

SHORT VERSION

Session 3: The death penalty as a deterrent: does it work?

BY Leela Ramdeen, Chair, Greater Caribbean for Life (TT))

Good afternoon, my friends. We all know the saying by the 19th Century writer: Victor Hugo, author of *Les Miserables* (1802-1885). He said: “What says the law? You will not kill. How does it say it? By killing!” And, as Archbishop Desmond Tutu said in his message to those of us who gathered in Madrid at the 5th World Congress against the Death Penalty in 2013: “There is no justice in killing in the name of justice, and no godliness in exacting vengeance.”

Too often it is the poor/working class, and individuals from minority ethnic communities who are over represented on death row/receive the death sentence. As the saying goes: “Capital punishment is for those who have no capital.”

Let me state from the outset that GCL believes that society has a right to protect itself from persons who commit heinous crimes and offenders must be held accountable. However, we believe that non-lethal means are sufficient to defend and protect society from offenders.

While GCL condemns the rise of violent crime in the Greater Caribbean region, and stands in solidarity with the victims of crime, members reject the notion that capital punishment will act as a deterrent or foster respect for life in our communities. What is urgent is for governments to consider the root causes of crime.

1. See General Assembly of the United Nations: Resolution 65/206 of 2012 and 69/186 of 18 Dec 2014 — endorse the claim that there is “no conclusive evidence of the deterrent value of the death penalty.” Convinced that a moratorium on the use of the death penalty contributes to respect for human dignity and to the enhancement and progressive development of human rights, and considering that there is no conclusive evidence of the deterrent value of the death penalty...”

2. Here in our Caribbean region, **The Honourable the Chief Justice, Mr Justice Ivor Archie of Trinidad and Tobago**, said at the opening of the Law Term, 2010: “I am yet to see any persuasive empirical evidence that executions significantly

reduce murder or crime rates generally... social scientists...suggest(s) that the certainty of conviction, and within a reasonably quick time, is a more potent factor.”

And at the opening of the Law Term this year (16 September 2015), he said that:

“Over the past few years the number of persons awaiting trial for murder has risen to more than 514. Common sense tells me that by itself the death penalty is not the solution. Apart from the **dubiousness** of its value as a deterrent...

* **Frank Friel, Former Head of Organized Crime Homicide Task Force, Philadelphia**, rightly says: "The death penalty does little to prevent crime. It's the fear of apprehension and the likely prospect of swift and certain punishment that provides the largest deterrent to crime."

3. It is worth noting what some other judges had to say about the deterrence argument in relation to the death penalty. I refer to the landmark decision by the **11 members of** the Constitutional Court of South Africa – which consisted of jurists from different races, religions and age groups – in the **South African** case of *The State v Makwanyane and Mchunu*. Judgment was delivered on 6 June 1995. The court ruled that capital punishment was incompatible with the protection against “cruel, inhuman or degrading treatment or punishment” in the Interim Constitution of 1993. It therefore abolished the death penalty in South Africa. The attorney general of Witwatersrand had pressed for the death penalty for two convicts.

The Presiding Judge, President Arthur Chaskalson, stated that the most effective deterrent is the knowledge that the offender will probably be caught, convicted, and punished. In striking out the use of the death penalty, the Court said: “We would be deluding ourselves if we were to believe that the execution of the few persons sentenced to death during this period, and of a comparatively few other people each year from now onwards will provide the solution to the unacceptably high rate of crime. There will always be unstable, desperate, and pathological people for whom the risk of arrest and imprisonment provides no deterrent, but there is nothing to show that a decision to carry out the death sentence would have any impact on the behaviour of such people, or that there will be more of them if imprisonment is the only sanction. No information was placed before us by the Attorney General in regard to the rising crime rate other than the bare statistics, and they alone prove nothing, other than that we are living in a violent society, in which most crime goes unpunished, something that we all know.”

He noted that the Attorney-General had admitted that it was impossible to prove convincingly that the death penalty was a deterrent, and that inevitably there was an element of speculation in such a conclusion. 'It is', he said, 'a proposition that is not capable of proof, because one never knows about those who have been deterred; we know only about those who have not been deterred, and who have committed terrible crimes.'

"...Justice Kerigler stated in his concurring reasons: '...no empirical study, no statistical exercise, and not theoretical analysis has been able to demonstrate that capital punishment has any deterrent force greater than that of a really heavy sentence of imprisonment.'

"Therefore, 'it simply cannot be reasonable to sanction judicial killing without knowing whether it has any marginal deterrent value.'" (See p.64 of the book: *The Death Penalty as Cruel Treatment and Torture...*

<https://books.google.tt/books?isbn=1555532683>)

4. NYU Professor David Greenberg and Virginia Tech University Professor Biko Agozino conducted a study in Trinidad and Tobago in 2011. They found no correlation between executions, imprisonment and crime: "over a span of 50 years, during which these sanctions were being deployed in degrees that varied substantially, neither imprisonment nor death sentences nor executions had any significant relationship to homicides. In the years immediately following an appeals court's determination limiting executions, the murder rate fell."

In particular, the study showed that between 1950 and 1980, while executions were carried out regularly every year, homicides rates remained fairly stable. In the years since 1980, although courts continued to impose death sentences, executions took place in just two of those years. This drop in executions had no large, immediate impact on murder rates, which only began to rise sharply from 2003, when the consequences of drug trafficking and illegal possession of weapons also began taking its toll on the country.)

5. The recently launched book, entitled: *Moving Away from the Death Penalty: Arguments, Trends and Perspectives*, has a helpful section on the issue of Deterrence. **Federico Mayor**, President of the International Commission against the Death Penalty, rightly states in his chapter in this book: *Leadership and the abolition of the death penalty*: "Rejecting capital punishment is about choosing what kind of society we want to live in, and which values—including human rights and dignity, democracy and the rule of law—we want to uphold....Principled

political leadership, within the domestic realm and internationally, is an essential factor in the momentum that is driving the movement for the abolition of the death penalty.

Ultimately, it is the state that must decide to abolish the death penalty and protect the fundamental human right to life. Political leadership has been very important in overcoming domestic opposition to abolition in several countries. Political leaders have recognized that while public opinion is relevant, nations face difficulties if popular sentiment, which is difficult to gauge accurately, is allowed to determine penal policy. Experience shows that the majority of the public is willing to accept abolition of capital punishment once it is achieved.”

— Federico Mayor (UN Office of the High Commissioner for Human Rights (OHCHR), (*Moving Away from the Death Penalty: Arguments, Trends and Perspectives*, 2014, available at: <http://www.refworld.org/docid/54a684144.html> [accessed 12 November 2015])

6. A comprehensive review of the research on the issue of deterrence **over 34 years** was conducted by a Committee of *The National Research Council of the National Academies in the USA*. The Committee confirmed in its **April 2012** report that: “research to date on the effect of capital punishment on homicide rates is not useful in determining whether the death penalty increases, decreases, or has no effect on these rates. The key question is whether capital punishment is less or more effective as a deterrent than alternative punishments, such as a life sentence without the possibility of parole. Yet none of the research that has been done accounted for the possible effect of non-capital punishments on homicide rates.”

These findings are consistent with research undertaken in **1988**, and updated in **2002** by one of the leading authorities on the death penalty. A survey of research findings on the death penalty and homicide rates concluded that “it is not prudent to accept the hypothesis that capital punishment...deters murder to a marginally greater extent than does the threat and application of the supposedly lesser punishment of life imprisonment.” (Roger Hood and Carolyn Hoyle, *The Death Penalty: A Worldwide Perspective*, Oxford, OUP, **4th edition 2008**).

6. In their chapter entitled: *Myth of Deterrence*, in the book *Moving Away from the Death Penalty: Arguments, Trends and Perspectives*, Carolyn Hoyle and Roger Hood state: “The empirical research conducted over the past few decades

demonstrates that no matter what politicians argue or the public believe, neither deterrence nor public opinion should be seen as barriers to abolition.

It is well-known that some categories of offenders would not be deterred by the threat of being executed. Federico Mayor stated that many of those sentenced to death have mental health issues or were under the influence of alcohol or drugs at the time of the offence, both of which suggest the defendant may not have thought through the consequences of their actions or the possibility they may be executed. Moreover, Mayor stated, organized crime groups make “calculated decisions and believe that detection and convictions are unlikely” while “those who commit terrorists acts for political ends...are often prepared to die for that cause...[and] unlikely to be deterred by the death penalty.” (See my background information from *The American Civil Liberties Union* etc.) http://www.ohchr.org/Lists/MeetingsNY/Attachments/27/moving_away_from_death_penalty_web.pdf)

7. And then we have the work of **Prof Michael Radelet**, Chair, Department of Sociology, University of Colorado- Boulder, and **Traci Lacock**, conducted in 2008. This was a survey of experts from the American Society of Criminology, the Academy of Criminal Justice Sciences, and the Law and Society Association.

The survey asked the expert opinions of the world’s leading criminologists whether **empirical research**(not their own views) “supports the contention that the death penalty is a superior deterrent. The findings demonstrate an overwhelming consensus among these criminologists that the empirical research conducted on the deterrence question strongly supports the conclusion that the death penalty does not add deterrent effects to those already achieved by long imprisonment.” (<http://www.deathpenaltyinfo.org/files/DeterrenceStudy2009.pdf>).

The findings are published in an article in the Journal of Criminal Law and Criminology 99 (489-508) – entitled: “***Do Executions Lower Homicide Rates? The Views of Leading Criminologists.***” In the article, they state that the research reported was designed to **update the 1996 study** by Radelet and Akers who had surveyed **67** leading American criminologists on the issue of deterrence and the death penalty. The 2008 study also assessed “if any recent deterrence studies have modified the beliefs of the world’s leading criminologists. The results indicate that only a small minority to top criminologists – 10% or less, depending on how the question is phrased- believes that the weight of empirical research studies supports the deterrence justification for the death penalty.”

In this article they comment on a number of “widely-cited studies” conducted in the 6 years prior to the article, and written primarily by economists. These studies claimed to show the death penalty has deterrent effects that criminologists have not spotted (see Criminal Justice Legal Found, Articles on Death Penalty Deterrence, (www.cjlf.org/deathpenalty/DPDeterrence.htm)).

Radelet and Lacoock state that “the importance of the deterrence justification for capital punishment has declined precipitously in recent years among the general public. In the mid-twentieth century and up through the 1970s, it was unquestionably the top argument in favour of executions” p492. However, as they noted, in a Gallup Poll the proportion of respondents who stated that the death penalty was not a deterrent doubled by 2004, from 31% in 1985 to 62%. (p492).

A comparison of the results of Radelet’s and Akers’ 1996 survey and that of the 2008 survey of Radelet and Lacoock, are as they say: “remarkably similar”.

88.2% of the polled criminologists (about 76 out of 94) stated that there is little empirical evidence from existing research to support the deterrent effect of the death penalty (up slightly from 83.6% in 1996). (5.3% believe it is deterrent vs 11.9% in 1996 survey).

Radelet and Lacoock state in the above article: *“Our survey indicates that the vast majority of the world’s top criminologists believe that the empirical research has revealed the deterrence hypothesis for a myth...the consensus among criminologists is that the death penalty does not add any significant deterrent effect above that of long-term imprisonment.”*

90% of the criminologists polled said that the death penalty had little effect overall on the committing of murder.

Over 75% of those polled do not believe that increasing the number of executions, or decreasing the time spent on death row before execution, would produce a general deterrent effect.

91% said that politicians support the death penalty as a symbolic way to show they are tough on crime.

75% said that it distracts legislatures from focusing on real solutions to crime.

91.6% said that increasing the frequency of executions would not add a deterrent effect.

8. There is also the result of a **1995 survey** entitled: ***On the Front Line: Law Enforcement Views on the Death Penalty***. The Death Penalty Information Center and commissioned **Peter D. Hart Research Associates** who in January 1995 (See: <http://www.deathpenaltyinfo.org/front-line-law-enforcement-views-death-penalty>) "conducted a national opinion poll of randomly selected police chiefs in the United States. In that poll, the chiefs had the opportunity to express what they believe really works in fighting crime. They were asked where the death penalty fit in their priorities as leaders in the law enforcement field."

"Police chiefs ranked the death penalty last as a way of reducing violent crime, placing it behind curbing drug abuse, more police officers on the streets, lowering the technical barriers to prosecution, longer sentences, and a better economy with more jobs."

Police Chiefs did not believe that murderers think about the range of possible punishments. Police Chiefs considered strengthening families and neighbourhoods, punishing criminals swiftly and surely, controlling illegal drugs, and gun control (to be) more important than the death penalty. The death penalty was rated as the least cost- effective method for controlling crime. They did not believe that the death penalty significantly reduces the number of homicides, nor did they believe that murderers think about the range of possible punishments.

9. In the past few years, the governors of **Washington, Colorado, and Oregon** have put a halt to executions in their states because of problems in the death penalty system. Below are some of the reasons they gave for their actions. (And see: <http://www.deathpenaltyinfo.org/death-penalty-flux/#exe> for States where there is a hold on executions – for various reasons – on hold either by court or executive order).

Governor Jay Inslee, Washington, February 11, 2014

"Equal justice under the law is the state's primary responsibility. And in death penalty cases, I'm not convinced equal justice is being served. The use of the death penalty in this state is unequally applied, sometimes dependent on the budget of the county where the crime occurred."

