

DEATH PENALTY AND DRUG CRIMES

How to answer the deterrence argument

13th World Day against the Death Penalty

On 10 October 2015, the World Coalition Against the Death Penalty along with abolitionist activists worldwide will mark the 13th World Day against the Death Penalty.

In the 1980s and 1990s, a trend emerged towards the abolition of the death penalty as countries repealed laws allowing capital punishment or simply ceased the practice of execution. According to Amnesty International, in 1977 only 16 countries had abolished the death penalty in law or practice. Today, that number has risen to 140¹.

WHAT IS THE DETERRENCE ARGUMENT?

Deterrence and retribution are the two main arguments used by governments that support capital punishment².

The deterrent theory is based on the idea that the object of punishment is not only to prevent crime to be committed a second time but also to **set an example to other persons** who have criminal tendencies. According to this theory, people would refrain from committing murder, or any other crimes punishable by death, out of **fear of execution**.

At its most basic level, deterrence is typically understood as operating within a theory of choice in which would-be offenders balance the benefits and costs of crime.

It is important to recognize that the alternative to capital punishment is not “no punishment” or a “minor punishment”. Instead, it is a lengthy prison sentence—often life imprisonment.

The relevant question regarding the deterrent effect of capital punishment is the following: does execution have a greater deterrent effect than other severe penalties, such as life imprisonment? This is a key issue as even in states that make the most frequent use of the death penalty, prison sentences are the most common sanction imposed for capital crimes.

In theory, as capital punishment is worse than any other penalties, it must lead to fewer crimes being committed, but what does empirical research tell us?

WHY IS IT SO DIFFICULT TO MEASURE THE DETERENT EFFECT OF THE DEATH PENALTY?

Abolitionists often say that there is no evidence that the death penalty deters crime and that claims to the contrary are impossible to prove. Why is that?

¹ For more details, see the documents *Facts and Figures* available at www.worldcoalition.org/worldday

² Most of the arguments used here are based on Carolyn Hoyle and Roger Hood's article “Deterrence and public opinion” published in *Moving Away from the Death Penalty: Arguments, Trends and Perspectives*, OHCHR, 2014 available at: <http://www.ohchr.org/Documents/Issues/DeathPenalty/MovingAwayDP.pdf>

- **The problem of methodology in academic studies**

- **Psychological studies**

Because it would be morally repugnant to conduct random experiments on human beings in the use of capital punishment, it remains difficult, if not impossible, to find empirical data on the deterrent effects of the threat of capital punishment that would utterly persuade a committed proponent of the death penalty to change his or her mind.

- **Econometric studies**

There is extensive research on the econometric and statistical methods used in the USA to estimate the effect of the death penalty on homicide rates. However, there is **no consensus on the statistical methodology** for studying the deterrent effect of the death penalty and in the end, none of the existing studies has proved one way or another that the death penalty is, or isn't, a deterrent³. Why is that?

The very first problem faced by statisticians is **getting reliable data**. In some retentionist countries, information related to the death penalty is considered a state secret (China, Vietnam...) and in many others, it is not made available to the public (Singapore, Malaysia...). Even in retentionist countries where information on the death penalty and on crime is made available, it is often extremely incomplete. For example, it is difficult to know for which crime people were sentenced to death and/or executed, how many people convicted of capital crimes were sentenced to death and had later their sentence commuted on appeal, or were granted a pardon. It is even more difficult to track down how many people who committed a capital crime have NOT been sentenced to death and what their sentence was (life sentence without the possibility of parole, life sentence with the possibility of parole, sentences of less than life...) It is also difficult to find data on the time actually served for convicted criminals who are paroled or who serve less than a life sentence.

Another problem regarding the data is linked to the **very small numbers** used in statistical models. The probability of most people committing a murder is so small that as a practical matter it can be treated as zero. Similarly, the probability of someone being executed is even smaller, with most retentionist countries executing less than one person a year. As the statistician Richard Berk⁴ put it, "a very small and atypical fraction of the data dominates the statistical results. The number of executions by state and year is the key explanatory variable, and most states in most years execute no one. A few states on rare occasion executed up to five individuals in a particular year. Years with five executions or less represent 99% of the data... generalizations to the mass of the data then become very risky."

