Commonwealth of Puerto Rico. GCL is the only organisation that is devoted to working towards the abolition of the death penalty in the region. It has been active in raising awareness of the issues surrounding the death penalty, while supporting Caribbean activists and abolitionist organisations since its establishment in 2013, following a Conference in Trinidad and Tobago, which was attended by abolitionists from 12 Greater Caribbean countries as well as abolitionists further afield.

I. EXECUTIVE SUMMARY

1. This report addresses Antigua and Barbuda's compliance with its human rights obligations with respect to its use of the death penalty. The country is a sovereign member state of the British Commonwealth of Nations and of the Organisation of Eastern Caribbean States, including the Eastern Caribbean Supreme Court (ECSC).¹ Both the ECSC and the Privy Council, Antigua and Barbuda's final appellate court, have handed down judgments on the death penalty.² In its 2016 Universal Periodic Review, Antigua and Barbuda noted a number of recommendations on the death penalty,³ and it has failed to implement them. Antigua and Barbuda has not yet formally abolished the death penalty or established an official moratorium. The government maintains that a de facto moratorium on the death penalty is in place and that no executions have occurred since 1991.⁴ No person is currently under sentence of death in Antigua and Barbuda.⁵
2. This report focuses on various issues concerning the death penalty and related human rights issues, including conditions of detention. Specifically, this report recommends that Antigua and Barbuda abolish the death penalty, ratify relevant human rights treaties, improve conditions for all persons in detention, and take steps to reduce the backlog of cases in its criminal courts. The authors are grateful for the provision of on-the-ground information from GCL.

II. BACKGROUND AND FRAMEWORK

A. 2016 Universal Periodic Review of Antigua and Barbuda

3. During its second-cycle Universal Periodic Review, Antigua and Barbuda received 14 recommendations related to the death penalty, 3 related to torture, and 1 related to the age of criminal responsibility. Antigua and Barbuda did not accept these recommendations. Antigua and Barbuda partly accepted 5 recommendations concerning the conditions of detention.
1. *Moratorium on the death penalty, abolition of the death penalty, awareness-raising campaigns.*

Status of Implementation: Not Accepted, Not Implemented

4. Antigua and Barbuda received 6 recommendations to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights,⁶ and 14 recommendations to consider imposing or to impose a formal moratorium on the death penalty or to abolish it entirely.⁷ Antigua and Barbuda further received one recommendation to carry out awareness-raising campaigns in relation to the lack of deterrent effects in the application of capital punishment.⁸ Antigua and Barbuda did not accept any of these recommendations, nor has it implemented them. Recalling that the death penalty had not been carried out in decades, Antigua and Barbuda's delegation stated in the interactive dialogue that it considered that its society "was not yet ready to take a quantum leap and remove the death penalty from its legislation."⁹ The delegation asserted that the fact that

the death penalty was on the statute books would give “some sort of security to the population.”¹⁰

2. *Detention conditions*

Status of Implementation: Partially Accepted, Partially Implemented

5. Antigua and Barbuda received 5 recommendations relating to the improvement of its detention conditions.¹¹ Out of these, Antigua and Barbuda accepted 2 recommendations that specifically called for efforts to reduce overcrowding¹² and rejected the other recommendations concerning general detention conditions, health conditions, and conformity with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).¹³ Antigua and Barbuda’s delegation recognised that overcrowding in prisons was a serious problem¹⁴ and that a new penal facility was urgently needed.¹⁵ The delegation noted that Antigua and Barbuda was trying to address overcrowding by pardoning people who had already served long prison terms and by releasing people on parole.¹⁶

3. *Torture*

Status of Implementation: Not Accepted, Not Implemented

6. Antigua and Barbuda received 3 recommendations to sign or ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.¹⁷ Antigua and Barbuda did not accept these recommendations. Antigua and Barbuda’s delegation noted that torture was not a recurrent matter in the islands but that the Government could consider the possibility of signing the Protocol.¹⁸

4. *Age of criminal responsibility*

Status of Implementation: Not Accepted, Not Implemented

7. Antigua and Barbuda noted one recommendation to raise the age of criminal responsibility in line with the model Child Justice Bill published by the Organisation of Eastern Caribbean States (OECS) in 2007.¹⁹ Under that Bill, the minimum age of criminal responsibility is 12, with a further rebuttable presumption that a child under the age of 14 shall not be held criminally responsible, unless it is proved that the child had capacity to realise that they ought not to do the act or omission in question.²⁰ Antigua and Barbuda has not implemented any changes in this regard.