"There are too many flaws in the system. And when the ultimate decision is death there is too much at stake to accept an imperfect system. "

"When the majority of death penalty sentences lead to reversal, the entire system itself must be called into question."

Governor John Hickenlooper, Colorado, May 22, 2013

"If the State of Colorado is going to undertake the responsibility of executing a human being, the system must operate flawlessly. Colorado's system for capital punishment is not flawless."

"As one former Colorado judge said to us, '[The death penalty] is the result of happenstance, the district attorney's choice, the jurisdiction in which the case is filed, perhaps the race or economic circumstance of the defendant.'"

"The death penalty is not making our world a safer or better place."

Governor John Kitzhaber, Oregon, November 22, 2011: "I do not believe that those executions made us safer; and certainly they did not make us nobler as a society." ***

"The death penalty as practiced in Oregon is neither fair nor just; and it is not swift or certain. It is not applied equally to all." ***

"I am convinced we can find a better solution that keeps society safe, supports the victims of crime and their families and reflects Oregon values."

10. A key issue to be considered in this discussion is **the state of mind** of those who commit murders. **As Willie L. Williams, Police Chief, Los Angeles, CA said:** "I am not convinced that capital punishment, in and of itself, is a deterrent to crime because most people do not think about the death penalty before they commit a violent or capital crime."

11. It is also worth noting that in the USA, where 31 States maintain the death penalty and 19 States and DC have abolished it, **States without the death penalty have had consistently lower murder rates.**

(<http://deathpenalty.org/article.php?id=82>) On p.502 of Radelet's and Lacoeks article (see above), they state that "death penalty states have consistently higher homicide rates than non-death-penalty states. In **2007**, for example, the homicide rate in states with active death penalty statutes was **42% higher than that of non-death-penalty states.**"

"The South, which carries out over 80% of the executions in the US, has the highest murder rate of the four regions." <http://www.deathpenaltyinfo.org/facts-about-deterrence-and-death-penalty> . One can say that this adds weight to the point that the death penalty is not a deterrent.

“In **Canada**, the homicide rate per 100,000 population fell from a peak of 3.09 in 1975, the year before the abolition of the death penalty for murder, to 2.41 in 1980. In 1993, 17 years after abolition, the homicide rate was 2.19 per 100,000 population, 27 per cent lower than in 1975.”

(<https://www.amnesty.org/download/Documents/.../asa330092013en.pdf>).

12. Our response to crime in our region is a moral test for all of us. Any discussion of the death penalty must be considered in the context of, for example, nation-building, character development of citizens and so on. All countries in our region and in the world at large are grappling with challenges faced in producing comprehensive crime plans. But such plans are not created in a vacuum. We need crime plans based on evidence and evidence must be gathered from many sources because crime is a complex phenomenon that requires a multi-faceted/multi-sectoral approach. GCL believes that any approach that prioritises capital punishment as a crime reduction strategy is doomed to fail.

I firmly believe that these strategies, many of which were recommended by the UNDP in their 2012 report: *Human development and the shift to better citizen security*, can contribute to build safer, more democratic and just societies in the region. At the launch of the report in TT in Feb 2012, UNDP Administrator, Helen Clark stated:

“This report stresses the need to rethink our approaches to tackling crime and violence and providing security on the ground. We need to follow approaches that are centered on citizen security and address the causes of this recent increase in violent crime, including social, economic, and political exclusion.”

The Report reviewed "the current state of crime as well as national and regional policies and programmes to address the problem in seven English- and Dutch-speaking Caribbean countries: Antigua and Barbuda, Barbados, Guyana, Jamaica, Saint Lucia, Suriname, and Trinidad and Tobago." <http://www.undp.org/content/undp/en/home/librarypage/hdr/caribbean-human-development-report-2012-1.html>

"Key recommendations from the Report: High rates of violent crime can be turned around by achieving a better balance between legitimate law enforcement and preventive measures, with a stronger focus on prevention;

Governments should create or invest more in units to address gender-based violence and adopt more preventive measures to ensure that violence against girls and women is no longer tolerated

Because crime harms social cohesion, Caribbean nations must better address youth violence and street gangs, whose crimes are rarely prosecuted

Public security requires community collaboration" (See above link for source).

In the final analysis, the Report stated that while "Crime has become one of the main challenges threatening economies and livelihoods in Caribbean countries...the right mix of policies and programmes can halt the problem."

We continue to address the **symptoms** of crime and not the **root causes**. In spite of the billions of dollars that our countries allocate in annual national budgets for national security, citizens do not feel safe. Death and destruction continue to stalk our lands.

***In March 2015, Pope Francis said: "For the rule of law, the death penalty represents a failure, as it obliges the state to kill in the name of justice... There is discussion in some quarters about the method of killing, as if it were possible to find ways of 'getting it right.' ... But there is no humane way of killing another person."

In conclusion, it is clear that the death penalty is not a deterrent. It is time that we acknowledge that this myth has been exposed. Political will is what is needed today. We need courageous, visionary leaders in our region who will develop their understanding of the nature of the problems we face in the region and who will be prepared to lift their heads above the parapet and speak out/act for what is right and just.

Rather than baying for blood, let's all work with our respective governments to: strengthen family life; fix our broken institutions - including the re-engineering of the criminal justice system; devise and implement more effective victim support initiatives; invest in education, youth development and job creation; reduce poverty and socio-economic inequality; protect children from risk-factors related to crime; work to restore respect for law, life and human rights by e.g. promoting a renewed ethic of justice, responsibility and community.

Let us go forth from this Conference, strengthening our resolve to stop crime not lives; to build a death-penalty-free world!

I thank you.

LONG VERSION

The death penalty as a deterrent: does it work?

Leela Ramdeen, Chair, Greater Caribbean for Life (TT))

Good afternoon ladies and gentlemen. We all have a vision of safer, just and peaceful societies; societies in which the rule of law prevails and in which there are conditions that will enable each person to realise his/her potential. It is time for us to acknowledge that the death penalty will not help us to realise this vision. The death penalty is a human rights issue. It dehumanises all of us; it tramples on the dignity of each human person - including the offender, the victim and their families.

“As long as the death penalty exists, there is a need for advocacy against it”. These words contained in the introduction of a book that was recently launched, entitled: *Moving Away from the Death Penalty: Arguments, Trends and Perspectives*, reflect the sentiments of those of us gathered here in Guyana.

Federico Mayor, President of the International Commission against the Death Penalty, rightly states in his chapter in this book: *Leadership and the abolition of the death penalty*: “Rejecting capital punishment is about choosing what kind of society we want to live in, and which values—including human rights and dignity, democracy and the rule of law—we want to uphold....Principled political leadership, within the domestic realm and internationally, is an essential factor in the momentum that is driving the movement for the abolition of the death penalty. The role played by leaders—such as prime ministers, presidents, ministers, authorities within ministries dealing with domestic and international affairs, national human rights institutions, the judiciary (including judges and magistrates who pass rulings that shape the debate and jurisprudence), lawyers and bar associations, and key figures in the media, religious bodies and civil society organisations—has been and will remain crucial to ensuring progress towards a world free of capital punishment. Ultimately, it is the state that must decide to

abolish the death penalty and protect the fundamental human right to life. Political leadership has been very important in overcoming domestic opposition to abolition in several countries. Political leaders have recognized that while public opinion is relevant, nations face difficulties if popular sentiment, which is difficult to gauge accurately, is allowed to determine penal policy. Experience shows that the majority of the public is willing to accept abolition of capital punishment once it is achieved.” — Federico Mayor (UN Office of the High Commissioner for Human Rights (OHCHR), (*Moving Away from the Death Penalty: Arguments, Trends and Perspectives*, 2014, available

at: <http://www.refworld.org/docid/54a684144.html> [accessed 12 November 2015] (“Between 2012 and 2014 OHCHR organised in New York a series of knowledge events on moving away from the death penalty. Four events focused on Lessons from National Experiences, Wrongful Convictions, Deterrence and Public Opinion and Discrimination against Marginalised Groups. These events brought together representatives of Member States, academia and civil society, as well as legal experts and victims of wrongful convictions. This publication consists of a series of articles from the panellists, and reflects a diversity of geographic experiences – Americas and Caribbean, Africa, Asia and Europe, with articles exploring compelling arguments relevant in deciding in favour of moving away from the death penalty”).

* Let me state from the outset that GCL believes that society has a right to protect itself from persons who commit heinous crimes and offenders must be held accountable. However, we believe that non-lethal means are sufficient to defend and protect society from offenders.

While GCL condemns the rise of violent crime in the Greater Caribbean region, and stands in solidarity with the victims of crime, members reject the notion that capital punishment will act as a deterrent or foster respect for life in our communities. GCL also believes that there is no empirical evidence to determine a link between crime rates and the application of the death penalty. Yet capital punishment is often portrayed as a means to reduce high volumes of violent crimes.

I recall an Attorney-at-Law, Senior Counsel, in Trinidad and Tobago (TT), speaking on a panel discussion on the death penalty - at the University of the West Indies, TT Campus, stating that whether the death penalty is a deterrent or not, he wants retribution, and that is his main reason for supporting it.

Such a response highlights the challenges we face in changing hearts and minds. Sadly, crime, fear of crime, frustration due to low detection rates and other inefficiencies in the criminal justice systems in our region may cause many to bay for blood. This sentiment is sometimes fuelled by some politicians who, when they fail to devise and implement effective crime reduction strategies, stir up an already volatile population into believing - albeit erroneously, that the death penalty will deter persons from committing murders. All this does is to raise the temperature in our respective countries and divert attention from the real issues that should concern us.

As the US Bishops rightly stated: "The death penalty offers the tragic illusion that we can defend life by taking life." This sentiment was also expressed years ago by Victor Hugo, author of *Les Miserables*, when he said: "What says the law? You will not kill. How does it say it? By killing!"

On the occasion of the 2014 World Day Against the Death Penalty, the UN Secretary-General Ban Ki-Moon stated that "the death penalty undermines human dignity. It fails to deter crimes more than other punishments [...] The taking of life is too irreversible for one person to inflict it on another. We must continue to argue strongly that the death penalty is unjust and incompatible with fundamental human rights." Full video available at: <http://bit.ly/1E36kx7> .

And, as Janet Reno, former Attorney General of the USA, stated some years ago: "I think that the only purpose for the death penalty, as I see it, is vengeance--pure and simple vengeance. But I think vengeance is a very personal feeling and I don't think it is something that civilized government should engage in"

It is significant that the global trend favours abolition. Is it that nearly two-thirds of the world's states – the 140 States that have abolished the death penalty in law or practice do not consider the death penalty to be a deterrent?

Sadly, 13 of the 58 States which have retained it belong to the Greater Caribbean region – almost all are English-speaking. Trinidad & Tobago and Barbados still retain the mandatory death penalty for murder. While some positive steps towards abolition are being taken in Barbados, where a bill for the elimination of the mandatory death penalty for murder is under consideration in Parliament, many Caribbean countries continue to sentence persons to death. Also, most of them have consistently voted against the UN General Assembly resolutions on a moratorium on the use of the death penalty and have signed the Note Verbale, dissociating themselves from the moratorium.

As has been noted, because of the effects of the Pratt & Morgan case (1994), Caribbean retentionist States have not carried out any execution for the past ten years, but the death penalty remains on their Criminal Statutes.

But Suriname gives us cause for hope. It is worth noting the words of Suriname's Justice and Police Minister, Edward Belfort, uttered in May 2014 by when he announced that Suriname planned to remove the death penalty from its Criminal Code. He said: "it is not the government's prerogative to decide who lives or dies." In March 2014 he had said that "countries that apply it (the death penalty) would be expected to be the safest countries in the world, yet still have many murders committed on a daily basis."

So, is there any evidence that the death penalty is a deterrent? * More and more organisations, including the UN, The Office of the High Commissioner for Human Rights, Amnesty International, and the Greater Caribbean for Life, advocate for the universal abolition of the death penalty for a number of reasons, including the fundamental nature of the right to life – the death penalty is incompatible with human rights and human dignity; the unacceptable risk of executing innocent people; the often arbitrary application of the death penalty, and the absence of proof that the death penalty serves as a deterrent to crime.

*** See General Assembly of the United Nations: Resolution 65/206 of 2012 and 69/186 of 18 Dec 2014 — endorse the claim that there is “no conclusive evidence of the deterrent value of the death penalty.”** Convinced that a moratorium on the use of the death penalty contributes to respect for human dignity and to the enhancement and progressive development of human rights, and considering that there is no conclusive evidence of the deterrent value of the death penalty...”

* In their chapter entitled: *Myth of Deterrence*, in the book *Moving Away from the Death Penalty: Arguments, Trends and Perspectives*, Carolyn Hoyle and Roger Hood state: “The empirical research conducted over the past few decades demonstrates that no matter what politicians argue or the public believe, neither deterrence nor public opinion should be seen as barriers to abolition....In Trinidad and Tobago, which has a very high homicide rate, academics have not been able to establish any relationship between trends in the execution and murder rates.”

