

**PARLIAMENTARIANS  
AND THE ABOLITION  
OF THE DEATH PENALTY  
— A RESOURCE —**



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# INTRODUCTION

The trend toward global abolition of the death penalty is generally positive both in terms of the number of countries which have become abolitionist and in terms of the numbers of people who have been executed. Public support for the death penalty has been diminishing. Nonetheless there is a small group of countries which account for the vast majority of executions where there are little signs of change at present.

There is another group of countries which have retained the death penalty in legislation but have not carried out executions recently and sometimes for many years. After more than 10 years, they are usually called “de facto abolitionist countries”. There are some signs of fragility in this group where a number have turned their back on a de facto moratorium and begun executing in 2012 and 2013. These two groups of countries present quite different kinds of challenge for those seeking abolition. Moreover, there is no one size fits all approach to abolition which can be applied equally to all retentionist countries. The particular circumstances and the local context surrounding the retention of capital punishment demand a case by case approach.

Nonetheless, there are issues in campaigning against the death penalty which come up time and again. These include: - public opinion about the death penalty, the claimed deterrent effect of capital punishment, secrecy in aspects of its governance and the need to form alliances of key actors, including NGOs, faith groups, members of the business community, academics, supporters within the relevant government departments, the judiciary, the legal profession and last but not least, parliamentarians. Parliamentarians are an important component in such campaigns and in the end, essential to making the legislative decisions to abolish. They are elected to make decisions on behalf of society in their country, to form Governments and to lead opinion. Despite their crucial role, there has been a lack of attention to how parliamentarians work, the kind of pressures they face, what influences them and what kinds of support they would find the most useful.

For parliamentarians, the recent trend toward abolition is matched by a wider development across the world towards more democratic forms of government, more openness and accountability, more expectations being placed on elected representatives, more information available and in circulation and greater appreciation of human rights. The abolition of the death penalty is just one element in a range of issues with which politicians in retentionist countries are grappling. In many countries the issue is not even raised. However, the death penalty as a single issue goes to the core of human

rights in general. It has a powerful symbolic value which both in the campaigning for and the achievement of abolition can provide a route into the question of human rights more broadly. These kinds of linkages are often welcomed by parliamentarians who have to address the full range of public concerns.

This resource is for parliamentarians around the globe, currently working or thinking of working for the abolition of the death penalty. It is intended to provide some of the key arguments for abolition based on a series of case studies, showing how abolition has been achieved and is being achieved around the world. The arguments section is summarised by a table giving the main arguments for abolition and the counterarguments against the retentionist case. Readers are signposted to where further information can be found.

The case studies which are appended are based on countries that have either achieved abolition or have managed to achieve one of the intermediate steps toward abolition. The challenges that have been faced or that remain provide learning points of use to all abolitionist parliamentarians. The focus is on countries which have abolished the death penalty or are working to abolish the death penalty within the last 20 years. Examples from Europe or from South America which are both almost completely abolitionist (except Belarus for Europe and Guatemala for South America).are not included

There are many accounts of these experiences in the literature<sup>1</sup>. It is hoped that there are enough examples from each of the major regions of the world where countries still retain the death penalty so that parliamentarians will recognise elements of their own experience.

The resource also sets out the mini steps that can be taken toward abolition and some information on the development of parliamentary networks and there are a list of contacts where parliamentarians can find information and support.

The resource, in the long term, is intended to be both interactive and adaptable so the quality of the advice it contains can be shaped by the feedback from abolitionists throughout the world.

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<sup>1</sup> See for example the ICDP report – how countries have abolished (2013) and the Madoka Futamura (ed) – The politics of the death penalty for countries in transition (2013)



# BACKGROUND AND CONTEXT

## Abolition at a crossroads

Although much progress has been made in recent years in abolishing the death penalty around the world much remains to be done. During 2013, excluding China, almost 80% of all known executions worldwide were recorded in only three countries: Iran, Iraq and Saudi Arabia.<sup>2</sup> Currently 140 countries are abolitionist in law or in practice but 58 still carry out the death penalty.

Countries that carry out the majority of executions in the world such as China, Iran, Saudi Arabia, Iraq and particular states in the USA such as Texas, represent the biggest challenge in terms of abolition. There are many other countries such as those in the Middle East, North Africa (MENA) region who are willing to engage with the debate on abolition and work towards its implementation. The challenge will be to engage with and encourage these countries to abolish or move towards the abolition of the death penalty and to further reduce the number committed to retention'. Even in China, however, there are the beginnings of an increased awareness of death penalty issues. As a Chinese academic<sup>3</sup> stated in 2007: 'Abolition is an inevitable international tide and trend as well as a signal showing the broad-mindedness of civilized countries ... (it) is now an international obligation'.

As of the 25<sup>th</sup> April 2014, 81 States out of the 167 State parties to the 1966 International Covenant of Civil and Political Rights (ICCPR) have ratified its Second Optional Protocol (OP2) which commits them to the abolition of the death penalty. Azerbaijan, Brazil, Chile, Greece and El Salvador have signed with a reservation and 3 States (Sao Tome & Principe, Madagascar and Angola) have signed the Protocol but have not yet ratified it.<sup>4</sup> Further, 140 countries have abolished the death penalty in law or in practice; a clear majority of countries throughout the world. 98 have rejected it completely in all circumstances.

The reasons for this trend are many. Abolition of the death penalty has moved in step with an increase in parliamentary democracy in many parts of the world which itself has been accompanied

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<sup>2</sup> Amnesty International: <http://www.amnesty.org/en/library/asset/ACT50/001/2014/en/652ac5b3-3979-43e2-b1a1-6c4919e7a518/act500012014en.pdf>

<sup>3</sup> Professor Zhao Bingzhi of Beijing Normal University 2007 quoted in address by Prof. Roger Hood to the UK Inner Temple, 21st January 2010: Towards Global Abolition of the Death Penalty – Progress and Prospects

<sup>4</sup> World Coalition Against the Death Penalty (2013): Campaign for the ratification of international and regional protocols aimed at the abolition of the death penalty: Lobbying kit for members <http://www.worldcoalition.org/media/resourcecenter/KitLobbyingMembresWCADP-EN.pdf> (accessed July 2014)

by a vastly increased concern about human rights. More specifically, it has been put forward<sup>5</sup> that arguments over capital punishment have shifted beyond a question of a nation's sovereignty over its criminal justice system to a growing acceptance that no matter how it is administered, the death penalty contravenes universal agreements on human rights such as embodied in the ICCPR.

The reasons why countries or states have become abolitionist recently are varied. They can include:

1. a desire to break with a repressive past, a military past and a period of armed conflict;
2. the personal experience of heads of state who faced the prospect themselves, or had friends or family face the prospect, of the death penalty in previous regimes;
3. improved understanding of the fallibility of the criminal justice system and the impossibility of reversing an execution;
4. well publicised cases of miscarriages of justice;
5. a recognition that the death penalty is disproportionately applied to ethnic minorities, the poor, the excluded and as an instrument of political repression;
6. cost factors;
7. the personal convictions of an individual head of state or government who then shows decisive leadership; and
8. the influence of normative pressure from the abolitionist majority at international level<sup>6</sup> and the influence of human rights regional systems.

Abolitionist countries now include those representing a range of cultures, religions, political regimes and societies and include large and small countries. It is now no longer possible to argue (if it ever was) that the death penalty is a legitimate product of particular kinds of society or religion or an inevitable response to particular government challenges such as terrorism. Of particular importance are the developments in the United States, seen as a democracy and a defender of rights and freedoms which still retains the death penalty. Here, there are currently 18 abolitionist states and of the remaining death penalty states a minority (9) carried out executions in 2013<sup>7</sup>. Public support for the death penalty in the USA is declining. The USA is given by retentionist countries as an example of a country which is a democratic and rights based society in many respects but still has the death penalty. Further abolition in the USA will undoubtedly have a catalytic effect on other retentionist countries.

Although the abolition of capital punishment is increasingly recognized as a measure of how serious countries are about human rights there are still resurgences of the use of the death penalty in a small number of countries including democratic ones such as India and Japan. There, the use of the death penalty is put forward by some as the only possible response to particular threats such as terrorism. There is high level of vulnerability in not only countries which are de facto abolitionist but also states which have passed legislation for abolition but where there are concerted campaigns to reinstate the death penalty. The challenge for abolition is not only to increase the number of abolitionist countries but to protect the abolition gains already made.

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<sup>5</sup> Eg. address by Prof. Roger Hood to the UK Inner Temple, 21st January 2010: Towards Global Abolition of the Death Penalty – Progress and Prospects

<sup>6</sup> In part from: International Commission Against the Death Penalty: How States Abolish the Death Penalty: 2013

<sup>7</sup> Death Penalty USA: <http://deathpenaltyusa.org/usa/date/2013.htm> (accessed 2/14)

# THE ROLE OF PARLIAMENTARIANS

The vast majority of countries (190 out of 193 UN members) have a parliament of some kind with the involvement of 46,000 parliamentarians. Different kinds of parliament are contained in this figure and not all conform to the most well-known model of a parliament. Here, power in the state is balanced between the government with executive power to devise and implement policy, parliament with the power to openly debate and inform policy, pass laws and to scrutinize the operation of government and the judiciary which has the responsibility for upholding the law.<sup>8</sup> Not all parliaments function in an open and democratic fashion so parliamentarians, in such circumstances, can be somewhat constrained in addressing issues like the death penalty.

There has been a rapid expansion in the establishment of democratic parliaments since the 1990's, a development which mirrors the development of abolitionist policies across the world. National and state governments are complex organisations and parliamentarians need to take account of and negotiate with multiple stakeholders, including the public and the press, government officials, political parties and lobby groups. At a political level the way debate is conducted is often confrontational where differences rather than similarities between positions are emphasised as politicians seek to establish distinct and recognisable political identities. However, parliament is also the place where negotiation and compromise takes place to ensure that policies are implemented.

Many parliaments have cross party systems such as joint committees to fulfil parliament's role in scrutinising the activities of government; this can foster a culture of joint working among parliamentarians. This and the shared experience of elected representatives, who regularly subject themselves to the test of public confidence during elections, encourages a sense of camaraderie amongst parliamentarians. Parliamentarians across the world have a connection and a mutual understanding.

Parliamentarians are facing increased pressure from public expectations, increased responsibilities as the size of government increases, the increased availability of information via communication technology and social networking and increased press coverage. The higher visibility in particular has emphasised the importance of being responsive and being seen to be responsive to public concerns.<sup>9</sup>

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<sup>8</sup> IPU, UNESCO ( ): A Guide to Parliamentary Practice, A Handbook: IPU, UNESCO, Paris 2004

<sup>9</sup> Power G, Shoot R (2012): Global Parliamentary Report, The Changing Nature of Parliamentary Representation: IPU, UNDP, New York, April 2012

Parliamentarians are essential to the process of abolition in several ways. They are central to law-making in their own countries and within regional and global government entities such as the European Parliament and the United Nations.

In some democracies such as the UK, parliamentarians can form governments; in others such as the USA, with a presidential system, the executive branch of government is directly elected. Whatever system parliamentarians operate in they have an important role in leading and influencing policy and public opinion. In terms of government scrutiny they can expose flaws in the national criminal justice system which highlights what a dangerous and irretrievable instrument the death penalty is. They can also identify and signpost better ways to protect victims and improve security. In the long term, they can play a role in campaigning and influencing parties and individuals who may form future governments.

For parliamentarians in countries where the death penalty is still being imposed working for abolition can be more difficult because of hostile public opinion. Even so, parliamentarians can play a role short of advocating outright abolition. For example, they can raise public awareness of the growing international movement against executions, work to introduce legislation to reduce the number of offences which carry the death penalty and carry out parliamentary enquiries to ensure that all trials for capital offences follow the highest standards. They can also be active in the support of ratification of international texts. In some countries, they can visit prisons where there are death rows.

In some countries Parliamentarians will have an essential role in case work, assisting and supporting individuals who are facing the death penalty and supporting their families. These cases may involve their own constituents but if they gain a reputation for campaigning on the death penalty issue their caseload may be drawn from across the country. Some of the people they assist could be facing the death penalty abroad. In these cases extra challenges arise where parliamentarians not only seek to ensure that international standards on the death penalty are applied as in their own country but also international law on the rights of foreign nationals is adhered to as well. (See below on the Vienna Convention)

It is also important to understand that parliamentarians have the potential to lead change within their society but will also reflect the societies which they represent.

Opportunities for dialogue between parliamentarians can occur at a number of levels:

- High level dialogues between countries.
- Delegations visiting retentionist countries.
- Meetings organised between parliamentarians such as through the Inter-Parliamentary Union or Parliamentarians for Global Action.
- Networks on the death penalty such as the World Coalition Against the Death Penalty.

The challenges facing parliamentarians need to be understood. They often have very busy and pre-set workloads which are driven by their constituents and ongoing legislative programmes. An issue like the death penalty may seem too contentious or peripheral to other challenges which they are facing. Often they do not have time to fully research an issue and need it presented in a brief and succinct form. They generally welcome the support that NGOs can provide them on single issues and thrive on good publicity. Accordingly, the views of the public are very important and public opinion surveys of good design are an extremely useful tool.

While parliamentarians will look to other countries for ideas and models for determining their own policies, they will be conscious of the unique features of their own country and will not be favourable to importing policies from other countries wholesale. They will want to develop dedicated policies to suit their own circumstances.

They will also be aware of the benefits of being part of international treaties and conventions such as the OP2. It is not only a confirmation and a signal of good practice and ethical policy, but also part of a complex of international relations which include trade and aid decisions.



# ARGUMENTS FOR ABOLITION

## **The main types of argument for abolition are:**

1. The human rights case- abolition of the death penalty is right, just and humane.
2. Making the case that the death penalty is ineffective as a deterrent. The death penalty has an extremely poor record in terms of acting as a deterrent against the most serious crimes and in fostering a sense of security among the general public particularly compared to what is known to work within criminal justice systems.
3. Challenging the claim that there is a mandate for the death penalty. This claim, often made in countries which have the death penalty, is that there exists a mandate for it in terms of public opinion, justice for victims and their families, cultural and religious requirements and practical issues for governments who accept some of the arguments for abolition but feel that the current circumstances are not right to abolish the death penalty completely.
4. The cost argument. Maintaining a death penalty capability and managing the inevitable appeals processes is very expensive. The only way to maintain a low cost death penalty capability is at the expense of other human rights including prison conditions, the right to fair legal hearings and adequate legal representation.

Although the starting point in arguing for abolition will always be that it is right, just and humane addressing the other arguments can be a powerful tool in influencing governments who face challenges in terms of security and the effectiveness of their criminal justice systems as a whole. In times of austerity arguments about cost and cost effectiveness will be taken seriously as well.

Building on the key arguments for abolition set out by the WCADP<sup>10</sup> there are a set of key arguments within each category.

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<sup>10</sup> WCADP <http://www.worldcoalition.org/media/resourcecenter/EN-KitMobilisationWD2013.pdf> (accessed 4/14)

# [ THE HUMAN RIGHTS CASE ]

## **No state should have the power to takes a citizen's life**

Within international law the right to life was established by the Universal Declaration of Human Rights of 1948. Building on this the United Nations (UN) agreed the International Covenant on Civil and Political Rights (ICCPR) of 1966, which confirmed the right to life as part of a universal set of human rights. The ICCPR entered into force in 1976. It sought to limit the death penalty as far as children and pregnant women are concerned and limit its application to all but the gravest crimes.

According to Article 6(2) the death penalty should be restricted to the 'most serious crimes', as interpreted by Safeguard 1 of the Safeguards Guaranteeing the Protection of the Rights of those Facing the Death Penalty adopted by resolution 1984/50 of the UN Economic and Social Council (ECOSOC) which limits its use only to 'intentional crimes with lethal or other extremely grave consequences'.<sup>11</sup> The UN interpretation of 'serious crimes' has become progressively more restrictive and from 2013 the term should only be applied to 'murder or intentional killing'.<sup>12</sup>

The ICCPR did not proscribe the use of the death penalty per se and a minority of 27 countries are signatories to it but nonetheless actively retain the death penalty. The Covenant was drawn up at a time when a small minority of states had abolished the death penalty but its intention was clearly to be a living document and move toward complete abolition.

According to Article 6(6); 'Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment'.<sup>13</sup>

Subsequently, the Second Optional Protocol to the ICCPR (1989) provided a treaty basis for the abolition of the death penalty. It is the only universal international treaty that prohibits executions and provides an essential mechanism to consolidate the abolition of the death penalty in the world. It has had a significant impact; by April 2014 81 countries were parties to the Second Optional Protocol and the use of the death penalty has been reducing in nearly all countries which retain the death penalty. The practice of International Criminal Tribunals and the International Criminal Court that the death penalty is not applicable even to atrocities has also sent a clear signal that an argument of reserving the death penalty for the very worst crimes is not valid.

The trend towards abolition of the death penalty is taking place in all regions of the world and legal instruments to underpin national policy on abolition have been or are being developed in many regions. For example:

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<sup>11</sup> <http://www.un.org/documents/ecosoc/res/1996/eres1996-15.htm> (accessed 4/14)

<sup>12</sup> Report of the Secretary General: The Question of the Death Penalty: 24th Session of the UN Human Rights Council, July 2013

<sup>13</sup> WCADP: <http://www.un.org/documents/ecosoc/res/1996/eres1996-15.htm> (accessed 4/14)



## Africa

The African Charter on Human and Peoples' Rights recognizes the right to life, freedom from cruel, inhuman or degrading treatment or punishment and to a fair trial. The Charter is overseen by the African Commission for Human and Peoples' Rights based in Banjul, Gambia. The African Commission working group on the death penalty in Africa in its "Study on the question of the death penalty in Africa", adopted in 2011, recommended to the African Union and to State Parties the adoption of a Protocol to the African Charter on Human and Peoples' Rights on the 'Abolition of the Death Penalty in Africa'.