B. Domestic Legal Framework

8. Antigua and Barbuda’s domestic legal framework has largely remained unchanged since the last Universal Periodic Review in 2016. The country’s legal system is based on English common law.²¹ Antigua and Barbuda is part of the Eastern Caribbean Supreme Court (ECSC), which consists of a High Court of Justice and a Court of Appeal.²² Final appeals lie to Her Majesty in Council,²³ and are heard on the Sovereign’s behalf by the Judicial Committee of the Privy Council (JCPC).²⁴ In practice, the JCPC will always

grant leave to appeal in capital cases.²⁵ Antigua and Barbuda has a bicameral legislature, consisting of a House of Representatives and a Senate which, together with the Sovereign, form the Parliament.²⁶

9. The Constitution of Antigua and Barbuda is the country's supreme law²⁷ 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."²⁸ The Constitution may be altered only if an amendment has the support of two-thirds of the members of the House of Representatives²⁹ and of two-thirds of votes cast in a referendum.³⁰
10. The death penalty is available for the offenses of treason³¹ and murder,³² as well as of certain military offenses under the Defence Act 2006.³³ 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.³⁴ The Court stressed the importance of mitigation in individual cases, such that the death penalty should be imposed only in exceptionally severe cases in the judge's discretion.³⁵ In 2008, the High Court of Justice in Antigua and Barbuda applied this ruling in *The Queen v Monelle*:³⁶ the death penalty is now discretionary, and should be imposed only in cases of aggravated murder or, presumably, of treason.³⁷ The JCPC has also found that the death penalty should be imposed, if at all, only in the most egregious cases.³⁸
11. 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,³⁹ military espionage/communicating with the enemy,⁴⁰ obstructing operations,⁴¹ or mutiny.⁴² However, certain provisions in the Defence Act 2006 may be incompatible with the Constitution, which expressly limits the death penalty to treason and murder.
12. Under the "delay rule" introduced by the JCPC in *Pratt & Morgan v Attorney-General for Jamaica*,⁴³ there is in effect a rebuttable presumption that executing a person after that person has spent five years or more on death row amounts to inhuman punishment and requires commutation of the death sentence.
13. The Child Justice Act 2015⁴⁴ provides that children may not be sentenced to death, life imprisonment, or corporal punishment. Further, under recent amendments to the Offences Against the Person Act 1873, minors may not be sentenced to death for murder, but shall instead be detained during the Court's pleasure subject to periodic review. (Such juvenile offenders had previously been ordered to be detained during Her Majesty's pleasure without such automatic periodic review.)⁴⁵ During Antigua and Barbuda's last Universal Periodic Review, several countries criticized the age of criminal responsibility,⁴⁶ currently set at eight years of age.⁴⁷ The minimum age to be sentenced to death is set at 18, however.
14. Under the Sentence of Death (Expectant Mothers) Act 1953, pregnant women may not be sentenced to death, and a life sentence is substituted instead.⁴⁸

15. Under the Constitution of Antigua and Barbuda, the Governor General exercises the prerogative of mercy on Her Majesty's behalf and in accordance with ministerial advice.⁴⁹ The Constitution also establishes an Advisory Committee,⁵⁰ which must review all death sentences and advise a minister designated to advise the Governor General on the pardon power. That advice is not binding on the minister.⁵¹
16. Antigua and Barbuda is a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,⁵² albeit not to the Optional Protocol establishing a monitoring and inspection system.⁵³ Since its last Universal Periodic Review, Antigua and Barbuda has also signed the International Covenant on Civil and Political Rights (ICCPR),⁵⁴ but not the Second Optional Protocol aiming at the abolition of the death penalty.⁵⁵ It acceded to the ICCPR on 3 July 2019.⁵⁶

III. IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

Right or area 2.1. Acceptance of international norms

17. Antigua and Barbuda ratified the ICCPR on 3 July 2019, following recommendations to do so from 12 countries during the 2016 Universal Periodic Review.⁵⁷ However, it has not ratified the Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty. Antigua and Barbuda has been a state party to the Convention against Torture since 1998, but it has not signed or ratified its Optional Protocol.⁵⁸

Right or area 6. Human rights education and training

18. During its 2016 Universal Periodic Review, Antigua and Barbuda noted a recommendation from Spain to conduct awareness-raising campaigns in relation to the death penalty, specifically the lack of deterrent effect of capital punishment.⁵⁹ There is no evidence suggesting the government has implemented this recommendation. Further, during the interactive dialogue, the Netherlands asked Antigua and Barbuda to address the negative trend of calls for reintroducing capital punishment, but did not make a formal recommendation in this regard.⁶⁰