(They were referring to a 2011 study carried out in Trinidad and Tobago by **NYU Professor David Greenberg and Virginia Tech University Professor Biko Agozino**, who found no correlation between executions, imprisonment and crime:

“over a span of 50 years, during which these sanctions were being deployed in degrees that varied substantially, neither imprisonment nor death sentences nor executions had any significant relationship to homicides. In the years immediately following an appeals court’s determination limiting executions, the murder rate fell.”

In particular, the study showed that between 1950 and 1980, while executions were carried out regularly every year, homicides rates remained fairly stable. In the years since 1980, although courts continued to impose death sentences, executions took place in just two of those years. This drop in executions had no large, immediate impact on murder rates, which only began to rise sharply from 2003, when the consequences of drug trafficking and illegal possession of weapons also began taking its toll on the country.)

(UN Office of the High Commissioner for Human Rights (OHCHR),(*Moving Away from the Death Penalty: Arguments, Trends and Perspectives*, 2014, available at: <http://www.refworld.org/docid/54a684144.html> [accessed 12 November 2015])

* Navi Pillay, High Commissioner for Human Rights (OHCHR) said in the 2012 document –*Moving away from the death penalty: Lessons from national experiences*, which includes highlights of the first OHCHR global panel event on the death penalty – held on 3 July 2012: “Any suggestions that the death penalty has a meaningful deterrent effect have been overstated, with little research supporting such an assertion.” (Page 10 (s.4.1) of the highlights of the first OHCHR global panel event on the above theme, focuses on the issue of Deterrence:

“4.1 Deterrence: Though deterrence is often presented as a major reason for retaining the death penalty, a number of panellists and participants discussed the lack of any evidence in this regard, stating that the death penalty’s perceived deterrence effect has been overstated and manipulated for decades.

Professor Barry Scheck of the United States pointed to the 2012 study of the **National Academy of Sciences** entitled *Deterrence and the Death Penalty*, which analyzed if there is a scientific basis for the assertion that the death penalty lowers homicide rates.”

(**Deterrence and the Death Penalty**, *National Research Council of the National Academies*, The National Academies Press (2012). The United States National Academy of Sciences provides independent advice to the government on matters related to science and technology).

A comprehensive review of the research on the issue of deterrence **over 34 years** was conducted by a Committee of *The National Research Council of the National Academies in the USA*. The Committee confirmed in its **April 2012** report that: “research to date on the effect of capital punishment on homicide rates is not useful in determining whether the death penalty increases, decreases, or has no effect on these rates. The key question is whether capital punishment is less or more effective as a deterrent than alternative punishments, such as a life sentence without the possibility of parole. Yet none of the research that has been done accounted for the possible effect of non-capital punishments on homicide rates.”

These findings are consistent with research undertaken in **1988**, and updated in **2002** by one of the leading authorities on the death penalty. (Roger Hood and Carolyn Hoyle, *The Death Penalty: A Worldwide Perspective*, Oxford, OUP, **4th edition 2008**). (“It draws on Roger Hood’s experiences as consultant to the United Nations for the UN Secretary General’s five-yearly surveys of capital punishment and on the latest information from a wide range of non-governmental organizations and academic literature.” <http://www.amazon.com/The-Death-Penalty-Worldwide-Perspective/dp/0199228477>)

A survey of research findings on the death penalty and homicide rates concluded that “it is not prudent to accept the hypothesis that capital punishment...deters murder to a marginally greater extent than does the threat and application of the supposedly lesser punishment of life imprisonment.” (R. Hood and C. Hoyle, *The Death Penalty: A Worldwide Perspective*, Oxford, OUP, 4th edition 2008, p.30)...

Panellists also discussed the fact that some categories of offenders would not be deterred by the threat of being executed. Mr. Federico Mayor stated that many of those sentenced to death have mental health issues or were under the influence of alcohol or drugs at the time of the offence, both of which suggest the defendant may not have thought through the consequences of their actions or the possibility they may be executed. Moreover, Mr. Mayor stated, organized crime groups make “calculated decisions and believe that detection and convictions are unlikely” while “those who commit terrorists acts for political ends...are often prepared to

die for that cause...[and] unlikely to be deterred by the death penalty.” (See my background information from *The American Civil Liberties Union etc.*)

http://www.ohchr.org/Lists/MeetingsNY/Attachments/27/moving_away_from_death_penalty_web.pdf)

See also:

<http://www.nap.edu/read/13363/chapter/1#ii>

<http://www.nap.edu/catalog/13363/deterrence-and-the-death-penalty> <http://www.abc.net.au/news/2015-02-26/fact-check3a-does-the-death-penalty-deter3f/6116030>

* Speaking at a press conference this month - on **4 Nov 2015** - at the UN Headquarters in New York, ahead of the launch of a new book by the **United Nations** entitled: *Moving Away from the Death Penalty: Arguments, Trends and Perspectives (2014)* <http://www.refworld.org/docid/54a684144.html> [accessed 12 November 2015] - on the global trend away from the death penalty, Mr. Ivan Šimonović, Assistant Secretary-General for Human Rights and the editor of the book, reiterating a statement made in the past by UN Secretary-General, Ban Ki-moon, said that there is no room for the death penalty in the 21st Century: “according to several studies, there is no convincing evidence of any deterring effect the death penalty has on crimes committed. However, there is conclusive evidence that there is a correlation between death penalty and discrimination and unequal treatment against vulnerable groups... in most cases, people who end up getting executed are poor, belong to vulnerable groups or socially disadvantaged minority groups or have mental disabilities.” <http://www.un.org/apps/news/story.asp?NewsID=52463#.VkIyirerR1S>

At the launch, by UN Secretary-General, Ban Ki-moon said: “I will never stop calling for an end to the death penalty... no one has proven that the death penalty even deters crime.”

The words of High Commissioner for Human Rights, Navi Pillay, is also a reminder that: “A death sentence is often imposed on less privileged individuals who do not have sufficient access to effective legal

representation.” http://www.ohchr.org/Lists/MeetingsNY/Attachments/27/moving_away_from_death_penalty_web.pdf

* **SOUTH AFRICAN CASE:** The Journalist N. Jayaram reminded us on 5 June 2015, that this year marks 20 years since a great anti-death penalty judgment in the case of *The State v Makwanyane and Mchunu – judgment was delivered on 6 June 1995*. “The two men at the centre of the case had been convicted of murders, attempted murder and robbery with aggravated circumstances and their appeals against the death penalty had been rejected by the Supreme Court. South Africa’s interim constitution had not expressly abolished the death penalty... the attorney general of Witwatersrand pressed for the death penalty for the two convicts. And thereby inadvertently did the world a great favour as it led to cascades of some of the most scintillating prose by the likes of Justices Arthur Chaskalson, Ismail Mahomed, Yvonne Mokgoro, Kate O’Regan, Albie Sachs and others. Most importantly the **11 members of the bench** unanimously and conclusively established through their brilliant argumentation that the death penalty was inconsistent with the Interim Constitution of South Africa of 1993 (overtaken by [the updated one of 1996](#)). The Constitutional Court consisted of jurists from different races, religions and age groups...”(<https://www.opendemocracy.net/n-jayaram/it-is-20-years-since-great-antideath-penalty-judgement>)

It is worth noting statements made in this 1995 case in South Africa when the Constitutional Court considered the issue of the deterrence of the death penalty within the context of the interim Constitution’s limitation clause. “Citing evidence before the Court showing that the bulk of violent crime was never solved, Presiding Judge, Chaskalson, stated that the most effective deterrent is the knowledge that the offender will probably be caught, convicted, and punished.

“In striking out the use of the death penalty, the Court said: *‘We would be deluding ourselves if we were to believe that the execution of the few persons sentenced to death during this period, and of a comparatively few other people each year from now onwards will provide the solution to the unacceptably high rate of crime. There will always be unstable, desperate, and pathological people for whom the risk of arrest and imprisonment provides no deterrent, but there is nothing to show that a decision to carry out the death sentence would have any impact on the behaviour of such people, or that there will be more of them if imprisonment is the only sanction.’*

“Concluding his remarks on the question of deterrence, President Chaskalson noted that the Attorney-General had admitted that it was impossible to prove

convincingly that the death penalty was a deterrent, and that inevitably there was an element of speculation in such a conclusion. 'It is', he said, 'a proposition that is not capable of proof, because one never knows about those who have been deterred; we know only about those who have not been deterred, and who have committed terrible crimes.'

"...Justice Kerigler stated in his concurring reasons: '...no empirical study, no statistical exercise, and not theoretical analysis has been able to demonstrate that capital punishment has any deterrent force greater than that of a really heavy sentence of imprisonment.'

"Therefore, 'it simply cannot be reasonable to sanction judicial killing without knowing whether it has any marginal deterrent value.'"

[The Death Penalty as Cruel Treatment and Torture: Capital Punishment Challenged in the World's Courts...](#)

<https://books.google.tt/books?isbn=1555532683> (1996 publication by William A. Schabas) (Northeastern University Press, Boston, USA). <http://www.abc.net.au/news/2015-02-26/fact-check3a-does-the-death-penalty-deter3f/6116030>

* Earlier this year, I had the pleasure of meeting **Prof Michael Radelet**, Chair, Department of Sociology, University of Colorado- Boulder, at a lecture in London organized by Parvais Jabber and Saul Lehrfreund of *The Death Penalty Project* – both work with the law firm Simons Muirhead and Burton. Prof Radelet was prepared to participate in GCL's 2nd Speaking Tour this year. However, the dates coincided with some of his other commitments. He remains ready to support our initiatives.

At the lecture in London, Prof Radelet was sharing information about the survey that he and **Traci Lacock**,

(a second-year student in the Ph.D. program, Department of Sociology, University of Colorado-Boulder, and a 2005 graduate of the University of Wyoming Law School)

conducted in 2008. This was a survey of experts from the American Society of Criminology, the Academy of Criminal Justice Sciences, and the Law and Society Association.

The survey asked the expert opinions of the world's leading criminologists as to whether the **empirical research** (not their own views) "supports the contention that the death penalty is a superior deterrent. The findings demonstrate an overwhelming consensus among these criminologists that the empirical research conducted on the deterrence question strongly supports the conclusion that the death penalty does not add deterrent effects to those already achieved by long imprisonment." (<http://www.deathpenaltyinfo.org/files/DeterrenceStudy2009.pdf>). The findings are published in an article in the Journal of Criminal Law and Criminology 99 (489-508) – entitled: ***"Do Executions Lower Homicide Rates? The Views of Leading Criminologists."*** In the article, they state that the research reported was designed to **update the 1996 study** by Radelet and Akers who had surveyed **67** leading American criminologists on the issue of deterrence and the death penalty. The 2008 study also assessed "if any recent deterrence studies have modified the beliefs of the world's leading criminologists. The results indicate that only a small minority to top criminologists – 10% or less, depending on how the question is phrased- believes that the weight of empirical research studies supports the deterrence justification for the death penalty."

In this article they comment on a number of "widely-cited studies" conducted in the 6 years prior to the article, and written primarily by economists. These studies claimed to show the death penalty has deterrent effects that criminologists have not spotted (see Criminal Justice Legal Found, Articles on Death Penalty Deterrence, (www.cjlf.org/deathpenalty/DPDeterrence.htm).

Radelet and Lacoock state that "the importance of the deterrence justification for capital punishment has declined precipitously in recent years among the general public. In the mid-twentieth century and up through the 1970s, it was unquestionably the top argument in favour of executions" p492. However, as they noted, in a Gallup Poll the proportion of respondents who stated that the death penalty was not a deterrent doubled by 2004, from 31% in 1985 to 62%. (p492).

A comparison of the results of Radelet's and Akers' 1996 survey and that of the 2008 survey of Radelet and Lacoock, are as they say: "remarkably similar". **88.2%** of the polled criminologists (about 76 out of 94) stated that there is little empirical evidence from existing research to support the deterrent effect of the death penalty (up slightly from 83.6% in 1996). (5.3% believe it is deterrent vs 11.9% in 1996 survey).

Radelet and Lacoock state in the above article: "Our survey indicates that the vast majority of the world's top criminologists believe that the empirical research

has revealed the deterrence hypothesis for a myth...the consensus among criminologists is that the death penalty does not add any significant deterrent effect above that of long-term imprisonment.”

90% of the criminologists polled said that the death penalty had little effect overall on the committing of murder.

Over 75% of those polled do not believe that increasing the number of executions, or decreasing the time spent on death row before execution, would produce a general deterrent effect.

91% said that politicians support the death penalty as a symbolic way to show they are tough on crime.

75% said that it distracts legislatures from focusing on real solutions to crime.

91.6% said that increasing the frequency of executions would not add a deterrent effect.

* There is also the result of a **1995 survey** entitled: ***On the Front Line: Law Enforcement Views on the Death Penalty***. The Death Penalty Information Center and commissioned **Peter D. Hart Research Associates** who in January 1995 (See: <http://www.deathpenaltyinfo.org/front-line-law-enforcement-views-death-penalty>) "conducted a national opinion poll of randomly selected police chiefs in the United States. In that poll, the chiefs had the opportunity to express what they believe really works in fighting crime. They were asked where the death penalty fit in their priorities as leaders in the law enforcement field."

"Police chiefs ranked the death penalty last as a way of reducing violent crime, placing it behind curbing drug abuse, more police officers on the streets, lowering the technical barriers to prosecution, longer sentences, and a better economy with more jobs."

