

End Delays From The Bench! - Bar Association Calls On Judges To Speedily Hand Down Judgments

The Gleaner

[Barbara Gayle](#)



McGregor: People do business and people have to rely on the justice system.

The Jamaican Bar Association (JBA) is putting pressure on Chief Justice Zaila McCalla to act to ensure that judges hand down their judgments quickly to end the frustration of litigants, some of whom have been waiting for 10 years.

Last week, the JBA sent a list of some of the outstanding judgments to McCalla urging her to take action.

The list includes cases in which judgments have been reserved from as far back as 2006.

"We are of the view that these many outstanding judgments underscore the problem of chronic delays in the timely delivery of justice within the Supreme Court, which demands urgent attention by all stakeholders.

"Particularly as several of the judges whose names appear on the list have either retired or will soon reach the constitutionally stated retirement age," the JBA said in its letter to the chief justice.

COMPREHENSIVE LIST NEEDED

The JBA noted that its list does not account for all outstanding judgments and asked the chief justice to provide a comprehensive list.

The association also asked the chief justice to indicate what steps are being taken to ensure the delivery of judgments in a timely manner, and suggested that she schedule dates for the delivery of judgments in respect of the list submitted to her.

The list of 62 cases in which judgments are outstanding includes a case for assessment of damages which was reserved in 2010 and one in which an oral decision was given but the written judgment has been outstanding since last July.

One of the cases is that of Rio Blanco Development Co Ltd (in receivership) against the National Commercial Bank (NCB). The suit was filed in the Supreme Court in 1994 and after being on the list for 11 years, the case was heard and judgment handed down on January 25, 2006.

However, shortly after the judgment was delivered, the lawyers representing the parties asked the judge for clarification of an aspect of his decision. There has been no response from the judge, who has since retired.

"The case is now in limbo," said attorney-at-law Dave Garcia, who is general manager, legal and compliance, at NCB.

He said the parties are still waiting to get the clarification, and since the case took so long to be tried the parties do not want to go down the road of having it retried.

In another of the cases, a couple filed a claim for division of property in 2005. The matter was heard and in April 2008 judgment was reserved. The judge who heard the case has since retired.

BLIGHT ON JUSTICE SYSTEM

In the meantime, Minister of Justice Delroy Chuck told our news team that he is well aware of the delays.

"It is obvious that delay of this nature where a judge having tried a case has failed to deliver the judgment for such an inordinate period is not only unfair and inconvenient to litigants but is a blight on the justice system," said Chuck.

He referred to the hardships litigants and their families and businesses faced and argued: "Judges must know that they are holding up many lives when they fail to deliver their judgments on time."

According to Chuck, the few judges who are responsible for the inordinate delays are giving the rest of the judges a bad image.

He said while he is aware that the chief justice is pressing the judges to write their judgments in a timely manner, he is looking at a Judicial Code of Conduct, which will entail accountability.

"What is clear is that she (McCalla) is not getting results and it seems to me that since the Bar has now identify many of these cases only public pressure can be brought to bear on these judges to step up the pace and do what is to be done and deliver their judgments," said Chuck.

SIX-MONTH DELIVERY GOAL

According to the justice minister, he is hoping that before the end of this year Jamaica will be able to say that no judgment must take longer than six months to be delivered.

That is a goal which JBA president, Sherry Ann McGregor, would love to see achieved as she is adamant that justice delayed is justice denied.

According to McGregor, the delays in handing down judgments reflect poorly on the country. "People do business and people have to rely on the justice system, therefore, the failure to deliver judgments on time could stifle the economy and discourage investors."

McGregor questioned how likely it is that after five years a judge can accurately assess the evidence presented, especially if the assessment was going to be based on the demeanour and credibility of witnesses.

"There needs to be greater focus on the resources that are required to assist judges to carry out their functions," declared McGregor.

2006 - 3

2007 - 1

2008 - 3

2009 - 4

2010 - 7

2011 - 3

2012 - 5

2013 - 17

2014 - 10

2015 - 9

Blame Gov't, Unions For Languishing Safety Law

The Gleaner

THE EDITOR, Sir:

The Jamaica Occupational Health and Safety Professionals Association (JOHSPA) is once again alarmed at yet another reported workplace accident in the construction industry, this time at a hotel construction site in Negril. Fortunately, this time, there has not been any loss of life.