Right or area 12.4. Death penalty

19. There have been no executions in Antigua and Barbuda since 1991, and no person is currently on death row. While a de facto moratorium is in place, there is no official moratorium on capital punishment. During its 2016 Universal Periodic Review, the delegation stated that Antiguan society "was not yet ready to take a quantum leap to remove the death penalty from its legislation. The fact that it was on the statute books had given some sort of security to the population."⁶¹ Indeed, in December 2020 the government of Antigua and Barbuda voted against the UN General Assembly Resolution on a Moratorium on the Use of the Death Penalty.⁶²
20. As explained above, under the Constitution, applicable legislation, and case law from the ECSC and the JCPC, the death penalty remains available for aggravated murder and

treason, although a lengthy delay in carrying out an otherwise lawful death sentence may result in mandatory commutation to a life sentence. Although legislation does not appear to stipulate how executions are to be carried out, the method used historically is death by hanging.⁶³ As also explained above, the death penalty is not available for minors or pregnant women.

Right or area 12.5. Prohibition of torture and cruel, inhuman or degrading treatment

21. The Constitution of Antigua and Barbuda expressly prohibits torture, as well as inhuman or degrading punishment.⁶⁴
22. As noted by the Committee Against Torture, there is no express provision in domestic legislation establishing that evidence obtained through torture or cruel, inhuman or degrading treatment is inadmissible.⁶⁵ However, English common law has historically taken a robust stance against torture and the admissibility of evidence obtained by torture,⁶⁶ and the JCPC would be expected to follow that jurisprudence even in the absence of an express statutory prohibition.⁶⁷ Antigua and Barbuda has ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, albeit not the Optional Protocol setting up a monitoring mechanism.⁶⁸

Right or area 12.6. Conditions of detention

23. Antigua and Barbuda has one prison, called “Her Majesty’s Prison.” Conditions at the prison have been severely criticized. As of 2018, the prison was “grossly overcrowded,” with poor ventilation and inadequate hygiene,⁶⁹ and with conditions described as “harsh and life threatening.”⁷⁰ The prison has a capacity of 150, but during the reporting period it held almost twice its capacity.⁷¹ There have recently been improvements, however. GCL confirms that, according to the superintendent’s office, as of 24 February 2021, there were 255 prisoners in Her Majesty’s Prison.
24. Antigua and Barbuda accepted 2016 recommendations to request technical assistance to resolve the detention issues raised during the interactive dialogue,⁷² but the authors have not uncovered evidence that it has in fact done so.
25. Pursuant to the Criminal Procedure Act, people held under sentence of death must be confined separately from other people in detention.⁷³ People under sentence of death are not entitled to visits without permission from the trial court. They are allowed visits only by prison guards, medical officers, and ministers of religion.⁷⁴ As stated above, however, there is currently no one on death row.

Right or area 15.1. Administration of justice & fair trial

26. Free legal assistance is available to indigent defendants in capital cases.⁷⁵

IV. RECOMMENDATIONS

27. This stakeholder report suggests the following recommendations for the government of Antigua and Barbuda:

- Abolish the death penalty and replace it with a sentence that is fair, proportionate, and in compliance with international human rights standards.
- Immediately impose an official moratorium on carrying out death sentences.
- In the absence of a de jure moratorium, restrict the use of the death penalty to those crimes in which the defendant committed an intentional killing, and eliminate the death penalty for offenses not entailing an intentional killing, such as treason or military offenses under the Defence Act 2016 not resulting in death.
- Collaborate with civil society organisations in the Caribbean to conduct a comprehensive public awareness-raising campaign to educate the public about international human rights standards as they pertain to the death penalty and alternatives to the death penalty.
- Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights.
- Ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- Adopt a law expressly criminalizing torture and prohibiting introduction of evidence obtained under torture or other cruel, inhuman, or degrading treatment, except as evidence that torture has been committed.
- Ensure that detention conditions comply with the Nelson Mandela Rules.
- Increase the resources available to the justice system to reduce prison overcrowding, including by investing in infrastructure such as new detention facilities, and continue to pardon people who have already served long prison terms and continue to release people on parole.
- Introduce alternatives to imprisonment for minor offenses, with a view to reducing overcrowding in prison.

¹ CIA World Factbook, “Antigua and Barbuda”, (16 February 2021). Available online at <https://www.cia.gov/the-world-factbook/countries/antigua-and-barbuda/>

² *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). Also available online at <https://www.eccourts.org/newton-spence-v-the-queen-and-peter-hughes-v-the-queen/> ¶ *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 ¶ *Pratt & Morgan v Attorney-General for Jamaica*, Appeal No. 10 of 1993 (JCPC), (2 November 1993). Also available online at <https://www.bailii.org/uk/cases/UKPC/1993/1.html> ¶ *Moise v The Queen*, paras. 50-54, Criminal Appeal No. 8 of 2003 (ECSJ Court of Appeal, St. Lucia), (15 July 2005). Also available online at <https://www.eccourts.org/mervyn-moise-v-queen/>

³ 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. Also available online at <https://undocs.org/A/HRC/33/13>.