Police Chiefs did not believe that murderers think about the range of possible punishments. Police Chiefs considered strengthening families and neighbourhoods, punishing criminals swiftly and surely, controlling illegal drugs, and gun control (to be) more important than the death penalty. The death penalty was rated as the least cost- effective method for controlling crime. They did not believe that the death penalty significantly reduces the number of homicides, nor did they believe that murderers think about the range of possible punishments.

* **Frank Friel, Former Head of Organized Crime Homicide Task Force, Philadelphia**, rightly says: "The death penalty does little to prevent crime. It's the fear of apprehension and the likely prospect of swift and certain punishment that provides the largest deterrent to crime.

* It is also worth noting that in the USA, where 31 States maintain the death penalty and 19 States and DC have abolished it, **States without the death penalty have had consistently lower murder rates.**(<http://deathpenalty.org/article.php?id=82>) On p.502 of Radelet's and Lacoeks article (see above), they state that "death penalty states have consistently higher homicide rates than non-death-penalty states. In **2007**, for example, the homicide rate in states with active death penalty statutes was **42% higher than that of non-death-penalty states.**"

"The South, which carries out over 80% of the executions in the US, has the highest murder rate of the four regions." <http://www.deathpenaltyinfo.org/facts-about-deterrence-and-death-penalty> . One can say that this adds weight to the point that the death penalty is not a deterrent.

"In **Canada**, the homicide rate per 100,000 population fell from a peak of 3.09 in 1975, the year before the abolition of the death penalty for murder, to 2.41 in 1980. In 1993, 17 years after abolition, the homicide rate was 2.19 per 100,000 population, 27 per cent lower than in 1975."

(<https://www.amnesty.org/download/Documents/.../asa330092013en.pdf>).

* A key issue to be considered in this discussion is **the state of mind** of those who commit murders. **As Willie L. Williams, Police Chief, Los Angeles, CA said:** "I am not convinced that capital punishment, in and of itself, is a deterrent to crime because most people do not think about the death penalty before they commit a violent or capital crime."

(R. Abramson, Emphasis on Values Is Needed to Stem Crime, Williams Says, The Los Angeles Times, April 27, 1992, at B1, [4.http://www.deathpenaltyinfo.org/front-line-law-enforcement-views-death-penalty](http://www.deathpenaltyinfo.org/front-line-law-enforcement-views-death-penalty)).

* Here in our Caribbean region, The Honourable the **Chief Justice, Mr Justice Ivor Archie** of Trinidad and Tobago, said at the opening of the Law Term, 2010: **"I am yet to see any persuasive empirical evidence that executions significantly reduce murder or crime rates generally... social**

scientists...suggest(s) that the certainty of conviction, and within a reasonably quick time, is a more potent factor.”

And at the opening of the Law Term this year (16 September 2015), he said that:

“Over the past few years the number of persons awaiting trial for murder has risen to more than 514. Common sense tells me that by itself the death penalty is not the solution. Apart from the dubiousness of its value as a deterrent...”

* Some of you will recall that when the Drug-Lord, **Dole Chadee** and eight of his gang members were hanged in TT in June 1999 - over a period of 4 days, this had no deterrent effect on the incidence of murder. There was a murder in a gas/petrol station after the 4th day, and the murder rate continued to rise (93 in that year. Today it is nearly 400 and we are still in November). This was a practical example of how little truth there is in the belief that the death penalty is a deterrent.

And with low detection rates and other deficiencies in the criminal justice system/administration of justice, lack of the swiftness and certainly to which Chief Justice Ivor Archie and the UNDP report refer, the idea of deterrence has no validity.

* We need to refer also to the issue of recidivism - to which **Chief Justice, Ivor Archie** refers. TT’s Inspector of Prisons, Daniel Khan, says **74%** of our people re-offend within 3–5 years of leaving prison. Clearly what we are doing is not people-centred enough. The revolving door keeps leading many former inmates back into prison. The challenge is to prevent persons going through the door in the first place. And while countries like TT has embraced the concept of Restorative Justice, we have not put in place the infrastructure necessary to implement this approach effectively.

* Our response to crime in our region is a moral test for all of us. Any discussion of the death penalty must be considered in the context of, for example, nation-building, character development of citizens and so on. All countries in our region and in the world at large are grappling with challenges faced in producing comprehensive crime plans. But such plans are not created in a vacuum. We need crime plans based on evidence and evidence must be gathered from many sources because crime is a complex phenomenon that requires a multi-faceted/multi-sectoral approach. GCL believes that any approach that prioritises capital punishment as a crime reduction strategy is doomed to fail.

* I firmly believe that recommendations such as those contained in the UNDP's 2012 report: *Human development and the shift to better citizen security*, can contribute to build safer, more democratic and just societies in the region. One of the key recommendations is that: *High rates of violent crime can be turned around by achieving a better balance between legitimate law enforcement and preventive measures, with a stronger focus on prevention.*

At the launch of the report in TT in Feb 2012, UNDP Administrator, Helen Clark stated:

"This report stresses the need to rethink our approaches to tackling crime and violence and providing security on the ground. We need to follow approaches that are centered on citizen security and address the causes of this recent increase in violent crime, including social, economic, and political exclusion."

The Report reviewed "the current state of crime as well as national and regional policies and programmes to address the problem in seven English- and Dutch-speaking Caribbean countries: Antigua and Barbuda, Barbados, Guyana, Jamaica, Saint Lucia, Suriname, and Trinidad and Tobago." <http://www.undp.org/content/undp/en/home/librarypage/hdr/caribbean-human-development-report-2012-1.html>

"Key recommendations from the Report: High rates of violent crime can be turned around by achieving a better balance between legitimate law enforcement and preventive measures, with a stronger focus on prevention;

Governments should create or invest more in units to address gender-based violence and adopt more preventive measures to ensure that violence against girls and women is no longer tolerated

Because crime harms social cohesion, Caribbean nations must better address youth violence and street gangs, whose crimes are rarely prosecuted

Public security requires community collaboration" (See above link for source).

In the final analysis, the Report stated that while "Crime has become one of the main challenges threatening economies and livelihoods in Caribbean countries...the right mix of policies and programmes can halt the problem."

* Political will is what is needed today. We need courageous, visionary leaders in our region who will develop their understanding of the nature of the problems we face in the region and who will be prepared to lift their heads above the parapet and speak out for what is right and just.

We continue to address the symptoms of crime and not the root causes. In spite of the billions of dollars that our countries allocate in annual national budgets for national security, citizens do not feel safe. Death and destruction continue to stalk our lands.

Those of us who are committed to abolition must continue to make the case for a death-penalty free world. Our advocacy strategies should aim to raise awareness about the inhumanity of the death penalty and of its ineffectiveness as a crime reduction strategy and of its violation of human rights. Let us also foster public debate on alternative crime reduction strategies and partner with each other to achieve our goals.

* It is clear that the death penalty is not a deterrent. In his message to those of us who gathered in Madrid for the 5th World Congress against the Death Penalty in 2013 Archbishop Desmond Tutu said: “There is no justice in killing in the name of justice and no godliness in exacting vengeance.”

In March 2015, Pope Francis said: “For the rule of law, the death penalty represents a failure, as it obliges the state to kill in the name of justice... There is discussion in some quarters about the method of killing, as if it were possible to find ways of ‘getting it right.’ ... But there is no humane way of killing another person.”

There is strength in unity. Let us move forward together. As GCL seeks to build capacity and work to achieve our goals, we invite you to join us on our quest to: ***Stop crime, not lives!*** Let us commit to working together to change the culture of revenge and violence and promote restorative justice, peace and harmony.

I thank you.

BACKGROUND INFORMATION:

- **Abolitionist for all Crimes: 98**
- **Abolitionist for Ordinary Crimes only: 7**

- **Abolitionist in Practice: 35**
- **Retentionist Countries: 58**

Total Abolitionist in law or practice: 140

<http://www.deathpenaltyinfo.org/abolitionist-and-retentionist-countries>

** The American Civil Liberties Union states: “Persons who commit murder and other crimes of personal violence often do not premeditate their crimes. Most capital crimes are committed in the heat of the moment. Most capital crimes are committed during moments of great emotional stress or under the influence of drugs or alcohol, when logical thinking has been suspended. Many capital crimes are committed by the badly emotionally-damaged or mentally ill. In such cases, violence is inflicted by persons unable to appreciate the consequences to themselves as well as to others.*

Even when crime is planned, the criminal ordinarily concentrates on escaping detection, arrest, and conviction. The threat of even the severest punishment will not discourage those who expect to escape detection and arrest. It is impossible to imagine how the threat of any punishment could prevent a crime that is not premeditated. Furthermore, the death penalty is a futile threat for political terrorists, like Timothy McVeigh, because they usually act in the name of an ideology that honors its martyrs”. (<https://www.aclu.org/case-against-death-penalty>).

* And I would add to this list those religious fundamentalists who believe that they would be rewarded in the next life if they kill for their beliefs, as well as those who see the death penalty as a way of becoming a martyr e.g. Timothy McVeigh who had asked for his execution in 2001 to be televised. The death penalty is not a deterrent to them.

Bruce Robison of the Ontario Consultants on Religious Tolerance rightly reminds us that:

"People murder for a variety of reasons and under many different situations. Examples are murders:

- during domestic disputes, when passions are inflamed

- under the influence of alcohol or other drugs, when the perpetrator is not in full control
- by contract killers who are typically certain that they will never be caught
- by psychopaths and other mentally ill individuals who have little regard for human life and who are unable to accept responsibility for their actions
- by self-destructive individuals who believe that they deserve to die and want to be arrested and executed; and
- by brain-damaged individuals, who experience periods of rage, and who, very rarely, may kill others.

With the exception of professional hit-men, very few people are in a rational frame of mind when they kill others." (<http://www.religioustolerance.org/execut4.htm>).

*** In the USA, 31 States have the death penalty:** Alabama, Arizona, Arkansas, California, Colorado, Delaware, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nevada, New Hampshire, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, Wyoming. **ALSO: US Govt and US Military**

Judge Kozinski of the U.S. Court of Appeals for the 9th Cir.states: “[W]e have little more than an illusion of a death penalty in this country. ... Whatever purposes the death penalty is said to serve— deterrence, retribution, assuaging the pain suffered by victims’ families—these purposes are not served by the system as it now operates.”

In the USA 19 States and DC have abolished the death penalty:

Alaska (1957)	Michigan (1846)	Vermont (1964)
Connecticut (2012)	Minnesota (1911)	West Virginia (1965)
Hawaii (1957)	Nebraska** (2015)	Wisconsin (1853)
Illinois (2011)	New Jersey (2007)	
Iowa (1965)	New Mexico* (2009)	ALSO
Maine (1887)	New York (2007)#	Dist. of Columbia (1981)
Maryland (2013)	North Dakota (1973)	
Massachusetts (1984)	Rhode Island (1984)^	

The Greater Caribbean region which is also known as the Caribbean Basin. It is composed of 25 countries. It includes 13 Caribbean island nations, the Caribbean states of South America, and the countries of Central America and Mexico (in addition to the US, British, Dutch and French Caribbean territories).

In the Greater Caribbean, 11 countries are abolitionist in law: Colombia, Costa Rica, Dominican Republic, El Salvador (for ordinary crimes only), Haiti, Honduras, Mexico, Nicaragua, Panama, Suriname and Venezuela. “Capital punishment has been abolished for decades in the Spanish-speaking Dominican Republic, and the death penalty is not used in French, British and Dutch dependencies in the Caribbean. Religious and cultural opposition to the death penalty holds sway in the U.S. Caribbean island of Puerto Rico, where jurors often reject federal prosecutors' request for capital punishment.”(www.jamaicaobserver.com)

1 country is considered abolitionist in practice: Grenada (last hanging took place in 1978).

13 countries in this region are retentionist: Antigua and Barbuda, Bahamas, Barbados, Belize, Cuba, Dominica, Guatemala, Guyana, Jamaica, St. Kitts & Nevis, Saint Lucia, Saint Vincent and the Grenadines, and Trinidad and Tobago.

***In 2007 the General Assembly adopted a resolution on a moratorium on the use of the death penalty (A/62/149). The resolution was passed by a vote of 104 in favour to 54 against, with 29 abstentions. The resolution called on all States that still allowed capital punishment to “progressively restrict the use of the death penalty and reduce the number of offences for which it may be imposed.” Those countries were also called on to provide the Secretary-General with information on their use of capital punishment and to respect international standards that safeguard the rights of condemned inmates. http://www.ohchr.org/Lists/MeetingsNY/Attachments/27/moving_away_from_death_penalty_web.pdf

***RE PRATT AND MORGAN:** The Privy Council concluded in the Jamaican case – Pratt and Morgan - 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 treatment’ and therefore unconstitutional. The effect of this case is that individuals who spent more than five years on Death Row cannot be executed” (Death Penalty Project).

