

BARBADOS

**Death penalty and
discrimination against LGBT
people still to be addressed**

*Amnesty International
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**AMNESTY
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INTRODUCTION

In this submission, prepared for the UN Universal Periodic Review (UPR) of Barbados in January-February 2013, Amnesty International comments on the response of the Barbadian government to recommendations made to it during its previous review. Particular attention is paid to recommendations regarding international standards, children, and lesbian, gay, bisexual and transgender (LGBT) people.

Amnesty International further comments on the death penalty provisions in Barbadian law and provides evidence of the use of mandatory death sentences in recent rulings. Additionally, Amnesty International notes concerns about the entrenchment of discrimination against LGBT people in Barbadian law. The organization expresses its concern about the criminalization of same sex relations and its effect on the LGBT community's reluctance to access health services and treatment.

FOLLOW UP TO THE PREVIOUS REVIEW

During the first Universal Periodic Review of Barbados in December 2008, Barbados rejected nearly half of the recommendations made by reviewing states, including a number of important recommendations on the death penalty,¹ ratification of international human rights treaties,² children,³ and the rights of lesbian, gay, bisexual and transgender people.⁴

Amnesty International regrets that Barbados rejected recommendations which were intended to ensure that Barbados adheres to its international human rights obligations towards children, as well as to lesbian, gay, bisexual and transgender people. In particular Barbados rejected the recommendations to eliminate all forms of corporal punishment from its legislation and discourage its use in schools, to decriminalize consensual sexual acts between adults of the same sex, and to take all necessary actions to protect LGBT people from harassment, discrimination and violence.⁵

Although Barbados rejected recommendations related to the abolition of the death penalty, the delegation did undertake to abolish the mandatory death penalty.⁶ However, the relevant legislation has not yet been amended in order to make the death penalty a discretionary penalty.

NORMATIVE AND INSTITUTIONAL FRAMEWORK IN BARBADOS

Barbados has still to ratify important international human rights treaties such as the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention for the Protection of all Persons Against Enforced Disappearance; the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty; and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

THE DEATH PENALTY

Although there have been no executions in Barbados since 1984, death sentences continue to be handed down by the courts, the most recent one, as far as Amnesty International is aware, in 2010. At the end of 2011 there were four prisoners on death row. Barbados has voted against the UN General Assembly resolutions on a moratorium on executions with a view to abolishing the death penalty in 2007, 2008 and 2010.⁷

Barbados is one of only two Caribbean countries to retain the mandatory death penalty for murder, treason and some military offences. This means that upon conviction for those crimes, death is the only penalty which the law allows judges to impose, without any possibility of taking into account the defendant's personal circumstances or the circumstances of the particular offence. International human rights law prohibits mandatory death sentences as they have been found to constitute arbitrary deprivation of life and cruel, inhuman or degrading punishment.⁸

In its ruling in the case of *DaCosta Cadogan v Barbados* in September 2009, the Inter-American Court of Human Rights ruled that the mandatory death sentences imposed in murder cases in Barbados violate the right to life. According to the Court, the mandatory imposition of the death penalty is arbitrary and fails to limit the application of the death penalty to the most serious crimes, in violation of articles 4(1) and 4(2) of the American Convention on Human Rights. The judgement echoed a previous ruling by the Court in the case *Boyce et al v. Barbados*, which also found that the mandatory imposition of the death penalty violates the right not to be arbitrarily deprived of life.⁹ The Court also found that the State had violated Mr Cadogan's right to a fair trial as his mental health status at the time of the offence was never fully evaluated and stated that "the State shall ensure that all persons accused of a crime whose sanction is the mandatory death penalty will be duly informed, at the initiation of the criminal proceedings against him, of their right to obtain the psychiatric evaluation carried out by a state-employed psychiatrist".¹⁰

On 2 October 2011, the Attorney General and Minister of Home Affairs, Adriel Brathwaite, was reported in a local newspaper, *The Barbados Advocate*, as having said that he expected that changes to national legislation to remove the mandatory imposition of the death penalty would be finalized by the end of 2011. However the proposed legislation is still pending before parliament.

DISCRIMINATION AGAINST LESBIAN, GAY, BISEXUAL AND TRANSGENDER PEOPLE

Consensual same-sex conduct is criminalized in Barbados. Section 9 of the Sexual Offences Act criminalises "buggery" and makes it punishable by life imprisonment. Section 12 of the same law defines the crime of "serious indecency" as "an act, whether natural or unnatural by a person involving the use of the genital organs for the purpose of arousing or gratifying sexual desire". A person committing an act of serious indecency towards a person of 16 years of age or more is liable on conviction to imprisonment for a term of 10 years. The vague definition of this crime and the use of the word "unnatural" in the definition leave the opportunity to use this legal provision to target and prosecute LGBT people and people engaging in consensual same-sex conduct.

These legal provisions entrench discrimination in the law and foster stigmatisation of and

prejudice against LGBT people throughout society.

The existence of laws criminalizing consensual same-sex leads to a reluctance amongst lesbian, gay, bisexual and transgender people to undergo HIV testing and to access other HIV/AIDS services. The 2011 UNAIDS report on Barbados indicates men who have sex with men (MSM) as a significant at-risk group for HIV.¹¹ It also highlighted that “the attendant stigma hinders accessibility of services for key populations”. Local human rights groups working on behalf of lesbian, gay, bisexual and transgender persons believe that since Barbados has agreed to specifically target men who have sex with men through the National AIDS Program, more efforts should be done to reduce the stigma against them and to enhance their access to prevention services. The decriminalization of consensual same-sex conduct should be a first crucial step in this direction.

