



## **Antigua and Barbuda's Compliance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

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

#### **Submitted by The Advocates for Human Rights**

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

#### **The World Coalition Against the Death Penalty**

and

#### **The Greater Caribbean for Life**

**for the 82nd Session of the Committee Against Torture  
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**The Advocates for Human Rights** (The Advocates) is a volunteer-based non-governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law since its founding in 1983. The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publication. The Advocates is the primary provider of legal services to low-income asylum seekers in the Upper Midwest region of the United States. The Advocates is committed to ensuring human rights protection for women around the world. The Advocates has published more than 25 reports on violence against women as a human rights issue, provided consultation and commentary of draft laws on domestic violence, and trained lawyers, police, prosecutors, judges, and other law enforcement personnel to effectively implement new and existing laws on domestic violence. In 1991, The Advocates adopted a formal commitment to oppose the death penalty worldwide and organized a death penalty project to provide pro bono assistance on post-conviction appeals, as well as education and advocacy to end capital punishment. The Advocates currently holds a seat on the Steering Committee of the World Coalition against the Death Penalty.

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

**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 in the region 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, and

has been supporting Caribbean activists and abolitionist organisations in the region since its establishment in 2013. This followed a Conference in Trinidad and Tobago, which was attended by abolitionists from 12 Greater Caribbean countries as well as abolitionists further afield.

## EXECUTIVE SUMMARY

1. This report addresses Antigua and Barbuda’s compliance with its human rights obligations arising from its use of the death penalty. Antigua and Barbuda has not yet formally abolished the death penalty, although the country observes a *de facto* moratorium on executions. No individuals are currently under sentence of death and the last known execution occurred in 1991.<sup>1</sup>

### **Antigua and Barbuda fails to uphold its obligations under the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment.**

#### **I. Death penalty (Concluding Observations paras. 43-44).**

2. In its 2017 Concluding Observations, the Committee Against Torture expressed concern that, although Antigua and Barbuda had announced at its 2016 Universal Periodic Review the possibility of declaring a moratorium on the death penalty,<sup>2</sup> the Committee had received no information on relevant measures taken in this regard.<sup>3</sup> The Committee recommended that Antigua and Barbuda “take the necessary steps to declare a formal moratorium on the death penalty, with a view to its abolition.”<sup>4</sup>
3. Since the Committee’s first review, Antigua and Barbuda’s commitment to move toward abolition has been unclear. In its 2021 UPR, for example, Antigua and Barbuda noted (rejected) all 19 recommendations it received relating to the death penalty.<sup>5</sup> But in a reversal of its votes in previous years, on December 17, 2024, Antigua and Barbuda voted in favor of the UN General Assembly resolution calling for a global moratorium on the death penalty.<sup>6</sup> Antigua and Barbuda has not taken any steps toward ratification of the Second Optional Protocol.
4. The Constitution of Antigua and Barbuda is the country’s supreme law<sup>7</sup> 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.”<sup>8</sup>

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<sup>1</sup> Cornell Center on the Death Penalty Worldwide Database, “Antigua and Barbuda”, (2023). Available online at <https://deathpenaltyworldwide.org/database/>.

<sup>2</sup> 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. Available online at <https://documents.un.org/doc/undoc/gen/g16/130/28/pdf/g1613028.pdf>

<sup>3</sup> Committee against Torture, *Concluding observations on Antigua and Barbuda in the absence of a report*, UN Doc. CAT/C/ATG/CO/1 (30 Aug. 2017), ¶ 43.

<sup>4</sup> Committee against Torture, *Concluding observations on Antigua and Barbuda in the absence of a report*, UN Doc. CAT/C/ATG/CO/1 (30 Aug. 2017), ¶ 44.

<sup>5</sup> Human Rights Council, *Matrix of recommendations from the Third Cycle of the Universal Periodic Review – Antigua and Barbuda*. Available online at <https://www.ohchr.org/en/hr-bodies/upr/ag-index>

<sup>6</sup> Draft resolution A/C.3/79/L.37/Rev.1. Available online at <https://igov.un.org/ga/c3/79/71b/meetings>

<sup>7</sup> CONSTITUTION OF ANTIGUA AND BARBUDA, section 2. Also available online at <https://pdba.georgetown.edu/Constitutions/Antigua/antigua-barbuda.html>.

<sup>8</sup> CONSTITUTION OF ANTIGUA AND BARBUDA, section 4(1). Also available online at <https://pdba.georgetown.edu/Constitutions/Antigua/antigua-barbuda.html>.