It is imperative that contractors and workers are held accountable for safety at worksites, and while we often hear about investigations by government agencies when workplace accidents take place, we are usually not told about the outcome, and more important, who was held accountable. Local authorities that issue construction permits should also monitor the construction process to ensure that the integrity of buildings being constructed. Are there poorly constructed buildings in Jamaica waiting to collapse with the passage of the slightest earthquake? The protracted non-passage of the Occupational Safety and Health Act (OSHA) constitutes a major indictment on respective Jamaican governments over the past 20 years, but more so on the trade unions for whom it constitutes nothing short of a disgrace. Governments have included high-ranking trade union officers, inclusive of even a president of the Jamaica Confederation of Trade Unions, yet the OSHA languishes while many workers continue to be denied safe working environments.

Accordingly, workers need to start demanding of their elected representatives and the trade unions that represent them better stewardship in respect of their efforts in this regard.

JOHSPA once again calls upon the Ministry of Labour and Social Security to pass the OSHA. This act will contain provisions applicable to the protection of workers and prevention of accidents at construction sites.

Our workers are our greatest national asset. Let us do more to protect them.

HENROY P. SCARLETT

President, JOHSPA

J'can-Panamanian in Colombian prison without charge since Dec

Mizrachi Matalon remains in prison despite court order to free him

The Observer



Jamaican-Panamanian Mayer Mizrachi Matalon is flanked by Colombian police on the day he was arrested in Bogota last December. (Photo: La Prensa) Attorneys representing Jamaican-Panamanian Mayer Mizrachi Matalon, who has been in

detention in a Colombian prison since December last year, without being charged, yesterday said they have referred his case to the Inter-American Commission on Human Rights (IACHR).

Lord Gifford, QC, and Caroline Hay explained in a news release that they filed a petition at the IACHR on April 11, 2016 after Panamanian authorities failed to act on a court order instructing that a ‘freedom ticket’ be sent to Colombia for Mizrachi Matalon’s release from La Picota jail in Bogota.

In addition, the attorneys said that a prolonged period of imprisonment would make Mizrachi Matalon vulnerable to serious damage to his health because he has, since early childhood, suffered from a rare health condition.

“I spoke with his Panamanian lawyer this week and he gave me a full report,” Lord Gifford told the Jamaica Observer yesterday. “He has appealed to the Panamanian Supreme Court to get the

freedom ticket. It's completely out of order, it not being issued, and he's hoping to make some progress there.”

In his release yesterday, Lord Gifford said the order for the freedom ticket to be sent to Colombia was handed down by the Second Superior Tribunal in Panama on January 18 this year after it found that there was no evidence that Mizrachi Matalon represented a risk to society, and thus granted him bail.

Mizrachi Matalon, an entrepreneur and expert in secure communications technology, has a Jamaican mother and a Panamanian father.

He had travelled from New York, where he operates his company, to Colombia on personal business, but was arrested at Cartagena airport on December 29, 2015 on a ‘red notice’ issued by Interpol at the request of the Panamanian Government, following an investigation by the Anti-Corruption Prosecutor’s Office into alleged breaches associated with a government contract. “The case arose from a contract which was signed between Mayer’s company and the Panamanian authorities in 2014 for the supply, on licence, of a mobile text messaging platform known as *Criptext*, which allows for secure communications to be passed by mobile phones between 100 members of governmental agencies. The contract was duly performed,” the Jamaican attorneys said in their news release.

“The prosecutor’s report suggested that the contract had not been fully performed and that public officers involved in the contract were therefore guilty of embezzlement. Mayer was said to be an accessory. He has not been charged, and the allegations made against him, which he denies, would not amount to any criminal conduct,” the lawyers added.

“Nevertheless, an Interpol red notice was issued and Mayer was arrested in a humiliating and public manner as a result. An extradition request has been made by Panama, even though the relevant treaty requires that a request can only be made in relation to a person who is the subject of ‘an indictment or its equivalent’, or who has been convicted of an offence,” the attorneys pointed out.

They said that despite the decision of the Second Superior Tribunal in Panama, their client remains in detention.

“In these circumstances a petition was filed on 11th April 2016 before the Inter-American Commission on Human Rights, complaining that the actions of the Panama authorities had resulted in violations of Mayer’s rights to liberty and due process,” the attorneys said.

“The petition asks for interim measures to be implemented by Panama, including the delivery of the freedom ticket, the suspension of the extradition proceedings, and the cancellation of the red notice,” they added.