Empirically, capital punishment is too infrequent to have a measureable effect⁵.

It is also very difficult to integrate in the statistical model **factors beyond the death penalty**. There are multiple variables and factors influencing crime rates, and the death penalty, if it has any influence, is only one of them. The use of the death penalty, for example, evolves over time as a result, among other things, of a complex interplay of crime trends, social norms, criminal justice budgets, and election results.

Because executions are not conducted in the context of a carefully controlled experimental setting, other factors that affect the homicide rate may coincide with the execution event. Because most research so far has

³ For an extensive research on methodology, see: D. Nagin and J. Pepper, "Deterrence and the Death Penalty," Committee on Law and Justice at the National Research Council, April 2012.

⁴ Richard Berk, "New Claims about Executions and General Deterrence: Déjà Vu All Over Again?" Journal of Empirical Legal Studies, Vol. 2, Issue 2 -303-330, July 2005.

⁵ Dr. Oliver Roeder, Lauren-Brooke Eisen, and Julia Bowling, "What Caused The Crime Decline?" Brennan Center for Justice, 2015, p43-45.

failed to integrate these external factors, small changes in the models used often lead to very different estimates of deterrence effects, in some case changing from positive to negative or vice versa. Just to give an example, researchers disagree on the period of time and the data to use in measuring the deterrent effect: some use the number of executions in the year prior to the year of homicide rate; others used the number of death sentences in the same prior year; others, the numbers of death row inmates in the prior year; others, the number of executions in the current year divided by the number of homicides in the prior year; some divided the number of executions in the current year by the number of prisoners in the prior year and others divided it by the population of the state in the prior year.

Another basic problem is that little is known about **how those who may commit murder or any other crime punishable by death perceive the death penalty**. As it is impossible to empirically measure criminal perceptions of the probability of execution (see paragraph above on psychological studies), researchers have used data on crimes and executions to construct statistics that purport to measure the objective risk of execution assuming that potential murderers have “rational expectations” and carefully assess the risk of execution.

However, “it is debatable whether an individual even engages in such objective calculations before committing a crime. Much psychological and sociological research suggests that many criminal acts are crimes of passion or committed in a heated moment based only on immediate circumstances, and thus potential offenders may not consider or weigh longer-term possibilities of punishment and capture, including the possibility of capital punishment.”⁶

Even if people who are contemplating murder do engage in objective calculations, there are many complications of calculating the objective risk of execution, including access to data and other external factors. It is usually understood that “when considering the effect of capital punishment on the potential commission of a homicide, the potential offender must consider the probability he would be caught, the probability he would be charged, the probability he would be convicted, the probability he would receive a death sentence, and the probability that he would be executed.”⁷

These many complications make clear that even with a concerted effort by careful, conscientious researchers to assemble and analyze relevant data on death sentences and executions, **assessment of the evolving objective risk of execution facing a potential murderer is a “daunting challenge”**.⁸

It is also clear that perceptions of this risk among potential murderers must at best be highly impressionistic. After multiplying these probabilities together, there is only a small probability of execution occurring, and therefore the possibility of being executed may never affect a criminal decision.

o **The views of leading criminologists**

A study conducted by Michael Radelet and Traci Lacock in 2009 asked the opinions of the USA’s top criminologists on the deterrence effects of the death penalty. The conclusion is that “the consensus among criminologists is that the death penalty does not add any significant effect above that of long-term imprisonment.”⁹

⁶ Dr. Oliver Roeder, Lauren-Brooke Eisen, and Julia Bowling, “What Caused The Crime Decline?” Brennan Center for Justice, 2015, p43-45.

⁷ Dr. Oliver Roeder, Lauren-Brooke Eisen, and Julia Bowling, “What Caused The Crime Decline?” Brennan Center for Justice, 2015, p43-45.

⁸ D. Nagin and J. Pepper, “Deterrence and the Death Penalty,” Committee on Law and Justice at the National Research Council, April 2012.

⁹ Michael L. Radelet & Traci L. Lacock “Recent developments, Do executions lower homicide rates?: the views of leading criminologists”, *The Journal of Criminal Law and Criminology*, Vol. 99, No. 2, pp. 489-508.

