



Shadow Report on the Death Penalty in the Republic of Grenada

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Submitted by:

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About the Greater Caribbean for Life and the Caribbean Institute for Human Rights

The Greater Caribbean for Life (GCL) is an international organization established by Caribbean abolitionist organizations and individuals with the purpose of campaigning for and working towards the permanent abolition of the death penalty in the Greater Caribbean. It supports Caribbean abolitionist activists and organizations in this region (comprised by the Caribbean Islands, Mexico, Central America, Colombia, Venezuela and the Guyanas) and collaborates with the international abolitionist community.

The Caribbean Institute for Human Rights (ICADH) is an independent organization affiliated to the Inter-American University of Puerto Rico, School of Law. The ICADH conducts human rights research in Caribbean countries and provide free legal representation to victims of human rights violations before international protection mechanisms.

Introduction

1. Most Caribbean Countries have abolished the death penalty, either in law or in practice. Although Grenada still retains the mandatory sentence of death, no executions have been conducted since 1978, and there's no person awaiting execution. It is very unlikely for the courts to impose new death sentences and when they do, such sentences are eventually commuted and the prisoner is resentenced. However, the retention of the death penalty keeps open the possibility of reinstating executions. Grenada's method of execution is by hanging, a method that has been condemned by the Inter-American Court of Human Rights as degrading and inhumane. Also, the underlying legal uncertainty of the implementation of the death penalty makes it politically malleable and susceptible to arbitrariness.

Death Penalty: Normative Framework

2. The Constitution of Grenada states that “[n]o person shall be deprived of his life intentionally save in the execution of the sentence of a court in respect of a Criminal offence under the law of Grenada of which he has been convicted”, consenting to the application of the death penalty in the country.

3. Grenada's 1987 Criminal Code allows for mandatory death penalty sentences. Under Article 230 “whoever commits murder shall be liable to suffer death”. There is no distinction in the law between murder and aggravated murder as a separate offense. The method of execution used in Grenada is by hanging.

Persons Excluded from Death Penalty Sentencing

4. Grenada's law forbids the execution of individuals for crimes committed while under the age of 18.² Additionally, it excludes pregnant and nursing women, individuals over the age of 70 years, and persons with mental retardation from the imposition of death penalty sentences.³ Grenada's courts have considered whether an individual's mental disability prevented him from fully understanding the nature and consequences of his actions such that he could not be found criminally responsible or could not be liable for the same punishment as an ordinary individual.⁴

2 Grenada Criminal Code of 1987, arts. 230, 322 amended by Act 36 of 1993.

3 Gilbert v. Queen, para. 18, Criminal Appeal No. 11 of 2001, ECSC Court of Appeals, Nov. 25, 2002.

4 Jacob v. Queen, p. 8-9, Criminal Appeal No. 7 of 1994, ECSC Court of Appeals, Dec. 8, 1997.

Death Penalty in Practice

5. Grenada's last documented execution was in 1978. There were no death sentences pronounced from 2005 to 2013, and currently there are no prisoners awaiting execution.⁵

6. Although Grenada's Criminal Code clearly imposes mandatory death sentence for all murders, the courts have applied a discretionary sentencing standard. This comes after the Eastern Caribbean Supreme Court ruled that the application of the death penalty should be applied only in light of "exceptional and appropriate circumstances" and should always be subject to effective judicial review.⁶

7. This principle of exceptionality was later reaffirmed by the Judicial Committee of the Privy Council (JCPC), Grenada's highest constitutional court, which ruled that Article 230 of Grenada's Criminal Code must be construed to allow for judicial discretion, and that those individuals who were denied an opportunity to question the legality of a mandatory sentence of death, should be resentenced.⁷ Judicial discretion is now been applied by courts resulting in the restriction of death penalty sentences to aggravated murder in the absence of mitigating circumstances.

Commutation of Death Sentences

8. Since 2010, Grenada applies the principles established by the Judicial Committee of the Privy Council (JCPC) in *Pratt & Morgan v. Jamaica*, which ruled that "in any case in which execution is to take place more than five years after sentence there will be strong grounds for believing that the delay is such as to constitute "inhuman or degrading punishment or other treatment".⁸ With this current standard, all prisoners awaiting execution in Grenada for more than 5 years are then commuted, resentenced to life imprisonment or set free.

9. Executions have not been performed in decades. The threat of being sentenced to death merely exists because of its presence in the Criminal Code. It appears that the Government of Grenada rejects the abolition of the death penalty because it considers the looming threat of the death penalty mainly as a deterrent for criminality.

Post Sentencing Processes

10. The Constitution grants the right of appeal in some cases.⁹ Judicial review for capital trials and sentencing can be submitted before the High Court of Justice¹⁰, then to the Eastern Caribbean Supreme Court sitting as a Court of Appeal, and finally to the Judicial Committee of the Privy Council. However, it is unclear when the appeal is as of right and, if so, whether that right is generally respected.

The Clemency Process

5 Amnesty International, Death Sentences and Executions 2013, available at: <http://www.amnestyusa.org/sites/default/files/act500012014en.pdf>

6 Newton Spence vs. The Queen (Court of Appeal, Criminal Appeal No. 20 of 1998), in St Vincent and The Grenadines; and, Peter Hughes vs. The Queen (Court of Appeal, Criminal Appeal No. 14 of 1997) in St. Lucia.