There are a number of other cases that are of note in our region:

- - in the 1996 **TT case of Guerra v Baptiste**, the JCPC stated that 4 years and 10 months was too long a period to hold someone on death row after sentence;
- - in 1997 in the Bahamian case of *Henfield v AG of Bahamas*, the JCPC stated that 3 1/2 years constituted inappropriate delay;
- - in 2009 in **Trimmingham v The Queen** – a case from **St Vincent and the Grenadines**, the Law Lords laid down 2 key principles as to whether the death penalty should be imposed:
 1. that the death penalty should be imposed only in cases which, on the facts of the offence are the most extreme and exceptional, ‘the worst of the worst’ or ‘the rarest of the rare’; and
 2. that there must be no reasonable prospect of reform of the offender and that the object of punishment could not be achieved by any means other than the ultimate sentence of death’.
- - in the 2011 **Bahamian case of Ernest Lockhart v The Queen**, Lord Kerr referred to another 2011 case – *Maxo Tido v The Queen*. Inter alia, he said that if the State is thinking of imposing the death penalty, it is not enough to submit a probation report. There may be a need also for more than a consultant psychiatrist’s report. There may be a need also for a report from a clinical psychologist.

As we can see, the JCPC seems to be setting higher and higher human rights standards. It is important to note an issue raised by Parvais Jabbar of the London Death Penalty Project at the WCADP General Assembly. He referred to a series of JCPC judicial decisions that limit the application of the death penalty in our region—especially the rulings against any execution after a long delay and imposing greater transparency on clemency and pardon procedures, and the introduction of principles in sentencing. He pointed out that the judiciary could not outlaw capital punishment completely in most English speaking Caribbean countries so that progress through the courts had reached its limits because abolishing the death penalty was, at the end of the day, a political issue.

* **Deterrence** is the number one reason that supporters of the death penalty cite (Newsweek Poll 2000). However, 26% of people claim that their justification for supporting the death penalty is "eye for an eye" (Newsweek Poll 2000). Furthermore, 55% would favor the death penalty even if it were found that it does

not act as a deterrent, that it does not reduce the murder rate (Gallup Poll 1999).<http://www.uvm.edu/~vlrs/doc/deathpenalty.htm> - Univ. of Vermont.

THIRD - LONGEST VERSION

The death penalty as a deterrent: does it work?

Leela Ramdeen, Chair, Greater Caribbean for Life (TT)

Good afternoon ladies and gentlemen. We all have a vision of safer, just and peaceful societies; societies in which the rule of law prevails and in which there are conditions that will enable each person to realise his/her potential. It is time for us to acknowledge that the death penalty will not help us to realise this vision. The death penalty is a human rights issue. It dehumanises all of us; it tramples on the dignity of each human person - including the offender, the victim and their families.

“As long as the death penalty exists, there is a need for advocacy against it”. These words contained in the introduction of a book that was recently launched, entitled: *Moving Away from the Death Penalty: Arguments, Trends and Perspectives*, answers any question as to why we are gathered here in Guyana.

Federico Mayor rightly states in his chapter in this book: *Leadership and the abolition of the death penalty*: “Rejecting capital punishment is about choosing what kind of society we want to live in, and which values—including human rights and dignity, democracy and the rule of law—we want to uphold....Principled political leadership, within the domestic realm and internationally, is an essential factor in the momentum that is driving the movement for the abolition of the death penalty. The role played by leaders—such as prime ministers, presidents, ministers, authorities within ministries dealing with domestic and international affairs, national human rights institutions, the judiciary (including judges and magistrates who pass rulings that shape the debate and jurisprudence), lawyers and bar associations, and key figures in the media, religious bodies and civil society organisations—has been and will remain crucial to ensuring progress towards a world free of capital punishment. Ultimately, it is the state that must decide to abolish the death penalty and protect the fundamental human right to life. Political leadership has been very important in overcoming domestic opposition to abolition

in several countries. Political leaders have recognized that while public opinion is relevant, nations face difficulties if popular sentiment, which is difficult to gauge accurately, is allowed to determine penal policy. Experience shows that the majority of the public is willing to accept abolition of capital punishment once it is achieved.” — Federico Mayor (UN Office of the High Commissioner for Human Rights (OHCHR), (*Moving Away from the Death Penalty: Arguments, Trends and Perspectives*, 2014, available at: <http://www.refworld.org/docid/54a684144.html> [accessed 12 November 2015]) (“Between 2012 and 2014 OHCHR organised in New York a series of knowledge events on moving away from the death penalty. Four events focused on Lessons from National Experiences, Wrongful Convictions, Deterrence and Public Opinion and Discrimination against Marginalised Groups. These events brought together representatives of Member States, academia and civil society, as well as legal experts and victims of wrongful convictions. This publication consists of a series of articles from the panellists, and reflects a diversity of geographic experiences – Americas and Caribbean, Africa, Asia and Europe, with articles exploring compelling arguments relevant in deciding in favour of moving away from the death penalty”)

Let me state from the outset that GCL believes that society has a right to protect itself from persons who commit heinous crimes and offenders must be held accountable. However, we believe that non-lethal means are sufficient to defend and protect society from offenders.

While GCL condemns the rise of violent crime in the Greater Caribbean region, and stands in solidarity with the victims of crime, members reject the notion that capital punishment will act as a deterrent or foster respect for life in our communities. GCL also believes that there is no empirical evidence to determine a link between crime rates and the application of the death penalty. Yet capital punishment is often portrayed as a means to reduce high volumes of violent crimes.

I recall being a guest on a radio programme in Trinidad, addressing issues relating to the death penalty. After I had shared some of the philosophical reasons for sentencing convicted persons, for example: incapacitation, deterrence, restitution, retribution, and rehabilitation, as well as the social, moral and economic reasons why we should abolish the death penalty, someone called in to remonstrate with me. Inter alia, he said: "Leela Ramdeen, whether you think the death penalty is a deterrent or not is immaterial to those suffering in TT. I say hang them high in the public square and sell tickets too!"

And on another occasion an Attorney-at-Law, Senior Counsel in Trinidad and Tobago (TT), speaking on a panel discussion on the death penalty - at the University of the West Indies, TT Campus, made it clear that whether the death penalty is a deterrent or not, he wants retribution, and that is his main reason for supporting it.

These responses highlight the challenges we face in changing hearts and minds. Sadly, crime, fear of crime, frustration due to low detection rates and other inefficiencies in the criminal justice systems in our region may cause many to bay for blood. This sentiment is sometimes fuelled by some politicians who, when they fail to devise and implement effective crime reduction strategies, stir up an already volatile population into believing - albeit erroneously, that the death penalty will deter persons from committing murders. All this does is to raise the temperature in our respective countries and divert attention from the real issues that should concern us.

As the US Bishops rightly stated: "The death penalty offers the tragic illusion that we can defend life by taking life." This sentiment was also expressed years ago by Victor Hugo, author of *Les Miserables*, when he said: "What says the law? You will not kill. How does it say it? By killing!"

On the occasion of the 2014 World Day Against the Death Penalty, the UN Secretary-General Ban Ki-Moon stated that "the death penalty undermines human dignity. It fails to deter crimes more than other punishments [...] The taking of life is too irreversible for one person to inflict it on another. We must continue to argue strongly that the death penalty is unjust and incompatible with fundamental human rights." Full video available at: <http://bit.ly/1E36kx7> .

And, as Janet Reno, former Attorney General of the USA, stated some years ago: "I think that the only purpose for the death penalty, as I see it, is vengeance--pure and simple vengeance. But I think vengeance is a very personal feeling and I don't think it is something that civilized government should engage in"

It is significant that the global trend favours abolition. Is it that nearly two-thirds of the world's states – the 140 States that have abolished the death penalty in law or practice do not consider the death penalty to be a deterrent?

Sadly, 13 of the 58 States which have retained it belong to the Greater Caribbean region – almost all are English-speaking. Trinidad & Tobago and Barbados still retain the mandatory death penalty for murder. While some positive steps towards abolition are being taken in Barbados, where a bill for the elimination

of the mandatory death penalty for murder is under consideration in Parliament, many Caribbean countries continue to sentence persons to death. Also, most of them have consistently voted against the UN General Assembly resolutions on a moratorium on the use of the death penalty and have signed the Note Verbale, dissociating themselves from the moratorium.

As has been noted, because of the effects of the Pratt & Morgan case (1994), Caribbean retentionist States have not carried out any execution for the past ten years, but the death penalty remains on their Criminal Statutes.

But Suriname gives us cause for hope. It is worth noting a statement made in May 2014 by Suriname's Justice and Police Minister, Edward Belfort, when he announced that Suriname planned to remove the death penalty from its Criminal Code. He said: "it is not the government's prerogative to decide who lives or dies." In March 2014 he had said that "countries that apply it (the death penalty) would be expected to be the safest countries in the world, yet still have many murders committed on a daily basis."

So, is there any evidence that the death penalty is a deterrent?

* More and more organisations, including the UN, The Office of the High Commissioner for Human Rights, Amnesty International, and the Greater Caribbean for Life, advocate for the universal abolition of the death penalty for a number of reasons, including the fundamental nature of the right to life – the death penalty is incompatible with human rights and human dignity; the unacceptable risk of executing innocent people; the often arbitrary application of the death penalty, and the absence of proof that the death penalty serves as a deterrent to crime.

*** See General Assembly of the United Nations: Resolution 65/206 of 2012 and 69/186 of 18 Dec 2014 — endorse the claim that there is “no conclusive evidence of the deterrent value of the death penalty.”** Convinced that a moratorium on the use of the death penalty contributes to respect for human dignity and to the enhancement and progressive development of human rights, and considering that there is no conclusive evidence of the deterrent value of the death penalty...”

* Speaking at a press conference this month - on **4 Nov 2015** - at the UN Headquarters in New York, ahead of the launch of a new book by the **United**

Nations entitled: *Moving Away from the Death Penalty: Arguments, Trends and Perspectives* (2014) <http://www.refworld.org/docid/54a684144.html> [accessed 12 November 2015] - on the global trend away from the death penalty, Mr. Ivan Šimonović, Assistant Secretary-General for Human Rights and the editor of the book, reiterating a statement made in the past by UN Secretary-General, Ban Ki-moon, said that there is no room for the death penalty in the 21st Century: “according to several studies, there is no convincing evidence of any deterring effect the death penalty has on crimes committed. However, there is conclusive evidence that there is a correlation between death penalty and discrimination and unequal treatment against vulnerable groups... in most cases, people who end up getting executed are poor, belong to vulnerable groups or socially disadvantaged minority groups or have mental disabilities.” <http://www.un.org/apps/news/story.asp?NewsID=52463#.VkIyirerR1S>

At the launch, UN Secretary-General, Ban Ki-moon said: “I will never stop calling for an end to the death penalty... no one has proven that the death penalty even deters crime.”

* In their chapter entitled: *Myth of Deterrence*, in the book *Moving Away from the Death Penalty: Arguments, Trends and Perspectives*, Carolyn Hoyle and Roger Hood state: “The empirical research conducted over the past few decades demonstrates that no matter what politicians argue or the public believe, neither deterrence nor public opinion should be seen as barriers to abolition....In Trinidad and Tobago, which has a very high homicide rate, academics have not been able to establish any relationship between trends in the execution and murder rates.”

(They were referring to a 2011 study carried out in Trinidad and Tobago by **NYU Professor David Greenberg and Virginia Tech University Professor Biko Agozino**, who found no correlation between executions, imprisonment and crime: “over a span of 50 years, during which these sanctions were being deployed in degrees that varied substantially, neither imprisonment nor death sentences nor executions had any significant relationship to homicides. In the years immediately following an appeals court’s determination limiting executions, the murder rate fell.”

In particular, the study showed that between 1950 and 1980, while executions were carried out regularly every year, homicides rates remained fairly stable. In the years since 1980, although courts continued to impose death sentences, executions took place in just two of those years. This drop in executions had no large,

immediate impact on murder rates, which only began to rise sharply from 2003, when the consequences of drug trafficking and illegal possession of weapons also began taking its toll on the country.)

(UN Office of the High Commissioner for Human Rights (OHCHR),(*Moving Away from the Death Penalty: Arguments, Trends and Perspectives*, 2014, available at: <http://www.refworld.org/docid/54a684144.html> [accessed 12 November 2015])

*The words of High Commissioner for Human Rights, Navi Pillay, is also a reminder that: “A death sentence is often imposed on less privileged individuals who do not have sufficient access to effective legal representation.” http://www.ohchr.org/Lists/MeetingsNY/Attachments/27/moving_away_from_death_penalty_web.pdf

As Navi Pillay, said in the 2012 document –*Moving away from the death penalty: Lessons from national experiences* (2014) <http://www.refworld.org/docid/54a684144.html> [accessed 12 November 2015], which includes highlights of the first OHCHR global panel event on the death penalty – held on 3 July 2012: “Any suggestions that the death penalty has a meaningful deterrent effect have been overstated, with little research supporting such an assertion.” (Page 10 (s.4.1) of the highlights of the first OHCHR global panel event on the above theme, focuses on the issue of Deterrence:

“4.1 Deterrence: Though deterrence is often presented as a major reason for retaining the death penalty, a number of panellists and participants discussed the lack of any evidence in this regard, stating that the death penalty’s perceived deterrence effect has been overstated and manipulated for decades. Professor Barry Scheck of the United States pointed to the recent study of the National Academy of Sciences entitled *Deterrence and the Death Penalty*, which analyzed if there is a scientific basis for the assertion that the death penalty lowers homicide rates. (Deterrence and the Death Penalty, *National Research Council of the National Academies*, The National Academies Press (2012). The United States National Academy of Sciences provides independent advice to the government on matters related to science and technology).

