

I. EXECUTIVE SUMMARY

1. The Bahamas has a *de facto* moratorium on the death penalty and has not executed anyone since 2000.¹ Recently however, **politicians in the Bahamas have begun calling for an end to the *de facto* moratorium and have expressed support for the death penalty.**² In response to rising crime rates, the Constitutional Reform Commission issued recommendations to retain capital punishment.³ The Bahamas noted previous UPR recommendations to declare a formal moratorium or abolish the death penalty.⁴

II. BACKGROUND AND FRAMEWORK

A. 2013 Universal Periodic Review of the Bahamas

1. *Recommendations Related to Death Penalty and the Bahamas' Response*

Status of Implementation: Not Accepted, Not Implemented

2. During the Bahamas' last Universal Periodic Review in 2013, many countries commended the Bahamas for its *de facto* moratorium on the death penalty and further requested that the Bahamas consider instituting a formal moratorium.⁵ In addition, many countries recommended that the Bahamas sign and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) and ratify the Convention Against Torture (CAT) and its Optional Protocol (OP-CAT).⁶

3. The Bahamas received several recommendations regarding the death penalty, most of which called for a *de jure* moratorium or abolition of the death penalty.⁷ The Bahamas stated that it would consider ratifying CAT and OP-CAT, but has not since done so, and responded to the recommendations regarding a formal moratorium by defending its retentionist status and noting each of them.⁸ The Bahamas asserted its sovereignty in defense of the death penalty, and referenced the support of "the majority of [the Bahamian] population" for the death penalty.⁹ The delegation noted, however, that "a *de facto* moratorium exists" and "the last execution took place twelve years ago."¹⁰ The delegation also noted that the recently appointed Constitutional Reform Commission would be considering the death penalty as part of its review.¹¹

2. *The Bahamas' Implementation of UPR Recommendations*

Status of Implementation: Partially Implemented

4. Since 2013, the Bahamas has taken action to implement UPR recommendations unrelated to the death penalty, including recommendations to establish a national human rights institution (as recommended by Germany, Maldives, Malaysia, and France), and to continue working toward increased awareness on human rights.¹² The Constitutional Reform Commission directly addressed several of the issues, including recommendations for constitutional amendments to protect human rights.¹³ The government made amendments adopting some of these



recommendations, particularly those surrounding discrimination.¹⁴ In 2016, the U.S. Department of State observed that the Bahamian government was cooperating with both international organizations and the “ombudsman-like” governmental commissioner regarding human rights investigations, but mentioned that “the government was less cooperative with domestic organizations.”¹⁵

B. Domestic Legal Framework

5. The death penalty in the Bahamas applies to the offenses of murder¹⁶ and treason,¹⁷ as well as genocide¹⁸ and terrorist acts which result in death or “serious bodily harm”¹⁹ if those acts can be prosecuted as murder or treason. The Bahamas defines treason as that which would be deemed treason under the law of England, including “the compassing, imagining, inventing, devising or intending” of an act of treason.²⁰ Further, murder committed in the course of a robbery, rape, kidnapping, terrorist act, or other felony may be punished with the death penalty regardless of intent, and the murder of a police officer, prison guard, witness, and the murder of more than one person is also punishable by death.²¹ The Constitution of the Bahamas specifically allows for the death penalty.²²

6. The imposition of the death penalty in the Bahamas is no longer mandatory following the Judicial Committee of the Privy Council’s decision in *Bowe v. The Queen*.²³ Judges can exercise discretion and should sentence only “the worst of the worst” and the “rarest of the rare” to death.²⁴ The Bahamas prohibits application of the death penalty to juveniles,²⁵ pregnant women,²⁶ and any person with an intellectual or psycho-social disability that “substantially impaired his or her mental responsibility for his acts in doing or being a party to the killing.”²⁷ Further, the Privy Council decision in *Pratt & Morgan v. Attorney General of Jamaica* determined that awaiting implementation of a sentence of execution for five years or longer violates the right to humane treatment; the Bahamas commuted the death sentences of several prisoners as a result of this decision and subsequent decisions involving prisoners in the Bahamas.²⁸