“I have been shocked by the detention for over four months of a man whose ‘offence’ was to enter into a bona fide business transaction with the Panamanian Government,” the release quotes Lord Gifford. “My colleague Caroline Hay has visited him in La Picota and is most concerned about the effect of detention on his health. Given the international aspects of the case, it is very fitting that the machinery of the Inter-American Commission on Human Rights be set in motion. The petition is being studied by the commission and we hope for a result which will set Mayer free.”

Yesterday, Hay told the Sunday Observer that she and her associate, Neco Pagon, visited Mizrachi Matalon on April 7.

“He has autoimmune challenges, which have been set out in the petition. We’ve named them and he has provided medical evidence in relation to them,” Hay said. “They display in terms of weight loss, spots on the skin, fatigue and other symptoms.”

She said that on the day she and Pagon visited Mizrachi Matalon — approximately 100 days since he was placed in detention — he had spots on his skin and he had lost about 30 pounds.

“So he’s rapidly losing weight, and that morning when we went to see him he reported feeling a seizure coming on because he suffers from seizures as well,” she said.

Asked whether her client was receiving medication, Hay said: “I understand that he is getting his medication, but I can’t guarantee that he’s getting it in a timely manner.”

She said that condition, in addition to the stress which Mizrachi Matalon is undergoing because of the case, have been included in his legal team’s request for precautionary measures. “We’re seeking bail and we want them to pay attention to the health challenges that he has, which are flaring,” Hay explained.

“How their system works [is that] you ask for bail, you pay the bond, and then the court issues this freedom ticket which Colombia should be acting on,” she said. “So a part of the precautionary measures we ask for is that they be ordered to issue it [freedom ticket].”

Lord Gifford and Hay had previously brought Mizrachi Matalon’s case to the Jamaican Government. However, because of the change of Administration after the February 25 General Election, they have now approached new Foreign Affairs Minister Kamina Johnson Smith. They are scheduled to meet with the minister “towards the end of this month” Lord Gifford said, in order to discuss the steps which might be taken internationally to end the continued detention of the Jamaican.

Carolyn Cooper | More Art, Less Violence

The Gleaner

Suppose our politicians had not put guns in the hands of restless youth. What if they'd been given video cameras instead? To shoot films, not each other! Perhaps some of our notorious criminals might have become internationally acclaimed filmmakers, telling their own stories with compelling authority. How different our society would be today!

But, of course, most politicians really don't give a damn about the disposable youth they employ as enforcers to defend garrisons. And these politicians will sell their souls to devilish dons who act on their behalf. All that matters is control of territory. Sometimes the dons fly past their nest, flipping the script on the politicians. And then it's hell and powder house!

In the 1940s, the weapons of choice for the warring People's National Party and Jamaica Labour Party (JLP) tribes were sticks and stones. By the 1960s, guns 'came into play'. This is a shameless turn of phrase that is brandished in Jamaican courts all the time. It relieves the accused of all responsibility for his or her actions. It's as if weapons act by themselves without any human agent.

But guns didn't just come into play. And this play was certainly not a game. It was murderous reality. Politicians systematically distributed guns to buy loyalty. Now, we pretend as if we don't remember when and how it all started. We act as if the everyday violence of Jamaican society is caused by a strange virus like chik-V or Zika. It's not home-grown.

NOT EXTERMINATED

Of course, the history of violence in Jamaica goes back much further than the 1960s. This is a society that was founded on violence. First, there was the brutal murder of the Taino people who discovered Christopher Columbus on their shores. In 1494, there were approximately 60,000 people living on the island. A century later, the population was reduced to about 3,000, and that included Africans enslaved by the Spanish.

Although we were taught in school that the Spanish invaders exterminated the Tainos, this is not true. The Ghanaian archaeologist, Kofi Agorsah, who taught for many years at the University of the West Indies, Mona, edited an informative book, *Maroon Heritage*, that was published in 1994. Based on archaeological research done in Nanny Town, Professor Agorsah argues that there may be evidence to "confirm the speculation that the 'Arawaks' were still inhabiting parts of the island at the time that the British took over the island and had, therefore, not been exterminated, as has often been asserted".

RECOVERED HISTORIES

The next wave of predatory violence in Jamaica was the savage attacks on enslaved Africans. The punishments inflicted on those who resisted slavery were horrific. You could be hanged until you were almost dead and then you would be revived, disembowelled and cut up into four pieces.