A draft text of the Protocol was prepared in 2013 and at the time of writing this document was due to be presented before the ACHPR for adoption by the Commission during its 56th Ordinary Session in December 2014. The next steps will be for an expert meeting involving state representatives, NGOs and human rights organisations to present the draft and gather further comments. The Commission will then submit the protocol to the meeting of African Union heads of State and Government for adoption.

## Europe

Protocol 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) concerning the Abolition of the Death Penalty was the first regional abolitionist treaty. It has been signed by all 47 Member States of the Council of Europe and ratified by 46 of them. This text provides for the abolition of the death penalty, but still allows States to maintain it for crimes committed in time of war or of imminent threat of war;

Protocol No. 13 to the same Convention, adopted in May 2002, ratified by 43 of the 47 States and signed by an additional two States, abolishes the death penalty in all circumstances and without possible reservations. Thus it goes beyond the range of the Second Optional Protocol to the ICCPR in not allowing a reservation to use the death penalty in time of war

## The Americas

The Protocol to the American Convention on Human Rights (ACHR) to Abolish the Death Penalty was adopted in 1990 by the Organisation of the American States (OAS). Like the Second Optional Protocol, it aims at abolishing capital punishment, with the same possibility for States "to apply the death penalty in wartime in accordance with international law, for extremely serious crimes of a military nature". It has been ratified to date by 13 of the 22 State parties to the ACHR out of the 35 Member States of the OAS.<sup>14</sup>

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<sup>14</sup> Op cit: World Coalition Against the Death Penalty (2013): Campaign for the ratification of international and regional protocols aimed at the abolition of the death penalty: Lobbying kit for members <http://www.worldcoalition.org/media/resourcecenter/KitLobbyingMembresWCADP-EN.pdf> (accessed Nov 13)

## Other international law instruments

Other international law instruments that can be relevant to the death penalty issue include the Vienna Convention on Consular Rights (1963). This has 171 signatory countries and gives the right to foreign nationals who are accused of a crime, to contact their consulate and seek assistance with their defence. This has been highlighted in recent death penalty cases in Texas where Mexican nationals have not been given their rights under the Vienna Convention and have been sentenced to death. The International Court of Justice has ruled against the USA on this matter. However, the US Supreme Court has ruled that the State of Texas can only be instructed by Congress to comply which it hasn't. Jose Medellin and Humberto Leal García, two of the Mexicans affected were executed respectively in 2008 and 2011. US citizens abroad facing charges have made full use of their rights under the Vienna convention.<sup>15</sup>

## UN resolutions

The UN has more recently encouraged abolition via a series of resolutions (2007, 2008, 2010 and 2012) to: - establish a moratorium on executions; restrict the number of offences where execution is a punishment; publish information on its use; respect international standards on the rights of those facing the death penalty; and ensure that abolition is not reversed.

The vote is not binding but gives a powerful message about the overwhelming consensus at the UN. There has been a persistently increasing majority since the first resolution in 2007. In 2012 the voting figures were 111 in favour, 41 against and 34 abstentions compared to 2007 when the figures were 104 in favour, 54 against and 29 abstentions.

It is now impossible for any country to argue convincingly that use of the death penalty does not contravene human rights, no matter how it is administered. By reference to the International and regional protocols, accepted interpretations that have been drawn up subsequently and votes at the UN, a *moral force*<sup>16</sup> for the abolition of the death penalty has gathered momentum. In 2013, only 22 out of 193 UN members carried out executions: that figure has declined from 28 in 2003 and that group of countries is becoming increasingly isolated. There are increasingly compelling reasons to comply with international treaties and to take note of majority opinion at the UN. These include:

- A better human rights record is worthwhile for the sake of international reputation.
- Progress towards abolition, in particular, would entail benefits with the EU, at the UN and in regional groupings.
- The community of abolitionist countries will be concerned that retention of the death penalty will affect trade, aid, diplomatic ties, defence and security cooperation and foreign investment.

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<sup>15</sup> In Texas a death penalty showdown with international law: The Atlantic July 2011  
<http://www.theatlantic.com/international/archive/2011/07/in-texas-a-death-penalty-showdown-with-international-law/241480/> (accessed 4/14)

<sup>16</sup> Roger Hood, Professor Emeritus of Criminology, University of Oxford (2013): Keynote address - The Death Penalty: Pakistan in World Perspective: Islamabad 10<sup>th</sup> October 2013

Those countries who have signed the Second Optional Protocol of the ICCPR and have voted in favour of UN resolutions to establish a moratorium on the death penalty broadly accept the following arguments in favour of abolition.

#### FURTHER INFORMATION

##### **World Coalition Against the Death Penalty**

Eg <http://www.worldcoalition.org/media/resourcecenter/KitLobbyingMembresWCADP-EN.pdf>

## The death penalty is irrevocable

No justice system is safe from judicial error and innocent people are likely to be sentenced to death. The UN Safeguards Protecting the Rights of Those Facing the Death Penalty<sup>17</sup> lays down standards for the conduct of trials including the right to legal representation based on Article 14 of the ICCPR. These standards are not met in many countries that have abolished the death penalty.

In the many countries that retain the death penalty and where these standards are not met, the consequences are far graver. They include, for example, Morocco where the right to representation at trial is not always observed, attorneys that are provided are poorly paid, information against the accused can be withheld and some judges have made judgements on forced confessions.<sup>18</sup>

Countries who argue for the death penalty as a response to atrocities and terrorism similarly have a duty via UN safeguards to ensure that standards of criminal justice have been met. Bangladesh has received criticism from UN Special Rapporteurs for passing a death sentence via the Bangladeshi International Crimes Tribunal which failed standards in terms of rights of appeal.<sup>19</sup>

Coerced confessions are of particular concern and their use in China and Japan has been publicised recently.<sup>20</sup> Iraq, which has had the sharpest increase in executions in 2013 routinely passes the death sentence based on confessions obtained by torture.<sup>21</sup> As for the USA, the use of planted evidence by the police has been exposed as a key element in wrongful convictions.<sup>22</sup>

<sup>17</sup> <http://www.ohchr.org/EN/ProfessionalInterest/Pages/DeathPenalty.aspx>

<sup>18</sup> 2009 Human Rights Practices – Morocco: US Department of State

<sup>19</sup> Office of the High Commissioner for Human Rights (OHCHR) (2013): UN human rights experts urge Bangladesh to stop the execution of Abdul Quader Mollah:

<http://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=14077&LangID=E> (accessed 4/14)

<sup>20</sup> <http://www.bbc.co.uk/news/magazine-20810572> (accessed 4/14)

<http://www.independent.co.uk/news/world/asia/supreme-court-rules-china-must-stop-using-torture-to-extract-confessions-8955182.html> (accessed 4/14)

<sup>21</sup> World Coalition submission to UN Human Rights Review: <http://www.worldcoalition.org/iraq-dath-penalty-executions-human-rights-violations.html> (accessed 4/14)

<sup>22</sup> <http://www.cbsnews.com/news/record-number-of-wrongful-convictions-overturned-in-2013/> (accessed 4/14)

In the USA, evidence of wrongful convictions has led to the release of 144 people from death row since 1973.<sup>23</sup> DNA testing has initially played an important part in exposing these flaws in the US criminal justice system. DNA testing has been used to overturn wrongful convictions in 316 cases since 1989. Of these 18 involved cases where the death penalty had been handed down.<sup>24</sup> A recent study published in the peer reviewed Proceedings of the National Academy of Sciences of the USA made a conservative estimate that 4.1% (or 120 of the approximately 3000 death row inmates in the US) will have been wrongfully convicted.<sup>25</sup>

According to the ICCPR (article 6.2), use of the death penalty will represent an arbitrary deprivation of the right to life if capital punishment is imposed in circumstances that breach other rights under this International Covenant, in particular, the right to a fair trial (article 14) and the prohibition on torture and inhuman and degrading treatment (article 7). Countries which are signatories to the ICCPR and which retain the death penalty are finding it impossible to argue convincingly that their criminal justice systems are completely fair and just and that they are therefore compliant with Articles 14 and 7 (see above).

#### FURTHER INFORMATION

**Witness To Innocence:** <http://www.witnesstoinnocence.org/index.html>

**The Innocence Project**

[http://www.innocenceproject.org/Content/DNA\\_Exonerations\\_Nationwide.php](http://www.innocenceproject.org/Content/DNA_Exonerations_Nationwide.php)

## The death penalty is unfair

The death penalty is discriminatory and is often used disproportionately against the poor, the mentally ill, those from racial and ethnic minorities, and in some places in the world because of discrimination related to sexual orientation or religion. It is not possible to provide a comprehensive picture of discrimination in the use of the death penalty globally because there is a lack of good quality data but some examples are given below.

<sup>23</sup> <http://www.witnesstoinnocence.org/about-innocence.html>

<sup>24</sup> Fact sheet of the Innocence Project: (accessed 4/14)

[http://www.innocenceproject.org/Content/DNA\\_Exonerations\\_Nationwide.php](http://www.innocenceproject.org/Content/DNA_Exonerations_Nationwide.php)

<sup>25</sup> Gross S, O'Brien B, Hu C, Kennedy E (2014) "Rate of False Conviction of Criminal Defendants Who Are Sentenced to Death," [www.pnas.org](http://www.pnas.org), Apr. 28, 2014

In Morocco it is estimated that 50% of prisoners and two thirds of those condemned to death have psychological problems and the majority are poor and illiterate. In the USA nearly all those on death row were unable to afford their own defence.<sup>26</sup> In Iraq there is discrimination in the application of the death penalty against the Sunni population.<sup>27</sup>

Racial discrimination at key stages of the criminal justice system leading to death sentences has been publicly debated in the USA for a number of years and continues. In 1990 the US General Accounting Office reported that there was evidence of racial factors influencing death penalty decisions at all points of the process in terms of the race of the victim and the race of the offender.<sup>28</sup>

Subsequent research has confirmed this. In 2011 a long term study of death sentence cases in Connecticut found that those from ethnic minorities who commit murders of white victims which could carry a death sentence are six times as likely to receive a death sentence as those where the victim themselves is from an ethnic minority. For those cases where someone from an ethnic minority murders a white victim the defendants are three times as likely to receive a death sentence as white defendants who murder white victims.<sup>29</sup> In 2013 a report by the Center for Constitutional Rights (CCR) and the International Federation for Human Rights (FIDH) on the death penalty in California and Louisiana concluded that 'California and Louisiana violate the principle of non-discrimination in the charging, conviction and sentencing of persons to death'. In Louisiana African Americans make up only 32 percent of the general population but 65% of death row prisoners. For California they comprise 6.7 percent of the general population, but 36 percent of those on death row.<sup>30</sup> Studies carried out in other states in the US have come up with broadly similar findings.

## FURTHER INFORMATION

**USA: Death by discrimination – the continuing role of race in capital cases**

<https://www.amnesty.org/en/library/asset/AMR51/046/2003/en/bd8584ef-d712-11dd-b0cc-1f0860013475/amr510462003en.pdf>

<sup>26</sup> Amnesty US (2012): Death Penalty Facts <http://www.amnestyusa.org/pdfs/DeathPenaltyFactsMay2012.pdf> (accessed 4/14)

<sup>27</sup> World Coalition submission to UN Human Rights Review: <http://www.worldcoalition.org/iraq-dath-penalty-executions-human-rights-violations.html> (accessed 4/14)

<sup>28</sup> US General Accounting Office (1990): Report to the Senate and House Committees on the Judiciary: Death Penalty Sentencing, Research indicates pattern of racial disparities

<sup>29</sup> Donohue J (2011): Capital punishment in Connecticut, 1973-2007: A comprehensive evaluation from 4686 murders to one execution <http://www.deathpenaltyinfo.org/documents/DonohueCTStudy.pdf> (Accessed 4/14)

<sup>30</sup> <http://www.fidh.org/en/americas/usa/california-and-louisiana-death-row-conditions-result-in-torture-14084> (10/14)

# The death penalty creates more pain

The administration of the death penalty represents cruel, inhuman, and degrading treatment as defined in UN, inflicts pain on the families of those on death row and causes great pain to the family members of those who have been executed. For example, the children of those executed will not be able to exercise their right under Article 9 of the UN Convention on the Rights of the Child to 'stay in contact with both parents'.

In many countries those on death row are kept in insanitary and overcrowded conditions whilst in others they can be kept in solitary confinement for many years. In the USA death row prisoners can be held in solitary confinement for extended or indefinite periods of time, often at the discretion of the prison management and without clear procedures.<sup>31</sup>

In South Korea, there is a prison overcrowding problem and there are particular human rights abuses such as the use of manacles. It is understood that there is a consensus that criminals are not entitled to human rights and that this is behind many rights abuses in prisons. There is little public debate on these issues.<sup>32</sup> In its report on South Korea in 2006 the UN Human Rights Committee stated concerns about criminal justice procedures including: - access to legal representation; detention without arrest; and detention of those arrested without being brought before a judge.<sup>33</sup>

In Algeria there is a moratorium on the death penalty. However, it has recently been sentencing over 100 people to death per year with over 600 prisoners now on death row, isolated from other prisoners and with few visits.<sup>34</sup>

A problem for those countries which have stopped carrying out executions but still retain the death penalty in law is that death sentences can continue to be handed out by the courts leading to ever increasing numbers of prisoners being held on death row. There are currently 8,000 inmates on death row in Pakistan and over 900 in Malaysia which last carried out an execution in 2008 and more than 700 in California.

## FURTHER INFORMATION

### Death Penalty Worldwide

<http://www.deathpenaltyworldwide.org/>

<sup>31</sup> <http://www.fidh.org/en/americas/usa/california-and-louisiana-death-row-conditions-result-in-torture-14084> (10/14)

<sup>32</sup> <http://www.deathpenaltyworldwide.org/country-search-post.cfm?country=South+Korea#f9-6> (accessed 12/13)

<sup>33</sup> [http://www.unhcr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/f6036667b5c5702ac12572580051f337/\\$FILE/G0645814.pdf](http://www.unhcr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/f6036667b5c5702ac12572580051f337/$FILE/G0645814.pdf) (accessed 12/13)

<sup>34</sup> Note: In its 2006 report to the UN the Algerian Government claimed to have commuted many death sentences to life imprisonment but this is unconfirmed.

# Rehabilitation failure

There are no positive outcomes from a death sentence. For the offenders there is little opportunity to come to terms with what they have done. They may make atonement but will have limited opportunities to change. For the victim or the victim's family, they may want to see punishment of the offender but not necessarily the death penalty. Capital punishment will not reverse the harm done. It is argued that the death penalty will allow closure but many victims' families disagree. For them, a system of brutal retribution dishonours the memory of the relative they have lost.

An alternative to the death penalty is life imprisonment. Life imprisonment can serve the function of protecting the public from those that are a danger to society; it is reversible if a miscarriage of justice has taken place; it can allow for the prisoner to serve their sentence in prison conditions that are less likely to involve human rights abuses than death row. It is a severe punishment particularly if there is no opportunity for parole.

However many countries have both abolished the death penalty and abolished life imprisonment (where the offender is expected to spend the rest of their life in prison). In 2012 there was a ruling by the European Court of Human Rights against the UK which determined that whole life imprisonment without the possibility of parole is in contravention to Article 3 of the European Convention on Human Rights. Article 3 states the 'no one shall be subjected to torture or to inhuman or degrading treatment or punishment'.<sup>35</sup>

## FURTHER INFORMATION

### **BBC ethics guide**

[http://www.bbc.co.uk/ethics/capitalpunishment/for\\_1.shtml](http://www.bbc.co.uk/ethics/capitalpunishment/for_1.shtml)

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<sup>35</sup> The Sentencing Project (2013): Life Goes On: The Historic Rise in Life Sentences in America

# Abolition of the death penalty is right, just and humane

## Summary of the arguments

For Abolition	Objections to Abolition
<p>The International Covenant on Civil and Political Rights (1966) (ICCPR) confirmed the right to life and to limit the use of the death penalty to exclude pregnant women and children and to limit its application to all but the gravest crimes.</p>	<p>Signatories to the ICPPR are not required to abolish the death penalty.</p>
<p>Capital punishment, no matter how administered breaches human rights in terms of arbitrary deprivation of life and in terms of cruel, inhuman or degrading punishment.</p>	<p>Countries such as the USA is seen by many as a democratic defender of human rights still retains the death penalty.</p>
<p>The death penalty is irrevocable: no justice system is safe from judicial error and innocent people are likely to be sentenced to death.</p>	<p>It is possible to administer a national criminal justice system so that errors do not occur.</p>
<p>The death penalty is unfair.</p>	<p>All offenders are equal before the law.</p>
<p>The death penalty does not rehabilitate.</p>	<p>It is not meant to as it is retribution.</p>



For Abolition	Objections to Abolition	For Abolition
<p>The intention of the ICCPR is clear. Article 6.6 states 'Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment'.</p>	<p>Retaining the death penalty is an issue of national sovereignty.</p>	<p>It is an established principle for international agreements to determine national policies – in terms of torture and slavery for example.</p>
	<p>Abolition of the death penalty is only generally accepted in particular regions such as Europe.</p>	<p>The number of abolitionist countries is growing in all regions and regional protocols have been developed such the Protocol to the American Convention on Human Rights (ACHR) to Abolish the Death Penalty adopted in 1990 by the OAS.</p>
<p>In the USA the use of the death penalty is declining and is only used extensively in a small number of states.</p>	<p>The death penalty should nonetheless be retained for the very worst crimes.</p>	<p>Having a poor human rights record can adversely affect, foreign relations including trade, aid, diplomatic ties and defence.</p>
<p>The USA provides the best example of a relatively transparent and rights based judicial system where judicial errors have been known to occur.</p>	<p>There may be some isolated errors but the death penalty is worth keeping as a deterrent.</p>	<p>Have a poor human rights record can adversely affect, foreign relations including trade, aid, diplomatic ties and defence.</p>
<p>The death penalty is not applied equally. It discriminates against the poor, the mentally ill and those from racial and ethnic minorities.</p>	<p>There may be isolated cases of discrimination but they are not sufficient to abandon the whole death penalty system.</p>	<p>Any discrimination is contrary to international human rights law.</p>
<p>Then the state is no better than the murderer.</p>	<p>It is meant to provide justice for the victims.</p>	<p>The evidence is that not all victim's families want retribution.</p>

# [ IS THE DEATH PENALTY A DETERRENT TO VIOLENT CRIME? ]

## It does not keep society safe

It has never been shown convincingly that the death penalty deters crimes more effectively than other punishments such as life imprisonment. Most of the research in this field takes place in the USA but US research which aims to establish a link between death penalty and decreases in homicides has been shown to be seriously flawed.