7. The Governor-General has the prerogative of mercy, and may grant a pardon, clemency, commutation, or stay of execution.²⁹ The Advisory Committee on the Prerogative of Mercy and its leading Minister advise the Governor-General as to the decision to grant mercy.³⁰

8. The Bahamas Constitution allows for accused persons to have access to counsel at all phases of criminal proceedings.³¹ For any person charged with a criminal offense, the Constitution also guarantees a fair hearing within a reasonable time by an independent and impartial court established by law.³² Nonetheless, in practice defendants are often left without access to legal aid if they cannot afford it themselves, particularly in the early phases of the criminal proceedings.³³



9. Public support—among politicians and private individuals—for the death penalty makes it impossible to predict how the death penalty would be applied if the *de facto* moratorium were lifted. It is unclear whether the criminal justice system provides people accused of death-eligible crimes with a judicial process that complies with all minimum international safeguards—that is, those standards which are intended to prevent the arbitrary deprivation of life.

C. Death penalty practice in the Bahamas

10. The Bahamas carried out its last execution in 2000. The condemned, David Mitchell, was a Bahamian national. At the time of his execution, Mitchell had an appeal pending before the Inter-American Court of Human Rights.³⁴ In 2013, Courts issued two new death sentences in separate murder cases,³⁵ but by the end of 2014 only Kofhe Goodman remained on death row, and the Court of Appeal had commuted the death sentences of two other men.³⁶ In 2016, Goodman’s sentence was commuted as well; the Bahamas is not currently holding any offenders on death row.³⁷

11. In response to domestic criminal activity, many Bahamian politicians have begun promoting the use of the death penalty.³⁸ Additionally, the Bahamas has voted *against* every U.N. General Assembly Moratorium Resolution, including the most recent resolution in 2016,³⁹ and up until 2012, the Bahamas also signed the Note Verbale of Dissociation from the resolution each year.⁴⁰ Nonetheless, notable politicians in the Bahamas, including former Governor-General Hon. Arthur D. Hanna, have spoken out against the death penalty.⁴¹

III. IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

A. Human Rights and the Death Penalty in The Bahamas

12. The Bahamas has taken significant steps toward recognizing and protecting particular rights, but it has a great number of opportunities to better protect the human rights of its people, including by abolishing the death penalty. The Bahamas has not carried out an execution in over 17 years⁴² and does not hold any offenders on death row at this time.⁴³ Nonetheless, the country maintains its retentionist status.⁴⁴

13. In 2012, the Prime Minister of the Commonwealth of the Bahamas appointed a second Constitutional Reform Commission to review the Constitution; gather public feedback on several thematic issues, including the death penalty; and make recommendations. In July of 2013, the Constitutional Reform Commission published a report of its recommendations, including retention of the death penalty.⁴⁵ The report cited public and political support for the death penalty but also mentioned political opposition thereto.⁴⁶ Members of the Commission noted that the death penalty was unlikely to be carried out until the Privy Council no longer stood as the Bahamas’ highest court of appeal. The Commission also observed that there was widespread



public support for the removal of the Privy Council as the final appellate court on the grounds that it is regarded “as an anti-hanging court.”⁴⁷ The Commission recommended a Constitutional amendment to ensure the Executive would be able to carry out a prescribed death penalty.⁴⁸

14. Despite the Bahamian government’s and the Constitutional Reform Commission’s consistent references to public support of the death penalty, The Greater Caribbean for Life confirms that it appears that little has been done in the Bahamas since the 2013 Universal Periodic Review to promote and increase opportunities for public and open debates on the death penalty. In light of this, GCL supports the recommendations listed in this current UPR, including the recommendation that the Bahamas should collaborate with abolitionist civil society organizations in the region to conduct a comprehensive public awareness-raising campaign to educate the public about international human rights standards and alternatives to the death penalty.

15. Despite the country’s stated practice of using the death penalty to punish only the “worst of the worst” crimes, the Bahamas does not follow the requirements dictated in Article 6(2) of the International Covenant on Civil and Political Rights,⁴⁹ that the death penalty be imposed for only “the most serious crimes.” Notably, as described in greater detail in paragraph 2, the country allows a death sentence for crimes which simply result in death, regardless of intent. Further, treason, defined as even the act of imagining or intending treason, is eligible for the death penalty.