5. Domestic law authorizes the death penalty for treason<sup>9</sup> and murder.<sup>10</sup> The Defence Act 2006<sup>11</sup> also authorizes the use of the death penalty in relation to military offenses not resulting in death, such as aiding the enemy,<sup>12</sup> military espionage/communicating with the enemy,<sup>13</sup> obstructing operations,<sup>14</sup> or mutiny.<sup>15</sup> Some of these provisions may be incompatible with the Constitution, which expressly limits the death penalty to treason and murder, as set forth in paragraph 4 above.
6. It is noteworthy that the Offences Against the Person Act speaks generally to the offence of murder and does not classify murder by degree.<sup>16</sup> Instead, the death penalty applies broadly to “murder,” an offense that the law does not define.<sup>17</sup>
7. Antigua and Barbuda’s last known execution occurred in 1991. Several persons have been under sentence of death since that time, but in December 2016, authorities released or resentenced six of the remaining persons on death row.<sup>18</sup> Prosecutors most recently sought the death penalty in 2011, but the court declined to sentence the defendant to death.<sup>19</sup> No person is currently under sentence of death.<sup>20</sup>
8. During the 2021 interactive dialogue for the country’s third UPR, the delegation from Antigua and Barbuda stated that “[t]he Eastern Caribbean Supreme Court, in its most recent practice direction and sentencing guidelines on the matter (2020), had established the threshold of violence necessary for consideration of the death penalty, requiring the crime in question to be ‘the worst of the worst’ and ‘the rarest of the rare.’”<sup>21</sup>

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<sup>9</sup> THE TREASON ACT 1984, section 7. ¶ Everyone who commits high treason is guilty of an offence triable on indictment and on conviction shall be sentenced to death. ¶ Also available online at <https://www.global-regulation.com/law/antigua-and-barbuda/2936284/treason-act.html>.

<sup>10</sup> THE OFFENCES AGAINST THE PERSON ACT 1873, section 2. ¶ Whosoever is convicted of murder shall suffer death as a felon. ¶ Also available online at <https://www.global-regulation.com/law/antigua-and-barbuda/2935766/offences-against-the-person-act.html>.

<sup>11</sup> THE DEFENCE ACT 2006. Available online at <https://www.global-regulation.com/law/antigua-and-barbuda/2935069/defence-act%252c-2006.html>.

<sup>12</sup> THE DEFENCE ACT 2006, section 37. Available online at <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/75265/87561/F1568778991/ATG75265.pdf>.

<sup>13</sup> THE DEFENCE ACT 2006, section 38. Available online at <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/75265/87561/F1568778991/ATG75265.pdf>.

<sup>14</sup> THE DEFENCE ACT 2006, section 44. Available online at <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/75265/87561/F1568778991/ATG75265.pdf>.

<sup>15</sup> THE DEFENCE ACT 2006, section 45. Available online at <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/75265/87561/F1568778991/ATG75265.pdf>.

<sup>16</sup> See Offences against the Person Act, Section 2 (“Whosoever is convicted of murder shall suffer death as a felon.”), <https://laws.gov.ag/wp-content/uploads/2018/08/cap-300.pdf>.

<sup>17</sup> *Ibid.*

<sup>18</sup> The Death Penalty Project, *Antigua Empties Death Row*, (1 Dec 2016). Available online at <https://deathpenaltyproject.org/antigua-empties-death-row/>

<sup>19</sup> *Views on Conclusions and/or Recommendations, Voluntary Commitments and Replies Presented by the State Under Review*, Antigua and Barbuda, United Nations Human Rights Council, Forty-Ninth Session (December 16, 2021). Also available online at: <https://documents.un.org/doc/undoc/gen/g21/378/67/pdf/g2137867.pdf>.

<sup>20</sup> Cornell Center on the Death Penalty Worldwide Database, “Antigua and Barbuda”, (2023). Available online at <https://deathpenaltyworldwide.org/database/>.