The US National Research Council panel, led by criminologist Daniel Nagin of Carnegie-Mellon University in Pittsburgh published, in 2012, an analysis of research into the links between capital punishment and murder rates. The report concluded that research in the US has failed to determine whether the death penalty has any deterrent effect on homicide rates and should not be used as part of the policy debate about capital punishment.

'The studies have reached widely varying, even contradictory, conclusions.' and contained serious methodological flaws. A '...major deficiency is the use of incomplete or implausible models of potential murderers' perceptions of and response to the capital punishment component of a sanction regime'.<sup>36</sup>

In terms of overall trends, since 1995, the murder rate has gone down in Asia, Europe and Northern America but gone up in Central America and the Caribbean. This period coincides with a rapid increase in the number of countries abolishing the death penalty yet it would be hard to demonstrate any kind of overall link with these trends and death penalty policy country by country.

As far as individual countries or states are concerned, many with the worst homicide rates retain the death penalty. These include Uganda, Lesotho, Belize, Jamaica, and Trinidad. In the USA, Louisiana, which retains capital punishment, has led the US murder rate statistics for over 20 years.<sup>37</sup>

## Lack of data

In many countries which retain the death penalty there aren't reliable data available to make an assessment of whether the death penalty is an effective deterrent or not. Claims in these countries that the death penalty provides a deterrent are not attempting to be evidence based. Nonetheless belief in the deterrent effect of the death penalty is persistent. In Benin, shortly before steps were initiated to abolish the death penalty it was argued by the government that the death penalty was necessary because the region was unstable and serious criminals might be attracted to seek refuge from neighbouring countries.

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<sup>36</sup> Daniel S. Nagin and John V. Pepper, editors (2012); Committee on Deterrence and the Death Penalty; Committee on Law and Justice; Division on Behavioral and Social Sciences and Education; National Research Council [http://www.nap.edu/catalog.php?record\\_id=13363](http://www.nap.edu/catalog.php?record_id=13363) (accessed 4/14)

<sup>37</sup> UK FCO briefing on the death penalty as a deterrent

This kind of statement is not unusual in the case study countries and is based on the perspective that the deterrent effect of capital punishment is self-evident and doesn't need to be proved. If states wish to maintain the ultimate penalty and be in breach of human rights standards, the onus should be on them to prove conclusively that it is an effective deterrent or abandon it.

#### FURTHER INFORMATION

**US National Research Council report on deterrence : [http://www.nap.edu/catalog.php?record\\_id=13363](http://www.nap.edu/catalog.php?record_id=13363)**

## The death penalty is not applicable for the worst crimes

It is argued by many countries that their efforts against terrorism justify the retention of the death penalty. There are 65 countries which retain the death penalty as being applicable to what are defined in each state as terrorism offences.<sup>38</sup>

These definitions are varied and there are a number which can include unwanted political activity or civil protest. They cannot be said to meet the criteria agreed in resolution 1996/15 of the UN Economic and Social Council which provides Safeguards guaranteeing protection of the rights of those facing the death penalty<sup>39</sup>. Here the death penalty can only be applicable for the most serious crimes which are limited to intentional crimes with lethal or other extremely grave consequences. The UN Special Rapporteur on Counter terrorism has also drawn attention to repeated failures of trials for terrorism to comply with the standards for a fair trial set out in Article 14 of the ICCPR.<sup>40</sup>

The response to the worst crimes in international law no longer involves the use of the death penalty as a sanction. Under international law, the worst crimes include, genocide, war crimes and crimes against humanity.

The international tribunals trying cases for these crimes committed in the former Yugoslavia or Rwanda, for example, did not use the death penalty and nor does the permanent International Criminal Court based in the Hague, Netherlands. As cases were handed over to national courts in these examples a condition of the hand over was that the national courts did not use the death penalty either.<sup>41</sup>

<sup>38</sup> Penal Reform International (PRI):

<sup>39</sup> <http://www.un.org/documents/ecosoc/res/1996/eres1996-15.htm> (accessed 14/4)

<sup>40</sup> <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/178/98/PDF/G1017898.pdf?OpenElement> (accessed 4/14)

<sup>41</sup> Penal Reform International (2013): Counter Terrorism in Kazakhstan: Why the death penalty is not the solution: PRI London October 2013

In terms of effectiveness as a deterrent it can be argued<sup>42</sup> that the use of the death penalty to combat terrorism is self-defeating:

- It creates so called martyrs.
- It reinforces the terrorist claim that the government is brutal and repressive.
- It cuts off an opportunity to gain intelligence.
- It divides the community of nations suffering from terrorism as the majority now find the use of the death penalty abhorrent.

#### FURTHER INFORMATION

**Penal Reform International: The Death Penalty Terrorism and International Law**

<http://www.penalreform.org/wp-content/uploads/2014/04/death-penalty-terrorism-v3-web.pdf>

## The death penalty is inefficient as an anti-crime measure

Time and money spent in maintaining the death penalty diverts resources from other more efficient law enforcement measures. For example, in Trinidad and Tobago recent calls from government ministers for a resumption of hanging as a response to the high crime rate have been countered with arguments from former government ministers for better policing and crime prevention measures where there is a 10% detection rate and a 1% conviction rate for crimes.<sup>43</sup> In Jamaica, according to figures made available in 2010, the police only make arrests in 34% of homicide cases and only 5% of cases result in a conviction.<sup>44</sup> A number of studies on crime and deterrence indicate that the likelihood of being caught is a far more effective deterrent than the specific penalty that may be incurred or its severity.<sup>45</sup>

The public perception of and confidence in the criminal justice system can be an important influence on attitudes to the death penalty. On the one hand the death penalty can be seen as the only viable option for serious crime if as is the case in South Sudan, the prison system is unable to contain its prison population and escapes are commonplace. On the other hand the public can become more aware of the injustice of retaining the death penalty when the criminal justice system is known to have major flaws.

Countries on the road to abolition can usefully combine a review of the death penalty with a review of policing, courts and prison practices to ensure that they are just, human and effective in their approaches to crime and security.

<sup>42</sup> For example: <http://ejusa.org/learn/terrorism> (accessed 4/14)

<sup>43</sup> <http://www.caribbean360.com/mobile/http://www.caribbean360.com/index.php/news/12872.html>

<sup>44</sup> [http://www.jamaicaobserver.com/columns/Is-capital-punishment-an-effective-crime-fighting-tool-in-Jamaica\\_7889](http://www.jamaicaobserver.com/columns/Is-capital-punishment-an-effective-crime-fighting-tool-in-Jamaica_7889) (accessed 1/14)

<sup>45</sup> Wright V (2010): Deterrence in Criminal Justice, Evaluating Certainty vs. Severity of Punishment: The Sentencing Project, research and advocacy for reform: Washington USA November 2010

There is an emerging evidence-base in what works in crime prevention. This is reflected in the series of tools that the UNODC has developed for the practical implementation of crime prevention policies and programmes in accordance with the United Nations guidelines for the prevention of crime.<sup>46</sup>

- Analyse the distribution of homicides which tend to cluster in the disadvantaged neighbourhoods of big cities and devise targeted prevention programmes accordingly.
- Utilising available resources for developing practice in the area of armed violence also follows the principles of a diagnostic approach to the identification of problems; a bottom up approach to solutions with local ownership and leadership; understanding the complex, multi-faceted and multi-layered of the problems and designing of appropriate multi-sector responses; focussing on prevention, risk factors and community resilience.<sup>47</sup>
- Crime prevention initiatives which broadly comprise the categories of social development, community based initiatives, adjusting features of the built environment, and social reintegration. They also have a neighbourhood focus which is something that parliamentarians can become involved in advocating and lobbying for.
- Although abolishing the death penalty is a powerful symbol of compliance with international human rights standards, it needs to be accompanied by measures which build capacity and integrity into institutions such as the criminal justice system and the police. Otherwise, human rights will not be respected in practice.

#### FURTHER INFORMATION

**UNODC (2010): Handbook on the Crime Prevention Guidelines, Making them Work: UN, New York 2010**

[http://www.unodc.org/pdf/criminal\\_justice/Handbook\\_on\\_Crime\\_Prevention\\_Guidelines\\_-\\_Making\\_them\\_work.pdf](http://www.unodc.org/pdf/criminal_justice/Handbook_on_Crime_Prevention_Guidelines_-_Making_them_work.pdf)

**Organisation for Economic Co-operation and Development, Armed Violence Reduction: Enabling Development, Conflict and Fragility Series (Paris, 2009).**

[http://www.keepeek.com/Digital-Asset-Management/oecd/development/armed-violence-reduction\\_9789264060173-en#page1](http://www.keepeek.com/Digital-Asset-Management/oecd/development/armed-violence-reduction_9789264060173-en#page1)

<sup>46</sup> UNODC (2010): Handbook on the Crime Prevention Guidelines, Making them Work: UN, New York 2010

<sup>47</sup> Organisation for Economic Co-operation and Development, Armed Violence Reduction: Enabling Development, Conflict and Fragility Series (Paris, 2009).

# [ ADDRESSING THE ARGUMENT THAT THERE IS A MANDATE FOR THE DEATH PENALTY ]

Countries which retain the death penalty often claim that there is a national mandate for it. Such claims include:

- The death penalty is the only way to ensure justice for victims and their families.
- Public opinion is in favour of the death penalty.
- The death penalty is part of the national cultural and religious heritage.
- Even when governments acknowledge the need to abolish the death penalty they may claim that the time is not right for change. They need encouragement to move toward abolition and assistance to identify the key steps.

## The death penalty is no deterrent to violent crime

### Summary of the arguments

For Abolition	Objections to Abolition
The death penalty does not keep society safe. There is not conclusive evidence of a deterrent effect from having the death penalty particularly compared to the use of life sentences.	The death penalty sends out a strong message to potentially violent criminals.
The penalty is not applicable to the worst crimes such as terrorism.	Terrorism is such a threat to the state that the death penalty is necessary as part of the response.
Maintaining the death penalty takes away valuable resources from more effective policing and crime prevention measures.	Having the ultimate penalty indicates a strong and determined state in the face of crime.

# Victims and their families

Not all murder victims' families want the death penalty. A large and growing number of victims' families worldwide reject the death penalty and are speaking out against it, saying it does not bring back or honour their murdered family member, does not heal the pain of the murder, and violates their ethical and religious beliefs. Victim rejection of the death penalty has been demonstrated most dramatically in countries which have been through extreme internal conflict such as South Africa where the truth and reconciliation process following apartheid has been accompanied by the abolition of the death penalty to mark a symbolic break with the past.

In the USA, family members of victims have played an important role in bringing about the abolition of the death penalty particularly in Connecticut, Maryland, New Mexico and New Jersey. A factor in their opposition to the death penalty is that the extended appeal process necessary in death penalty cases requires them to relive the circumstances of their relative's death repeatedly over a number of years.

In Cambodia victims of the Pol Pot regime, more than 30 years later, favour forgiveness rather than the death penalty. At first the Rwanda government argued against the International Criminal

For Abolition	Objections to Abolition	For Abolition
Countries including Jamaica, Uganda and Louisiana within the USA have the highest homicide rates in the world whilst retaining the death penalty.	The deterrent effect of the death penalty is self-evident.	Responsibility should be on governments to prove the deterrent effect of the death penalty if they propose to use it.
Terrorism is being defined to include lesser activity not 'serious crime' and many terrorism trials do not comply with Article 14 of the ICCPR.	All nations should unite over terrorism and not be critical of each other.	Lack of compliance with human rights is always a legitimate criticism of any country. Also the death penalty used against terrorists creates martyrs and exposes the government as brutal and repressive.
Investment in criminal justice reform policing and crime prevention has been shown to work. There is a substantial literature of what works in these areas.	Criminal justice reforms can take place whilst retaining the death penalty.	Detection is a far greater deterrent than the penalty or its severity.

Tribunal's non-use of the death penalty saying that it undermined their own justice and reconciliation process but eventually chose to abolish the death penalty themselves.<sup>48</sup> According to, Rwandan Minister Johnston Busingye, speaking in Madrid in 2013, "Abolishing the death penalty was an important step forward in the process of reconciliation".

Governments which argue that they are representing victims in retaining the death penalty are not necessarily ones where the needs of victim's families are best protected. In Japan victim's relatives have argued that their chief concerns have been to know the truth about what happened to the victim and to get some kind of compensation. The current system does not provide psychological or material support to victim's families and the death penalty is presented by the government 'to be the only and most just compensation for their loss'.

#### FURTHER INFORMATION

**Murder victims families for human rights** <http://www.mvfhr.org/>

**Journey of Hope** <https://www.journeyofhope.org/home/>

**Murder Victim's Families for Reconciliation** <http://www.mvfr.org/>

## Public opinion

Although public opinion is an important factor in democracy those in government and in parliament should exercise leadership and be prepared to act ahead of public opinion at critical times. In a number of countries including France and the UK, governments abolished the death penalty despite the fact that a majority of the public, according to opinion polls, were in favour of the death penalty. The proportion of those supporting the death penalty has declined in those countries subsequently and although France and the UK are not perfect in democratic terms they conform to generally accepted democratic standards in representing people.

In the USA public support for the death penalty has been steadily declining. In 2013 a Gallup poll gave a result of 60% support for the death penalty. The lowest level of support since 1972. This is tied to a result that the proportion of the public who believe that the death penalty is applied fairly has reduced from 60% to 52% in the last 10 years. The breakdown of support for the death penalty by voting allegiance gives clues on how to present the arguments for abolition to the public. In China, public surveys (2007) do not suggest that there is a strong mandate in public opinion for retaining the death penalty.<sup>49</sup>

Although straight choice public opinion surveys in many countries suggest a majority of the public favours the death penalty more probing questionnaires indicate that public support for the death

<sup>48</sup> <http://unu.edu/publications/articles/the-politics-of-the-death-penalty-in-countries-in-transition.html> (accessed 4/14)

<sup>49</sup> Full details in Roger Hood, Professor Emeritus of Criminology, University of Oxford (2013): Keynote address - The Death Penalty: Pakistan in World Perspective: Islamabad 10th October 2013 (op cit)



penalty is far more nuanced. As far as the death penalty as a deterrent is concerned there is considerable skepticism from the public.

A 2012 study in Malaysia on attitudes to the mandatory death penalty started by returning 91% in favour, but when shown concrete crime scenarios, only 8% agreed with the death penalty in all of them.<sup>50</sup>

An analysis of government polls in Japan which have consistently suggested a large majority of the public in favour of the death penalty have been shown to have methodological flaws and the returns are based on both a lack of information and misinformation about the death penalty in Japan.<sup>51</sup>

Issues for the public may vary widely from country to country. In a country like South Sudan the death penalty may be seen to represent, for the public, a sure form of justice when the prison system is known to be chaotic and prison breakouts are common. For the USA, on the other hand, incarceration for life is not uncommon so the death penalty cannot be argued to be the only option in removing those judged to be a danger for the public from society. The debate in the USA has tended to focus more on whether the death penalty has a deterrent effect, the significant number of miscarriages of justice and, in a time of economic austerity, whether the relative costs of keeping a prisoner on death row whilst the appeals process runs its course are justified.

The public do not support the death penalty if they are asked if it should be used when there is the possibility that an innocent person could be executed. When asked to decide whether to apply the death penalty in scenarios the public are far less likely to opt for its use than respond to a crude yes or no question 'are you in favour of the death penalty?'

Several countries who retain the death penalty maintain a level of secrecy around its administration and about prisoners on death row. These include China, Taiwan, Iran, Vietnam, Belarus and to a lesser extent Japan ). It is difficult to see how the public in these countries can come to an informed view about the death penalty when they are kept in the dark about how and the extent to which it takes place.

Governments which cite public opinion as a key factor in maintaining the death penalty don't necessarily test what public opinion actually is. For example, the Tanzanian Government has argued that democracy demands that more importance be given to the involvement of the public in national decision making than pressure from the international community on human rights issues. This is reflected in the public involvement in the recent constitutional review. However there has been no recent survey carried out by the Government to test public opinion.