⁴ 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>

⁵ Cornell Center on the Death Penalty Worldwide Database, “Antigua and Barbuda”, (2021). Available online at <https://deathpenaltyworldwide.org/database/>.

⁶ 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, ¶77.8 Move forward with the ratification of the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, including the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Chile); ¶ 77.48 Establish a formal moratorium on the death penalty with a view to ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights (Australia); ¶ 77.49 Establish a formal moratorium on the death penalty and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, with a view to abolishing capital punishment both in practice and in law (Portugal); ¶ 77.50 Establish an official moratorium on executions and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, so as to bring national legislation into conformity with the de facto moratorium (Netherlands); ¶ 77.51 Abolish the death penalty and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty (France); ¶ 77.52 Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Montenegro). Also available online at <https://undocs.org/A/HRC/33/13>.

⁷ 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, ¶77.8 Move forward with the ratification of the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, including the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Chile); ¶ 77.48 Establish a formal moratorium on the death penalty with a view to ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights (Australia); ¶77.49 Establish a formal moratorium on the death penalty and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, with a view to abolishing capital punishment both in practice and in law (Portugal); ¶ 77.50 Establish an official moratorium on executions and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, so as to bring national legislation into conformity with the de facto moratorium (Netherlands); ¶ 77.51 Abolish the death penalty and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty (France); ¶ 77.52 Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Montenegro); ¶ 77.53 Consider establishing an official moratorium on executions with a view to abolishing the death penalty as called for by United Nations General Assembly resolution 69/186 (Germany); ¶ 77.54 Consider taking all necessary steps to establish a de jure moratorium on executions with a view to fully abolishing the death penalty (Italy); ¶ 77.55 Establish an official moratorium on the death penalty, with a view to its full abolition (Slovenia); ¶ 77.56 Abolish the death penalty (Honduras); ¶ 77.57 Abolish the death penalty and commute to prison terms the death sentences already pronounced (Panama); ¶ 77.58 Abolish the death penalty and in the interim rigorously apply international standards for fair trial in all death penalty cases and respect national legal procedures and the standards required by the Privy Council and the United Nations for the protection of the rights of prisoners sentenced to death (United Kingdom of Great Britain and Northern Ireland); ¶ 77.59 Consider taking steps towards the abolition of the death penalty (South Africa); ¶ 77.60 Carry out awareness-raising campaigns in relation to the lack of deterrent effects in the application of capital punishment and establish a de jure moratorium aiming at the total abolition of the death penalty (Spain). Also available online at <https://undocs.org/A/HRC/33/13>.

⁸ 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, ¶ 77.60 Carry out awareness-raising campaigns in relation to the lack of deterrent effects in the application of capital punishment and establish a de jure moratorium aiming at the total

abolition of the death penalty (Spain). ¶ Also available online at <https://undocs.org/A/HRC/33/13>.

⁹ 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, ¶ 52 The delegation responded to the statement by the Netherlands about calls by some politicians for the death penalty to be brought back into use. It considered that the society of Antigua and Barbuda was not yet ready to take a quantum leap and remove the death penalty from its legislation. The fact that it was on the statute books had given some sort of security to the population. But the delegation recalled, once again, that the death penalty had not been implemented in decades. ¶ Also available online at <https://undocs.org/A/HRC/33/13>.

¹⁰ 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, ¶ 52 The delegation responded to the statement by the Netherlands about calls by some politicians for the death penalty to be brought back into use. It considered that the society of Antigua and Barbuda was not yet ready to take a quantum leap and remove the death penalty from its legislation. The fact that it was on the statute books had given some sort of security to the population. But the delegation recalled, once again, that the death penalty had not been implemented in decades. ¶ Also available online at <https://undocs.org/A/HRC/33/13>.

¹¹ 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, ¶ 76.14 Take measures to reduce overcrowding in prisons (China); ¶ 76.15 Introduce alternatives to imprisonment for minor offences, with a view to reducing overcrowding and improving the situation of prisoners in general (Portugal); ¶ 77.61 Improve conditions of detention and reduce the duration of detention with faster legal proceedings and investing into infrastructure to address prison overcrowding (Germany); ¶ 77.62 Increase the resources aimed at improving the conditions of prisons, especially in relation to health conditions and the separation of prisoners according to the type of crime committed and level of risk (Spain); ¶ 77.63 Take effective measures to ensure that conditions of detention at Her Majesty’s Prison are in conformity with United Nations Standard Minimum Rules for the Treatment of Prisoners, including by reducing overcrowding (Canada). Also available online at <https://undocs.org/A/HRC/33/13>.