The skin could be stripped from your body while you were still alive. You could be hung up in an iron cage until you died from hunger and thirst. You could be burnt to death. You could be beaten to death. Beating sounds like an easy death in comparison. But it was not. It just took longer.

The Recovered Histories website quotes an anonymous Jamaican planter: "To people in Britain, it must seem strange that there should be a necessity for a law to punish [by] mutilating and dismembering their servants I know two men, whose neighbours say positively that each of them have murdered scores of their own negroes ... ; the wonder was not that they had buried so many, [but] that they had any above ground."

Black bodies had so little value that plantation owners could keep on killing off the 'stock' because it could be easily replenished. Capital punishment was, indeed, a favourite strategy for terrorising enslaved Jamaicans. Nevertheless, they kept on resisting against the system.

FROM POVERTY TO PROSPERITY

Jamaica's history of violence has deadly consequences. It seems as if we have inherited the murderous DNA of our savage European colonisers. Today, Jamaica is a society in crisis. In 1962, the murder rate was 3.9 per 100,000 citizens. In 2015, it was 37.7 per 100,000!

I see that the JLP Government is toying with the idea of bringing back the death penalty. This is a most peculiar way of taking the country from poverty to prosperity. We are going right back to the primitive Old Testament justice of an eye for an eye and a tooth for a tooth.

National Security Minister Robert Montague seems to think that capital punishment is an excellent crime-prevention strategy. But is this true? Research conducted in many jurisdictions across the globe concludes that there is little evidence to support this claim.

We need to find crime-prevention strategies that do work. It's too late for most of our hardened criminals. We need to start with our children. And it has to be a long-term strategy. There's no quick fix for a 500-year culture of violence.

It might sound very idealistic. But I think arts education is one of the strategies we must use: teaching children to work together to create beauty. Art really does have the power to change how we see the world. And how we act. Instead of capital punishment, we need capital investment in an education system that can help us to reclaim our humanity.

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The death penalty and its impediments

BY STEPHEN VASCIANNIE

The Observer



MONTAGUE ... wants hanging to resume
There has been much ado about the death penalty in recent days — or at least, much has been said.

Minister Robert Montague wants hanging to be resumed, while Opposition spokespersons Mark Golding and Peter Bunting have voiced their reservations.

Various letter writers and cartoonists have also presented their opinions, with one letter advocating, in addition to the return of the hangman's noose, reversion to flogging — “six to twelve lashes on the buttocks” for various offences.

So, where have we reached with our death penalty debate in Jamaica, and what does the law have to say on the subject?

MURDER RATE

The main argument for the death penalty in Jamaica turns on the country's high murder rate. Pro-death penalty sentiment runs strongest when there are high-profile murder cases and where there is a spike in heinous crimes — as is currently the case. But, bearing in mind that Jamaica's murder rate is invariably at a frightening level, many people argue that the society needs an effective deterrent; they see capital punishment as that deterrent, or hope that it can be.

There is also a majoritarian argument in support of the death penalty. True, there is substantial opposition to the sentence among the intelligentsia, and in some church communities, but most Jamaicans still wonder why the sentence is not carried out, given the rampant and callous disregard for life that is daily in evidence. The majoritarian perspective has no doubt influenced some parliamentarians who voted in 2008 to retain capital punishment. In a democratic polity which, by definition, attaches some importance to the majority will, the parliamentary response is not surprising. If parliamentarians openly defy the popular view on the highly charged matter of the death penalty, this could have obvious electoral consequences.

POLITICIANS

But this is not to suggest that the politicians are simply looking over their shoulders at the majority will, though some may well be. In the 2008 parliamentary vote in the House of Representatives, 34 members voted for retention of capital punishment, while 15 were against it; in the Senate, the division was 10 to 7, with the majority in favour. In 1979, when an earlier conscience vote was taken, 24 members opted to retain hanging, as against 19 who opposed it.

This breakdown suggests that, as far as the ultimate sanction is concerned, not all parliamentarians regard the popular will as decisive. Nor should it be; the majority will may be a factor in the decision, but it cannot be the only consideration. Our parliamentarians have a duty to consider all the arguments before reaching their conclusion.

REVULSION

In this context, there are at least two additional arguments that are appealing to some Jamaicans. One is that the death penalty serves to register the society's sense of revulsion to murder. Within this perspective, punishment must reflect not only deterrence and the prospect of rehabilitation, it must also emphasise that society rejects murder, and is determined to fight it with decisive measures. This view — sometimes associated with Lord Denning, among others — is offered partly in response to abolitionists who maintain that the death penalty is not a deterrent.