The report concluded that “research to date on the effect of capital punishment on homicide rates is not useful in determining whether the death penalty increases,

decreases, or has no effect on these rates. The key question is whether capital punishment is less or more effective as a deterrent than alternative punishments, such as a life sentence without the possibility of parole. Yet none of the research that has been done accounted for the possible effect of non-capital punishments on homicide rates.” These findings are consistent with research undertaken in 1988, and updated in 2002 by one of the leading authorities on the death penalty. (R. Hood and C. Hoyle, *The Death Penalty: A Worldwide Perspective*, Oxford, OUP, 4th edition 2008).

A survey of research findings on the death penalty and homicide rates concluded that “it is not prudent to accept the hypothesis that capital punishment...deters murder to a marginally greater extent than does the threat and application of the supposedly lesser punishment of life imprisonment.” (R. Hood and C. Hoyle, *The Death Penalty: A Worldwide Perspective*, Oxford, OUP, 4th edition 2008, p.30).

As highlighted by one of the panellists, Mr. Cousin Zilala, even in situations of past mass atrocities in Africa, such as those committed in Rwanda, national leaders have publicly stated that the death penalty is not an effective deterrent, and that those countries wanted to break with the violence of the past when they abolished the death penalty. The Prosecutor-General of Burundi, Mr. Valentin Bagorikunda, made a similar point. Though the legislative assembly had originally believed the death penalty did act as a deterrent, “in actual fact...its deterrent effect was not obvious” and failed to deter the mass violence in 1993 when civil war broke out. According to the Prosecutor-General, following the abolition of the death penalty in 2009, there has been no increase in the rates of crime. Panellists also discussed the fact that some categories of offenders would not be deterred by the threat of being executed. Mr. Federico Mayor stated that many of those sentenced to death have mental health issues or were under the influence of alcohol or drugs at the time of the offence, both of which suggest the defendant may not have thought through the consequences of their actions or the possibility they may be executed. Moreover, Mr. Mayor stated, organized crime groups make “calculated decisions and believe that detection and convictions are unlikely” while “those who commit terrorists acts for political ends...are often prepared to die for that cause...[and] unlikely to be deterred by the death penalty.”

http://www.ohchr.org/Lists/MeetingsNY/Attachments/27/moving_away_from_death_penalty_web.pdf)

* **See reference above:** A comprehensive review of the research on the issue of deterrence over 34 years was conducted in 2012 by a Committee of *The National*

Research Council of the National Academies in the USA. “The Committee confirmed in its April 2012 report that: ‘research to date on the effect of capital punishment on homicide is not information about whether capital punishment decreases, increases or has no effect on homicide rates. Therefore, the committee recommends that these studies not be used to inform deliberations...about the effect of the death penalty on homicide.’

“It said the studies it reviewed should not be used to influence policymakers. ‘Claims that research demonstrates that capital punishment decreases or increases the homicide rate by a specified amount or has no effect on the homicide rate should not influence policy judgements about capital punishment.’ It said.

“One of the main problems was that it was impossible to know what a jurisdiction’s murder rate would be with different sentencing options. ‘The data alone cannot reveal what the homicide rate in a state without (with) a capital punishment regime would have been had the state (not) had such a regime.’

“A second problem was ‘the use of incomplete or implausible models of potential murderers’ perceptions of and response to the capital punishment component of a sanction regime.’

“Without this basic information, ‘it is impossible to draw credible findings about the effect of the death penalty on homicide.’

(<http://www.nap.edu/read/13363/chapter/1#ii>)

(See a report brief published in April 2012 in Law and Justice at the National Research Council, USA (NRC) - based on the report: Deterrence and the Death Penalty (<http://www.nap.edu/catalog/13363/deterrence-and-the-death-penalty>) as well as: <http://www.abc.net.au/news/2015-02-26/fact-check3a-does-the-death-penalty-deter3f/6116030>)

(Use for reference only: The NRC "was asked to assess whether the available evidence provides a scientific basis for answering questions of if and how the death penalty affects homicide rates. The committee examined studies that have been conducted on deterrence and the death penalty since the 1976 Supreme Court decision in Gregg vs Georgia, which ended a four-year moratorium on executions.

The Committee made it clear that the parameters of its study focused only on deterrence and, as it states: "Deterrence is only one of many considerations relevant to deciding whether the death penalty is good public policy. Not all

supporters of capital punishment base their argument on deterrent effects, and not all opponents would be affected by persuasive evidence of such effects. The case for capital punishment is sometimes based on arguments that the death penalty is the only appropriate response to especially heinous crimes; the case against it is sometimes based on claims that the sanctity of human life precludes state-sanctioned killings. Other considerations include whether capital punishment can be administered in a non-discriminatory way, whether the risk of mistakenly executing an innocent person is acceptably small, and the cost of administering the death penalty in comparison with other punishments.

"The committee was not charged with considering these issues, not with rendering an overall judgment on whether capital punishment is good public policy. It was tasked only with assessing the scientific quality of the evidence on whether capital punishment deters homicides and recommending ways to improve the quality of future research.

The committee concluded that: "research to date is not informative about whether capital punishment decreases, increases, or has no effect on homicide rates. Therefore, these studies should not be used to inform deliberations requiring judgments about the effect of the death penalty on homicide. Claims that research demonstrates that capital punishment decreases or increases the homicide rate or has no effect on it should not influence policy judgments about capital punishments.

"All of the studies on the possible effects of capital punishment on homicide rates suffer from three fundamental flaws, which make them uninformative as a basis for policy consideration:

“The studies do not factor in the effects of noncapital punishments that may also be imposed....

The studies use incomplete or implausible models of potential murderers' perceptions of and response to the use of capital punishment. Much of the research assumes that potential murderers respond to the objective risk of execution. But determining the objective risk poses great complexities even for a well-informed researcher, let alone a potential murderer...

Estimates of the effect of capital punishment are based on statistical models that make assumptions that are not credible...

The committee lists some recommendations, including some questions of interest e.g.

- * If or how the legal status of the death penalty affects homicide rates;

- * If or how the intensity of use of the death penalty - both in terms of sentencing and actual executions - affects homicide rates; and

- * If or how executions affect homicide rates in the short run.”) (<http://www.nap.edu/catalog/13363/deterrence-and-the-death-penalty>)

- * Speaking at a press conference this month - on **4 Nov 2015** - at the UN Headquarters in New York, ahead of the launch of a new book by the United Nations entitled: ***Moving Away from the Death Penalty: Arguments, Trends and Perspectives*** - on the global trend away from the death penalty, Mr. Ivan Šimonović, Assistant Secretary-General for Human Rights, reiterating a statement made in the past by UN Secretary-General, Ban Ki-moon, said that there is no room for the death penalty in the 21st Century: “according to several studies, there is no convincing evidence of any deterring effect the death penalty has on crimes committed. However, there is conclusive evidence that there is a correlation between death penalty and discrimination and unequal treatment against vulnerable groups... in most cases, people who end up getting executed are poor, belong to vulnerable groups or socially disadvantaged minority groups or have mental disabilities.” <http://www.un.org/apps/news/story.asp?NewsID=52463#.VkIyirerR1s>

The words of High Commissioner for Human Rights, Navi Pillay is also a reminder that: “A death sentence is often imposed on less privileged individuals who do not have sufficient access to effective legal representation.” http://www.ohchr.org/Lists/MeetingsNY/Attachments/27/moving_away_from_death_penalty_web.pdf

- * **See General Assembly of the United Nations: Resolution 65/206 of 2012 and 69/186 of 18 Dec 2014** — endorse the claim that there is “no conclusive evidence of the deterrent value of the death penalty. “Convinced that a moratorium on the use of the death penalty contributes to respect for human dignity and to the enhancement and progressive development of human rights, and considering that there is no conclusive evidence of the deterrent value of the death penalty...”

- * **SOUTH AFRICAN CASE:** The Journalist N. Jayaram reminded us on 5 June 2015, that this year marks 20 years since a great anti-death penalty judgment in the

case of *The State v Makwanyane and Mchunu* – judgment was delivered on 6 June 1995. “The two men at the centre of the case had been convicted of murders, attempted murder and robbery with aggravated circumstances and their appeals against the death penalty had been rejected by the Supreme Court. South Africa’s interim constitution had not expressly abolished the death penalty... the attorney general of Witwatersrand pressed for the death penalty for the two convicts. And thereby inadvertently did the world a great favour as it led to cascades of some of the most scintillating prose by the likes of Justices Arthur Chaskalson, Ismail Mahomed, Yvonne Mokgoro, Kate O’Regan, Albie Sachs and others. Most importantly the **11 members of the bench** unanimously and conclusively established through their brilliant argumentation that the death penalty was inconsistent with the Interim Constitution of South Africa of 1993 (overtaken by [the updated one of 1996](#)). The Constitutional Court consisted of jurists from different races, religions and age groups...”(<https://www.opendemocracy.net/n-jayaram/it-is-20-years-since-great-antideath-penalty-judgement>)

It is worth noting statements made in this 1995 case in South Africa when the Constitutional Court considered the issue of the deterrence of the death penalty within the context of the interim Constitution’s limitation clause. “Citing evidence before the Court showing that the bulk of violent crime was never solved, Presiding Judge, Chaskalson, stated that the most effective deterrent is the knowledge that the offender will probably be caught, convicted, and punished.

“In striking out the use of the death penalty, the Court said: *‘We would be deluding ourselves if we were to believe that the execution of the few persons sentenced to death during this period, and of a comparatively few other people each year from now onwards will provide the solution to the unacceptably high rate of crime. There will always be unstable, desperate, and pathological people for whom the risk of arrest and imprisonment provides no deterrent, but there is nothing to show that a decision to carry out the death sentence would have any impact on the behaviour of such people, or that there will be more of them if imprisonment is the only sanction.’* Concluding his remarks on the question of deterrence, President Chaskalson noted that the Attorney-General had admitted that it was impossible to prove convincingly that the death penalty was a deterrent, and that inevitably there was an element of speculation in such a conclusion. ‘It is’, he said, ‘a proposition that is not capable of proof, because one never knows about those who have been deterred; we know only about those who have not been deterred, and who have committed terrible crimes.’

“...Justice Kerigler stated in his concurring reasons: ‘...no empirical study, no statistical exercise, and not theoretical analysis has been able to demonstrate that capital punishment has any deterrent force greater than that of a really heavy sentence of imprisonment.’

“Therefore, ‘it simply cannot be reasonable to sanction judicial killing without knowing whether it has any marginal deterrent value.’”

[The Death Penalty as Cruel Treatment and Torture: Capital Punishment Challenged in the World’s Courts...](#)

<https://books.google.tt/books?isbn=1555532683> (1996 publication by William A. Schabas) (Northeastern University Press, Boston, USA).

<http://www.abc.net.au/news/2015-02-26/fact-check3a-does-the-death-penalty-deter3f/6116030>

* Earlier this year, I had the pleasure of meeting **Prof Michael Radelet**, Chair, Department of Sociology, University of Colorado- Boulder, at a lecture in London organized by Parvais Jabber and Saul Lehrfreund of *The Death Penalty Project* – both work with the law firm Simons Muirhead and Burton. Prof Radelet was prepared to participate in GCL’s 2nd Speaking Tour this year. However, the dates coincided with some of his other commitments. He remains ready to support our initiatives.

At the lecture in London, Prof Radelet was sharing information about the survey that he and **and Traci Lacock**,

(a second-year student in the Ph.D. program, Department of Sociology, University of Colorado-Boulder, and a 2005 graduate of the University of Wyoming Law School)

conducted in 2008. This was a survey of experts from the American Society of Criminology, the Academy of Criminal Justice Sciences, and the Law and Society Association.

The survey asked the expert opinions of the world’s leading criminologists as to whether the **empirical research** (not their own views) “supports the contention that the death penalty is a superior deterrent. The findings demonstrate an

overwhelming consensus among these criminologists that the empirical research conducted on the deterrence question strongly supports the conclusion that the death penalty does not add deterrent effects to those already achieved by long imprisonment.” (<http://www.deathpenaltyinfo.org/files/DeterrenceStudy2009.pdf>).

The findings are published in an article in the *Journal of Criminal Law and Criminology* 99 (489-508) – entitled: “*Do Executions Lower Homicide Rates? The Views of Leading Criminologists.*” In the article, they state that the research reported was designed to **update the 1996 study** by Michael Radelet and Ronald L. Akers who had surveyed **67** leading American criminologists on the issue of deterrence and the death penalty. The 2008 study also assessed “if any recent deterrence studies have modified the beliefs of the world’s leading criminologists. The results indicate that only a small minority to top criminologists – 10% or less, depending on how the question is phrased- believes that the weight of empirical research studies supports the deterrence justification for the death penalty.”

In this article they comment on a number of “widely-cited studies” conducted in the 6 years prior to the article, and written primarily by economists. These studies claimed to show the death penalty has deterrent effects that criminologists have not spotted (see Criminal Justice Legal Found, Articles on Death Penalty Deterrence, (www.cjlf.org/deathpenalty/DPDeterrence.htm).

Radelet and Lacoock state that “the importance of the deterrence justification for capital punishment has declined precipitously in recent years among the general public. In the mid-twentieth century and up through the 1970s, it was unquestionably the top argument in favour of executions” p492. However, as they noted, in a Gallup Poll the proportion of respondents who stated that the death penalty was not a deterrent doubled by 2004, from 31% in 1985 to 62%. (p492).

