

## CCJ rules that mandatory death penalty in Barbados unconstitutional

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The Greater Caribbean for Life (GCL) & the Catholic Commission for Social Justice (CCSJ) welcome the judgment by the Caribbean Court of Justice (CCJ), Barbados' highest appellate Court, that the mandatory death penalty as stated in section 2 of the Offences Against the Persons Act (OAPA), Ch.141, for persons convicted of murder in Barbados is unconstitutional.

Convictions under section two of the OAPA automatically attract mandatory death sentences without any consideration of the mitigating factors in their cases or their individual circumstances.

Barbados adopted the CCJ as its most superior court in place of the Judicial Committee of the Privy Council (JCPC) in 2005.

The CCJ judgment which was delivered on Wed 27 June, 2018, related to the consolidated appeal cases of Jabari Sensimania Nervais and Dwayne Omar Severin, who had been convicted of murder. They appealed their murder convictions and the constitutionality of the mandatory death sentence for murder in Barbados. Their appeals against their convictions were dismissed and the CCJ ordered that they be brought before the Supreme Court of Barbados for re-sentencing.

The two appellants were represented by Douglas Mendes SC, Andrew Pilgrim QC, Naomi Lynton and Kamisha Benjamin. The Barbados Government was represented by acting deputy Director of Public Prosecutions Anthony Blackman, Krystal Delaney, Senior Crown Counsel and Neville Watson.

In its judgment, the CCJ stated that it "considered the state of the mandatory death penalty in Barbados for murder and found that it was indisputable that the nation, through its actions, had acknowledged that it had an obligation to remove such mandatory sentences imposed by section 2 of OAPA.

“Barbados had also given undertakings to the CCJ and the Inter American Court of Human Rights to rectify the mandatory sentence which was reflected in the Barbados Privy Council’s consistent commutation of the mandatory death penalty.

“The CCJ held that section 11 of the Constitution, which gives the right to protection of the law, was enforceable. The CCJ found that the mandatory death penalty breached that right as it deprived a court of the opportunity to exercise the quintessential judicial function of tailoring the punishment to fit the crime.”

The CCJ stated that savings clauses, which had ‘saved’ the mandatory death penalty in Barbados, should be condemned. Laws should not be “calcified to reflect the colonial times.”

The same savings clause exists in the Constitution of Trinidad and Tobago, and with this CCJ judgment, Trinidad and Tobago remains the only country in the Caribbean that imposes the mandatory death penalty.

**GCL & CCSJ invite the government of Trinidad and Tobago to approve the necessary reforms to immediately overrule mandatory death penalty.**

Leela Ramdeen, GCL’s Chair & CCSJ’s Chair, says: “This is truly a landmark judgment. While society needs to defend itself from crime and violence and to uphold the value of the lives of its citizens, we should not sacrifice the values we seek to protect. GCL & CCSJ support an ethic of respect for ALL life. Our vision of building safe, just, and peaceful communities must not lead us to lose our humanity by hanging on to colonial laws that lead us to treat persons in inhuman and degrading ways.

“There is a global movement towards the abolition of the death penalty which is a human rights issue. We have some way to go to achieve this in our Caribbean region. GCL & CCSJ welcome the opportunity that this judgment provides for a new national dialogue in our region about how we deal with crime and violence; how we restore respect for law and life; and how we protect and rebuild communities. We note that these are the last judgments that the Rt. Hon. Sir Dennis Byron will deliver as CCJ President as he will demit office on July 4th. We wish him all the very best in his future endeavours.”

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