¹² 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, ¶ 76.14 Take measures to reduce overcrowding in prisons (China); ¶ 76.15 Introduce alternatives to imprisonment for minor offences, with a view to reducing overcrowding and improving the situation of prisoners in general (Portugal). Also available online at <https://undocs.org/A/HRC/33/13>.

¹³ 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, ¶ 77.61 Improve conditions of detention and reduce the duration of detention with faster legal proceedings and investing into infrastructure to address prison overcrowding (Germany); ¶ 77.62 Increase the resources aimed at improving the conditions of prisons, especially in relation to health conditions and the separation of prisoners according to the type of crime committed and level of risk (Spain); ¶ 77.63 Take effective measures to ensure that conditions of detention at Her Majesty’s Prison are in conformity with United Nations Standard Minimum Rules for the Treatment of Prisoners, including by reducing overcrowding (Canada). Also available online at <https://undocs.org/A/HRC/33/13>.

¹⁴ 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, ¶ 22 Regarding overcrowding in prisons, the delegation recognized that this was a serious problem. ¶ Also available online at <https://undocs.org/A/HRC/33/13>.

¹⁵ 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, ¶ 68 With regard to prison overcrowding, the delegation agreed that a new penal facility was urgently needed. ¶ Also available online at <https://undocs.org/A/HRC/33/13>.

¹⁶ 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, ¶ 22 The Government was trying to address overcrowding in two ways. First, it had studied the situation of long-term prisoners, and subject to certain terms and conditions, some prisoners had received a pardon. Second, the Government was beginning to implement the Convicts’ Licences Act, under which some prisoners — depending on the crime they had committed, their conduct, the sentence they had received and the length of time they had served — were released under a convict’s licence (on parole, in other legal systems).

¶ Also available online at <https://undocs.org/A/HRC/33/13>.

¹⁷ 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, ¶ 77.6 Ratify the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict; ¶ 77.7 Become a State party to the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the International Labour Organization Indigenous and Tribal Peoples Convention, 1989 (No. 169); and the Convention against Discrimination in Education (Honduras); ¶ 77.15 Ratify the Optional Protocol to the Convention against Torture (Costa Rica) (Denmark) (Uruguay). Also available online at <https://undocs.org/A/HRC/33/13>.

¹⁸ 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, ¶ 41 On torture, the delegation considered that this was not a recurrent matter in the islands but that the Government could consider the possibility of signing the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The delegation reiterated that the Government was aware of the problems pertaining to the prison and stated that it would accept the recommendations to request technical assistance to solve them. ¶ Also available online at <https://undocs.org/A/HRC/33/13>.

¹⁹ 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, ¶ 77.72 Raise the age of criminal responsibility as proposed in the model Child Justice Bill of the OECS from 2007 (Germany). ¶ Also available online at <https://undocs.org/A/HRC/33/13>.

²⁰ CHILD JUSTICE BILL 2007 (OECS), clause 5. ¶ (1) It shall be presumed that a child under the age of twelve years is not capable of or guilty of committing a criminal offence. (2) A person over the age of twelve years and under the age of fourteen years shall not be criminally responsible for an act or omission unless it is proved that at the time of doing the act or making the omission, he or she had the capacity to know that he or she ought not to do the act or make the omission. ¶ Available online at <https://www.oecs.org/en/our-work/knowledge/library/social-development/bills/child-jb>

²¹ CIA World Factbook, “Antigua and Barbuda”, (16 February 2021). Available online at <https://www.cia.gov/the-world-factbook/countries/antigua-and-barbuda/>

²² Eastern Caribbean Supreme Court, “Court Overview”. Available online at <https://www.eccourts.org/court-overview/>

²³ CONSTITUTION OF ANTIGUA AND BARBUDA, section 122. The CONSTITUTION is contained in Schedule 1 to the Antigua and Barbuda Constitution Order 1981, a UK statutory instrument (S.I. 1981/1106). Also available online at <http://laws.gov.ag/wp-content/uploads/2018/08/cap-23.pdf>

²⁴ Judicial Committee of the Privy Council, “The Judicial Committee”. Available online at <https://www.jcpc.uk/about/judicial-committee.html>

²⁵ Cornell Center on the Death Penalty Worldwide Database, “Antigua and Barbuda”, (2021). Available online at <https://deathpenaltyworldwide.org/database/>