- **The unsophisticated method: comparing murder rates before and after abolition**

According to Carolyn Hoyle and Roger Hood, “One rather unsophisticated way of considering deterrence is to analyse homicide rates before and after the death penalty is abolished.”

According to the deterrent theory, as capital punishment is worse than other penalties, it must lead to fewer crimes being committed in countries that still have the death penalty. On the other hand, countries that have abolished capital punishment should inevitably experience more murders. However, when we compare the intentional homicide rates of several abolitionist countries¹⁰ since they have abolished the death penalty¹¹, findings shows quite the opposite: overall, homicide rates tend to decrease over time:

- In **Australia**, where the last executions occurred in the mid-1960s, and abolition in 1985, the reported murder rate has fallen to reach 1.1 for 100,000 habitants in 2012.
- Prior to the abolition of the death penalty in **Canada**, the reported homicide rate had been rising, yet in 2003, 27 years after abolition, the rate had fallen to 1.73 for 100,000 habitants compared to 3.02 for 100,000 habitants in 1975, the year before abolition. The sharp decline following abolition was a potent argument used by the Canadian prime minister in 1987 when opposing the reintroduction of capital punishment. The rate has continued to fall. In 2012 it was 1.56 for 100,000 habitants, its lowest level since 1966.
- In **Eastern European countries**, the homicide rate declined quite sharply after the mid-1990s, and this decline has not been reversed. In the Czech Republic, Hungary, Moldova, Poland and Romania, all of which abolished the death penalty in the 1990s, the rate declined by 61 per cent from 4.5 for 100,000 habitants to 1.6 for 100,000 habitants between 2000 and 2008.
- In **Latvia**, which abolished the death penalty for ordinary crimes in 1999, the homicide rate has fallen from 10.0 for 100,000 habitants in 2000 to 3.3 for 100,000 habitants in 2010.
- In **Serbia**, where abolition occurred in 2002, the crime rate has fallen from 2.0 for 100,000 habitants in 2002 to 1.2 for 100,000 habitants in 2012.
- In **Turkey**, which abolished the death penalty for ordinary crimes in 2002, and for all crimes in 2004, the rate has declined from 4.3 for 100,000 habitants in 2003 to 2.6 for 100,000 habitants in 2011.
- The same can be observed in some countries in Asia. For example, in **Bhutan**, where abolition took place in 2004 for all crimes, the crime rate went from 3.2 for 100,000 habitants in 2000 to 2.4 for 100,000 habitants in 2004, and 1.1 for 100,000 habitants in 2009.

However, this does not mean that there is a causal relationship between abolition and the decreasing homicide rate in abolitionist countries. Multiple factors can explain it, beyond abolition of the death penalty, such as social-economic, political and geopolitical changes in those countries, regional stability, post-conflict situations and other.

¹⁰ All the statistics on homicide rates are for 100,000 habitants and are from: UNODC *Global Study on Homicide 2013*

¹¹ All the dates of abolition are from: Report of the Secretary General, Capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty, 2015 UN Doc. E/2015/49

Furthermore, as shown in the examples of Taiwan and India, even if the rates of violent crime and of homicide have decreased during the moratorium periods, executions have resumed:

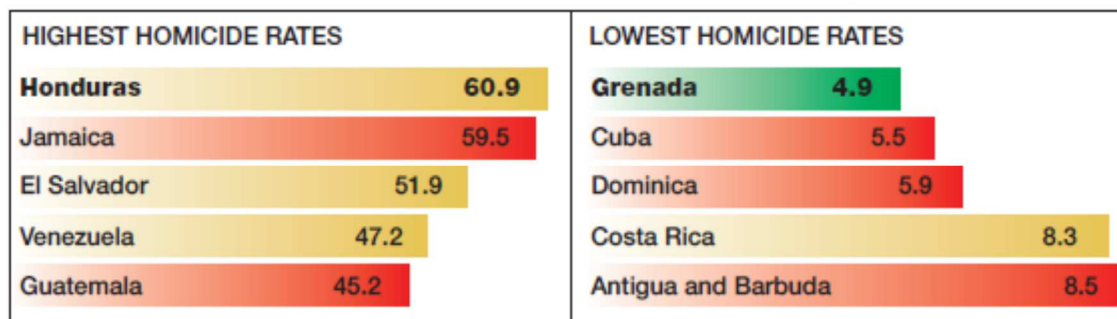
- **Taiwan's** informal moratorium on executions, which lasted from 2006 to 2010, provided an opportunity to examine whether the withdrawal of the threat of execution led to an increase in violent crimes reported to the police. Analysis by the Taiwan Alliance to End the Death Penalty showed that in fact the violent crime rate fell during these four years from 62.9 for 100,000 habitants in 2005 (when there were three executions) to 53.6 for 100,000 habitants the following year and 29.3 for 100,000 habitants in 2009.¹² Yet executions resumed at the alarming pace of 5 to 6 executions a year since 2010.
- **India's** murder rate has also declined during two long periods with no execution, between 1995 and 2004 and again between 2004 and 2012, falling from 4.6 in 1992 to 2.7 per 100,000 in 2013, "raising questions about whether the death penalty has any greater deterrent effect than life imprisonment"¹³. However, three people were executed in 2012, 2013 and 2015 for terrorism-related crimes.

• **Comparing murder rates between abolitionist and retentionist countries**

Similarly, there is no detectable effect of capital punishment on crime when one compares the similar trends of homicide in abolitionist and retentionist neighboring countries.

- **A very good example of this is in the Greater Caribbean** where no correlation whatsoever can be found between having the death penalty or not and the intentional homicide rate. Costa Rica, abolitionist for over a century, has a low homicide rate similar to that of Antigua and Barbuda, a retentionist country, while Honduras, an abolitionist state since 1956, has a higher homicide rate than retentionist Jamaica.

Crime rate / state of the abolition (Murder rates for 100 000 habitants)



abolitionist in law abolitionist in practice retentionist

Source : Greater Caribbean for Life, 2012

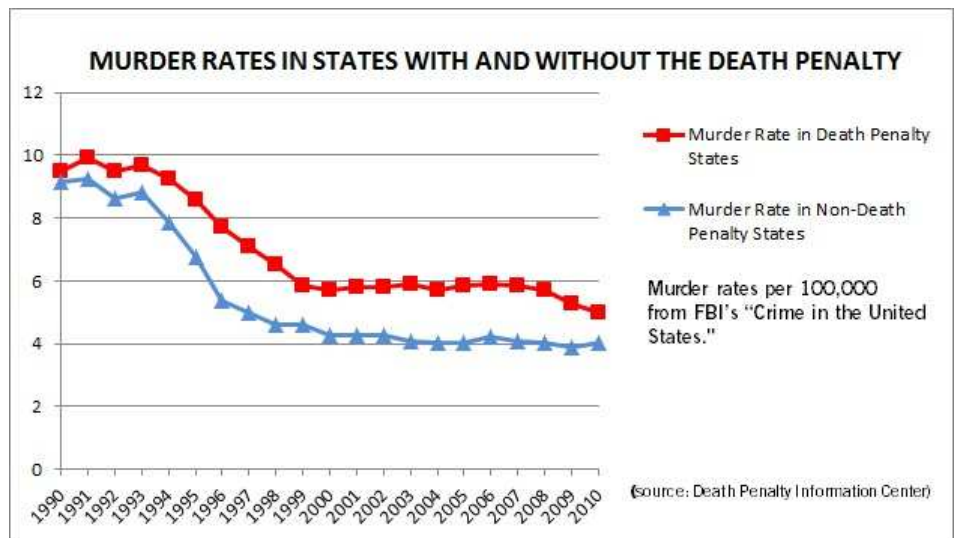
- **In Asia, comparing crime rates in countries that are culturally close is also very interesting: Hong Kong** abolished the death penalty in 1993, **Singapore** has executed between 0 and 8 people each year since 2005 and is one of the most vocal retentionist country at the international level. **Taiwan** experienced a moratorium on executions from 2006 to 2010 and **China** is the country that executes most people in the world. However, their crime rates do not reflect their use of the death penalty: Hong Kong and Singapore had a similar homicide rate in 2010: 0.4 in Singapore and 0.5 in Hong Kong, China's homicide rate was at 1.0 and Taiwan at 3.2.