THE BIBLE

Secondly, it is fair to suggest that many Jamaicans continue to support the death penalty by reference to biblical assertions. Specifically, reference is often made to Mosaic principles relating to “a life for a life”; and in this context, the *lex talionis*, as set out in *Leviticus 24* (verse 17), is occasionally called in aid: “Whoever kills any man shall surely be put to death...”

The approach based on the *lex talionis* is not convincing. In the first place, *Old Testament* strictures relating to a life for a life are themselves linked to disfigurement as a form of punishment. The relevant passage in *Leviticus 24* on a life for a life also states that: “If a man causes disfigurement of his neighbour... so shall it be done to him — fracture for fracture, eye for eye, tooth for tooth.”

No humane, liberal justice system could today justify principles of punishment based on pure brutality in return for brutality. And accordingly, we should not expect the *Old Testament* pronouncements on a life for a life to present literal guidance in sentencing policy for modern Jamaica.

Moreover, if we accept the premise that the laws of Jamaica should follow biblical precepts, the life for a life approach encounters difficulties with the New Testament which, to put the matter at its minimum, does not support the brutal retaliation - turning the other cheek is conceptually different from the *lex talionis*.

Generally, therefore, the Biblical argument is not decisive. But, there is force in the fact that the society wants its leaders to take tough decisions to fight murder; the death penalty also derives support as the remedy that reflects the will of the majority, and as an approach that expresses our revulsion for some of the horrendous murders that confront us on a daily basis.

IRREVERSIBLE ERROR

In light of these realities, opponents of the death penalty face — admittedly — an uphill struggle in Jamaican society. One argument they present is based on the possibility of mistake. The

justice system, it is sometimes argued, cannot provide the assurance that it will always present the correct person at the gallows.

This must be true. Even in the most efficient systems, there are instances of error. And, when the error is made, then, obviously, it is irreversible and shocking. In some cases in the United States of America, DNA evidence has been used to demonstrate the innocence of several persons on death row, and in other instances, one wonders if the execution of persons is driven more by the desire for catharsis than by certainty as to the identification of the murderer.

In the case of Jamaica, some politicians — when faced with the argument based on mistake — take solace in the putative safe harbour of the Privy Council. They say that the Privy Council is unbiased and, if anything, opposed to the death penalty; so, if the Privy Council allows the death penalty to proceed in a particular case, we can be sure that this is a decision devoid of error. This line of reasoning is open to question. The Privy Council, to be sure, is a court of the highest impartiality and authority, but it does not follow from this that the court is beyond error. Also, in deciding murder cases from Jamaica, the Privy Council will normally accept the jury's assessment of the facts of a given case. Thus, if the error is made by the jury, there will be instances in which the Privy Council's conclusions will also be incorrect. In my view, therefore, the death penalty is cogently challenged by the possibility of error.

MORALITY

Some opponents of the death penalty also condemn the sentence on moral grounds. The death penalty, they submit, is unquestionably wrong, and it is wrong in all circumstances. It is barbaric, pointless and must be opposed by all lawful means.

This view, consistently presented over many years by Amnesty International, has recently received strong support from United Nations Secretary General Ban Ki Moon. Declaring that the death penalty is “simply wrong”, the Secretary General emphasised that: “I will never stop calling for an end to the death penalty” (United Nations, November 4, 2015).

Ban Ki Moon's position is also held by the European Union. The European Union Policy on the Death Penalty asserts that executions are "cruel and inhuman", and affirms that abolition is a prerequisite for entry into the Union. Building on its position based on morality, the European Union also calls on states which still have the death penalty to take steps to remove it progressively, starting with a moratorium.

OAS VIEWPOINT

Within the Organization of American States, there is also some support for the view that the death penalty is morally wrong. As Roger Hood and Carolyn Hoyle of Oxford University remind us, the death penalty has long been abolished in certain Latin American States. According to Hood and Hoyle, Venezuela abolished it in 1863, Ecuador in 1906, and Uruguay in 1907 (Hood and Hoyle, "Abolishing the Death Penalty Worldwide: The Impact of a 'New Dynamic'" *Crime and Justice*, Volume 38, Number 1 (2009), p 1 at p 5).