²⁶ CONSTITUTION OF ANTIGUA AND BARBUDA, section 27. ¶ There shall be a Parliament in and for Antigua and Barbuda which shall consist of Her Majesty, a Senate and a House of Representatives. ¶ Also available online at <http://laws.gov.ag/wp-content/uploads/2018/08/cap-23.pdf>

²⁷ 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 <http://laws.gov.ag/wp-content/uploads/2018/08/cap-23.pdf>

²⁸ CONSTITUTION OF ANTIGUA AND BARBUDA, section 4(1). Also available online at <http://laws.gov.ag/wp-content/uploads/2018/08/cap-23.pdf>

²⁹ 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 <http://laws.gov.ag/wp-content/uploads/2018/08/cap-23.pdf>

³⁰ 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 <http://laws.gov.ag/wp-content/uploads/2018/08/cap-23.pdf>

³¹ 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 <http://laws.gov.ag/wp-content/uploads/2018/08/cap-439.pdf>

³² THE OFFENCES AGAINST THE PERSON ACT 1873, section 2. ¶ Whosoever is convicted or murder shall suffer death as a felon. ¶ Also available online at <http://laws.gov.ag/wp-content/uploads/2018/08/cap-300.pdf>

³³ THE DEFENCE ACT 2006. Available online at <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/75265/87561/F1568778991/ATG75265.pdf>

³⁴ *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/>

³⁵ *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). ¶ 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/>

³⁶ *The Queen v Monelle*, Criminal Case No. 0015/2007 (ECSC 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

³⁷ Cornell Center on the Death Penalty Worldwide Database, “Antigua and Barbuda”, (2021). Available online at <https://deathpenaltyworldwide.org/database/>

³⁸ *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))

³⁹ THE DEFENCE ACT 2006, section 37. Available online at <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/75265/87561/F1568778991/ATG75265.pdf>

⁴⁰ THE DEFENCE ACT 2006, section 38. Available online at <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/75265/87561/F1568778991/ATG75265.pdf>

⁴¹ THE DEFENCE ACT 2006, section 44. Available online at <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/75265/87561/F1568778991/ATG75265.pdf>

⁴² THE DEFENCE ACT 2006, section 45. Available online at <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/75265/87561/F1568778991/ATG75265.pdf>

⁴³ *Pratt & Morgan v Attorney-General for Jamaica*, Appeal No. 10 of 1993 (JCPC), (2 November 1993). Also available online at <https://www.bailii.org/uk/cases/UKPC/1993/1.html>

⁴⁴ CHILD JUSTICE ACT 2015, section 72(1). ¶ Subject to subsection (2), a sentence of life imprisonment or capital punishment or any form of corporal punishment shall not be imposed on a child. ¶ Available online at <http://laws.gov.ag/wp-content/uploads/2019/02/a2015-23.pdf>

⁴⁵ THE OFFENCES AGAINST THE PERSON ACT 1873, section 3(4), as amended. ¶ Where a person under the age of eighteen years is convicted of murder, the court shall sentence him to be detained during the Court's pleasure, and under such conditions (including periodic reviews by a court of competent jurisdiction) as the court may direct to meet the requirements of retribution, deterrence and rehabilitation and upon such terms as to periodic review of his detention as the court deems appropriate. ¶ Also available online <http://laws.gov.ag/wp-content/uploads/2019/02/a2013-13.pdf>

⁴⁶ Germany recommended that Antigua and Barbuda increase the age of criminal responsibility: 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. ¶ 77.72 Raise the age of criminal responsibility as proposed in the model Child Justice Bill of the OECS from 2007 (Germany). ¶ Also available online at <https://undocs.org/A/HRC/33/13>

⁴⁷ CHILD JUSTICE ACT 2015, section 5. ¶ It shall be conclusively presumed that a child of eight years and under is not capable of committing a criminal offence and no child of eight years and under shall be prosecuted. ¶ Available online at <http://laws.gov.ag/wp-content/uploads/2019/02/a2015-23.pdf> ¶ 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, ¶ 36. It considered that the issue of the age of criminal responsibility was a serious one. It added that the legislature had debated the issue but had been unable to change the law because some members considered that it should remain as it was. However, it was expected that civil society organizations would exert pressure for the age of criminal responsibility to be raised. ¶ Also available online at <https://undocs.org/A/HRC/33/13>

⁴⁸ THE SENTENCE OF DEATH (EXPECTANT MOTHERS) ACT 1953, section 2. ¶ Where a woman convicted of an offence punishable with death is found in accordance with the provisions of this Act to be pregnant, the sentence to be passed on her shall be a sentence of imprisonment for life instead of sentence of death. ¶ Also available online at <http://laws.gov.ag/wp-content/uploads/2018/08/cap-397.pdf>