When politicians take the lead and a proactive strategy to engaging with the public they are far more likely to get a positive response. This was the experience of Governor Bill Richardson in New Mexico who announced his intention to remove capital punishment from state legislation and put out a public call for the residents of New Mexico to comment on the issue. He received a response rate of over three quarters in favour of repeal.

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<sup>50</sup> Hood R (2013): The Death Penalty in Malaysia: Public opinion on the mandatory death penalty for drug trafficking, murder and firearms offences: Death Penalty Project: London 2013

<sup>51</sup> The Death Penalty Project (2013): A report on Japan's legal obligations under the ICCPR and an assessment of public attitudes to capital punishment

## FURTHER INFORMATION

**Mai Sato – Public opinion and the death penalty in Japan**

[https://www.westminster.ac.uk/\\_\\_data/assets/pdf\\_file/0004/43429/v.4\\_4.pdf](https://www.westminster.ac.uk/__data/assets/pdf_file/0004/43429/v.4_4.pdf)

## National culture and religion

The question of culture and religious doctrine and the death penalty is a complex issue and a detailed and comprehensive examination of the key questions is beyond the scope of this document. Religions and faith groups have been an important force in encouraging the overwhelming shift to abolition of the death penalty in the last 30 years (eg in the Philippines). This development has been consolidated, as set out above in global declarations on the primacy of human rights including the right to life which are a set of secular, or at least pan-religious, values and which the majority of nations adhere to whatever their dominant religion.

Nevertheless, religious belief and practices have been used as an argument in some retentionist countries to retain the death penalty. These arguments have been applied in the name of all the major religions. A potential basis for challenge is that religious arguments for the death penalty are rooted in particular interpretations of religious doctrine which vary from country to country.

But arguments that capital punishment is an essential part of any culture or religion; for example, the argument that it is an essential part of Sharia law is undermined by the fact that only four retentionist Muslim countries - Iran, Saudi Arabia, Iraq and Yemen now make regular and large scale use of capital punishment as a crime control measure.

Within Christianity there are both churches which support and churches which oppose abolition. For example, in the Philippines, the Philippine Evangelical Church supports the death penalty whilst the far more widely supported Catholic Church is opposed the death penalty. For Islam there are interpretations of Islam and the Koran which dispute the necessity of retaining the death penalty. It has also been argued that in countries where religion is cited as a basis for retaining the death penalty there are still political considerations at the heart of retentionist policy.

A concept that has resonance with all religions is that of justice. A consideration of justice would accept that in many cases the death penalty is applied where the standards in terms of arrest, interrogation, legal representation, a fair trial and fair appeals procedures have fallen short of international standards. Overall the death penalty is used discriminately against the poor, the socially excluded and ethnic minorities. These concerns of justice, fairness and equality are arguably more central to the major religions and their literature than occasional mentions of the death penalty.

## FURTHER INFORMATION

**BBC ethics :** <http://www.bbc.co.uk/ethics/capitalpunishment/>

# Moving toward abolition

Despite the persistent trend toward abolition there are many retentionist states which may accept some of the arguments against capital punishment but are far from the point of repealing it. In these countries, parliamentarians who want to work toward abolition can press for two main types of action - intermediate forms of legislation and other actions which prepare the ground for future legislation on abolition. Intermediate forms of legislation can both signal the inappropriateness of the death penalty and create opportunities to critically review its use. They should be presented as intermediary steps and not seen as end goals. Other actions to prepare the ground should try to address the major obstacles to abolition.

## Key steps

The ultimate goal is to confirm national legislation to abolish the death penalty by becoming a party to the International Covenant on Civil and Political Rights and the Second Optional Protocol and the relevant regional treaties. UN General Assembly Resolution 67/176 'Moratorium on the use of the Death Penalty (passed in 2012)<sup>52</sup> suggests ways in which States can move toward abolition. It 'Calls upon all States:

- a) To respect international standards that provide safeguards guaranteeing protection of the rights of those facing the death penalty, in particular the minimum standards, as set out in the annex to Economic and Social Council resolution 1984/50 of 25 May 1984, as well as to provide the Secretary-General with information in this regard;
- b) To make available relevant information with regard to their use of the death penalty, inter alia, the number of persons sentenced to death, the number of persons on death row and the number of executions carried out, which can contribute to possible informed and transparent national and international debates, including on the obligations of States pertaining to the use of the death penalty;
- c) To progressively restrict the use of the death penalty and not to impose capital punishment for offences committed by persons below eighteen years of age and on pregnant women;
- d) To reduce the number of offences for which the death penalty may be imposed.

Following the UN resolution the following should be considered in moving toward abolition.

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<sup>52</sup> <http://www.handsoffcain.info/chisiamo/index.php?iddocumento=17300976> (accessed 4/14)

# Intermediate legislation

1. The government declaring a moratorium on executions.
2. Commuting existing death sentences to terms of imprisonment.
3. Removing mandatory death sentences.
4. Restricting those offences which carry the death sentence to the most serious crimes excluding offences which fall outside the UN definition of serious crimes such as drug trafficking.
5. Removing vulnerable groups within society from those eligible to receive the death sentence such as children and the mentally disabled, mentally ill, pregnant women and nursing mothers and the elderly.
6. Implementing 'freedom of information' legislation so that the details of the processes and effects of capital punishment can become available, disseminated and discussed.

## Other actions

### Other actions can include

1. Keeping track of compliance with international protocols on the implementation of the death penalty including equality before the law, right to a fair trial, the presumption of innocence and so on.
2. Campaigning for the release of comprehensive data on the administration of capital punishment to inform public debate and linked to the implementation of 'freedom of information' legislation as above.
3. Reviewing and publicising the lack of evidence for the death penalty providing and deterrence effect and highlighting the evidence base for 'what works' in crime prevention and criminal justice.
4. More generally linking to campaigns for effective systems of law enforcement, criminal justice and the rights of victims.
5. Commissioning methodologically robust public opinion surveys which explore what is behind public support for the death penalty and public concerns about not only security and victimization but deterrence and the effectiveness of the criminal justice system as well.
6. Bringing many of the above actions together by campaigning for initiatives such as commissions which can encourage informed debates on the death penalty and bring together activists and concerned representatives from the relevant government institutions.
7. Creating national coalitions against the death penalty linked to networks of parliamentarians.

8. Educating and making young people aware of death penalty issues.
9. Organising delegations of civil society organisations and parliamentarians to visit those on death row.
10. Planning for amendments to the penal code. National penal codes need to be adapted to the particular constitutions and legal frameworks within each country although model penal codes may be applicable to groups of countries. The model penal code for the death penalty of the American Law Institute within the United States for guidance across individual states was amended in 2009 to remove its application in cases of murder.

## The importance of good information

Information about the use of the death penalty is well understood as a first step to bringing the issues out into the open. In the first place the public need to know to what extent executions are taking place and how many death sentences are being handed down. It is significant that a number of executing countries such as China, Iran, Belarus etc., classify the death penalty as a state secret.

Many retentionist countries have less than perfect legal systems and well-publicised miscarriages of justice provide powerful arguments against the death penalty. It can also be effective to raise the issue in terms of the fates of fellow countrymen who may be on death row abroad.

According to Professors Roger Hood and Caroline Hoyle of Oxford University - 'Systems of criminal justice need to be accountable to the citizens on whose behalf they enforce the law. They therefore need to be patently transparent: the more so where the death penalty is concerned and the lives of human beings are at risk from misapplication of the law by criminal justice agencies and from judicial error'.<sup>53</sup>

One of the main arguments about the death penalty is the role it plays in ensuring security, it is important to have good quality information about trends in serious crimes and policing and the operation of the criminal justice system in general. Yet for, homicides at least, a central issue is that there are significant data gaps in many regions of the world.<sup>54</sup> As the demand for public accountability is increasing across the world now is an opportune moment to improve the quality of data in these areas.

Generally, information for the public is important in helping it form a view about the death penalty. Surveys in Japan which compared the responses to questions about the death penalty from those who had been provided with information about the death penalty, the criminal justice system and crime rates show a distinct direct relationship between those who are better informed and those who support abolition.<sup>55</sup>

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<sup>53</sup> Hood R and Hoyle C: *The Death Penalty: A Worldwide Perspective*, 4th edition, Oxford University Press 2008

<sup>54</sup> UNODC (2011): *2011 Global Study on Homicide, Trends, Data, Contexts*: UNODC

<sup>55</sup> *The Death Penalty Project (2013): The Death Penalty in Japan: A Report on Japan's Legal Obligations under the ICCPR and an Assessment of Public Attitudes to Capital Punishment*: Death Penalty Project with the Centre for Prisoner's Rights 2013

# Can there be a national mandate for the death penalty?

## Summary of the arguments

For Abolition	Objections to Abolition
<p>The needs of victims and their families can be assured without recourse to capital punishment.</p>	<p>The death penalty is the only way to ensure murder victims justice.</p>
<p>Arguments that the death penalty needs to be retained because it enjoys popular public support are often based on false assumptions about public opinion.</p>	<p>Public opinion polls often show a majority in favour of the death penalty.</p>
<p>Arguments that the death penalty is a legitimate consequence of a particular national religion or culture can always be challenged</p>	<p>My religion demands that the death penalty is retained.</p>
<p>There are many ways to move toward abolition.</p>	<p>My country is not ready for full abolition at present.</p>

For Abolition	Objections to Abolition	For Abolition
<p>The death penalty appeals process means that victims repeatedly have to go over the details of the crime for many years.</p>	<p>The death penalty affords victim's families closure.</p>	<p>Many victims support the abolition of the death penalty and take no comfort from state killings.</p>
<p>Public support for the death penalty is declining in many places and there is little public support for the proposal that the death penalty is an effective deterrent.</p>	<p>A government cannot change the death penalty unless the public demands it.</p>	<p>Sometimes politicians must show a lead and the experience where this has happened is that the death penalty ceases to become a major issue for the public.</p>
<p>More robust questionnaires which probe public opinion on the death penalty and use scenarios indicate that the public's support of the death penalty is far less certain.</p>		
<p>There are countries with the same dominant religion who have abolished the death penalty.</p>	<p>Promoting abolition of the death penalty is an attack on my religion.</p>	<p>All religions have at their heart principles of justice and equality. As a human rights abuse the death penalty does not represent justice and routinely represents discrimination.</p>
<p>Religion has also been at the forefront of abolition in many countries.</p>		
<p>There are many ways in which the death penalty can be limited by adherence to international standards. UN resolution 67/176 provides a menu of options.</p>	<p>How does one think about implementing such options?</p>	<p>Think about implementation using the principles of strategic and utilising resources such as this one.</p>

Those retentionist governments who fall back on an argument that it is by public demand that they retain the death penalty and that it is a responsibility of democratic governments to follow such demand have a particular responsibility to release comprehensive data about the operation of their criminal justice system.

## Datasets which contribute to abolition via good governance, accountability and transparency

Dataset	Main Sources
Data on those executed	National/Regional Government
Data on those sentenced to death	National/Regional Government
Numbers on Death Row	National/Regional Government
Prison effectiveness and prison conditions	NGOs, human rights watchdogs, prison inspectorates, government and academic studies
Fairness, openness and compliance with international human rights standards of the administration of the death penalty	NGOs, UN Office of the Human Rights Commissioner
Fairness and openness of trial and sentencing procedures	NGOs, legal profession, human rights watchdogs
Details of abolition elsewhere	Abolitionist networks
Miscarriages of justice	NGOs, legal profession, human rights watchdogs
Crime rates and trends	Government and academic studies

### FURTHER INFORMATION

**Penal Reform International 'Abolition of the Death Penalty in the Arab World: Effective Strategies and Available Mechanisms:**

<http://www.penalreform.org/resource/abolition-death-penalty-arab-world-effective-strategies-mechanisms/>



# [ THE CASE FOR ABOLITION IN TERMS OF COST ]

## The cost of the death penalty

The costs associated with the administration of the death penalty are a particular issue in the USA where data on costs can be accurately determined. The issue has become increasingly important in a time of austerity when tax supported criminal justice, crime prevention and social inclusion services are subject to considerable financial constraints. This has led to a number of studies which have been carried out to analyse costs in several US states. The most comprehensive work has been carried out in California. The increased cost of death penalty cases are incurred in three main ways.

1. Increased level of preparation of evidence and testimony plus state born support for an increased level of defence for the accused. Death penalty cases last longer than non-death penalty cases. Defending a death penalty case in Kansas has been calculated as costing approximately four times as much as defending a non-death penalty case.<sup>56</sup>
2. Costs incurred by cases where a death penalty is handed down but is commuted to life imprisonment on appeal. This is estimated to occur in 50% of cases.<sup>57</sup>
3. The cost of holding a prisoner for life compared to holding someone on death row for a number of years and then executing them. According to Hands Off Cain; 'On average, in the United States, a death sentence costs between 1 and 3 million dollars, as compared to the 500,000 dollars a sentence of life without parole costs taxpayers.'<sup>58</sup>

In Maryland it has been calculated that a case where a death penalty has been successfully sought by the prosecution cost \$3 million, three times the cost of a case where it could have been sought but wasn't.<sup>59</sup> For California, it has been calculated that abolishing the death penalty would save \$170 million per year.<sup>60</sup> A proportion of the costs incurred stem from observance of constitutional and legal rights within the US of those accused and sentenced to death. To reduce costs by abandoning such rights is not an option; rather, serious problems in due process in prosecution and sentencing and the cruel and inhumane treatment of death row prisoners needs urgent attention as it is.<sup>61</sup>

<sup>56</sup> <http://www.deathpenaltyinfo.org/documents/KSCost2014.pdf> (accessed 4/14)

<sup>57</sup> <http://www.handsoffcain.info/bancadati/schedastato.php?idcontinente=26&nome=united%20states%20of%20america> (accessed 4/14)

<sup>58</sup> <http://www.handsoffcain.info/bancadati/schedastato.php?idcontinente=26&nome=united%20states%20of%20america> (accessed 4/14)

<sup>59</sup> Urban Institute(2008): The costs of the death penalty in Maryland:  
[http://www.urban.org/UploadedPDF/411625\\_md\\_death\\_penalty.pdf](http://www.urban.org/UploadedPDF/411625_md_death_penalty.pdf) (accessed 4/14)

<sup>60</sup> <http://www.deathpenaltyinfo.org/documents/LoyolaCalifCosts.pdf> (accessed 4/14)

<sup>61</sup> Centre for Constitutional Rights (CCR) and International Federation for Human Rights (FIDR) (2013): Discrimination, Torture and Execution: A Human Rights Analysis of the Death Penalty in California and Louisiana

# The cost case against the death penalty

## Summary of the arguments

For Abolition	Objections to Abolition
The cost to the criminal justice system and the prison system of keeping the death penalty and maintaining a death row system is increasingly being found to be prohibitive.	A firm enough belief in a strong response to the worst crimes justifies the high cost.

## Funding diverted from other public services

Expenditure on maintaining the death penalty represents a policy choice by state legislatures against other options known to have an impact on crime and violence – these include early interventions to improve child education, assistance with schooling to bolster graduation rates, mental health and drug treatment services.<sup>62</sup> Maintaining the death penalty is also impacting on other parts of the policing and criminal justice systems with police officers and prison staff being laid off.<sup>63</sup> Comparisons between the expenditure profiles of states and counties using the death penalty and those where it is abolished or not currently used demonstrate that expenditure on the death penalty is at the expense of preventive measures. A study of sentencing in the counties in California<sup>64</sup> found that just 10 counties handed out the most death sentences compared to neighbouring counties with similar demographics which used the death penalty far less. Of those 10 counties handing down the most death sentences 7 spent less than the state average per pupil on education.

For other countries retaining the death penalty the financial data may not be available to judge precisely how far maintaining the death penalty has become a financial millstone around the neck of government expenditure. However, the policy choices in terms of expenditure are the same throughout the world. Maintaining the death penalty will always be at the expense of other more crime management measures, several of which have been found to be more effective than capital punishment.

## The costs in trade and aid of maintaining the death penalty

Part of the debate on the death penalty in the USA is about its loss of reputation arising from the many human rights abuses entailed in administering the death penalty. For many other countries the potential economic consequences for diplomatic ties in terms of trade and aid could be more

<sup>62</sup> <http://www.ncadp.org/pages/cost> (accessed 4/14)

<sup>63</sup> <http://www.fnsa.org/v1n1/dieter.html> (accessed 4/14)

<sup>64</sup> ACLU California (2008): Death by Geography, a county by county analysis of the road to execution in California [http://www.deathpenalty.org/downloads/Death\\_By\\_Geography.pdf](http://www.deathpenalty.org/downloads/Death_By_Geography.pdf) (accessed 4/14)

For Abolition	Objections to Abolition	For Abolition
Sentences to life imprisonment protect the community from violent offenders and are significantly cheaper to administer than the death penalty.	Losing the ultimate deterrent is surrendering to violence and criminality.	Losing the death penalty will allow more funding for proven interventions in crime and violence prevention.
		Losing the death penalty and improving the national human rights profile will bring economic benefits in terms of trade and aid.

damaging. The European Commission, the world's largest donor of economic aid, lays down the following conditions:

"Commitment to the fundamental values of human rights, democracy and rule of law is essential for the establishment of any partnership and co-operation between the EU and third countries. General budget support is seen, by its very nature, as an implicit recognition that the partner country's overall policy stance and political governance is on track."<sup>65</sup>

Another example of a diplomatic mechanism is 'Partner for Democracy' Status with the Council of Europe. Countries from neighbouring regions to Council of Europe members may apply for partner for democracy status with its Parliamentary Assembly and enjoy much of the support of its institutions. In order to be granted such status they must, in general terms, agree explicitly 'to embrace the values of the Council of Europe, which are pluralist and gender parity-based democracy, the rule of law and respect for human rights and fundamental freedoms' and particularly give 'a commitment to act to abolish the death penalty and to encourage the competent authorities to introduce a moratorium on executions'.<sup>66</sup> To date, Morocco and the Palestine National Council have been granted Partner status, both in 2011 (although Palestine has yet to halt executions).