A comparison of the results of Radelet’s and Akers’ 1996 survey and that of the 2008 survey of Radelet and Lacoock, are as they say: “remarkably similar”.

88.2% of the polled criminologists (about 76 out of 94) stated that there is little empirical evidence from existing research to support the deterrent effect of the death penalty (up slightly from 83.6% in 1996). (5.3% believe it is deterrent vs 11.9% in 1996 survey).

Radelet and Lacoock state in the above article: “Our survey indicates that the vast majority of the world’s top criminologists believe that the empirical research

has revealed the deterrence hypothesis for a myth...the consensus among criminologists is that the death penalty does not add any significant deterrent effect above that of long-term imprisonment.”

90% of the criminologists polled said that the death penalty had little effect overall on the committing of murder.

Over 75% of those polled do not believe that increasing the number of executions, or decreasing the time spent on death row before execution, would produce a general deterrent effect.

91% said that politicians support the death penalty as a symbolic way to show they are tough on crime.

75% said that it distracts legislatures from focusing on real solutions to crime.

91.6% said that increasing the frequency of executions would not add a deterrent effect.

* There is also the result of a 1995 survey entitled: *On the Front Line: Law Enforcement Views on the Death Penalty*. The Death Penalty Information Center and commissioned **Peter D. Hart Research Associates** who in January 1995 (See: <http://www.deathpenaltyinfo.org/front-line-law-enforcement-views-death-penalty>) "conducted a national opinion poll of randomly selected police chiefs in the United States. In that poll, the chiefs had the opportunity to express what they believe really works in fighting crime. They were asked where the death penalty fit in their priorities as leaders in the law enforcement field."

"Police chiefs ranked the death penalty last as a way of reducing violent crime, placing it behind curbing drug abuse, more police officers on the streets, lowering the technical barriers to prosecution, longer sentences, and a better economy with more jobs."

Police Chiefs did not believe that murderers think about the range of possible punishments. Police Chiefs considered strengthening families and neighbourhoods, punishing criminals swiftly and surely, controlling illegal drugs, and gun control (to be) more important than the death penalty. The death penalty was rated as the least cost- effective method for controlling crime. They did not believe that the death penalty significantly reduces the number of homicides, nor did they believe that murderers think about the range of possible punishments.

* **Frank Friel, Former Head of Organized Crime Homicide Task Force, Philadelphia**, rightly says: "The death penalty does little to prevent crime. It's the fear of apprehension and the likely prospect of swift and certain punishment that provides the largest deterrent to crime."

* It is also worth noting that in the USA, where 31 States maintain the death penalty and 19 States and DC have abolished it, **States without the death penalty have had consistently lower murder rates.**(<http://deathpenalty.org/article.php?id=82>) On p.502 of Radelet's and Lacoeks article (see above), they state that "death penalty states have consistently higher homicide rates than non-death-penalty states. In 2007, for example, the homicide rate in states with active death penalty statutes was **42% higher than that of non-death-penalty states.**"

"The South, which carries out over 80% of the executions in the US, has the highest murder rate of the four regions." <http://www.deathpenaltyinfo.org/facts-about-deterrence-and-death-penalty> . One can say that this adds weight to the point that the death penalty is not a deterrent.

"In **Canada**, the homicide rate per 100,000 population fell from a peak of 3.09 in 1975, the year before the abolition of the death penalty for murder, to 2.41 in 1980. In 1993, 17 years after abolition, the homicide rate was 2.19 per 100,000 population, 27 per cent lower than in 1975."(<https://www.amnesty.org/download/Documents/.../asa330092013en.pdf>). The following statements from Governors of Washington, Colorado, and Oregon who have halted executions in these states which still retain the death penalty speak for themselves:

* A key issue to be considered in this discussion is **the state of mind** of those who commit murders. **As Willie L. Williams, Police Chief, Los Angeles, CA said:** "I am not convinced that capital punishment, in and of itself, is a deterrent to crime because most people do not think about the death penalty before they commit a violent or capital crime."

(R. Abramson, Emphasis on Values Is Needed to Stem Crime, Williams Says, The Los Angeles Times, April 27, 1992, at B1, 4.<http://www.deathpenaltyinfo.org/front-line-law-enforcement-views-death-penalty>).

* Here in our Caribbean region, The Honourable the **Chief Justice, Mr Justice Ivor Archie** of Trinidad and Tobago, said at the opening of the Law Term, 2010:

“I am yet to see any persuasive empirical evidence that executions significantly reduce murder or crime rates generally... social scientists...suggest(s) that the certainty of conviction, and within a reasonably quick time, is a more potent factor.” And at the opening of the Law Term this year (16 September 2015), he said that “common sense” dictates that the death sentence was not the solution to T&T’s spiralling crime situation.

“Over the past few years the number of persons awaiting trial for murder has risen to more than 514. Common sense tells me that by itself the death penalty is not the solution. Apart from the dubiousness of its value as a deterrent, do we really believe, assuming that a significant fraction of those persons are found guilty, that we will be able to hang several hundreds of people, or that if we tried we could stomach it?”

Archie questioned the pragmatism behind implementing the death penalty and if T&T could really handle putting a large number of people to death if they were to be found guilty of murder.

“Please do not misunderstand me. The question whether we have a mandatory death penalty or any death penalty at all is a matter for the legislature and the people of T&T, but as the ones who pass the death sentences, we must ask, is there a sense in futility in doing so? And we must ask questions about the tactical difficulties of implementation. What are we going to do? Schedule one a day, or do it in groups? So what is the real problem and what can we do about it?” he said.

The Guardian newspaper reports that "before stating that the death penalty was not a solution, Archie said that a criminal case takes a long period of time to be completed. Archie called for a reform of the way trials are done from the beginning of the indictment to the end of the trial." <http://www.guardian.co.tt/news/2015-09-16/cj-rethink-death-penalty-solution-crime>.

It is also noteworthy that he mentions the following which are important issues to be included in our discussion: "He called for a serious and meaningful national debate on the mandatory death penalty for murder. In addition to the death penalty and the CCJ, Archie also stated that failure of the Prisons Service to rehabilitate offenders was also an area of concern. “So collectively we turn a blind eye to harsh and inhumane prison conditions when all the empirical research tells us that there is a positive correlation between a more humane, restorative approach to incarceration and lower rates of recidivism.

“The only punishment intended by a custodial sentence should be the deprivation of liberty,” Archie said as he revealed that it costs the State \$13,000 a month to incarcerate a prisoner. He also took issue with the merits of passing lengthy prison sentences on convicted criminals.

“Common sense tells us that we cannot incarcerate our way out of our social problems and crime in general because many studies internationally show a positive correlation between longer sentences and higher rates of recidivism as well as between higher overall rates of incarceration per capita and higher rates of recidivism,” Archie said. He also preached for the need of converting T&T into a more secular state.

“Common sense tells me we need more respect for fundamental human rights because studies do not support the notion that professed adherence to any recognised religion is associated with reduced rates of violent crime. In fact, there is a considerable body of evidence to the contrary,” Archie said.

As part of his continuous call to citizens to adopt a common sense approach when seeking solutions to issues, Archie advised against lumping blame for the country’s crime rate on his organisation. “People need to stop blaming us for those aspects of the justice system that are outside our control. We need a little common sense here.

“What can I do about low crime detection rates or inadequate evidence or no proper detention facilities or slow forensic analysis or a shortage of attorneys at the criminal bar or prisoners arriving late for court despite our admonitions?” Archie asked. Although he admitted that most of the issues raised by him during his speech were highlighted by him in the past, Archie suggested that constant reminders may be the impetus for eventual change.

“Those who have listened to my past addresses may find that some of what I have to say today may sound repetitive but it has been my experience that sound arguments and exhortations often require repetition before they are noted and acted upon,” Archie added. <http://www.guardian.co.tt/news/2015-09-17/cj-death-penalty-not-denting-serious-crime-let’s-talk-about-it>.

* A 2011 study carried out in Trinidad and Tobago by **NYU Professor David Greenberg and Virginia Tech University Professor Biko Agozino**, found no correlation between executions, imprisonment and crime: “over a span of 50 years, during which these sanctions were being deployed in degrees that varied substantially, neither imprisonment nor death sentences nor executions had any

significant relationship to homicides. In the years immediately following an appeals court's determination limiting executions, the murder rate fell."

In particular, the study showed that between 1950 and 1980, while executions were carried out regularly every year, homicides rates remained fairly stable. In the years since 1980, although courts continued to impose death sentences, executions took place in just two of those years. This drop in executions had no large, immediate impact on murder rates, which only began to rise sharply from 2003, when the consequences of drug trafficking and illegal possession of weapons also began taking its toll on the country.

* Some of you will recall that when the Drug-Lord, **Dole Chadee** and eight of his gang members were hanged in TT in June 1999 - over a period of 4 days, this had no deterrent effect on the incidence of murder. There was a murder in a gas/petrol station after the 4th day, and the murder rate continued to rise (93 in that year. Today it is nearly 400 and we are still in November). This was a practical example of how little truth there is in the belief that the death penalty is a deterrent.

And with low detection rates and other deficiencies in the criminal justice system/administration of justice, lack of the swiftness and certainly to which Chief Justice Ivor Archie and the UNDP report refer, the idea of deterrence has no validity.

* We need to refer also to the issue of recidivism - to which **Chief Justice, Ivor Archie** refers. TT's Inspector of Prisons, Daniel Khan, says **74%** of our people re-offend within 3-5 years of leaving prison. Clearly what we are doing is not people-centred enough. The revolving door keeps leading many former inmates back into prison. The challenge is to prevent persons going through the door in the first place. And while countries like TT has embraced the concept of Restorative Justice, we have not put in place the infrastructure necessary to implement this approach effectively.

* Our response to crime in our region is a moral test for all of us. Any discussion of the death penalty must be considered in the context of, for example, nation-building, character development of citizens and so on. All countries in our region and in the world at large are grappling with challenges faced in producing comprehensive crime plans. But such plans are not created in a vacuum. We need crime plans based on evidence and evidence must be gathered from many sources

because crime is a complex phenomenon that requires a multi-faceted/multi-sectoral approach. GCL believes that any approach that prioritises capital punishment as a crime reduction strategy is doomed to fail.

I firmly believe that these strategies, many of which were recommended by the UNDP in their 2012 report: *Human development and the shift to better citizen security*, can contribute to build safer, more democratic and just societies in the region. At the launch of the report in TT in Feb 2012, UNDP Administrator, Helen Clark stated:

“This report stresses the need to rethink our approaches to tackling crime and violence and providing security on the ground. We need to follow approaches that are centered on citizen security and address the causes of this recent increase in violent crime, including social, economic, and political exclusion.”

The Report reviewed "the current state of crime as well as national and regional policies and programmes to address the problem in seven English- and Dutch-speaking Caribbean countries: Antigua and Barbuda, Barbados, Guyana, Jamaica, Saint Lucia, Suriname, and Trinidad and

Tobago." <http://www.undp.org/content/undp/en/home/librarypage/hdr/caribbean-human-development-report-2012-1.html>

"Key recommendations from the Report: High rates of violent crime can be turned around by achieving a better balance between legitimate law enforcement and preventive measures, with a stronger focus on prevention;

Governments should create or invest more in units to address gender-based violence and adopt more preventive measures to ensure that violence against girls and women is no longer tolerated

Because crime harms social cohesion, Caribbean nations must better address youth violence and street gangs, whose crimes are rarely prosecuted

Public security requires community collaboration" (See above link for source).

In the final analysis, the Report stated that while "Crime has become one of the main challenges threatening economies and livelihoods in Caribbean countries...the right mix of policies and programmes can halt the problem."

We continue to address the symptoms of crime and not the root causes. In spite of the billions of dollars that our countries allocate in annual national budgets for national security, citizens do not feel safe. Death and destruction continue to stalk our lands.

It is important for us to place homicides within the wider context of the various security threats to the region - including: white collar crime, illegal drugs, illegal firearms, corruption, youth violence, growing lawlessness, poverty and inequity, and terrorism.

Deep within their beings, I am convinced that politicians do not believe that the death penalty is a deterrent. I recall writing to the then PM, Leader of the Opposition, each MP and Senator in the Upper and Lower Houses in the Parliament of TT a few years ago when a draft Bill was before Parliament to consider altering our Constitution in a way that would nullify the effects of Pratt and Morgan. I listed strategies that could be employed to reduce crime rather than holding on to lethal means of doing so. I received only one response from an MP - via telephone. The then MP said that while he agreed with my analysis and suggestions, he would not support me publicly. He just wanted to give me moral support to continue my work.

Some of the examples I shared with the Honourable PM, Leader of the Opposition, all MPs and Senators included the need to: promote good governance; strengthen family life; fix our broken institutions - including the re-engineering of the criminal justice system; devise and implement more effective victim support initiatives; invest in education, youth development and job creation; reduce poverty and socio-economic inequality; protect children from risk-factors related to crime; work to restore respect for law, life and human rights by e.g. promoting a renewed ethic of justice, responsibility and community.