⁴⁹ CONSTITUTION OF ANTIGUA AND BARBUDA, section 84. ¶ (1) The Governor-General may, in Her Majesty's name and on Her Majesty's behalf - 1. grant to any person convicted of any offence against any law a pardon, either free or subject to lawful conditions; 2. grant to any person a respite, either indefinite or for a specified period, from the execution of any punishment imposed on that person for such an offence; 3. substitute a less severe form of punishment for that imposed by any sentence for such an offence; or 4. remit the whole or any part of any sentence passed for such an offence or any penalty or forfeiture otherwise due to Her Majesty on account of such an offence. (2) The powers of the Governor-General under subsection (1) of this section shall be exercised by him in accordance with the advice of a Minister designated by him acting in accordance with the advice of the Prime Minister. ¶ Also available online at <http://laws.gov.ag/wp-content/uploads/2018/08/cap-23.pdf>

⁵⁰ CONSTITUTION OF ANTIGUA AND BARBUDA, section 85. ¶ Also available online at <http://laws.gov.ag/wp-content/uploads/2018/08/cap-23.pdf>

⁵¹ CONSTITUTION OF ANTIGUA AND BARBUDA, section 86. ¶ (1) Where an offender has been sentenced to death by any court for an offence against any law, the Minister shall cause a written report of the case from the trial judge (or the Chief Justice, if a report from the trial judge cannot be obtained) together with such other information derived from the record of the case or elsewhere as the Minister may require, to be taken into consideration at a meeting of the Advisory Committee. (2) The Minister may consult with the Advisory Committee before tendering any advice to the Governor-General under section 84(2) of this Constitution in any case not falling within subsection (1) of this section. (3) The Minister shall not be obliged in any case to act in accordance with the advice of the Advisory Committee. (4) The Advisory Committee may regulate its own procedure. (5) In this section "the Minister" means the Minister referred to in section 84(2) of this Constitution. ¶ Also available online at <http://laws.gov.ag/wp-content/uploads/2018/08/cap-23.pdf>

⁵² U.N. Office of the High Commissioner of Human Rights, *Convention against Torture and Other Cruel, Inhuman*

or Degrading Treatment or Punishment, (10 December 1984). Available online at

<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>

⁵³ U.N. Office of the High Commissioner of Human Rights, *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, (18 December 2002). Available online at

<https://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCAT.aspx>

⁵⁴ *International Covenant on Civil and Political Rights*, (16 December 1966). Available online at

https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=_en

⁵⁵ U.N. Office of the High Commissioner of Human Rights, *Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty*, (15 December 1989). Available online at

<https://www.ohchr.org/en/professionalinterest/pages/2ndopcpr.aspx>

⁵⁶ *International Covenant on Civil and Political Rights*, (16 December 1966). Available online at

https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=_en

⁵⁷ Guatemala, Honduras, Chile, Namibia, Spain, Panama, Costa Rica, France, Ghana, Italy, Montenegro, and Sierra Leone. See 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. Also available online at <https://undocs.org/A/HRC/33/13>

⁵⁸ U.N. Human Rights Office of the High Commissioner, “U.N. Treaty Body Database”. Available online at https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=6&Lang=EN

⁵⁹ 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. ¶ 77.60 Carry out awareness-raising campaigns in relation to the lack of deterrent effects in the application of capital punishment ... (Spain). ¶ Also available online at <https://undocs.org/A/HRC/33/13>.

⁶⁰ 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. ¶ 47. ... In view of recent calls from society in Antigua and Barbuda for a full reinstatement of the death penalty, the Netherlands asked the Government to address this negative trend. The Netherlands made recommendations. ¶ Also available online at <https://undocs.org/A/HRC/33/13>.

⁶¹ 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. ¶ 52 The delegation ... considered that the society of Antigua and Barbuda was not yet ready to take a quantum leap and remove the death penalty from its legislation. The fact that it was on the statute books had given some sort of security to the population. But the delegation recalled, once again, that the death penalty had not been implemented in decades. ¶ Also available online at <https://undocs.org/A/HRC/33/13>

⁶² United Nations General Assembly, *Resolution adopted by the General Assembly: Moratorium on the use of the death penalty*, (16 December 2020). Available online at <https://undocs.org/A/RES/75/183>.

⁶³ THE CRIMINAL PROCEDURE ACT 1873, section 70. ¶ The Governor-General may make such rules and regulations, to be observed on the execution of judgment of death in every prison, as he may deem expedient for the purpose, as well of guarding against any abuse in such execution, as also of giving greater solemnity to the same, and of making known without the prison walls the fact that such execution is taking place. ¶ Also available online at <http://laws.gov.ag/wp-content/uploads/2018/08/cap-117.pdf>.