#### FURTHER INFORMATION

**US Death Penalty Information Centre :** <http://www.deathpenaltyinfo.org/costs-death-penalty>

**US National Coalition to Abolish the Death Penalty :** <http://www.ncadp.org/pages/cost>

<sup>65</sup> [http://ec.europa.eu/europeaid/how/delivering-aid/budget-support/documents/future\\_eu\\_budget\\_support\\_en.pdf](http://ec.europa.eu/europeaid/how/delivering-aid/budget-support/documents/future_eu_budget_support_en.pdf) (accessed 4/14)

<sup>66</sup> Council of Europe, Parliamentary Assembly, Rule 60, Partners for Democracy <http://assembly.coe.int/ASP/APFeaturesManager/defaultArtSiteView.asp?ID=996> (accessed 12/13)



# HOW PARLIAMENTARIANS CAN WORK TOGETHER

In addressing the issues outlined in the previous sections parliamentarians can be supported in a number of ways by activists including NGOs, faith groups, civil society organisations, and organisations representing professional interests such as lawyers. A list of the resources that Parliamentarians can draw upon is set out in the next section. Parliamentarians are generally very receptive to exchanges, discussions and support from other parliamentarians particularly those who have had equivalent political experiences or are facing broadly similar challenges. There are relevant global organisations aimed at bringing together parliamentarians such as the Inter-Parliamentary Union (IPU), which is increasingly willing to take on the death penalty issue as an important element within their human rights portfolios and Parliamentarians for Global Action (PGA), which has recently created a Global parliamentary platform for the abolition of the death penalty (see below for more information). There is also a multiplicity of other types networks of parliamentarians which include:

- Those based on specific regions. For example the emerging network of parliamentarians against the death penalty in the MENA region or the network of women parliamentarians of Central Africa (RFPAC).
- Networks based on specific issues such as the World Bank Initiative to establish a global network of parliamentarians against corruption.
- Those based on old political ties such as the Commonwealth Parliamentary Association (CPA) (Comprising the UK and the other countries in the Commonwealth).

These networks have either taken up the death penalty, have the potential to do so as they are concerned about human rights such as RFPAC or are addressing an important related issue such as anti –corruption. In dealing with corruption, public trust in state institutions such as the police and the criminal justice system is an important factor in ensuring their legitimacy. Similarly, the trust that the public has in state policing and criminal justice institutions is an important factor in shaping their views on the death penalty. The irreversibility of the death sentence becomes more of a concern when police practices are corrupt and miscarriages of justice are known to occur.

There are a number of ways in which this parliamentarian to parliamentarian peer support can be provided.

## Individual support

Engaging with individual parliamentarians in retentionist countries; putting them in touch with abolitionist parliamentarians in other retentionist and, where appropriate, abolitionist countries; providing information, training opportunities and opportunities to take part in events.

## Advocacy

Advice to parliamentarians in engaging with their key stakeholders on the death penalty issue. These will include: their political party, both in terms of its organisation and policies; the political parliamentary group to which they belong; their main sponsors in terms of elections, such as trade unions or the private sector, and finally, their constituents.

## Strategic approach

Encouragement for abolitionist parliamentarians to develop strategic approaches to abolition in their countries:

This may include identifying the following:

- a. the strengths and weaknesses of the position of abolitionists within their country;
- b. the major obstacles to and opportunities for raising the death penalty issue;
- c. the allies that they can hope to engage with the issue;
- d. long term objectives and short term mini-steps in order to work towards longer term goals;
- e. the issues that drive retention and the evidence and arguments that are the most effective in addressing those issues.<sup>67</sup>

## Flexibility

Ensuring flexibility: Although the abolition of the DP is based on the respect of universal rights, there is no one-size-fits-all approach to achieving the abolition of the death penalty and account needs to be taken of different histories, politics, culture and economic circumstances between countries. Inter-parliamentary exchanges need to acknowledge these differences whilst seeking to apply transferable lessons from one country's experience to another.

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<sup>67</sup> For a fuller account of a strategic approach to death penalty issues see 'Abolition of the Death Penalty in the Arab World: Effective Strategies and Available Mechanisms: Penal Reform International (2013).

# Networks

These can include:

- National parliamentary networks: Assisting individual parliamentarians to join with and apply to both chambers of parliament. Parliamentarians can look to the success in establishing such a network in Morocco as a positive move toward abolition.
- Regional parliamentary networks: Promoting regional networks of parliamentarians where groups of retentionist countries have common ties and are facing broadly equivalent challenges. For example the emerging regional parliamentary network for the MENA region. (See below for 'Creating a Parliamentary Network').
- International parliamentary network: Joining the largest network of parliamentarians which has created a global parliamentary platform on the abolition of the death penalty: Parliamentarians for Global Action (PGA). PGA is "a non-profit, non-partisan international network of approximately 1100 legislators in 141 elected parliaments around the globe that informs and mobilizes parliamentarians to promote the respect and protection of all human rights under the primacy of the Rule of Law, in order to realise the vision of PGA "to contribute the creation of a rules-based international order for a more equitable, safe and democratic world". Despite the many actions undertaken by parliamentarians worldwide, with support of dedicated international and national human rights organizations, until recently there has been no international grouping or network of parliamentarians devoted to abolition of the death penalty. Under the leadership of its Executive Committee, PGA decided therefore to establish in 2013 a Global Parliamentary Platform for the abolition of the death penalty to support, enhance and maximise the impact of the individual initiatives of parliamentarians worldwide on the abolition of the death penalty, as well as to launch and coordinate targeted campaigns in selected countries. As such, in June 2014, PGA has been recognised as the international parliamentary network by the General Assembly of the World Coalition in Puerto Rico. The global parliamentary platform in support of abolition is thus open to all interested Parliamentarians world-wide and based on the full support of its strong membership already mobilised to work on international law and human rights issues: the platform is at the disposal of MPs to exchange information and promote action, including legislative action to abolish the death penalty, or any related action, such as the establishment of a de jure moratorium, the restriction of the use of the death penalty and/or the application of minimum standards on its use.

## International campaigns

Parliamentary networks, in co-operation with NGOs and with the support of regional and national coalitions and the World Coalition Against the Death Penalty can campaign for increased support of UN resolutions on a moratorium on the use of the death penalty.

There should be encouragement of feedback and intelligence about campaigns and other initiatives. However, parliamentarians in retentionist countries should not simply be passive recipients of support and resources from elsewhere.

They should be encouraged to share their experiences, their challenges and their successes via parliamentary networks in order to maximise learning within the global abolitionist movement.



# SETTING UP A NATIONAL PARLIAMENTARY NETWORK AGAINST THE DEATH PENALTY

Although a parliamentary network will have links to abolitionists and campaigners outside its parliament its primary focus will be on the national or regional assembly and its programme of legislation. Its role is to highlight and address critical issues for abolition of the death penalty within parliament and to initiate bills and amendments to either promote abolition or to challenge pro death penalty measures. The role of parliamentarians in shaping legislation can vary depending on the type of government system is in place. The three main types are a parliamentary system where a parliamentarian belongs to a party that is either in government or not; a presidential system where they may be in a party aligned to the president but not part of the government executive and; a semi-presidential system where the president is elected as head of government but the government cabinet is formed from parliament. Outside of government their role is much more to initiate informed debate on the issue. As a network they can make best use of the resources available at a national or international level.

The structure of the network may depend on the commitment that members can give to it and any national laws governing the creation and governance of special interest or cross-party groups. Although networks can range from informal groups to much more structured organisations it is recommended that as a minimum they aim to have a footprint which includes contact details and a published programme of activities.

## [ INITIAL STEPS IN SETTING UP A NETWORK ]

### **Members**

1. Build a broad base of support. Perhaps start with sympathetic members from a particular party but try and engage with those from other parties. Concentrate initially on those willing to be involved in founding and building the network.
2. Recognise that different members will be willing and able to give varying levels of commitment and that commitment may also vary at different times.

- a. Activists and leaders within the legislative process or the debate.
  - b. Sympathisers who are willing to lend their names to petitions, motions, letters and so on.
  - c. Names who are happy to be seen to be part of the network but are not otherwise active.
3. Parliamentarians who are opposed to the death penalty can be opposed for different reasons which can include:
- a. Human rights and fairness in the light of imperfect criminal justice systems.
  - b. Ineffectiveness of the death penalty as a violence prevention or reduction measure and in terms of achieving public security.
  - c. High cost of maintaining capital punishment.

Ways should be found of including all these perspectives within the network and identifying those members who are the most credible to present the relevant arguments. See below for an example of how this issue is being tackled creatively in the USA.

## CASE STUDY

### THE CONSTITUTION PROJECT (TCP)

#### 'ENGAGING UNLIKELY ALLIES' INITIATIVE

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The 'Engaging Unlikely Allies' initiative is designed to foster criminal justice reform in the USA. As far as the death penalty is concerned, it is based on the simple but important premise that those who support the abolition of the death penalty may do so for very different reasons and supporters may agree on very little else. Further, those who are concerned about the death penalty primarily because of its lack of effectiveness and its cost, and are not traditionally seen as being opposed, make some of the most powerful voices for abolition. The TCP keeps a database of 'Unlikely Allies' in the USA and argues for a pragmatic approach to achieving abolition as follows.

"...the death penalty debate is often thought of as a debate between those who are "pro-" and "anti-" death penalty. For years, those against the death penalty sought to convince those in favor of it that the death penalty must end, for the sole reason that it is immoral. However, while a minority of the public believes that capital punishment is immoral, most Americans disagree. The morality argument is thus generally unproductive in building a majority in favor of abolition or even reform. So, don't try to convert them. If an unlikely ally supports the death penalty, and you disfavor it, there's no need to discuss the morality of the death penalty. Maybe you can agree that the system convicts too many innocent people or makes too many mistakes. That, not the morality of the death penalty, should be the starting point for a conversation in which you are asking them to support for badly-needed reforms. Often, even those who support capital punishment in the abstract end up opposing it because they learn more about the system and come to believe that the problems with the system will never be sufficiently repaired."<sup>68</sup>

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<sup>68</sup> For a fuller account of a strategic approach to death penalty issues see 'Abolition of the Death Penalty in the Arab World: Effective Strategies and Available Mechanisms: Penal Reform International (2013).

# Publicity

- Agree a mission statement that captures your central goals.
- Launch your network with a public event to ensure maximum press coverage.
- Develop a good relationship with the media.
- Agree on a name or slogan for the network which has the best impact. (for example the World Coalition initiative in the Caribbean has the slogan 'Stop Crime Not Lives' which addresses legitimate public concerns about security).

Where possible use new technology to promote the network, keep in touch with other networks and facilitate the sharing of ideas, contacts, resources and good practice.

# Influence

The aim of the network will be to influence policy. In order to do this it will be necessary to influence a number of different communities of interest. These include:

- Fellow parliamentarians particularly those who are or will be holding government office.
- Government officials and civil servants.
- Interests within society such as the business community.
- The Press.
- The public.

For each of these communities of interest it will be necessary to think about: the best arguments to deploy, using sound data and the most up to date evidence; who is best placed to deliver the argument and; what is the best forum for the discussion to take place. In order for all these decisions to be made it is the responsibility of the members of the network to keep themselves informed.

# Establish a system of governance for the network

- Check any laws or regulations governing networks that may affect yours. For example, the European Parliament specifies a minimum membership of 19 members before a network can claim financial support. (see also case study on the UK All-Party Group below).
- Whilst observing basic democratic principles for the group, in terms of periodic election of officers and so on, don't make structures unnecessarily overcomplicated. Make structures and procedures as straightforward as possible.
- Whilst not restricting the enthusiasm of individual members be quite careful about who is given authority to represent and speak for the Group (normally the chair followed by the other officers unless individuals are specifically designated a role).

- If the network wishes to attract resources to support its work decide on a fundraising strategy. If staff support is agreed decide on a clear accountability system and distinct roles between staffing and members.

## Links with other abolitionist parliamentarians, groups and organisations

- Build links with regional and global networks for the abolition of the death penalty.
- Use opportunities such as regional and world events to make such links.
- Make use of the United Nation's biennial vote on a moratorium for the death penalty to encourage your government to engage with the abolitionist majority at UN level.

## Programme of work

As in the check list for a strategic approach given above identify a programme of work including: strengths, weaknesses, opportunities and threats (SWOT) analysis; identifying potential allies; agreeing short and long terms goals and; devising the best arguments for abolition within the national context.

On an ongoing basis, monitor developments both domestically and internationally. This can include:

- The relevant legislative programme particularly constitutional review.
- The work of relevant departments including justice, policing and prison departments and those responsible for prevention and social cohesion as well. Collect figures on crime trends, sentencing and incarceration levels particularly death row prisoners.
- The press particularly if there is a trend to more positive coverage of the question of abolishing the death penalty and equally if there are campaigns to reintroduce the death penalty or widen the range of capital crimes as a result of significantly abhorrent crimes.
- Your country's treaty obligations and compliance with human rights protocols and conventions.

It is hoped that at some point you will be introducing or sponsoring the introduction of new legislation: You will need to decide:

- What is possible - complete abolition of the death penalty in law or a moratorium or a restriction capital crimes for example;
- Whether the aim is to raise the issue by introducing legislation or to change the existing law;
- Tactics – identifying those definitely for, against and the undecided and how to focus on that crucial third group;
- Ways and means in which the issues can be aired and the arguments set out in the run up to a vote (See the example of an expert commission in the California case study) and;
- The best figurehead for the introduction of the bill.

# CASE STUDY

## THE UK ALL-PARTY PARLIAMENTARY GROUP (APPG) FOR THE ABOLITION OF THE DEATH PENALTY

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The UK APPG on the Abolition of the Death Penalty is a long standing All-Party Group within the UK parliamentary system. In general, All-Party Groups (APGs) are informal cross-party groups that have no official status within Parliament. They are essentially run by and for Members of the two Chambers within Parliament, although many groups involve individuals and organisations from outside Parliament in their administration and activities. In order to be recognised on the Parliamentary Register of All-Party Groups a Group has to meet the following conditions:

- It is open to all members of the House of Commons and House of Lords.
- It has a minimum of 20 members of which 10 must be from the party of government and 10 from other parties but at least 6 from the main opposition party.
- It has an Annual General Meeting every year which is publicised.
- It publicly declares any external financial support or support in kind and any material benefits received by members in undertaking work on behalf of the Group.

A benefit of being recognised is that the office, new technology and meeting room facilities available to parliamentarians can be legitimately used on APPG business. The APPG on the Abolition of the Death Penalty has 40+ members but a much larger group of sympathisers. It has organised a number of events on the death penalty in the UK, corresponds with governments in retentionist countries over particular death penalty cases and has taken up issues such as restricting the availability of drugs for lethal injections in the USA from UK suppliers. In recent years it has developed a programme of visits to retentionist countries by its members many of whom have previously held office within the UK government.

The purpose of the visits is to engage with the government on the issue of the death penalty, to make links with and encourage abolitionist parliamentarians and to support the work of local campaigners for abolition. To date it has visited retentionist countries in Asia, the MENA region, Africa, the Caribbean and the USA. It receives financial support from the UK Foreign and Commonwealth Office and from philanthropic trusts.

## CASE STUDY

### THE EUROPEAN PARLIAMENT

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At European level the European External Action Service is extremely active in speaking out against human rights violations involving the death penalty and it supports many abolitionist programmes. As far as parliamentarians are concerned there is no specific group within the European Parliament dedicated to the global abolition of the death penalty. However, parliamentarians at the European level have been active in a number of ways in promoting abolition outside Europe.

- They have pressed for the European ban on the export of drugs to the USA for the purpose of lethal injections.
- They have reaffirmed their opposition to the death penalty ‘in all cases and under all circumstances’ via a resolution in the European Parliament in 2010.
- The Committee within the European Parliament which covers the death penalty is the Subcommittee on Human Rights which has existed in its current form since 2004. It has 30 members. The Subcommittee organises hearings and discussions on a range of human rights issues including the death penalty. It then adopts reports and resolutions, thus contributing to the international debate. For example, in May 2013, it condemned the execution in India of Mohammad Afzal Guru and called upon the Indian government to implement a moratorium on the death penalty.
- A number of members of the European Parliament are active within Parliamentarians for Global Action (PGA) and have the potential to provide peer to peer support for abolitionist parliamentarians outside Europe as part of the global platform for the abolition of the death penalty created by the PGA.

## CASE STUDY

### MOROCCO, THE ROLE OF PARLIAMENTARY NETWORKS

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An active and influential parliamentary network has been established in Morocco and was formally launched on the 26th February 2013. It currently has 208 members from both chambers in the Moroccan Parliament and representing a range of different political positions. It started with a group of 10 members in October 2012. It seeks the abolition of the death penalty and wide-ranging criminal justice and penal reform with a human rights focus.