7 See: Coard v. A.G. of Grenada, para. 34, Appeal No. 10 of 1996, JCPC, Feb. 7, 2007.

8 Pratt & Morgan v. Jamaica, Privy Council Appeal No. 10 of 1993, 3 SLR 995.

9 Grenada's Constitution Order, arts. 101-104, Dec. 19, 1973.

10 Queen v. Knights, Case No. GDAHCR1994/0212, Grenada and West Indies High Court of Justice, May 28, 2010

11. According to Articles 73 and 74 of Grenada's Constitution, any capital sentence not issued by court martial is reviewed by the Advisory Committee on the Prerogative of Mercy. A special Minister appointed by the Governor General in accordance with the advice of the Prime Minister causes a report of the case and other useful information to be submitted to the Committee, which makes recommendations to the special Minister. That Minister determines "in his own deliberate judgment" whether to advise the Governor General, who must act in accordance with that advice, to exercise the prerogative of mercy.

12. This Clemency Process has been found to violate specific provisions of the American Convention on Human Rights because it does not guarantee any procedural protections.¹¹ Prisoners applying for amnesty, pardon or commutation of sentence have no specific procedure, regulations or mechanisms to follow. This lack of procedural guarantees allows for arbitrariness and partiality in the clemency process.

Conditions of Detention

13. Prison conditions in Grenada do not meet international standards, and overcrowding at the sole incarceration facility is severe. By the end of 2013, 456 prisoners were held in a prison with capacity for only 198 persons.¹² After 5 years, a death-sentenced prisoner is permitted to be out of his cell for 11.5 hours each day, may participate in sporting, vocational and other activities, and may have a radio and television in his cell.¹³

Grenada's International Compromises

14. Although Grenada has been a party to the International Covenant on Civil and political Rights (ICCPR) since 1991¹⁴, it has neither signed nor ratified the First Optional Protocol allowing for the right of individual petition nor the Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty. Grenada has ratified Convention on the Rights of the Child¹⁵, and the American Convention on Human Rights in 1978.¹⁶ However, it has not accepted the jurisdiction of the Inter-American Court of Human Rights and has not signed the Protocol to the American Convention on Human Rights to Abolish the Death Penalty.

15. During the eighth session of the Working Group on the Universal Periodic Review, Grenada rejected recommendations on the abolition of the death penalty and on adopting a formal moratorium on executions.¹⁷

¹¹ IACHR, *Donnason Knights v. Grenada*, Case 12.028, Report No. 47/01, April 4 2001, at par. 115.

¹² US Department of State, Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights 2013, Grenada, Section 1 (c). Available at: <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>

¹³ U.S. Dept. of State, 2009 Human Rights Report: Grenada, Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Available at: <http://www.state.gov/g/drl/rls/hrrpt/2009/wha/136113.htm>

¹⁴ Status, Declarations, and Reservations, ICCPR, 999 U.N.T.S. 171, Dec. 16, 1966, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en

¹⁵ Status, Declarations, and Reservations, CRC, 1577 U.N.T.S. 3, Aug. 20, 1989, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en

¹⁶ Status, Declarations, Reservations, Denunciations, Withdrawals, B-32: Amer. Conv. on Human Rights, Pact of San Jose, Costa Rica, Nov. 22, 1969, <http://cidh.oas.org/basicos/english/basic4.amer.conv.ratif.htm>

¹⁷ Report of the Human Rights Council on its fifteenth session (A/HRC/15/L.10), par. 504

16. More recently, in 2013, Grenada joined other nations in expressing their rejection on the adoption of the United Nations General Assembly Resolution 67/176, which called for an international moratorium on the use of the death penalty. In a Note Verbale, Grenada and other 46 nations affirmed their “persistent objection to any attempt to impose a moratorium on the use of the death penalty or its abolition.”¹⁸

Conclusion

17. While no executions have been carried out for decades, Grenada’s retention of the death penalty keeps open the possibility of reinstating executions. Currently, there is no formal moratorium on executions and the government has expressly opposed any international intent to abolish the death penalty.

18. Grenada’s method of execution is by hanging, a method that has been condemned by the Inter-American Court of Human Rights as degrading and inhumane.¹⁹ The fact that Grenada retains the legality of executions by hanging is by itself a violation to its human rights international obligations to eradicate from its normative framework the use of torture, cruel, inhumane and degrading punishment or treatment.

19. Additionally, the lack of a clear prohibition on executions continues to instill legal uncertainty on the implementation of death penalty sentences. This ambiguity also allows for arbitrariness and the possibility of its reinstatement for merely politically motivated reasons.

Recommendations: The undersign organizations believe that the government of Grenada should fully implement its international human rights obligations by adopting the following recommendations:

- **Abolish and/or declare a formal moratorium on the death penalty;**
- **Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, and the Protocol to the American Convention on Human Rights to Abolish the Death Penalty;**
- **Refrain from seeking the reinstatement of the death penalty;**
- **Take the necessary measures to ensure compliance with the highest standards of due process in cases involving the application of the death penalty;**
- **Take the necessary steps to ensure that standards domestic laws meet the most rigorous level of review applicable to cases that may attract the death penalty;**
- **Ensure full compliance with the decisions of the Inter-American Commission and specifically decisions involving individual cases and precautionary measures related to the death penalty.**

¹⁸ Note Verbale, dated 16 April 2013, from the Permanent mission of Egypt to the United Nations, addressed to the Secretary-General. UN Doc. A/61/841. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N13/297/84/PDF/N1329784.pdf?OpenElement>

¹⁹ Aitken v. Jamaica, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (ser. C) No. 58/02, par. 138 (Oct. 21, 2002).