⁶⁴ CONSTITUTION OF ANTIGUA AND BARBUDA, section 7. ¶ (1) No person shall be subjected to torture or to inhuman or degrading punishment or other such treatment. (2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorises the infliction of any description of punishment that was lawful in Antigua on 31st October 1981. ¶ Also available online at <http://laws.gov.ag/wp-content/uploads/2018/08/cap-23.pdf>

⁶⁵ Committee Against Torture, *Concluding observations on Antigua and Barbuda in the absence of a report* (30 August 2017), U.N. Doc. CAT/C/ATG/CO/1. ¶ 33. The Committee is concerned at the absence of an express provision in domestic legislation establishing that evidence obtained through torture or cruel, inhuman or degrading treatment is inadmissible (art. 15). ¶ Available online at <https://undocs.org/CAT/C/ATG/CO/1>

⁶⁶ *A & Ors v Secretary of State for the Home Department* [2006] 2 AC 221 (UK House of Lords). ¶ Also available online at <http://www.bailii.org/uk/cases/UKHL/2005/71.html>

⁶⁷ *Wong Kam-ming v The Queen* Appeal No. 21 of 1978 (JCPC) (20 December 1978). Available online at <https://www.casemine.com/judgement/uk/5b2897cf2c94e06b9e19b901>; *Lam Chi-ming v The Queen* Appeal No. 39 of 1990 (JCPC). Available online at <https://www.casemine.com/judgement/uk/5b4dc2292c94e07cccd22633>

⁶⁸ U.N. Human Rights Office of the High Commissioner, “U.N. Treaty Body Database”. Available online at https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=6&Lang=EN

⁶⁹ U.S. Department of State, *2018 Country Reports on Human Rights Practices: Antigua and Barbuda*, available online at <https://www.state.gov/wp-content/uploads/2019/03/ANTIGUA-AND-BARBUDA-2018.pdf>

⁷⁰ U.S. Department of State, *2018 Country Reports on Human Rights Practices: Antigua and Barbuda*, available online at <https://www.state.gov/wp-content/uploads/2019/03/ANTIGUA-AND-BARBUDA-2018.pdf>

⁷¹ Her Britannic Majesty’s Foreign, Commonwealth & Development Office, “Antigua and Barbuda: Prisoner Pack”, (2 September 2020). ¶ HM Prison Antigua was built in the 1700s and occupies a site near St John’s. The prison is designed to hold up to 150 inmates and currently has a population of nearer to 300. Overcrowding is a problem. There is a separate female section. ¶ Also available online at <https://www.gov.uk/government/publications/antigua-prisoner-pack/antigua-and-barbuda-prisoner-pack#:~:text=HM%20Prison%20Antigua%20was%20built,population%20of%20nearer%20to%20300>. ¶ According to GCL, as of 24 February 2021, the prison population is 255.

⁷² 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. ¶ 41 ... [T]he delegation reiterated that the Government was aware of the problems pertaining to the prison and stated that it would accept the recommendations to request technical assistance to solve them. ¶ Also available online at <https://undocs.org/A/HRC/33/13>

⁷³ THE CRIMINAL PROCEDURE ACT 1873, section 68. ¶ Every person sentenced to suffer death shall, after judgment, be confined, in some safe place within the prison, apart from all other prisoners, and no person but the keeper of the prison and his servants, the medical officer or surgeon of the prison, a chaplain or a minister of religion, shall have access to any such convict without the permission in writing of the Court or Judge, before whom such convict has been tried, or of the Provost-Marshal. ¶ Also available online at <http://laws.gov.ag/wp-content/uploads/2018/08/cap-117.pdf>

⁷⁴ THE CRIMINAL PROCEDURE ACT 1873, section 68. ¶ Every person sentenced to suffer death shall, after judgment, be confined, in some safe place within the prison, apart from all other prisoners, and no person but the keeper of the prison and his servants, the medical officer or surgeon of the prison, a chaplain or a minister of religion, shall have access to any such convict without the permission in writing of the Court or Judge, before whom such convict has been tried, or of the Provost-Marshal. ¶ Also available online at <http://laws.gov.ag/wp-content/uploads/2018/08/cap-117.pdf>

⁷⁵ Committee Against Torture, *Concluding observations on Antigua and Barbuda in the absence of a report* (30 August 2017), U.N. Doc. CAT/C/ATG/CO/1. ¶ 17. ... in practice, many persons are held in custody beyond 96 hours, free legal aid is provided only in murder cases and interpretation services are unavailable until the individual is charged. ¶ Available online at <https://undocs.org/CAT/C/ATG/CO/1>