¹² Carolyn Hoyle and Roger Hood, "Deterrence and public opinion" in *Moving Away from the Death Penalty: Arguments, Trends and Perspectives*, OHCHR, 2014.

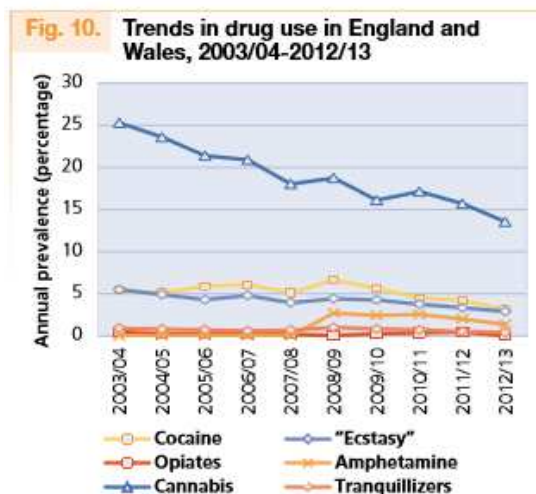
¹³ Law Commission of India, Report No.26: "The Death Penalty", August 2015, p.6.

- The same is true in Africa if we compare the rates of retentionist Gambia and abolitionist Senegal: 10.2 vs 2.8 in 2012.

- The comparison between abolitionist Canada and retentionist USA's 2012 homicide rate further demonstrate it: Canada had a homicide rate of 1.6 and the USA of 4.7. Even within the USA, the murder rate in non-death penalty states has remained consistently lower than the rate in states with the death penalty¹⁴.



- Comparing drug use and drug-related crime between abolitionist and retentionist countries



Source: United Kingdom, Home Office, "Drug misuse: findings from the 2012/13 Crime Survey for England and Wales" (London, July 2013).

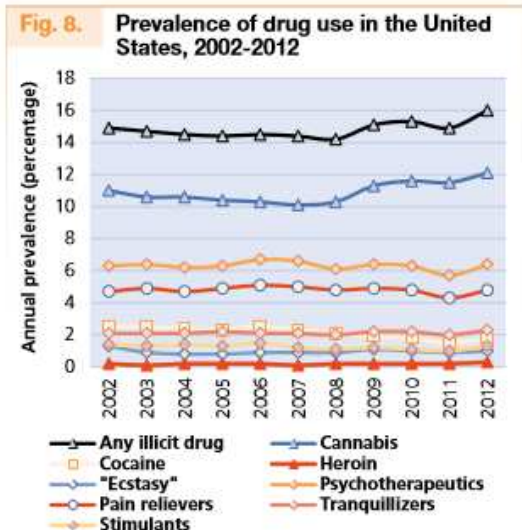
Although international human rights standards limit the death penalty to crimes involving intentional killing, some retentionist countries still have the death penalty for crimes other than murder. For example, many countries in Asia and the Middle East claim that the death penalty is a necessary deterrent against some drug-related offenses. However, the death penalty has not been proven to reduce drug consumption or drug trafficking.

According to the UNODC¹⁵, during the period 2003-2012, the estimated number of drug users has remained fairly stable.

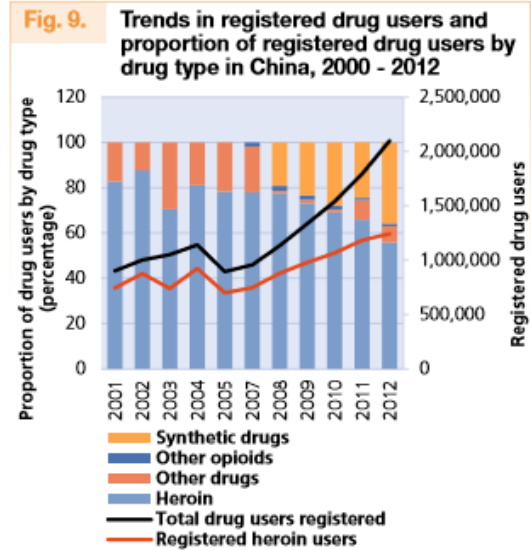
Moreover, if we compare the tables showing trends in drug use in an *abolitionist* state (England and Wales) a *symbolic application* state for drug-related offenses (USA) and a *high application* state (China), we see a clear decrease in England, and Wales; in the United States, the number of drug users seems to be pretty stable, while in **China** the number of registered drug users continues to increase.