It is non-partisan in its approach aiming at engaging sympathisers from across the political spectrum and focuses on advocacy with parties and individual MPs. It is linked to a national coalition of 11 human rights organisations and aims to work more closely with the media. In November 2013 a draft bill was being prepared for the lower chamber within the Moroccan Parliament to repeal the

death penalty and to address conditions on death row. It is yet to be discussed. At the closing session of the 5th World Congress Against the Death Penalty held in Madrid in June 2013, the Moroccan network launched an international call for the creation of similar networks elsewhere.

The last execution in Morocco took place in 1993 making it abolitionist in practice. However 10 people were sentenced to death in 2012 and there are 115 people on death row.<sup>69</sup> The drive toward abolition is part of an emerging liberalisation with constitutional reform being carried out in 2010/11 and more power being devolved to the Moroccan Parliament. The move toward the abolition of capital punishment is also linked to reform of criminal justice to ensure fairness and integrity within the system. According to Article 20 of the new national constitution, drawn up in 2011, "the right to life is the first right of every human being."

The criminal justice system is acknowledged to have problems. For example, prosecutors have very little time (48 hours) to prepare a case and deal with a caseload of 40 per day. This encourages the extraction of confessions under duress and an overemphasis on remands in custody. It is estimated that 50% of prisoners and two thirds of those condemned to death have psychological problems and the majority are poor and illiterate. According to the Moroccan government these problems are beginning to be addressed and it is acknowledged that improvements in criminal justice will help the cause of abolition. But according to the UN Human Rights Review in 2012 further improvements in the prison were recommended.<sup>70</sup>

These developments have grown out of a process of truth, equity and reconciliation from the period under the previous King, Hassan 2 (the so called 'Years of Lead') and the liberalisation of many former communist states. The Equity and Reconciliation Committee was set up in 2004<sup>71</sup> and led to a recommendation in 2005 for Morocco to sign up to the Second Optional Protocol of the ICCPR. Also the government announced in 2007, that the country would move towards the abolition of the death penalty and more recently, in 2012, the statement of support from the King of Morocco for constitutional reform has provided a favourable context for a move toward abolition. Remaining challenges include a review and revision of the current criminal code which is seen as a legacy of previous regimes.

The Moroccan Parliament has successfully applied for 'Partner in Democracy' with the Parliamentary Assembly of the Council of Europe and is the first to apply for and be granted this status.<sup>72</sup> Partner in Democracy status includes a commitment, identified as of key importance, to 'abolishing the death penalty set out in the Penal Code, going beyond the de facto moratorium on executions...'<sup>73</sup>

In 2012 the first regional congress against the death penalty was held in Rabat organised by the French NGO Ensemble Contre la Peine de Mort and the Moroccan Coalition Against the Death Penalty.

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<sup>69</sup> Ensemble Contre La Peine de Mort (2013): Inquiry

<sup>70</sup> UN Human Rights: Universal Periodic Review Second Cycle – Morocco: May 2012

<sup>71</sup> <http://www.ictj.org/publications?keys=morocco&language%5B%5D=en>

<sup>72</sup> Council of Europe Parliamentary Assembly Resolution 1942 (2013): <http://assembly.coe.int/ASP/XRef/X2H-DW-XSL.asp?fileid=19934&lang=EN> (accessed 12/13)

<sup>73</sup> Council of Europe Parliamentary Assembly Resolution 1818 para 8.8 <http://assembly.coe.int/ASP/XRef/X2H-DW-XSL.asp?fileid=18002&lang=en> (accessed 12/13)





# APPENDIX

## THE EXPERIENCE OF PARLIAMENTARIANS IN ABOLITION

### CASE STUDIES

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The case studies will focus on the experience of those countries which have recently abolished, or moved towards abolition. The case studies will include:

- examples of how abolition has been achieved within those regions where the majority of retentionist countries remain – Middle East, Africa, Asia, the Caribbean and the USA.
- progress in taking steps towards abolition – such as restricting the offences for which the death penalty applies, restricting those eligible for the death penalty such as children, ensuring that the legislative processes, particularly appeals, are robust, ensuring conditions on death row are humane, improving the integrity of criminal justice systems generally to address public insecurity, moving from moratoriums on the death penalty to abolishing it in law and so on.
- An analysis of the legal instruments which were employed to move toward abolition
- An assessment of the different challenges depending on the particular features of national governance within countries. For example, the relative power between parliament and an individual head of state such as a president or monarch.
- Lessons from the experiences. Why successes in abolition were successful? What was learned from any failures? What were the limits to success and why was success limited? What were the main challenges?

## ASIAN REGION

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Asia accounts for a clear majority of the executions currently taking place in the world. It includes countries with the highest numbers and rates of execution, a number of countries which have official and unofficial moratoriums and simply have not executed anyone for some time or are abolitionist. Some Asian countries illustrate the problems with moratoriums or de facto abolition which have led to increases in the death row population. For example there are 8,000 inmates on death row in Pakistan and over 900 in Malaysia.

Some of these arrangements are also fragile as witnessed by the resumption of the death penalty in India, Indonesia, Malaysia and Vietnam in the 2012 and 2013. Asia, unlike many other regions of the world does not have a regional body that addresses or campaigns for the abolition of the death penalty such as the African Commission for Human and Peoples Rights or the Organization of American States. One regional body within Asia, the Asian Association of South-east Asian Nations, has a constitution that allows each member a veto. This virtually precludes any discussion on topics where there is a difference of opinion between member states.

## CASE STUDY THE PHILIPPINES

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After President Marcos was deposed in 1986, the newly-drafted Constitution limited the application of the death penalty to a few crimes which in effect meant that it was abolished in practice. The Philippines was the first Asian country to do so. The Constitution also gave the Philippine Congress the power to reintroduce the death penalty.

Accordingly, in 1993, Congress reintroduced the death penalty for 'heinous crimes' which could include murder and car theft. Following this there was a cycle of moratoria and re-introductions of the death penalty under successive presidencies. Even the President who was to finally to introduce legislation to abolish the death penalty, President Gloria Macapagal-Arroyo, threatened to go back on a moratorium in 2001 as a response to increases in kidnappings.

In 2006 following a campaign led by the Free Legal Assistance Group (FLAG) and an overwhelming vote on the issue in the Philippines' Congress, President Arroyo introduced legislation which replaced the death penalty with life imprisonment or an indeterminate sentence with a minimum of 30 years. In the same year, the sentences of 1,230 death row inmates were commuted to life imprisonment, in what Amnesty International believes to be the "largest ever commutation of death sentences".<sup>74</sup>

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<sup>74</sup> <http://web.amnesty.org/library/Index/ENGASA350032006?open&of=ENG-PHL>

The Philippines has also ratified the Second Optional Protocol to the ICCPR (2007) although the reintroduction of the death penalty is still a possibility with the Constitution.

The death penalty has attracted and continues to attract strong advocates and opponents in the Philippines. The Philippine Evangelical Church supports the death penalty whilst the far more widely supported Catholic Church is opposed. In the years leading up to final abolition parliamentarians in both Houses within its Congress were active in both introducing bills to extend its application (2001) and to abolish the death penalty (2002). By 2006 there were overwhelming majorities in both the Senate and the House of Representatives for abolition even though there had been several coup attempts against the Arroyo Presidency. It has been suggested that the decision to abolish was in part an attempt to appease international criticism of the Philippine Government for being repressive.<sup>75</sup>

## CASE STUDY **REPUBLIC OF CHINA (TAIWAN)**

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Taiwan emerged from a military regime in 1987 where the death penalty and other human rights abuses were commonplace. Taiwan had a moratorium on the death penalty between 2006 and 2009 following a number of well publicised miscarriages of justice but then resumed executions and 4 to 6 people have been executed each year since. Although there are a range of offences which attract the death penalty including treason and espionage all recent executions have involved cases of murder. For example, the Supreme Court has not given death sentences for drug trafficking recently. Information about executions and death row prisoners is not made readily available by the government.

In response to international pressure the government has set up a Committee to review options for gradual moves towards abolition. In 2009 Taiwan incorporated into law the ICCPR which effectively meant limiting the use of the death penalty to the 'most serious offences' and it seemed that progress was being made but a resumption of executions took place shortly after this process.

70 to 80 percent of the general public support the use of the death penalty but this is based on government surveys. The move towards abolition is part of a move towards better human rights generally. This includes a criminal justice system which people trust, fair trials and so on.

## CASE STUDY **THAILAND**

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The last execution in the Kingdom of Thailand took place in 2009 by lethal injection. According to the Thai Department of Corrections there are currently 112 people on death row. Thailand has an extensive list of capital crimes which includes drug offences (both possession and trafficking) and bribery. In these the death penalty is not mandatory but the penal code does not always provide

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<sup>75</sup> National Coalition Against the Death Penalty  
<http://ncadp.proboards.com/index.cgi?board=goodnews&action=display&thread=137> (accessed 12/13)

for alternative sanctions. Conditions on death row are overcrowded; they are understaffed and health and sanitation is poor.

Even though Thailand is a signatory to the ICCPR which determines that the death penalty shall be reserved for the 'most serious crimes', it hands down death sentences for drug offences even though these have been determined by the UN Human Rights Committee as not constituting 'most serious crimes'.

Thailand has taken a number of significant steps towards abolition in recent years. These include:

2012 – legislation to abolish the death penalty for those under 18;

2012 – a royal pardon for those on death row with a commutation of their sentence to life imprisonment;

2013 – Minister of Justice announces proposed legislation on abolition and an intention to sign the Second Optional Protocol of the ICCPR;

2014 – Inclusion in the Thai Human Rights Plan of a plan for abolition of the death penalty including a public consultation and a parliamentary debate;

2014 – Protests against the government and the seizing of power by a military junta have seriously impeded reforms with respect to the death penalty. It will require pressure from abolitionist parliamentarians to get the death penalty back on the political agenda.

## CASE STUDY **TAJIKISTAN**

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The Republic of Tajikistan declared a moratorium on the death penalty on the 15th July 2004 and there have been no executions since then but their criminal code still allows for the death penalty for 5 types of crime including terrorism, genocide, aggravated murder and rape of a minor, genocide and biocide.<sup>76</sup> Further, the criminal code was amended in 2005 to allow for alternative life sentences for these crimes. All death sentences have been commuted to sentences of life imprisonment as part of the moratorium and there are currently no prisoners on death row.<sup>77</sup>

Like many of the states formed after the collapse of the Soviet Union Tajikistan's declaration is in part to mark a distinction with the previous regime. However, unlike other states such as Mongolia which has successfully abolished the death penalty it has struggled to take the steps towards abolition in law and adoption of the Second Optional Protocol of the ICCPR.

Following participation in the 4th World Congress Against the Death Penalty in Geneva in 2010 Tajikistan set up a Working Group on the Death Penalty to study social and legal aspects of abolition. This was in part a response to international pressure to complete the process of abolition. It is also

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<sup>76</sup> <http://legislationline.org/topics/country/49/topic/11> (accessed 12/13)

<sup>77</sup> Op cit

to address concerns from the government that a decision on full abolition should carry public support that it is provided with persuasive evidence that abolition is not associated with increases in crime and that the prison system is capable of managing those who are sentenced to terms of life imprisonment.<sup>78</sup> The Working Group was due to report in 2012 but had not done so by the end of 2013 despite pressure from the UN and the EU.

These arguments have been aired at a conference organised by the League of Women Lawyers of Tajikistan in 2011 – ‘Central Asia without the Death Penalty’.

The impact of this and initiatives arising from the event such as setting up a new website on abolition (<http://www.deathpenaltyabolition.tj/>) has been to broaden the debate on abolition and give a public airing to the key issues.

## CASE STUDY **SOUTH KOREA**

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South Korea is considered by the UN to be de facto abolitionist as it has not executed anyone since 1997. It still passes sentences of the death penalty and there are understood to be over 60 people on death row.<sup>79</sup> There are many offences for which the death penalty is eligible including – robbery, rape, kidnapping and drug trafficking. The large number of capital offences has been reduced marginally. For example, in April of 2013 the Act on the Aggravated Punishment, etc. of Specific Crimes was amended to remove ‘conspiracy to commit gang robbery’ from the list of capital offences.

South Korea has a prison overcrowding problem and there are particular human rights abuses such as the use of manacles. It is understood that there is a consensus that criminals are not entitled to human rights and that this is behind many rights abuses in prisons. There is little public debate on these issues.<sup>80</sup> In its report on South Korea in 2006 the UN Human Rights Committee stated concerns about criminal justice procedures including: - access to legal representation; detention without arrest; and detention of those arrested without being brought before a judge.<sup>81</sup>

Initial momentum towards abolishing the death penalty was brought about by President Kim Dae-jung, (1997 to 2002). He, himself had been sentenced to death by a military court in 1980, on charges of treason. He was the first South Korean President to not approve executions. He made a strong case for a link between the need for abolition and the development of democracy arguing - *Capital punishment goes against the foundation of democracy. Democracy regards the life of a human being as the most cherished thing in the world, and to end a person’s life even in the name of the law clearly runs counter to the basic principles of human rights.*<sup>82</sup>

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<sup>78</sup> Presentation by Presidential Counsellor of State on Legal Affairs Mr Juma Davlatov  
<http://www.deathpenaltyabolition.tj/en/component/content/article/54-home-page> (accessed 12/13)

<sup>79</sup> Amnesty International Report 2013, Amnesty International Report, Amnesty International, 2013, pp. 162–164

<sup>80</sup> <http://www.deathpenaltyworldwide.org/country-search-post.cfm?country=South+Korea#f9-6> (accessed 12/13)

<sup>81</sup> [http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/f6036667b5c5702ac12572580051f337/\\$FILE/G0645814.pdf](http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/f6036667b5c5702ac12572580051f337/$FILE/G0645814.pdf)  
(accessed 12/13)

<sup>82</sup> Johnston D, Zimring F (2009): Kim Dae Jung quoted in *The Next Frontier: National Development, Political Change, and the Death Penalty in Asia*: OUP (2009)

The moratorium in South Korea is fragile. In 2010 the South Korean Supreme Court ruled by 5 votes to 4 that the death penalty was not a violation of its constitution making the moratorium vulnerable to shifts in national politics.

As with many areas which have de facto moratoriums there has been strong public pressure to reinstate the death penalty in response to well publicised horrific crimes.

## CASE STUDY SINGAPORE

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Although Singapore is classed as a retentionist country the number of executions is thought to have reduced in recent years from a very high rate in the nineties. According to the Singapore Prison Service four executions took place in 2011 but none in 2012 or 2013. There are understood to be thirty two people on death row. Executions resumed in July 2014.<sup>83</sup>

A review of the mandatory death penalty in Singapore's penal laws had found that apart from certain types of homicides, the death sentence will no longer be mandatory but be at the discretion of the courts. According to Minister for Law K Shanmugam - *"This change will ensure that our sentencing framework properly balances the various objectives: justice to the victim, justice to society, justice to the accused, and mercy in appropriate cases ... This is a matter of judgement and the approach being taken is not without risks, but we believe this is a step we can take."* Part of the explanation for introducing the measure was that it was meant to reflect changing norms and expectations within society. As part of a review of cases undertaken following the amendment to the law a death sentence for drug trafficking was commuted to life imprisonment and fifteen strokes of the cane in 2013

## CASE STUDY JAPAN

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Despite a pause in executions between 2007 and 2010 Japan continues to regularly execute prisoners, executing three in 2012, six in 2013 and a further 3 by September 2014 This policy is associated with, although not exclusive to the centre right in government but is against the trend in the region for countries to reduce the numbers of those executed. Japan is also anomalous in retaining the death penalty as it has a relatively mature democracy and has, compared to Europe and the USA, a very low crime rate.<sup>84</sup>

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<sup>83</sup> <http://www.worldcoalition.org/singapore-drugs-most-serious-crimes-moratorium-executions.html>

<sup>84</sup> Crime and Society: A comparative criminology tour of the world

[http://www-rohan.sdsu.edu/faculty/rwinslow/asia\\_pacific/japan.html](http://www-rohan.sdsu.edu/faculty/rwinslow/asia_pacific/japan.html) (accessed 12/13)

Public opinion has generally been quoted as being in favour of the death penalty and is seen more generally to be an important influence on government policy. The role of political leadership in guiding policy in this issue at least is of thought to be of secondary importance. Government surveys on the death penalty have been carried out since 1956 and take place about once every five years. The last survey was carried out in 2009. The original surveys had a question design of 'do you support the death penalty' with the options 'yes', 'no' and 'don't know'. The government changed this question as there were a large proportion of don't knows and it was thought that 'don't know' was somehow not a valid response. The most recent surveys suggest that 86% of the public support the death penalty although the questionnaire methodology has been questioned (see below).

Despite this apparent public mandate for the death penalty there have been a number of cases where particular Ministers of Justice, who have responsibility for signing death warrants, have struggled between their personal convictions against the use of the death penalty and expectations on them that their duty is to carry out the obligations of their office. In 2010 the outgoing Minister of Justice initiated a 'Study Panel' with the aim of initiating a nation-wide debate on the death penalty. The Panel was disbanded in 2012 without reaching any conclusions.<sup>85</sup>

In 2009 the introduction of trial by jury and the fact that journalists were allowed to publish pictures of execution rooms sparked a modest public debate on criminal justice and punishment but it has not been sustained. There has been disappointment expressed that the promised public debate about the death penalty has not taken place and executions have continued. This is perhaps part of the culture of secrecy that surrounds the death penalty in Japan. Prisoners on death row are held in solitary confinement and told of their execution on the morning when it is due to take place.