In this context, too, in January 2014, on the invitation of Mexico, the Permanent Council of the Organization of American States discussed the question of the death penalty, with strong support for abolition coming from the Latin American countries which took part in the debate. Some of the speakers in that debate relied heavily on various resolutions of the United Nations General Assembly which have called for a moratorium on the death penalty throughout the world, and on publications by the Inter-American Commission on Human Rights (for summary, see OAS Press Release E-012/14).

In short, the moral case against the death penalty continues to be built at the international level. Opposition spokesman Mark Golding is on firm ground when he points out that the reintroduction of the death penalty in Jamaica will have consequences for the country on the international plane. Many of our international friends — the United Kingdom, France, the rest of the European Union, Canada, and some Latin American countries — would regard reintroduction as a retrograde step.

Non-legal impediments

Minister Montague has publicly asked Minister of State Parnel Charles Jr for a report on the impediments which Jamaica would face in seeking to reintroduce the death penalty. On the basis of the foregoing, I suggest that there will be one set of impediments based on the moral and practical arguments against the death penalty. International opinion against the sentence will also need to be taken into account.

I rather doubt, however, that these are the types of impediments Minister Montague has in mind. These are, after all, not legal impediments: they stand in the way of the imposition of the death penalty in a general sense, but they do not rule out the possibility of a return to capital punishment by Jamaica.

INTERNATIONAL LAW

What, then, are the legal impediments that Minister Charles may uncover? It may be best to answer this question by reference to International Law and domestic law, respectively. As to the former, Jamaica has traditionally maintained that International Law does not prohibit capital punishment. Thus, notwithstanding the various United Nations Resolutions calling for moratoria in this area, Jamaica has argued that the relevant international instruments allow each State to carry out executions in appropriate circumstances.

The Jamaican position was perhaps most clearly articulated in its Statement on the subject to the Third Committee of the 62nd Session of the General Assembly on December 12, 2007. In that statement, Jamaica maintained that:

The Universal Declaration of Human Rights of 1948 does not expressly or implicitly prohibit the death penalty.

Several States which supported the Universal Declaration of Human Rights accepted that everyone has the right to life, but this has not prevented these States from retaining the death penalty.

The International Covenant on Civil and Political Rights (the ICCPR) (1966), which is binding on Jamaica, does not expressly or implicitly prohibit the death penalty.

The ICCPR expressly states that countries which have not abolished the death penalty should adhere to certain preconditions before carrying out executions. As long as these preconditions are satisfied, the penalty is allowed in International Law.

There is a treaty which is open to all states that wish to abolish the death penalty. This is the Second Optional Protocol to the ICCPR. As long as a State does not ratify this treaty, the State will not be legally required to terminate executions. Jamaica has not ratified this treaty.

The death penalty is an internal matter for each State. Jamaica, in keeping with its sovereignty and self-determination, reserves the right to carry out the death sentence. This is true for several countries in the world.

THE ICCPR

As a matter of International Law, the Jamaican position suggests that the country has reserved the right to conduct executions. International Law will not be an impediment to Minister Montague, as long as Jamaica carries out capital punishment in accordance with the strictures in the ICCPR.

In summary form, the ICCPR indicates that the death penalty may be carried out only for the most serious crimes, can only be imposed for matters which are subject to execution at the time of the commission of the crime, and may be carried out only following the final judgment of a competent court. Persons under the age of 18 may not be executed, nor may pregnant women. These provisions are set out in Article 6 of the ICCPR.

Another provision of the ICCPR, Article 7, is also relevant. It provides that no one shall be subject to torture or to cruel, inhuman or degrading treatment or punishment.

CRITICISMS

Although the Jamaican position may withstand legal scrutiny, it is vulnerable to at least two criticisms. First, Jamaica's strict reliance on the language of the ICCPR commits the country to a rigid adherence to the text of the treaty; this approach ignores the context of the ICCPR and developments that have taken place since the ICCPR entered into force.

For Jamaica, the original meaning of the ICCPR remains in place even though the treaty may have evolved as a "living instrument." In this regard, Jamaica's Statement is reminiscent of the approach to the reading of legal texts most famously associated with the late Judge Scalia of the United States Supreme Court.

Secondly, Jamaica's position — to the effect that the death penalty is a matter of internal law only — is difficult to reconcile with the evolution of human rights in the post-World War II era. The United Nations Charter, in Article 2, paragraph 7, indicates that the United Nations should not interfere with matters within the reserved domain of each State. But, that reserved domain is not a static concept. With the development of human rights, external agencies and States have become increasingly concerned with developments within individual countries.