Political will is what is needed today. We need courageous, visionary leaders in our region who will develop their understanding of the nature of the problems we face in the region and who will

be prepared to lift their heads above the parapet and speak out for what is right and just.

In the past few years, the governors of **Washington, Colorado, and Oregon** have put a halt to executions in their states because of problems in the death penalty system. Below are some of the reasons they gave for their actions. (And see: <http://www.deathpenaltyinfo.org/death-penalty-flux/#exe> for States where there is a hold on executions – for various reasons – on hold either by court or executive order).

Governor Jay Inslee, Washington, February 11, 2014

"Equal justice under the law is the state's primary responsibility. And in death penalty cases, I'm not convinced equal justice is being served. The use of the death penalty in this state is unequally applied, sometimes dependent on the budget of the county where the crime occurred."

"There are too many flaws in the system. And when the ultimate decision is death there is too much at stake to accept an imperfect system. "

"When the majority of death penalty sentences lead to reversal, the entire system itself must be called into question."

Governor John Hickenlooper, Colorado, May 22, 2013

"If the State of Colorado is going to undertake the responsibility of executing a human being, the system must operate flawlessly. Colorado's system for capital punishment is not flawless."

"As one former Colorado judge said to us, '[The death penalty] is the result of happenstance, the district attorney's choice, the jurisdiction in which the case is filed, perhaps the race or economic circumstance of the defendant.'"

"The death penalty is not making our world a safer or better place."

Governor John Kitzhaber, Oregon, November 22, 2011: "I do not believe that those executions made us safer; and certainly they did not make us nobler as a society." ***

"The death penalty as practiced in Oregon is neither fair nor just; and it is not swift or certain. It is not applied equally to all." ***

"I am convinced we can find a better solution that keeps society safe, supports the victims of crime and their families and reflects Oregon values."

* On August 13, 2015, the **Connecticut Supreme Court** (4-3) held that the state's death penalty was in violation of the state's constitution, especially in light of the state legislature's prospective repeal of the death penalty in 2012. The ruling means that the death sentences of those who were not covered by the legislative repeal

will now have those sentences reduced to life. Excerpts from the main opinion follow:

"[W]e are persuaded that, following its prospective abolition, this state's death penalty no longer comports with contemporary standards of decency and no longer serves any legitimate penological purpose."

And, as Judge Kozinski of the U.S. Court of Appeals for the 9th Cir. stated then: "[W]e have little more than an illusion of a death penalty in this country. ... Whatever purposes the death penalty is said to serve— deterrence, retribution, assuaging the pain suffered by victims' families—these purposes are not served by the system as it now operates."

* I refer to a statement made by Pope Francis who continues to call for an end to capital punishment. In an address on October 23 2015 to the International Association on Penal Law he said: "It is impossible to imagine that states today cannot make use of another means than capital punishment to defend peoples' lives from an unjust aggressor... He cited the Catechism of the Catholic Church, which says that the death penalty can be used only if it is the 'only possible way of effectively defending human lives against the unjust aggressor,' and that modern alternatives for protecting society mean that 'cases in which the execution of the offender is an absolute necessity are very rare, if not practically non-existent.' Pope Francis said, 'All Christians and people of good will are thus called today to struggle not only for abolition of the death penalty, whether it be legal or illegal and in all its forms, but also to improve prison conditions, out of respect for the human dignity of persons deprived of their liberty.' In discussing a variety of criminal justice issues, he critiqued the tendency to focus solely on punishment, rather than addressing broader social issues" (www.deathpenaltyinfo.org).

* Some examples of **the inhumanity of the Death Penalty:** GCL condemns the death penalty not only for its inhumanity but for its potential cruelty. In 2014 three executions in the USA have highlighted the inhumanity and cruelty of the death penalty.

In **January 2014, Michael Lee Wilson**, an **Oklahoma** condemned man actually was heard to say as he suffered death: "I feel my whole body burning". In the same month **Dennis McGuire**, an **Ohio** inmate, suffered for 26 minutes after being injected with a lethal injection during which he repeatedly gasped with his mouth opening and closing. On **22 July Joseph Wood**, another condemned man

in **Arizona**, was “gasping and snorting” for 117 minutes, nearly 2 hours, after the lethal injection was administered.

These developments led **Governor Jay Dixon of Missouri** to stay the execution of serial killer, **Joseph Paul Franklin** until a new drug can be found. US States are now seeking to find other drugs for the lethal injection, but the efforts meet with principled objection from countries which will not allow the supply of drugs for this purpose. The authorities have now to balance the morality and economics of obtaining the drugs from underground sources and the scientific effectiveness of the concoctions. Thus, in the determination to carry out executions, the Authorities are applying combinations of drugs, from unknown sources without any assurances as to what tests have been carried out or guarantee that their application will not amount to torture, inhumane treatment and cruel and unusual punishment.

* It is clear that the death penalty is not a deterrent. Those of us who are committed to abolition must continue to make the case for a death-penalty free world. Our advocacy strategies should aim to raise awareness about the inhumanity of the death penalty and of its ineffectiveness as a crime reduction strategy and of its violation of human rights. Let us also foster public debate on alternative crime reduction strategies and partner with each other to achieve our goals.

There is strength in unity. As GCL seeks to build capacity and work to achieve our goals, we invite you to join us on our quest to: ***Stop crime, not lives!*** Let us commit to working together to change the culture of revenge and violence and promote restorative justice, peace and harmony.

I end with the words of 2 of the world’s religious leaders: In his message to those of us who gathered in Madrid for the 5th World Congress against the Death Penalty in 2013 Archbishop Desmond Tutu said: “There is no justice in killing in the name of justice and no godliness in exacting vengeance.” And in March 2015, Pope Francis said: “For the rule of law, the death penalty represents a failure, as it obliges the state to kill in the name of justice... There is discussion in some quarters about the method of killing, as if it were possible to find ways of ‘getting it right.’ ... But there is no humane way of killing another person.” I thank you.

BACKGROUND INFORMATION:

· **Abolitionist for all Crimes: 98**

- **Abolitionist for Ordinary Crimes only: 7**
- **Abolitionist in Practice: 35**
- **Retentionist Countries: 58**

Total Abolitionist in law or practice: 140

<http://www.deathpenaltyinfo.org/abolitionist-and-retentionist-countries>

** The American Civil Liberties Union states: “Persons who commit murder and other crimes of personal violence often do not premeditate their crimes. Most capital crimes are committed in the heat of the moment. Most capital crimes are committed during moments of great emotional stress or under the influence of drugs or alcohol, when logical thinking has been suspended. Many capital crimes are committed by the badly emotionally-damaged or mentally ill. In such cases, violence is inflicted by persons unable to appreciate the consequences to themselves as well as to others.*

Even when crime is planned, the criminal ordinarily concentrates on escaping detection, arrest, and conviction. The threat of even the severest punishment will not discourage those who expect to escape detection and arrest. It is impossible to imagine how the threat of any punishment could prevent a crime that is not premeditated. Furthermore, the death penalty is a futile threat for political terrorists, like Timothy McVeigh, because they usually act in the name of an ideology that honors its martyrs”. (<https://www.aclu.org/case-against-death-penalty>).

* And I would add to this list those religious fundamentalists who believe that they would be rewarded in the next life if they kill for their beliefs, as well as those who see the death penalty as a way of becoming a martyr e.g. Timothy McVeigh who had asked for his execution in 2001 to be televised. The death penalty is not a deterrent to them.

Bruce Robinson of the Ontario Consultants on Religious Tolerance rightly reminds us that:

"People murder for a variety of reasons and under many different situations. Examples are murders:

- during domestic disputes, when passions are inflamed
- under the influence of alcohol or other drugs, when the perpetrator is not in full control
- by contract killers who are typically certain that they will never be caught
- by psychopaths and other mentally ill individuals who have little regard for human life and who are unable to accept responsibility for their actions
- by self-destructive individuals who believe that they deserve to die and want to be arrested and executed; and
- by brain-damaged individuals, who experience periods of rage, and who, very rarely, may kill others.

With the exception of professional hit-men, very few people are in a rational frame of mind when they kill others." (<http://www.religioustolerance.org/execut4.htm>).

*** In the USA, 31 States have the death penalty:** Alabama, Arizona, Arkansas, California, Colorado, Delaware, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nevada, New Hampshire, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, Wyoming. **ALSO: US Govt and US Military**

Judge Kozinski of the U.S. Court of Appeals for the 9th Cir.states: “[W]e have little more than an illusion of a death penalty in this country. ... Whatever purposes the death penalty is said to serve— deterrence, retribution, assuaging the pain suffered by victims’ families—these purposes are not served by the system as it now operates.”

In the USA 19 States and DC have abolished the death penalty:

Alaska (1957)
Connecticut (2012)
Hawaii (1957)
Illinois (2011)

Michigan (1846)
Minnesota (1911)
Nebraska (2015)**
New Jersey (2007)

Vermont (1964)
West Virginia (1965)
Wisconsin (1853)

Iowa (1965)	New Mexico* (2009)	ALSO
Maine (1887)	New York (2007)#	Dist. of Columbia (1981)
Maryland (2013)	North Dakota (1973)	
Massachusetts (1984)	Rhode Island (1984)^	

The Greater Caribbean region which is also known as the Caribbean Basin. It is composed of 25 countries. It includes 13 Caribbean island nations, the Caribbean states of South America, and the countries of Central America and Mexico (in addition to the US, British, Dutch and French Caribbean territories).

In the Greater Caribbean, 11 countries are abolitionist in law: Colombia, Costa Rica, Dominican Republic, El Salvador (for ordinary crimes only), Haiti, Honduras, Mexico, Nicaragua, Panama, Suriname and Venezuela. “Capital punishment has been abolished for decades in the Spanish-speaking Dominican Republic, and the death penalty is not used in French, British and Dutch dependencies in the Caribbean. Religious and cultural opposition to the death penalty holds sway in the U.S. Caribbean island of Puerto Rico, where jurors often reject federal prosecutors' request for capital punishment.”(www.jamaicaobserver.com)

1 country is considered abolitionist in practice: Grenada (last hanging took place in 1978).

13 countries in this region are retentionist: Antigua and Barbuda, Bahamas, Barbados, Belize, Cuba, Dominica, Guatemala, Guyana, Jamaica, St. Kitts & Nevis, Saint Lucia, Saint Vincent and the Grenadines, and Trinidad and Tobago.

***In 2007 the General Assembly adopted a resolution on a moratorium on the use of the death penalty (A/62/149). The resolution was passed by a vote of 104 in favour to 54 against, with 29 abstentions. The resolution called on all States that still allowed capital punishment to “progressively restrict the use of the death penalty and reduce the number of offences for which it may be imposed.” Those countries were also called on to provide the Secretary-General with information on their use of capital punishment and to respect international standards that safeguard the rights of condemned inmates. http://www.ohchr.org/Lists/MeetingsNY/Attachments/27/moving_away_from_death_penalty_web.pdf

***RE PRATT AND MORGAN:** The Privy Council concluded in the Jamaican case – Pratt and Morgan - 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 treatment’ and therefore unconstitutional. The effect of this case is that individuals who spent more than five years on Death Row cannot be executed” (Death Penalty Project).

There are a number of other cases that are of note in our region:

- - in the 1996 **TT case of Guerra v Baptiste**, the JCPC stated that 4 years and 10 months was too long a period to hold someone on death row after sentence;
- - in 1997 in the Bahamian case of *Henfield v AG of Bahamas*, the JCPC stated that 3 1/2 years constituted inappropriate delay;
- - in 2009 in **Trimmingham v The Queen** – a case from **St Vincent and the Grenadines**, the Law Lords laid down 2 key principles as to whether the death penalty should be imposed:
 1. that the death penalty should be imposed only in cases which, on the facts of the offence are the most extreme and exceptional, ‘the worst of the worst’ or ‘the rarest of the rare’; and
 2. that there must be no reasonable prospect of reform of the offender and that the object of punishment could not be achieved by any means other than the ultimate sentence of death’.
- - in the 2011 **Bahamian case of Ernest Lockhart v The Queen**, Lord Kerr referred to another 2011 case – *Maxo Tido v The Queen*. Inter alia, he said that if the State is thinking of imposing the death penalty, it is not enough to submit a probation report. There may be a need also for more than a consultant psychiatrist’s report. There may be a need also for a report from a clinical psychologist.

As we can see, the JCPC seems to be setting higher and higher human rights standards. It is important to note an issue raised by Parvais Jabbar of the London Death Penalty Project at the WCADP General Assembly. He referred to a series of JCPC judicial decisions that limit the application of the death penalty in our region—especially the rulings against any execution after a long delay and imposing greater transparency on clemency and pardon procedures, and the introduction of principles in sentencing. He pointed out that the judiciary could not outlaw capital punishment completely in most English speaking Caribbean countries so that

progress through the courts had reached its limits because abolishing the death penalty was, at the end of the day, a political issue.

* **Deterrence** is the number one reason that supporters of the death penalty cite (Newsweek Poll 2000). However, 26% of people claim that their justification for supporting the death penalty is "eye for an eye" (Newsweek Poll 2000). Furthermore, 55% would favor the death penalty even if it were found that it does not act as a deterrent, that it does not reduce the murder rate (Gallup Poll 1999).
Univ. of Vermont:

<http://www.uvm.edu/~vlrs/doc/deathpenalty.htm> -