The secrecy surrounding the death penalty in Japan also has implications for the families of those facing the death penalty particularly the children. They face considerable stigma, a lack of support and have very limited opportunities to communicate with and visit their parent on death row.<sup>86</sup>

There is also a lack of awareness in Japan about the international debate on the death penalty as a human rights issue. There is an established group of parliamentarians opposed to the death penalty within the Japanese Parliament (Diet) but they have been relatively secretive for fear of a public backlash.<sup>87</sup>

Currently reasons that the Japanese Government cites for maintaining the death penalty is the high public support for the death penalty as indicated in government surveys. However, independent analysis of these surveys shows that the question design is flawed. The option for the death penalty is worded in such a way that is open and invites agreement and the option for abolition is phrased in a more constricting manner.

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<sup>85</sup> <http://www.japantimes.co.jp/news/2012/04/01/news/ogawa-assailed-after-scrapping-plan-to-set-up-death-penalty-discussion-panel/> (accessed Nov 13)

<sup>86</sup> Quaker United Nations Office (August 2014): Children of parents sentenced to death or executed: Developments, good practices, next steps:

<sup>87</sup> International Federation of Human Rights (FIDR) (2008): The Death Penalty in Japan: The Law of Silence

More scientifically worded surveys which also seek to explore what is behind public attitudes to the death penalty and surveys which give the public more information about the death penalty and its administration have been recently carried out in Japan. The methodology included the following. In the first place the questions of the government survey – for abolition ‘the death should be abolished in all circumstances’ and against abolition ‘the death penalty is unavoidable in some cases’ were replaced by more even handed questions; for abolition - ‘the death penalty should be definitely abolished’ and ‘the death penalty should probably be abolished’; and against – ‘the death penalty should be definitely kept’ and ‘the death penalty should probably be kept’.

Secondly two sampled comparison groups were given both the surveys. One of the groups was given background information about the death penalty, including the international movement towards abolition, the administration of the death penalty in Japan, miscarriages of justice in Japan and so on. The provision of information made no difference to the results of the government survey but the group given information and completing the more even handed survey showed less support for the death penalty. Overall the surveys show that public support is far more nuanced and qualified than the Government suggests.<sup>88</sup>

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<sup>88</sup> Death Penalty Project (2013): The Death Penalty in Japan A Report on Japan’s legal obligations under the International Covenant on Civil and Political Rights and an assessment of public attitudes to capital punishment



## MENA REGION

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The Middle East and North African (MENA) Region includes a group of states which share aspects of culture, language and religion but are diverse in terms of the economy, political systems and history. In terms of the death penalty most states retain capital punishment in practice or in law. Islam and Sharia Law are major considerations for the region. The region is also generating new networks of parliamentarians against the death penalty such as the well established one in Morocco.

## CASE STUDY **IRAQ** AT THE BEGINNING OF THE ABOLITION PROCESS

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The use of the death penalty was widespread under the regime of Saddam Hussein and since the restoration of the Iraqi Government in 2004 use of the death penalty has continued. Following the Coalition intervention in Iraq there has been acute political instability and the 2,200 executions that have been carried out since then have reflected this. For example of the 120+ (the precise figure is unknown) executions in 2009 the majority were for alleged terrorist offences.<sup>89</sup>

The beginnings of a debate about abolition in Iraq are being initiated via a series of workshops for university students and teachers, lawyers and civil society organizations to put pressure on the Iraqi parliament to pass laws limiting the death penalty.

The challenge is that many in Iraqi society are not convinced by 'amnesty' and tolerance and are not aware of the debate about the death penalty elsewhere in the world and the movement pressing for abolition.

## CASE STUDY **LEBANON**

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Lebanon retains the use of capital punishment and the most recent executions were carried out in 2004 when three murderers were hung. It had previously revoked the use of the mandatory death penalty in 2001. This was one of the early successes of a campaign against the death penalty initiated in 1998 by a number of NGOs including the Association for Justice and Mercy. It has been an extremely persistent and active campaign and is largely responsible for the 2004 moratorium.

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<sup>89</sup> Newton M A (2013): Death Penalty and the Iraqi Transition; Observations on a lost opportunity: Vanderbilt University Law School, Public Law and Legal Theory, working paper 12-45: 2013

Capital crimes include murder, espionage, treason, terrorism, and collaborating with the Israelis. There are currently more than 200 people on death row including 50 convicted of espionage on behalf of Israel. The President's office has the power to confirm death penalties or pardon those condemned to death. A previous president, Emile Lahoud, declared a moratorium between 1998 and 2000 after a period of executions carried out in the aftermath of the Lebanese civil war between 1975 and 1990.

There have been a number of initiatives to remove the death penalty. These include 3 bills between 2001 and 2009. A report of the Lebanese Association for Civil Rights (LACR) has led to the introduction of a law for abolition proposed by the Justice Minister. The Law has yet to be considered by the Lebanese Cabinet. In 2011 a bill was passed in parliament amending the law on sentencing consolidating the status of those 'sentenced to death without being executed' which has had the effect of consolidating the moratorium. Although they are not a large group, abolitionist parliamentarians are working to ensure that campaigns to reinstate the death penalty are unsuccessful.

Most of the 200+ people on death row are held in prison near Beirut where there is severe overcrowding and conditions are poor. Legal representation for those accused of capital crimes is less than adequate and widespread torture of the accused takes place. A comprehensive definition of torture is not contained in the legislation and those who commit torture are not properly prosecuted or punished.

A major issue for the Lebanon is the civil conflict in neighbouring Syria that began in 2011 and continues at the time of writing. Its impact on the death penalty debate in the Lebanon has been to create an atmosphere where the value placed on human life has been diminished.

## CASE STUDY **ALGERIA**

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Algeria has had a freeze on executions since 1993 after executing 20 people in 1992 (in the context of the black years). Despite some hopeful signs in the intervening years it is still far from moving towards abolition in law or a formal moratorium. In 2003 Algeria became a signatory to the ICCPR and renewed its freeze on executions. It has consistently supported UN General Assembly resolutions on a moratorium on the use of the death penalty. It has also reduced the application of the death penalty since 2001 to grave crimes and those affecting the security of the state.

However, it has also sentenced over 100 people to death per year consigning over 600 prisoners to death row, isolated from other prisoners and with few visits.<sup>90</sup> In 2009 a bill to abolish the death penalty was defeated in the Algerian Parliament and the Justice Minister claimed that abolition of the death penalty would encourage terrorism. Nonetheless in 2010 a number of those on death row had their sentences commuted to life imprisonment.<sup>91</sup>

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<sup>90</sup> Note: In its 2006 report to the UN the Algerian Government claimed to have commuted many death sentences to life imprisonment but this is unconfirmed.

<sup>91</sup> ECPM Algeria: <http://www.abolition.fr/fr/pays/algerie> (accessed 12/13)

The country has been in a state of transition since its civil war in the nineties and only officially lifted its state of emergency in 2011. The current political situation is one of a republican democracy where power is balanced between the president and the two chambers of parliament, The Peoples National Assembly and the Council of the Nation, with the balance in favour of the president. The military is also understood to wield considerable influence.<sup>92</sup>

In 2013, following a recent press campaign concerning a case where children were kidnapped, the government, who have a majority in parliament, is to introduce a bill where kidnapping children is to be added to the list of offences where the death penalty can be applied. Although they are currently a small and isolated abolitionist group, parliamentarians in Algeria are very active on the issue but with few means for campaigning at their disposal. The Algerian coalition against the death penalty forms part of a regional Arab coalition launched in Amman, Jordan in 2007.

## CASE STUDY **TUNISIA**

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The last known execution in Tunisia was in 1991 and although death sentences have been regularly handed down since that time they are understood to have been regularly commuted by the previous (overthrown president Ben Ali. There were 122 inmates on death row up until the 14th January 2012 when President Moncef Marzouki commuted their death sentences. Crimes that can attract the death penalty include aggravated murder and other crimes resulting in death, various forms of treason and crimes not resulting in death including rape of a minor and arson. A motion to abolish the death penalty in the Tunisian Parliament in 2008 was defeated.

In 2011 the Arab Spring democracy movement began in Tunisia with the overthrow of president Ben Ali and the new government pledged to move towards abolition and signing the Second Optional Protocol to the ICCPR. Since then, the country has been fraught with divisions over the role of Islam within government and with Islamist factions resisting moves towards abolition. Tunisia is also struggling with economic problems including a high cost of living and a shortage of jobs.

Of note is the work of the Tunisian National Coalition Against the Death Penalty with, amongst other things, a conference on the Arab Spring and abolitionism, and a meeting with members of the Constituent Assembly.

In drafting a new constitution for Tunisia the Tunisian National Constituent Assembly had agreed Article 21 which retains the death penalty and a motion to remove it was defeated. Abolition of the death penalty is officially absent from the constitution agreed on the 27th January 2014. Caretaker President Moncef Marzouki expressed his disagreement with the decision stating 'Article 21 will never allow Tunisia to be part of democratic abolitionist countries, i.e. most of the nations of the world, including Turkey, a country as attached to Islam as Tunisia'.

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<sup>92</sup> <http://www.reuters.com/article/2011/01/21/ozatp-algeria-opposition-idAFJ0E70K02X20110121?sp=true> (accessed 12/13)

## AFRICAN REGION

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Many countries within Africa achieved independence from Colonial rule in the 1950's and 1960's. For some, independence could allow a focus on traditions, which value a right to life, such as in Senegal and South Africa. In total seventeen countries in Africa have now done away with the death penalty in law and 16 no longer executes prisoners. Africa also contains examples of countries that have repealed the death penalty after periods of bitter internal conflict.

## CASE STUDY **BENIN**

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On July 5th 2012, Benin acceded to the 1989 Second Optional Protocol to the International Covenant on Civil and Political Rights on the abolition of the death penalty. Benin is the 75th state party to the treaty. The measure was voted by a substantial majority of Benin's parliamentarians demonstrating cross party support. There have been no executions in Benin since 1987.

The main steps to abolition began in 2008 with a government multidisciplinary committee on abolition. In 2009 the President initiated measures to include the abolition of the death penalty in the constitution and the government lobbied members of parliament to support it. Benin had voted for UN resolutions on a moratorium on the use of the death penalty in 2007 and 2008. However, during this period Benin courts were still handing out death sentences.

Before this time Benin had been ambivalent about the death penalty. In 2006 the Minister of Justice had expressed a concern that removing the death penalty when neighbouring countries retained it would make the country 'a refuge for gangsters from neighbouring countries'.<sup>93</sup>

The Second Optional Protocol to the ICCPR is the most important international human rights treaty aiming at the universal abolition of the death penalty. As a party to the treaty, Benin commits to no longer carrying out executions, and to take all necessary measures to abolish the death penalty. In 2012 capital punishment had not yet been repealed from Benin's criminal code but on August 4, 2012, the Constitutional Court issued a decision stating that the provisions relating to the death penalty in the Code were unconstitutional, and called on the National Assembly to remove them. The National Assembly voted for removal in December 2012.<sup>94</sup>

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<sup>93</sup> Death Penalty Worldwide: <http://www.deathpenaltyworldwide.org/country-search-post.cfm?country=Benin> (accessed 12/13)

<sup>94</sup> <http://www.handsoffcain.info/bancadati/schedastato.php?idcontinente=25&nome=benin>

# CASE STUDY **RWANDA**

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Rwanda's abolition of the death penalty has been remarkable giving the recent history of civil conflict and genocide within the country. But its path to abolition has not been straightforward since independence from Belgium in 1962. The death penalty was included in its post-independence penal code with responsibility for death penalty decisions lying with the State Security Court. Between 1969 and 1974, 120 people were sentenced to death and of those 13 were executed.<sup>95</sup>

President Juvénal Habyarimana came to power via a military coup in 1973 but began to commute death sentences to life imprisonment in 1981. Although death sentences were carried out in the following years, death sentences were regularly commuted from 1987 to 1994 - the period just before Rwanda's genocide.

Following the genocide involving the deaths of approximately 800,000 people, it took until 1996 for the Rwandan government to begin to try genocide cases because of losses amongst the judiciary and damage to the court infrastructure. Executions of those judged to have been involved in the genocide were carried out up to 1998 although death sentences continued to be handed down until 2003.

The International Criminal Tribunal for Rwanda (ICTR) was established by the UN Security Council in Arusha, Tanzania. However, the Rwandan government was unwilling to accept the intervention of the International Criminal Tribunal which did not apply the death penalty as the Rwandan courts were still applying the death penalty for crimes associated with the genocide. They argued that the death penalty was necessary for reconciliation. The issue appears to have disrupted UN attempts at peacekeeping at this time.<sup>96</sup> In 2000 the government re-established local, traditional 'Gacaca' courts where ordinary Rwandans can judge their peers and in order to clear the backlog of 100,000 genocide cases. They were intended to be part of a process of justice and reconciliation but were discontinued in 2012 after international concerns that they did not meet acceptable legal standards.

Eventually, by 2007, and after the presidential elections in 2003 – the first since the genocide - agreement was reached that those sentenced by the ICTR and returned to Rwanda would not be executed. Also steps were taken to abolish the death penalty altogether as a means to signal a break from past violence. It followed a mass release of prisoners in three phases between 2002 and 2005 to address prison overcrowding. Many of those released had confessed to involvement in the genocide.

The initiative for abolition came from the ruling party the Rwandan Patriotic Front, and was supported by both chambers of parliament, by public opinion and by President Paul Kagame. The death penalty was removed from the Rwandan penal code and is therefore not applicable to any

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<sup>95</sup> ICDP (2013): How countries abolish

<sup>96</sup> Interview with Madoka Futamura by Stephen Schmidt (2013): The politics of the Death Penalty for Countries in Transition <http://unu.edu/publications/articles/the-politics-of-the-death-penalty-in-countries-in-transition.html> (accessed 12/13)

offence. The Rwandan government has also ratified the Second Protocol to the ICCPR (2008) and voted at UN level for a worldwide moratorium.

Addressing the 5th World Congress on the Abolition of Death Penalty in Madrid Spain, in 2013, Minister Johnston Busingye emphasised the role of abolition in reconciliation.

“We came to the view that death could never serve as an instrument of justice even in the case of the most heinous imaginable crimes, and we have not regretted that decision for a moment. Abolishing the death penalty was an important step forward in the process of reconciliation.”

## CASE STUDY **TANZANIA**

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Tanzania won its independence in 1961. According to article 13 of the Tanzanian constitution drawn up after independence, the death penalty is allowable for certain capital crimes even though article 14 guarantees the right to life as a fundamental right for every human being.

In 1994, in a landmark case, *Republic v Mbushuu*, Chief Justice James Mwalusanya ruled that the death penalty was a violation of the right to life and therefore unconstitutional. Since then there has been a moratorium on the death penalty in Tanzania, although it is dependent on the support of whichever president is in power. The 1994 ruling did not lead to a judgement that the death penalty was unconstitutional.

The majority of the public are understood to support the death penalty. Nonetheless in 2008, following a report by the Law Commission of Tanzania recommending abolition, a petition was put before the high court seeking the replacement of the death penalty with a sentence of life imprisonment.

For the Government at that time it was argued that democracy demanded that more importance be given to the involvement of the public in national decision making than pressure from the international community on human rights issues. This is reflected in the public involvement in the recent constitutional review. However there has been no recent survey carried out by the Government to test public opinion and a survey carried out by the Tanzanian Legal and Human Rights Centre suggests that there is a majority in favour of abolition.<sup>97</sup>

The second draft of the constitutional review has retained a reference to the death penalty as part of the responsibilities of the President which will include: “The President in his position as the Head of State shall have the following duties: (k) to endorse the implementation of the death penalty as issued in accordance to the laws of the country.”<sup>98</sup> Legal action by the Tanzanian Legal and Human Rights Centre to remove this reference as contradicting the right to life, also included in the constitution, is ongoing at time of writing.

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<sup>97</sup> LHRC: Tanzania Human Rights Report 2012: <http://www.humanrights.or.tz/reports> (accessed 1/14)

<sup>98</sup> IPP Media, 11/02/2014: Rose Mwalongo: Little hope of anti-death penalty in new constitution: <http://www.ippmedia.com/frontend/?l=63910> (accessed 2/14)

# CARIBBEAN REGION

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The Caribbean appears to represent a paradox. Although few executions take place and many countries have de facto moratoriums, many countries in the region are resolutely opposed to abolition and a number hand out death sentences. The four case study countries below include three which retain the death penalty and consistently vote against the UN resolution on a moratorium on the use of the death penalty. They present the death penalty as an instrument of crime management and deterrence without any convincing evidence to support this.

## CASE STUDY JAMAICA

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The last person to be executed in Jamaica was in 1988 and there has been a moratorium on the death penalty since. In 2009 the Jamaican Parliament voted for the principle that executions can legally take place and are a means to tackle the country's rising crime rate.. This decision was reaffirmed by the Prime Minister in 2010 and is supported by the two major parties – the People's National Party and the Jamaica Labour Party. There is considerable insecurity in Jamaica due to the high crime rate (1650 people were murdered in 2013) but there are early signs that more professional policing methods are beginning to have an impact.<sup>99</sup> Previously, according to figures made available in 2010, the police only make arrests in 34% of homicide cases and only 5% of cases result in a conviction.<sup>100</sup>

Executions have not been taking place in part because of decisions made by the Judicial Committee of the UK Privy Council which is the final court of appeal on death sentences. For example in the case of Watson (2004) it was upheld that the automatic imposition of the death penalty following conviction for murder was unlawful and unconstitutional. The government is considering switching to the Caribbean Court of Justice based in Port of Spain as the final court of appeal to end what the Jamaican Prime minister describes as 'judicial surveillance from London'. Although executions are not taking place, death penalty sentences continue to be handed out and there were 7 prisoners on death row in 2011.