The establishment of the International Criminal Court, the work of the United Nations Human Rights Council and the Human Rights Committee, exemplify this development. As an increasing number of states ban the death penalty, and maintain that they have done so because of developments in International Law, Jamaica will be hard-pressed to maintain that the death penalty is a purely internal affair.

Besides, Jamaica has accepted the ICCPR and the American Convention on Human Rights, which both address aspects of the death penalty as an international matter. This implies an opening of the door to international treatment of Jamaica's internal death penalty debate.

DOMESTIC DELAY

Finally, what are the domestic impediments to the death penalty in Jamaican law? In the not too distant past, law students would immediately cite the Privy Council's approach to delay in carrying out death sentences as a significant impediment.

In *Pratt and Morgan v The Attorney General of Jamaica* (1993), the Privy Council held that where the period between sentencing and execution exceeded five years, it was to be presumed that execution would be inhuman or degrading punishment or treatment.

And in *Neville Lewis v The Attorney General* (2000), the Privy Council appeared to have treated this presumption as an automatic rule, so that as soon as five years elapsed, the death sentence would have to be commuted to life imprisonment.

Arguably, then, the treatment of cases of delay was an "impediment." If so, this impediment was removed when the Charter of Fundamental Rights and Freedoms in the Jamaican Constitution entered into force in 2011; for the Charter (in Section 13(8)(a)) expressly overturned the *Pratt and Morgan* and *Neville Lewis* approaches. The "death row phenomenon" is no longer incompatible with our law — even if delay in execution is of the order of 14 years, this will be acceptable.

Section 13(8)(b) of the Charter of Fundamental Rights and Freedoms also removed another possible "impediment" to execution. This provision specifies that the circumstances in which a person on death row is detained shall not provide the basis for commutation of sentence from death to life. In a sense, this amendment to our constitutional rights was a pre-emptive strike: the Privy Council had grown increasingly concerned about mistreatment of death row prisoners. We have concluded that it is possible to mistreat prisoners and then execute them.

MANDATORY DEATH

In *Lambert Watson v R*, the Privy Council held that the mandatory death penalty was unconstitutional; our final court reached this conclusion on the assumption that the mandatory death sentence was inhuman or degrading punishment or treatment (see, eg, *Vasciannie*, "The

Decision of the Judicial Committee of the Privy Council in the Lambert Watson Case from Jamaica and the Question of Fragmentation, *New York University Journal of International Law and Politics*, Volume 41, p 836).

Following that decision, Jamaica amended its Offences against the Person Act in order to specify that, for capital murder cases, the presiding judge must have an alternative to execution among the sentencing options. Thus, for capital crimes, the judge may now choose between a death sentence and a life sentence.

CRITERIA FOR EXECUTION

This has prompted the need for the courts to develop criteria for determining which capital murders are deserving of the ultimate sanction. The Privy Council, in *Daniel Dick Trimmingham v The State* (2009), a case from St Vincent and the Grenadines, has held that the death penalty must be reserved for murders which in the facts of the murder amount to the “worst of the worst” and the “rarest of the rare.” The Privy Council also held that capital punishment may take place only when there is no prospect of reform of the murderer.

Although the facts in *Trimmingham* were quite horrific, the Privy Council found that they did not amount to the worst of the worst. The standard of depravity required is therefore extraordinarily high. In *Peter Dougal v R* (2011), the Jamaican Privy Council applied the standard, and commuted the death sentence to life imprisonment for the murder of two persons — LG Brown and Sandra Campbell — while they slept. This was not the worse of the worst, using the Privy Council’s marker.

CAPITAL MURDER

Generally, therefore, I expect that the report on impediments to Minister Montague will point out that Jamaica still retains the death penalty for some murders. These murders are categorised as capital murders in the Offences against the Person Act.

Capital murder includes murder for hire, murder in the course of certain felonies (burglary, robbery, arson, sexual offences), murder of a member of a specified class of persons acting in the

course of their duties (security forces, correctional officer, judicial officer, a person carrying out constabulary functions, witness, juror, or Justice of the Peace), and multiple murders.

Murders within the capital category may bring about the death sentence, but they will do so only if they are so gruesome — and the murderer so awful — that they satisfy the Trimmingham criteria. All other murders are non-capital, and cannot give rise to the death sentence.

WHAT IS THE POINT?