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

9. In its written response to 2021 UPR recommendations on the death penalty, Antigua and Barbuda stated that “[f]or a convicted person to be sentenced to the death penalty, the national court must be satisfied that the murder must rank among the worst of the worst and the rarest of the rare. . . . Given that this test is impossible to satisfy, and given that the prosecution has failed previously to satisfy this test, it is highly unlikely any court will impose death penalty in the future. Hence, in these circumstances, it is unnecessary to abolish it via the national law as a penalty since de facto it is not applied.”<sup>22</sup> In further response to a similar recommendation, Antigua and Barbuda stated: “the last time the prosecution sought the death penalty and did not succeed was in 2011. There is no need for a moratorium if in fact the penalty is not being applied.”<sup>23</sup>
10. Despite these assurances, the text of the Offences Against the Person Act calls for the death penalty for all acts of “murder” and does not specify or classify intentional killings by degree, as explained in paragraph 6 above.
11. Public awareness about the death penalty and about human rights concerns regarding the practice is low.<sup>24</sup> In noting 2021 UPR recommendations to “[s]trengthen an awareness-raising campaign on the death penalty and public debates on the subject with a human rights focus, including in parliament, with a view to enabling its formal abolition,” to “[d]evelop awareness-raising campaigns regarding the absence of dissuasive effects in the application of the death penalty,” and to “[i]nitiate a process for a State review and discussion on the relevance of the death penalty to Antigua and Barbuda, with a view to considering the imposition of a moratorium,”<sup>25</sup> Antigua and Barbuda stated: “[i]t is likely to be costly to run both anti-death penalty campaigns and national referendums on the issue, given that financing is an issue at this time, owing to the pandemic.”<sup>26</sup>
12. **Suggested questions** relating to the death penalty:
  - What efforts has the State Party made to facilitate debates in Parliament on the subject of the death penalty?
  - What other measures has the State Party taken in Parliament to discuss the death penalty? Has the State Party promoted Parliamentary Joint Select Committees or Inquiries into the death penalty?
  - What efforts has the State Party made to collaborate with civil society to raise public awareness about the death penalty in international human rights law and its

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<sup>22</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Antigua and Barbuda: Addendum* (December 16, 2021), UN Doc. A/HRC/49/15/Add.1, at 1-2.

<sup>23</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Antigua and Barbuda: Addendum* (December 16, 2021), UN Doc. A/HRC/49/15/Add.1, at 2.

<sup>24</sup> 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>.

<sup>25</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Antigua and Barbuda* (Dec. 20, 2021), UN Doc. A/HRC/49/15, ¶¶ 88.24, 88.75, 88.78.

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

alternatives? What steps has the State Party taken to seek technical support for such efforts?

- What guidance do sentencing judges receive for determining whether a crime is “the worst of the worst” and “the rarest of the rare” in capital cases?
- How does the State Party reconcile its public pronouncements that the death penalty in practice is limited to the worst of the worst and the rarest of the rare cases with the absence of any classification of intentional homicide by severity within the Offences Against the Person Act and the absence of any definition of the offence of murder within that law?
- Does the law of Antigua and Barbuda presently authorize the death penalty for treason or for offenses specified under the Defence Act 2006 as eligible for the death penalty? What measures are in place to ensure that no person can be sentenced to death for a crime that does not rise to the level of “most serious” as the Committee has defined in General Recommendation 36?
- In light of representations made during the most recent Universal Periodic Review, will the State Party consider directing prosecutors not to seek the death penalty under any circumstances?
- What steps has the State Party taken to move toward formal abolition of the death penalty and ratification of the Second Optional Protocol to the Covenant?

## **II. Conditions of detention (Concluding Observations paras. 21-22)**

13. In its 2017 Concluding Observations, the Committee expressed concern about the conditions at Her Majesty’s Prison, the sole prison facility in Antigua and Barbuda.<sup>27</sup> These included concerns over extreme overcrowding, inadequate levels of sanitation and ventilation, the lack of running water and proper toilets, a recent outbreak of infectious diseases, insufficient healthcare, and allegations of ill-treatment and sexual violence in the prison.<sup>28</sup> The Committee recommended that Antigua and Barbuda bring prison procedures into compliance with the Nelson Mandela Rules and the Bangkok Rules.<sup>29</sup> The Committee’s recommendations focused on reducing overcrowding, improving ventilation and access to adequate food and water, providing adequate health services, and ensuring that people in detention can file complaints regarding detention conditions and torture or ill-treatment.<sup>30</sup>

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<sup>27</sup> Committee against Torture, *Concluding observations on Antigua and Barbuda in the absence of a report*, UN Doc. CAT/C/ATG/CO/1 (30 Aug. 2017), ¶ 21.