¹⁴ Amnesty International USA: "The Death Penalty and Deterrence", <http://www.amnestyusa.org/our-work/issues/death-penalty/us-death-penalty-facts/the-death-penalty-and-deterrence?id=1101085>

¹⁵ UNODC, *World Drug Report 2014*



Source: Substance Abuse and Mental Health Services Administration, Results from the 2012 National Survey on Drug Use and Health: Summary of National Findings, NSDUH Series H-46, HHS Publication No. (SMA) 13-4795. Rockville, MD: Substance Abuse and Mental Health Services Administration, 2013.



Source: Information provided by China in the UNODC annual report questionnaire and the annual reports on drug control in China published by the Office of the National Narcotics Control Commission.

Similarly, drug trafficking has not decreased since the adoption of legislation adding the death penalty for drug-related offenses. **Singapore** is a compelling example of how even harsh laws against drug-related crimes are ineffective in reducing trafficking. Singapore has had draconian laws for drug-related offences since 1973, and has been notorious as one of the world's leaders in imposing the death penalty for drug crimes. Still, Singapore's drug-related crime rate is worse than other countries such as Costa Rica and Turkey, according to the European Institute for Crime Prevention and Control in 2010¹⁶. The number of drug seizures in Singapore has continued to increase in recent years. The Central Narcotics Bureau of Singapore reported record numbers of seizures in 2012. The estimated street value of the drugs seized was S\$18.3 million (\$15 million, €11.3 million), 14% higher than in 2011. The escalating rate of drug trafficking in Singapore shows that harsh laws have no impact on drug trafficking and access to drugs.

CONCLUSION:

Problem of methodology in academic studies has made it is impossible to prove scientifically that the death penalty is, or isn't, a deterrent. Figures available show that there seems to be no direct relationship between homicide rates or drug-related crime rates and the use of the death penalty. Similarly, countries with the highest crime rates are no more or less likely to have the death penalty.

As the two maps below show, there seems to be no correlation at all between countries' homicide rates and their use of the death penalty.

The theory of deterrence is predicated on the idea that if state-imposed sanctions are sufficiently severe, certain, and swift, then those sanctions will discourage criminal activity.

Concerning the **severity** dimension, capital punishment is deemed an even worse fate than the possibility of a lifetime of imprisonment. Severity alone, however, cannot deter. There must also be **certainty of punishment**: the offender must be apprehended, charged, successfully prosecuted, sentenced by the judiciary and executed. Finally, the less studied dimension of the classical formulation of deterrence is the concept of

¹⁶ European Institute for Crime Prevention and Control, International Statistics on Crime and Justice, Helsinki, 2010, HEUNI Publication Series No. 64, Stefan Harrendorf, Markku Heiskanen, Steven Malby (eds.)

celerity—the speed with which a sanction is imposed. In the case of the death penalty, celerity may be problematic. According to the US Bureau of Justice Statistics (2010), the average time to execution for the executions that occurred between 1984 and 2009 in the USA was 10 years.

As Roger Hood and Carolyn Hoyle point out: “Those retentionist countries that rely on the deterrent justification should face the fact that if capital punishment were used to try to obtain its maximum possible deterrent effect, it would have to be enforced mandatorily, or at least with a high degree of probability, on a substantial scale across most categories of homicide, and swiftly. This would increase the probability of innocent or wrongfully convicted people, and people whose crimes had sufficient mitigating circumstances, being executed. One wonders, therefore, whether those states that do retain the death penalty for some limited class of murders and murderers, imposed in a somewhat haphazard and arbitrary way on only a few of those who are death-eligible, can really claim that such a policy is justified by its deterrent effects. Looked at this way, the balance of evidence clearly favours the abolitionist position.”¹⁷