16. Government officials may use the country’s increasing crime rate as a pretext for resuming executions. Various reports suggest that crime is a significant problem in the Bahamas.⁵⁰ The 2016 Inter-American Development Bank report on Crime and Violence in the Bahamas noted that the rate of homicides is on an upward trend and in 2014 reached 31.9 per 100,000 people.⁵¹ In comparison, over the same time period, the global average homicide rate was just 6.2 per 100,000 people.⁵² **Thus, there is a serious threat that executions will resume in the Bahamas in the near future.**

17. Procedural concerns regarding the right to a fair trial and access to appeals also impede the Bahamian judicial system.⁵³ In practice, many problems plague the **judicial system in the Bahamas, including heavy caseloads, insufficient protection for witnesses, high levels of crime, weak forensic capacities, crime lab delays in processing evidence, and lack of mental health assessments for the accused.**⁵⁴ One or more of these factors can easily contribute to a miscarriage of justice in a capital case.

18. **Additionally, in the early stages of proceedings, legal counsel is available only at the accused’s expense, leaving a critical gap in legal defense.**⁵⁵ International standards require that countries provide any and all defendants with access to legal aid. According to Article 14 of the ICCPR, any person accused of a crime has the right “to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if



he does not have sufficient means to pay for it.”⁵⁶ Further, the UN Human Rights Committee has specified that “assistance of counsel should be ensured, through legal aid as necessary, immediately on arrest and throughout all subsequent proceedings to persons accused of serious crimes, in particular in cases of offences carrying the death penalty.”⁵⁷ Thus, by neglecting to provide its defendants, particularly defendants of crimes punishable by death, proper and adequate access to legal counsel, the Bahamas is not complying with the international standards for a fair trial.

IV. RECOMMENDATIONS

19. The Advocates for Human Rights, the Greater Caribbean for Life, and the World Coalition against the Death Penalty respectfully suggest the following recommendations for the Bahamas:

- a. **Impose an official, *de jure* moratorium on the death penalty, effective immediately going forward.** The Bahamas should impose a country-wide moratorium on the death penalty that immediately halts all sentences and executions, with a view toward complete abolition of the death penalty.
- b. **Abolish the death penalty and replace it with a sentence that is fair, proportionate, and respects international human rights standards.**
- c. **Ratify key international agreements regarding the death penalty.** The Bahamas should ratify the Second Optional Protocol to the ICCPR with a view toward abolishing the death penalty, as well as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- d. **Ensure that all defendants have access to adequate and timely legal counsel immediately on arrest and throughout all subsequent criminal proceedings.**
- e. **Collaborate with abolitionist civil society organizations in the region to conduct a comprehensive public awareness-raising campaign to educate the public about international human rights standards and alternatives to the death penalty.** As the Bahamas cites public support for the death penalty as the primary obstacle to a formal moratorium, the Bahamas should undertake a public education campaign about human rights and alternatives to the death penalty in order to move the country closer to full abolition.

V. QUESTIONS

19. The authors of this joint stakeholder report propose the following questions to the Bahamas:



- a. **What steps has the Bahamas taken to shape public opinion about the death penalty, with a view toward facilitating full abolition?**

- b. **What procedural protections are in place to prevent future cases, like that of David Mitchell, of executions while defendants have pending appeals?**

¹ World Coalition Against the Death Penalty, *Death Penalty Worldwide*, Cornell University School of Law, <http://www.deathpenaltyworldwide.org/country-search-post.cfm?country=Bahamas®ion=&method=> (last updated Aug. 23, 2013).

² World Coalition Against the Death Penalty, *Death Penalty Worldwide*, Cornell University School of Law, <http://www.deathpenaltyworldwide.org/country-search-post.cfm?country=Bahamas®ion=&method=> (last updated Aug. 23, 2013).; Amnesty International, *Death Penalty in the English-Speaking Caribbean: A Human Rights Issue*, AMR 05/001/2012, Nov. 30, 2012.

³ World Coalition Against the Death Penalty, *Death Penalty Worldwide*, Cornell University School of Law, <http://www.deathpenaltyworldwide.org/country-search-post.cfm?country=Bahamas®ion=&method=> (last updated Aug. 23, 2013).