<sup>28</sup> Committee against Torture, *Concluding observations on Antigua and Barbuda in the absence of a report*, UN Doc. CAT/C/ATG/CO/1 (30 Aug. 2017), ¶ 21.

<sup>29</sup> Committee against Torture, *Concluding observations on Antigua and Barbuda in the absence of a report*, UN Doc. CAT/C/ATG/CO/1 (30 Aug. 2017), ¶ 22(a).

<sup>30</sup> Committee against Torture, *Concluding observations on Antigua and Barbuda in the absence of a report*, UN Doc. CAT/C/ATG/CO/1 (30 Aug. 2017), ¶ 22(a)-(d).

14. As of 2023, detention conditions were “harsh due to overcrowding and outdated infrastructure.”<sup>31</sup> The prison has a capacity of 150 prisoners, but at one point during the reporting period it held almost 300 prisoners.<sup>32</sup> Greater Caribbean for Life confirms that, according to the superintendent’s office, as of 24 February 2021, there were 255 prisoners in Her Majesty’s Prison. The government also created a separate facility for remand prisoners to ameliorate the situation.<sup>33</sup>
15. Antigua and Barbuda noted (declined to support) all eight of the 2021 UPR recommendations it received concerning detention conditions.<sup>34</sup> In so doing, Antigua and Barbuda accepted that “a new prison is needed. The major problem is getting the funding to do same,” and added that “[m]easures have been taken to significantly improve conditions at pre-trial detention facilities at various police stations.”<sup>35</sup>
16. Pursuant to the Criminal Procedure Act, people held under sentence of death must be confined separately from other people in detention.<sup>36</sup> People under sentence of death are not entitled to visits without permission from the trial court. Only prison guards, medical officers, and ministers of religion may visit without court permission.
17. **Suggested questions** relating to conditions of detention:
- What steps have authorities taken to address the concerns raised by the Committee in its 2017 Concluding Observations in relation to the conditions at His Majesty’s Prison?
  - Please outline any steps already taken and any additional plans to increase detention capacity and to use alternatives to imprisonment in accordance with the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), such as expanded use of bail, parole, pardons, and penalties that are alternatives to imprisonment.

<sup>31</sup> U.S. Department of State, *2023 Country Reports on Human Rights Practices: Antigua and Barbuda*, at 2, available at [https://www.state.gov/wp-content/uploads/2024/02/528267\\_ANTIGUA-AND-BARBUDA-2023-HUMAN-RIGHTS-REPORT.pdf](https://www.state.gov/wp-content/uploads/2024/02/528267_ANTIGUA-AND-BARBUDA-2023-HUMAN-RIGHTS-REPORT.pdf).

<sup>32</sup> Her Britannic Majesty’s Foreign, Commonwealth & Development Office, “Antigua and Barbuda: Prisoner Pack”, (2 September 2020). 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 was 255.

<sup>33</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Antigua and Barbuda*, (20 December 2021), U.N. Doc. A/HRC/49/15. Available online at <https://documents.un.org/doc/undoc/gen/g21/380/84/pdf/g2138084.pdf>.

<sup>34</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Antigua and Barbuda* (Dec. 20, 2021), UN Doc. A/HRC/49/15, ¶ 88.90 (Denmark), ¶ 88.89 (France), ¶ 88.88 (Germany), ¶ 88.87 (Ireland), ¶ 88.86 (Italy), ¶ 88.85 (Ukraine), ¶ 88.84 (Canada), ¶ 88.83 (Portugal).

<sup>35</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Antigua and Barbuda: Addendum* (December 16, 2021), UN Doc. A/HRC/49/15/Add.1, at 4.

<sup>36</sup> 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. ¶ Available online at <http://laws.gov.ag/wp-content/uploads/2018/08/cap-117.pdf>.

- Please provide information about any State Party requests for technical assistance to resolve detention issues raised by UN human rights mechanisms and the results of such requests.
- What steps have authorities taken to ensure that people in detention are able to file complaints with an independent body regarding their conditions of detention and/or torture and ill-treatment, including sexual violence, and that such complaints are promptly, impartially and thoroughly investigated?
- What measures and procedures have been put in place to ensure the provision of adequate health services to prisoners and the conducting of thorough and independent medical examinations of all detainees, both at the outset of detention and on a regular basis throughout the duration of detention?
- What steps have authorities taken to ensure that any person who might be under sentence of death in the future is not held in prolonged or indefinite solitary confinement, as prohibited under Rules 43–45 of the Nelson Mandela Rules?