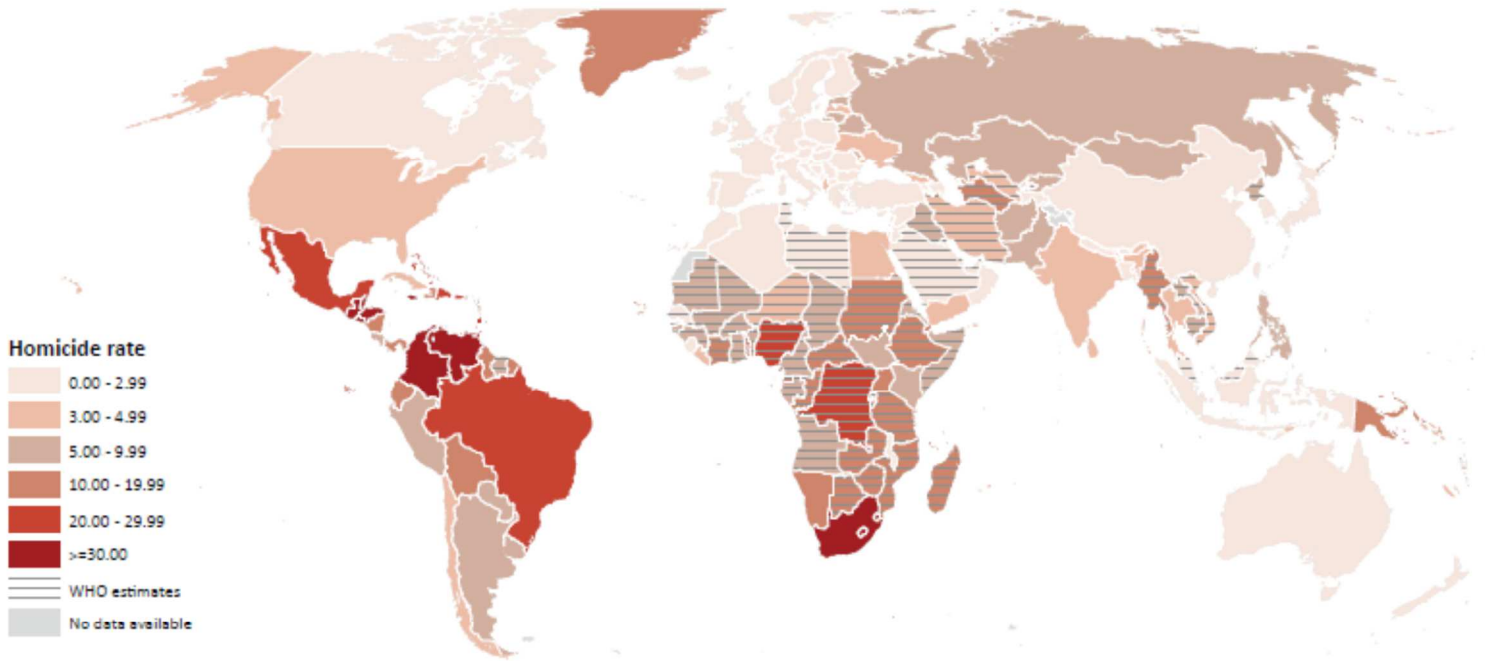
Acknowledgements:

This sheet was prepared by the World Coalition Against the Death Penalty for World Day against the Death Penalty, in October 2015.

More information at: www.worldcoalition.org/worldday

¹⁷ Carolyn Hoyle and Roger Hood, “Deterrence and public opinion” in *Moving Away from the Death Penalty: Arguments, Trends and Perspectives*, OHCHR, 2014.

Map 1.1: Homicide rates, by country or territory (2012 or latest year)



Note: The boundaries and names shown and the designations used on this map do not imply official endorsement or acceptance by the United Nations. Dashed lines represent undetermined boundaries. The dotted line represents approximately the Line of Control in Jammu and Kashmir agreed upon by India and Pakistan. The final status of Jammu and Kashmir has not yet been agreed upon by the parties. The final boundary between the Republic of Sudan and the Republic of South Sudan has not yet been determined. A dispute exists between the Governments of Argentina and the United Kingdom of Great Britain and Northern Ireland concerning sovereignty over the Falkland Islands (Malvinas).

Source: UNODC Homicide Statistics (2013).

The death penalty in the world in 2014