In effect, then, it is open to Jamaica to carry out the death sentence. And the only impediments are those which follow from the proper operation of the law — as set out in the Jamaican Constitution, the Offences against the Person Act and decisions of the courts. This is as it should be.

It may not be a good thing for us to grab at the death penalty whenever there is a spike in murders. We should acknowledge that Jamaica has not carried out the death penalty since 1988, and give serious thought to whether there is any point in keeping it.

Stephen Vasciannie, CD, is Professor of International Law, University of the West Indies, Mona, and a former Jamaica Ambassador to the USA and the Organization of American States.

US Visitor Charged With Illegal Possession Of Firearm



The Gleaner

- An American woman who was last week arrested and charged with illegal possession of firearm and ammunition has been convicted and sentenced.

After pleading guilty in the Montego Bay Resident Magistrate's Court on May 12, Nikkii Adams, 33, an insurance underwriter of Georgia in the United States of America, was fined \$600,000 or 18 months at hard labour for illegal possession of firearm.

She was also fined \$500,000 for failing to declare the firearm.

Police officers arrested Adams on Tuesday, May 10 after routine checks at the baggage area revealed a Taurus pistol in one of the suitcases, which was later confirmed to be Adams' luggage.

She was then arrested and charged.

US-based Jamaicans react to proposed resumption of hanging

BY HAROLD G BAILEY Observer correspondent



PINNOCK...life without parole would be just as effective

NEW YORK, USA — Plans by the Jamaican Government to consider the resumption of the death penalty in a bid to reduce the island's murder toll has ignited a vigorous debate

among Jamaicans here, with strong sentiments both for and against the idea.

Last month, national security minister Bobby Montague announced that state minister Senator Parnel Charles Jr had been mandated to hold discussions with stakeholders — including the

Ministry of Justice and the office of the Attorney General — to determine if there are any legal impediments to the reactivation of the death penalty.

Inside the popular Grey Dolphin Sports Bar and Restaurant in the upscale community of Cambria Heights in Queens last week, emotions ran high as patrons debated the issue. President of the Jamaican American Bar Association for the southern United States Don G James gave tacit support to the idea.

“I applaud the Government on its thinking regarding this matter,” he said during a telephone interview.

He said he “does not have a problem with the resumption of the death penalty”, and while he understands the opposition to it, “those bleeding heart opponents should consider the impact murders have had on family members and the irreparable damage to our country”.

Support for the measure has also come from Johnnie Erskine, vice president of the Ex-Correctional Officers Association of Jamaica, a non-profit group.

“Evidence will show that murders were less when the death penalty was in force,” he told the Jamaica Observer.

Despite the damage being done to Jamaica by the high murder rate, there are also many here who do not support a resumption of hanging.

“I don’t think a resumption of the death penalty will serve the purpose of being a deterrent,” attorney Joan Pinnock, who heads the Diaspora Advisory Board for the North East US, said. She says that while she understands the arguments and sentiments for the death penalty, in the context of a high murder toll, she thinks a “sentence of life without parole would be just as effective”.



Rick Nugent, who is president of the National Association Of Jamaica and Supportive Organisations, also favours life imprisonment with or without parole as opposed to the death penalty.

“The death penalty is not a solution to Jamaica’s crime problem,” he said, adding that “there is no evidence that it reduces murders or any other crime”. As part of the solution Nugent argued that “Jamaica needs more social and economic programmes to help reduce crime”.

Opposition to a reactivation of the death penalty was also echoed by Denzil Jackson, head of the Queens chapter of the Jamaica Ex- Police Office Association. He too would prefer to see more economic opportunities that will help people focus their attention on nation-building rather than criminal activities.

The sentiments on both sides of the issue have continued to fuel the vigorous debate.

Cops find gun in luggage at MoBay airport, American woman convicted

The Observer

KINGSTON, Jamaica — An American woman who was last week arrested and charged with illegal possession of firearm and ammunition has been convicted.

After pleading guilty in the Montego Bay Resident Magistrate’s Court on Thursday, May 12, Nikkii Adams, 33, an insurance underwriter of Georgia in the United States of America, was fined J\$600,000 or 18 months at hard labour for illegal possession of firearm.

She was also fined J\$500,000 for failing to declare the firearm.

Police officers arrested Adams on Tuesday, May 10 after routine checks at the baggage area of the Sangster International Airport in Montego Bay, St James, revealed a Taurus pistol in one of the suitcases.

The luggage was later confirmed to be Adams'. She was scheduled to depart the island.

The End