⁴ U.N. Human Rights Council Rep. of the Working Group on the Universal Periodic Review—The Bahamas, addendum presented by the State under Review, U.N. Doc. A/HRC/23/8/Add. 1 (May 30, 2013).

⁵ U.N. Human Rights Council Rep. of the Working Group on the Universal Periodic Review—the Bahamas, U.N. Doc. A/HRC/23/8 (Mar. 22, 2013).

⁶ U.N. Human Rights Council Rep. of the Working Group on the Universal Periodic Review—the Bahamas, U.N. Doc. A/HRC/23/8 (Mar. 22, 2013). ¶¶ 92 See *id.* at p. 18, ¶¶ 92.45-92.53 (Italy, Norway, Slovakia, Portugal, Estonia, Spain, France, among other countries).

⁷ *Id.*

⁸ U.N. Human Rights Council Rep. of the Working Group on the Universal Periodic Review—Bahamas, addendum presented by the State under Review, U.N. Doc. A/HRC/23/8/Add. 1 (May 30, 2013).

⁹ U.N. Human Rights Council Rep. of the Working Group on the Universal Periodic Review—Bahamas, addendum presented by the State under Review, U.N. Doc. A/HRC/23/8/Add. 1 (May 30, 2013) at pp. 3, ¶ 92.45.

¹⁰ U.N. Human Rights Council Rep. of the Working Group on the Universal Periodic Review—Bahamas, addendum presented by the State under Review, U.N. Doc. A/HRC/23/8/Add. 1 (May 30, 2013).

¹¹ U.N. Human Rights Council Rep. of the Working Group on the Universal Periodic Review—Bahamas, addendum presented by the State under Review, U.N. Doc. A/HRC/23/8/Add. 1 (May 30, 2013).



¹² U.N. Human Rights Council Rep. of the Working Group on the Universal Periodic Review–Bahamas, addendum presented by the State under Review, U.N. Doc. A/HRC/23/8/Add. 1 (May 30, 2013).

¹³ Commonwealth of the Bahamas, *Report of the Constitutional Commission into a Review of The Bahamas Constitution*, Constitutional Commission (Nassau, The Bahamas: Government of The Bahamas, 2013), available at https://www.bahamas.gov.bs/wps/wcm/connect/7c2fe440-cb66-4327-9bf3-432131510cc4/Constitution+Commission+Report+2013_8JULY2013.pdf?MOD=AJPERES.

¹⁴ Commonwealth of the Bahamas, *Report of the Constitutional Commission into a Review of The Bahamas Constitution*, Constitutional Commission (Nassau, The Bahamas: Government of The Bahamas, 2013), available at https://www.bahamas.gov.bs/wps/wcm/connect/7c2fe440-cb66-4327-9bf3-432131510cc4/Constitution+Commission+Report+2013_8JULY2013.pdf?MOD=AJPERES.

¹⁵ United States Department of State, *The Bahamas 2016 Human Rights Report*, by the U.S. Bureau of Democracy, Human Rights and Labor available at <http://www.state.gov/j/drl/rls/hrrpt/2013/wha/220468.htm>.

¹⁶ Penal Code of the Bahamas § 291.

¹⁷ Penal Code of the Bahamas § 389.

¹⁸ Statute Law of the Bahamas, ch. 8585, art. 2(a), 2001.

¹⁹ Bahamas Anti-Terrorism Act, art 3(1), Act No. 25 of 2004, Dec. 31, 2004.

²⁰ Penal Code of the Bahamas § 389.

²¹ Penal Code of the Bahamas (Amendment), § 290, Act No. 34 of 2011, 2011.

²² The Constitution of the Commonwealth of the Bahamas, June 20, 1973, ch.3, arts. 16(a), 1973.

²³ *Bowe v. The Queen*, (2006) L.R.P.C. [43].

²⁴ *Lockhart v. The Queen*, (2011) U.K.P.C. 33.

²⁵ Penal Code of the Bahamas § 291.

²⁶ World Coalition Against the Death Penalty, *Death Penalty Worldwide*, Cornell University School of Law, <http://www.deathpenaltyworldwide.org/country-search-post.cfm?country=Bahamas®ion=&method=> (last updated Aug. 23, 2013).