As mentioned above, in the context of its first review Barbados rejected recommendations to decriminalise consensual sexual acts between adults.¹² The government said in its response to the UPR recommendation that it was unable to accept such a recommendation due to public opinion, arguing that there was “no political mandate to do so and in fact significant sections of the community are opposed to such decriminalization”.¹³ The government further argued that “This is a topic which has been widely considered in society not only on the basis of its legality but from the socio-cultural and historical perspectives. It must be noted that Barbados is a heavily religious society and there is a significant lobby by the church on such issues.”¹⁴

Religious, cultural and moral beliefs, however, cannot be used as a justification for differential treatment, intolerance, violence or the criminalization of intimacy between adults. Lesbian, gay, bisexual and transgender persons have the right not to be discriminated against on the basis of sexual orientation or gender identity; the right to equality before the law; the right to privacy; the right to health; the right to life, liberty and security of the person; and the right to be free from torture and inhuman or degrading treatment. These rights are guaranteed under international human rights law, and by continuing to criminalize consensual same-sex conduct the Barbadian government is violating its international obligations under the treaties to which it is a party.

The Barbadian government should therefore play an important role in ensuring that the broader public understands that human rights must be guaranteed regardless of sexual orientation or gender identity. At the same time, the government should exert its leadership to decriminalize consensual same-sex conduct and abide by its international human rights obligations. By doing so, Barbados will set the example for other English speaking Caribbean countries and be recognized at an international level for its leadership on this issue.

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the government Barbados:

The death penalty:

- To immediately establish a moratorium on executions with a view to abolishing the death penalty, in line with UN General Assembly resolutions 62/149 of 18 December 2007, 63/168 of 18 December 2008 and 65/206 of 21 December 2010;
- To commute without delay all death sentences to terms of imprisonment;
- To immediately remove all provisions in national laws which are in breach of international human rights law, in particular by abolishing all provisions which provide for mandatory death sentences;
- To ensure rigorous compliance in all death penalty cases with international standards for fair trial;
- To ratify without reservations the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

Discrimination against lesbian, gay, bisexual and transgender persons:

- To repeal all provisions that criminalize consensual same-sex conduct, including in the Sexual Offences Act;
- To enhance access of men who have sex with men (MSM) to HIV/AIDS prevention services;
- To establish and implement policies and initiatives to address discrimination, prejudice and violence based on sexual orientation or gender identity;
- To acknowledge that LGBT persons are at risk of greater discrimination, prejudice and violence because of the existence of laws criminalizing consensual same-sex activity.

Ratification of international human rights treaties

- To ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention for the Protection of All Persons from Enforced Disappearance; and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

ENDNOTES

- ¹ Human Rights Council, *Report of the Working Group on the Universal Periodic Review on Barbados*, A/HRC/10/73, 9 January 2009, recommendation 77.4 (Turkey, Chile, Mexico, Brazil, Canada, Italy, Sweden).
- ² A/HRC/10/73, recommendation 77.1 (France, Czech Republic, Mexico, Chile, Algeria, Argentina).
- ³ A/HRC/10/73, recommendation 77.13 (Italy, Brazil) and 77.14 (Chile, Germany, Turkey, Slovenia).
- ⁴ A/HRC/10/73, recommendation 77.17 (France, Canada, Slovenia, Czech Republic, Chile, Sweden) and 77.18 (Canada).
- ⁵ Report of the Working Group on the Universal Periodic Review, Addendum (A/HRC/10/73/Add.1), 16 March 2009
- ⁶ Ibid, paragraph 12.
- ⁷ UN General Assembly resolutions 62/149 (2007), 63/168 (2008) and 65/206 (2010).
- ⁸ The International Covenant on Civil and Political Rights, Art 6 is interpreted to be incompatible with mandatory death sentences..
- ⁹ The ruling of the Inter-American Court of Human Rights in the case *Boyce et al v. Barbados* is available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_169_ing.pdf. The ruling on the case *DaCosta Cadogan v Barbados* is available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_204_ing.pdf
- ¹⁰ *DaCosta Cadogan v Barbados*, available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_204_ing.pdf
- ¹¹ Global AIDS response, Progress Report 2012, Barbados, available at http://www.unaids.org/en/dataanalysis/monitoringcountryprogress/progressreports/2012countries/ce_BB_Narrative_Report%5B1%5D.pdf
- ¹² A/HRC/10/73, recommendation 77.17 (France, Canada, Slovenia, Czech Republic, Chile, Sweden).
- ¹³ Report of the Working Group on the Universal Periodic Review – Barbados, Addendum, A/HRC/10/73/Add.1, 16 March 2009, paragraph 26.
- ¹⁴ A/HRC/10/73/Add.1, paragraph 26.

ANNEX

AMNESTY INTERNATIONAL DOCUMENTS FOR FURTHER REFERENCE¹

Barbados: Abolition of mandatory death penalty by the end of 2011 would be a first step in the right direction (Index: AMR 15/001/2011).

¹ All of these documents are available on Amnesty International's website:
<http://www.amnesty.org/en/region/barbados>

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