## CASE STUDY BARBADOS

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There have been no executions in Barbados since 1984 but death sentences continue to be handed down and there were 4 prisoners on death row in 2011.. The cessation of executions is thought to be the effect of the Judicial Committee of the UK Privy Council ruling in 1993 that keeping prisoners

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<sup>99</sup> <http://ipsnorthamerica.net/news.php?idnews=475> (accessed 1/14)

<sup>100</sup> [http://www.jamaicaobserver.com/columns/Is-capital-punishment-an-effective-crime-fighting-tool-in-Jamaica\\_7889](http://www.jamaicaobserver.com/columns/Is-capital-punishment-an-effective-crime-fighting-tool-in-Jamaica_7889) (accessed 1/14)

on death row for more than 5 years constituted cruel, inhuman or degrading treatment (Pratt and Morgan v The Attorney General of Jamaica which was also binding on Barbados) This led to many on death row having their sentences commuted. Like Jamaica, Barbados subsequently altered its constitution to get round the Privy Council ruling but unlike Jamaica has taken the step to replace the Privy Council with the Caribbean Court of Justice.

The death penalty in Barbados has been mandatory for murder and treason. In 2009, in response to pressure from the Inter-American Human Rights Court, Barbados appeared to undertake to remove the mandatory death penalty. Commenting on the issue Attorney General Adriel Braithwaite suggested that it was time to put in place social policies to prevent murder. He pointed to a joint Ministerial initiative to identify at-risk young people and help bring families out of poverty. However, the removal of the mandatory death penalty has never been implemented and Barbados remains one of two countries in the Caribbean to keep it.

## CASE STUDY **TRINIDAD AND TOBAGO**

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The death penalty is mandatory for murder and the last executions were in 1999. The final court of appeal is the Privy Council in the UK. Death sentences continue to be handed out and the number on death row in 2011 were 31.

When Trinidad and Tobago withdrew from the American Convention on Human Rights, it stated 'the death penalty is not a human rights issue.'<sup>101</sup> However its efficacy as a criminal justice measure has been fundamentally challenged. An analysis of over 50 years of crime statistics concluded that there was no link between the use of capital punishment and subsequent murder rates.<sup>102</sup>

According to the authors, between 1955 and 1980 murder rates were relatively stable while executions per year varied between 16 in 1969 and 0 for 1980 -1993. Although there were 11 executions in 1999, from then until 2007 the murder rate rose in most years.

Recent calls from government ministers for a resumption of hanging as a response to the high crime rate from the Trinidadian government have been countered with arguments from former government ministers for better policing and crime prevention measures where there is a 10% detection rate and a 1% conviction rate for crimes.<sup>103</sup>

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<sup>101</sup> International Bar Association (2008): The Death Penalty under International Law: A Background Paper to the IBAHRI Resolution on the Abolition of the Death Penalty: May 2008

<sup>102</sup> British Journal of Criminology, February 2012 'Executions, Imprisonment and Crime in Trinidad and Tobago' by Professors Daniel Greenberg and Biko Agozino

<sup>103</sup> <http://www.caribbean360.com/mobile/http://www.caribbean360.com/index.php/news/12872.html>



# CASE STUDY **DOMINICAN REPUBLIC**

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The Dominican Republic fully abolished the death penalty within its constitution of 1966 although it had been prohibited earlier in 1924<sup>104</sup> and replaced by 30 years hard labour. Full abolition was a measure introduced immediately after civil war in 1965 and by the otherwise authoritarian regime of Joaquín Balaguer which was also marked by extra-judicial killings.<sup>105</sup>

The constitution of 1966 'indicates that neither the death penalty, torture, or any abusive penalty or proceeding that implies the loss or diminution of the individual's physical integrity or health may be established, pronounced, or applied in any case'.<sup>106</sup>

This constitution, one of many drawn up within the Dominican Republic, sought to combine liberal elements of the previous 1963 constitution and conservative elements in an attempt to stabilise the country after the civil war.

A later constitution drawn up in 1994 retained abolition and further sought to consolidate human rights in other ways. This was in the final years of the Balaguer presidency which faced strong opposition for reform and pressure from the United States. The Organisation of American States, Inter American Commission on Human Rights, commended the Dominican Republic in its aims to protect fundamental human rights but commented:

'Protecting human rights, however, requires the full application of the legal standards, ensuring their realization in practice. In the process of fully implementing such standards, the role of the judiciary and the police is fundamental, as is the existence of a civil society that can press claims for the full exercise of the rights'.<sup>107</sup>

There have been moves in the National Congress to reinstate the death penalty. In 2006 a proposal was put forward to reform the country's penal code and allow for the death penalty. The proposal was strongly opposed by the Catholic Church arguing that the 'the death penalty should never be justified'. The Church view was supported by members of the National Congress although public opinion polls suggested a significant number of Dominicans were in favour of the death penalty for serious crimes.<sup>108</sup>

In January 2012 the Dominican Republic ratified the additional Protocol to the American Convention on Human Rights to Abolish the Death Penalty; however, it has not ratified the Second Optional Protocol to the ICCPR.

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<sup>104</sup> OCHR (2012): Moving Away from the Death Penalty: Lessons from national experiences

<sup>105</sup> Miami Herald 05/06/2002: <http://www.latinamericanstudies.org/dominican/balaguer-obit.htm> (accessed 2/14)

<sup>106</sup> Organisation of American States (OAS) (1999): Inter American Commission on Human Rights; Political and Juridical Organisation of the Dominican Republic <http://www.cidh.org/countryrep/dominicanrep99/Chapter2.htm> (accessed 2/14)

<sup>107</sup> Op cit the above

<sup>108</sup> Angus Reid Global (2006):

[http://www.angusreidglobal.com/polls/10806/dominican\\_republic\\_ponders\\_death\\_penalty/](http://www.angusreidglobal.com/polls/10806/dominican_republic_ponders_death_penalty/) (accessed 2/14)

# THE AMERICAS

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The United States is often held up as an example by retentionist countries of a Western democracy that retains the death penalty. The fact of the matter is that, in the USA, the death penalty has been abolished in 18 States and the number of executions annually has been falling steadily since 1999. In 2013 only 9 of its 50 states carried out an execution. Thirty states have had no executions in the last five years.

The 80 death sentences in 2013 were handed down in 2 percent of all counties in the USA and over half of the 39 executions carried out took place in Texas and Florida.<sup>109</sup>

## CASE STUDY THE USA AT FEDERAL LEVEL

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At a federal level the USA can apply the death penalty to over 20 crimes including treason, espionage, federal murder, drug trafficking or a murder of someone involved in the court process. Since 1963, 3 people have been executed by the Federal Government.

The USA Supreme Court suspended the death penalty in 1972 but reintroduced it at State level in 1976. At that time the main argument arose from the *Furman v Georgia* case. It was argued that as the death penalty was applied inconsistently it constituted cruel and unusual punishment. Cruel and unusual punishment is banned by the eighth amendment of the American Constitution. During the suspension the Supreme Court also clarified that the use of mandatory death sentences was forbidden.

The Supreme Court established in 1976 by a series of cases that States could use the death penalty if the process of finding guilt was separated from that of sentencing and if there was an automatic appeal review of all death sentences. As far as the operation of the death penalty at federal level was concerned, it was not reintroduced until 1988 as a result of passing the so called Drug Kingpin Act. The scope of the death penalty at federal level was later widened by further legislation – the Violent Crime and Law Enforcement Act of 1994 and the Antiterrorism and Effective Death Penalty Act of 1996.

There have been attempts to get the death penalty abolished at federal level and unsuccessful bills for the establishment of the Federal Death Penalty Abolition Act have been introduced in 2005, 2007, 2009, 2011 and 2013. Senator Russ Feingold in introducing the Bill to the Senate in 2005 cited the proportion of death penalty cases where those convicted had subsequently found to be innocent particularly by using DNA testing. He also cited evidence of racial discrimination within the criminal justice system.<sup>110</sup> The Act was introduced into the House of Representatives by

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<sup>109</sup> Death Penalty Information Centre Report (2013)

<sup>110</sup> Miami Herald 05/06/2002: Feingold R (Senator) (2005): Truthout <http://www.truth-out.org/archive/item/52013:abolish-the-federal-death-penalty> (accessed 2/14)

Representative Dennis Kucinich with the support of 39 others shortly after. Representative Kucinich, in arguing for his bill included a rebuttal of the death penalty's supposed deterrent effect and a reference to its cost to the state which was based on a study in Kansas in 2003. The study found 'The median cost for a death penalty case was \$1.26 million while the median cost for a non-death penalty case was \$ 740,000.'<sup>111</sup>

The bill was reintroduced in 2007 in the Senate and in 2008 in the House of Representatives and was unsuccessful. By 2009, in reintroducing the bill, Senator Feingold was able to reference the recent decision in New Mexico to abolish the death penalty and the conclusions in 2007 of a Constitution Subcommittee hearing of a Senate Judiciary Committee, examining the federal death penalty. It found a lack of transparency in death penalty decisions-making and enduring problems of racial inequity at federal level. He also drew attention to the 2007 study of the American Bar Association on state death penalty systems, which found 'racial disparities, convictions based on bad evidence, grossly inadequate indigent defense systems ...'<sup>112</sup> This bill was referred to committee for consideration but made no further progress.

In 2011 the Act of 2005 was reintroduced to the House of Representatives with 15 cosponsors but again 'died'. In 2013 with the support of 12 cosponsors the bill has been reintroduced by Congresswoman Donna Edwards. Her arguments include those about the reputation of the USA abroad ('the death penalty marginalizes the United States in the fight for human rights in the international community and is fiscally irresponsible').<sup>113</sup>

## CASE STUDY - **NEW HAMPSHIRE**

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Although the last execution in New Hampshire was in 1939 it retains the death penalty in its legislation and has one person on death row who was sentenced in 2008. New Hampshire represents the long road towards final legal abolition. A motion to end capital punishment in the state was passed by both chambers of the State Legislature in 2000 only to be vetoed by the Governor. A further vote in the House to end capital punishment won by a 194-148 majority but failed to overturn the Governor's decision. In 2009 a further bill was passed in the House but failed in the Senate. The Governor at this time also pledged to veto a bill to repeal the death penalty.

In 2010 a special committee was set up by the state legislature to review the state's death penalty statute. Its remit included a range of the relevant public policy issues including cost.

The latest motion was introduced in 2013 for repeal and the current Governor has said she was prepared to sign such a bill. The motion commanded a range of expert support from representatives of the police, judiciary and faith community addressing the criminal justice, cost and moral

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<sup>111</sup> Press release by Congressman Dennis Kucinich (December 2005): <http://www.commondreams.org/news2005/1214-03.htm> (accessed 2/14)

<sup>112</sup> Delaney A (2009): Russ Feingold introduces legislation to abolish federal death penalty: Huffington Post 20/03/2009

<sup>113</sup> Congresswoman Donna Edwards' website:

[http://donnaedwards.house.gov/index.php?option=com\\_content&view=article&id=407&Itemid=31](http://donnaedwards.house.gov/index.php?option=com_content&view=article&id=407&Itemid=31) (accessed 2/14)

arguments respectively.<sup>114</sup> Despite the support of the State Governor and a decisive majority in the State House of Representatives (225 to 104), the motion for repeal was tied 12 to 12 in the State Senate meaning that the status quo was maintained. The death penalty remains in New Hampshire for the time being.<sup>115</sup>

## CASE STUDY - NEW MEXICO

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The Governor of New Mexico, Bill Richardson, signed the law abolishing the death penalty in the State of New Mexico in 2009. The decision to abolish was informed by a study on the death penalty. The Governor was also supported by former President Jimmy Carter and the US Congress of Catholic Bishops. Jimmy Carter gained significant media attention and hence political cover for his fellow Democrat who was in the national spotlight while he was considering his decision. Bill Richardson also put out a public call for the residents of New Mexico to comment on the issue and received a response rate of over three quarters in favour of repeal.

Prior to the abolition of the death penalty there had been one execution since 1960, in 2001. The death penalty was replaced, in terms of the harshest punishment, by the life imprisonment without the possibility of parole.

At the time Governor Richardson said 'Faced with the reality that our system for imposing the death penalty can never be perfect, my conscience compels me to replace the death penalty with a solution that keeps society safe'.<sup>116</sup>

## CASE STUDY - CALIFORNIA

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The campaign for the abolition of the death penalty in California goes back at least twenty years and has intensified within the last 10 years. Part of the campaign was the creation of the California Commission on the Fair Administration of Justice, feeding evidence based on research into it, and making use of its favourable findings the campaign culminated in the public vote on what was known as proposition 34 to abolish the death penalty. The vote took place in November 2012 and was narrowly lost but the debate has continued.

Recently, United States Federal District Court Judge Cormac J. Carney, who was appointed by former President George W. Bush, a strong supporter of the death penalty, ruled on 16 July that California's death penalty system violates the US Constitution.

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<sup>114</sup> Nick B. Reid (25/10/13): SeaCoast online: Rep. Cushing leads bid to end N.H. death penalty  
[http://www.seacoastonline.com/articles/20131025-NEWS-310250340#.Ump\\_NiyBhqE.facebook](http://www.seacoastonline.com/articles/20131025-NEWS-310250340#.Ump_NiyBhqE.facebook)

<sup>115</sup> [http://www.nytimes.com/2014/04/18/us/in-new-hampshire-measure-to-repeal-death-penalty-fails-by-a-single-vote.html?\\_r=0](http://www.nytimes.com/2014/04/18/us/in-new-hampshire-measure-to-repeal-death-penalty-fails-by-a-single-vote.html?_r=0) (accessed 4/14)

<sup>116</sup> Deborah Baker 19th March 2009: New Mexico bans Death Penalty: Huffington Post  
[http://www.huffingtonpost.com/2009/03/18/new-mexico-bans-death-pen\\_n\\_176666.html](http://www.huffingtonpost.com/2009/03/18/new-mexico-bans-death-pen_n_176666.html) (accessed Nov 2013)

Judge Carney wrote that the “dysfunctional administration of California’s death penalty system has resulted, and will continue to result, in an inordinate and unpredictable period of delay” and that these delays have created a “system in which arbitrary factors, rather than legitimate ones like the nature of the crime or the date of the death sentence, determine whether an individual will actually be executed”.

Overtaking the death sentence of petitioner Ernest Dewayne Jones, Judge Carney noted that Jones faced “complete uncertainty as to when, or even whether” he will be executed. The “random few” who will be executed “will have languished for so long on death row that their execution will serve no retributive or deterrent purpose and will be arbitrary”.

“No rational person,” Carney wrote, “can question that the execution of an individual carries with it the solemn obligation of the government to ensure that the punishment is not arbitrarily imposed and that it furthers the interests of society.”

The Attorney General has announced that the decision of Judge Carney will be challenged at the Federal Court of Appeal.



# USEFUL CONTACTS

World Coalition Against the Death Penalty	<a href="http://www.worldcoalition.org">www.worldcoalition.org</a>
Death Penalty Worldwide	<a href="http://www.deathpenaltyworldwide.org">http://www.deathpenaltyworldwide.org</a>
Death Penalty Information Center (DPIC)	<a href="http://www.deathpenaltyinfo.org">http://www.deathpenaltyinfo.org</a>
The Constitution Project (USA)	<a href="http://www.constitutionproject.org">http://www.constitutionproject.org</a>
Penal Reform International (PRI)	<a href="http://www.penalreform.org/">http://www.penalreform.org/</a>
Amnesty International	<a href="http://www.amnesty.org/">http://www.amnesty.org/</a>
Reprieve	<a href="http://www.reprieve.org.uk/">http://www.reprieve.org.uk/</a>
Ensemble Contre La Peine de Mort (ECPM)	<a href="http://www.abolition.fr/">http://www.abolition.fr/</a>
Inter-Parliamentary Union (IPU)	<a href="http://www.ipu.org/english/home.htm">http://www.ipu.org/english/home.htm</a>
Parliamentarians for Global Action (PGA)	<a href="http://www.pgaction.org/">http://www.pgaction.org/</a>
International Commission Against the Death Penalty (ICDP)	<a href="http://www.icomdp.org/">http://www.icomdp.org/</a>
American Civil Liberties Union	<a href="https://www.aclu.org/">https://www.aclu.org/</a>

# GLOSSARY AND ACRONYMS

## Glossary of Terms

<b>Abolitionist de facto</b>	A country which retains the death penalty but has not executed anyone for 10 years (A UN definition)
<b>Abolitionist de jure</b>	A country which has abolished the death penalty in law
<b>Moratorium</b>	A suspension of the implementation of the death penalty without removing it in law
<b>Retentionist</b>	A country which retains the death penalty

## Acronyms

<b>APPG</b>	All-Party Parliamentary Group
<b>APPGADP</b>	All-Party Parliamentary Group on the Abolition of the Death Penalty
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>MENA</b>	Middle East North African
<b>OAS</b>	Organisation of American States
<b>OP2</b>	Second Optional Protocol to the ICCPR
<b>PGA</b>	Parliamentarians for Global Action
<b>UN</b>	United Nations
<b>WCADP</b>	World Coalition Against the Death Penalty



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Coopération au Développement

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