²⁷ Penal Code of the Bahamas § 305.

²⁸ *Pratt & Morgan v. Attorney General of Jamaica*, 2 AC 1 (1994); See also *Henfield v. Attorney General of the Bahamas*, AC 413, U.K.P.C. (1997).

²⁹ The Constitution of The Commonwealth of The Bahamas, June 20, 1973, ch.6, art. 90(1)(a-d), 1973.

³⁰ The Constitution of The Commonwealth of The Bahamas, June 20, 1973, ch.6, art. 90(2), 1973.

³¹ See The Constitution of The Commonwealth of The Bahamas, June 20, 1973, ch.3, art. 19, 1973.

³² The Constitution of The Commonwealth of The Bahamas, June 20, 1973, ch.3, art. 19, 1973.



³³ Amnesty International, *Death Penalty in the English-Speaking Caribbean: A Human Rights Issue*, AMR 05/001/2012, Nov. 30, 2012.

³⁴ Amnesty International, *Bahamas: Government to hang two more in violation of international obligations*, AMR 14/02/99, August 6, 1999.

³⁵ Amnesty International, *Death Sentences and Executions: 2013*, by Amnesty International (London: Amnesty International Publications, March 2014), 11.

³⁶ Amnesty International, *Death Sentences and Executions: 2014*, by Amnesty International (London: Amnesty International Ltd, April 2015), 14.

³⁷ Amnesty International, *Death Sentences and Executions: 2016*, by Amnesty International (London: Amnesty International Ltd, April 2017), 13.

³⁸ Commonwealth of the Bahamas, *Report of the Constitutional Commission into a Review of The Bahamas Constitution*, Constitutional Commission (Nassau, The Bahamas: Government of The Bahamas, 2013), available at [https://www.bahamas.gov.bs/wps/wcm/connect/7c2fe440-cb66-4327-9bf3-](https://www.bahamas.gov.bs/wps/wcm/connect/7c2fe440-cb66-4327-9bf3-432131510cc4/Constitution+Commission+Report+2013_8JULY2013.pdf?MOD=AJPERES;)

[432131510cc4/Constitution+Commission+Report+2013_8JULY2013.pdf?MOD=AJPERES.](https://www.bahamas.gov.bs/wps/wcm/connect/7c2fe440-cb66-4327-9bf3-432131510cc4/Constitution+Commission+Report+2013_8JULY2013.pdf?MOD=AJPERES;); See also Amnesty International, *Death Penalty in the English-Speaking Caribbean: A Human Rights Issue*, AMR 05/001/2012, Nov. 30, 2012.

³⁹ See G.A. Res. 71/187, U.N. Doc. A/RES/71/187 (Dec 19, 2016); G.A. Res. 69/186, U.N. Doc. A/RES/69/186 (Dec. 18, 2014); G.A. Res. 67/176, U.N. Doc. A/RES/67/176 (Dec. 20, 2012); G.A. Res. 65/206, U.N. Doc. A/RES/65/206 (Dec. 21, 2010); G.A. Res. 63/168, U.N. Doc. A/RES/63/168 (Dec. 18, 2008); G.A. Res. 62/149, U.N. Doc. A/RES/62/149 (Dec. 18, 2007).

⁴⁰ Cornell Law School, “Death Penalty Database,” accessed June 23, 2017.

U.N. General Assembly, 69th Session, Note Verbale dated 28 July 2015, U.N. Doc. A/69/993, Jul. 29, 2015; U.N. General Assembly, 67th Session, Note Verbale dated 16 April 2013, U.N. Doc. A/67/841, Apr. 23, 2013; U.N. General Assembly, 65th Session, Note Verbale dated 11 March 2011, U.N. Doc. A/65/779, Mar. 11, 2011; U.N. General Assembly, 63rd Session, Note Verbale dated 10 February 2009, U.N. Doc. A/63/716, Feb. 12, 2009; U.N. General Assembly, 62nd Session, Note Verbale dated 11 January 2008, U.N. Doc. A/62/658, Feb. 2, 2008.

⁴¹ Commonwealth of the Bahamas, *Report of the Constitutional Commission into a Review of The Bahamas Constitution*, Constitutional Commission (Nassau, The Bahamas: Government of The Bahamas, 2013), available at [https://www.bahamas.gov.bs/wps/wcm/connect/7c2fe440-cb66-4327-9bf3-](https://www.bahamas.gov.bs/wps/wcm/connect/7c2fe440-cb66-4327-9bf3-432131510cc4/Constitution+Commission+Report+2013_8JULY2013.pdf?MOD=AJPERES)

[432131510cc4/Constitution+Commission+Report+2013_8JULY2013.pdf?MOD=AJPERES.](https://www.bahamas.gov.bs/wps/wcm/connect/7c2fe440-cb66-4327-9bf3-432131510cc4/Constitution+Commission+Report+2013_8JULY2013.pdf?MOD=AJPERES)

⁴² U.N. Human Rights Council Rep. of the Working Group on the Universal Periodic Review–Bahamas, addendum presented by the State under Review, U.N. Doc. A/HRC/23/8/Add. 1 (May 30, 2013).

⁴³ Amnesty International, *Death Sentences and Executions: 2016*, by Amnesty International (London: Amnesty International Ltd, April 2017), 13.

⁴⁴ Amnesty International, *Death Sentences and Executions: 2016*, by Amnesty International (London: Amnesty International Ltd, April 2017), 13.



⁴⁵Commonwealth of the Bahamas, *Report of the Constitutional Commission into a Review of The Bahamas Constitution*, Constitutional Commission (Nassau, The Bahamas: Government of The Bahamas, 2013), available at [https://www.bahamas.gov.bs/wps/wcm/connect/7c2fe440-cb66-4327-9bf3-](https://www.bahamas.gov.bs/wps/wcm/connect/7c2fe440-cb66-4327-9bf3-432131510cc4/Constitution+Commission+Report+2013_8JULY2013.pdf?MOD=AJPERES)

432131510cc4/Constitution+Commission+Report+2013_8JULY2013.pdf?MOD=AJPERES.

⁴⁶Commonwealth of the Bahamas, *Report of the Constitutional Commission into a Review of The Bahamas Constitution*, Constitutional Commission (Nassau, The Bahamas: Government of The Bahamas, 2013) ¶ 1.13.

⁴⁷Commonwealth of the Bahamas, *Report of the Constitutional Commission into a Review of The Bahamas Constitution*, Constitutional Commission (Nassau, The Bahamas: Government of The Bahamas, 2013) ¶ 15.89.

⁴⁸Commonwealth of the Bahamas, *Report of the Constitutional Commission into a Review of The Bahamas Constitution*, Constitutional Commission (Nassau, The Bahamas: Government of The Bahamas, 2013) ¶ 15.93.

⁴⁹UN General Assembly, International Covenant on Civil and Political Rights, 1966, Art. 6(2).

⁵⁰Crime and Violence in the Bahamas: IDB Series on Crime and Violence in the Caribbean, Inter-American Development Bank 18 (June 2016).

⁵¹Crime and Violence in the Bahamas: IDB Series on Crime and Violence in the Caribbean, Inter-American Development Bank 18 (June 2016).

⁵²Crime and Violence in the Bahamas: IDB Series on Crime and Violence in the Caribbean, Inter-American Development Bank 18 (June 2016).

⁵³Amnesty International, *Death Penalty in the English-Speaking Caribbean: A Human Rights Issue*, AMR 05/001/2012, Nov. 30, 2012. (noting, for example, that prominent politicians in Saint Lucia have publicly voiced support for the increased imposition of the death penalty).

⁵⁴Amnesty International, *Death Penalty in the English-Speaking Caribbean: A Human Rights Issue*, AMR 05/001/2012, Nov. 30, 2012.; Amnesty International, *Turning the Tide in the Caribbean: Towards an End to the Death Penalty*, AMR 05/001/2013, February 2013.

⁵⁵Amnesty International, *Death Penalty in the English-Speaking Caribbean: A Human Rights Issue*, AMR 05/001/2012, Nov. 30, 2012.

⁵⁶UN General Assembly, International Covenant on Civil and Political Rights, 1966, Art. 14(3).

⁵⁷Concluding Observations of the Human Rights Committee: St. Vincent and the Grenadines, UN document CCPR/C/VCT/CO/2, April 24, 2008.