

20th World Day Against the Death Penalty

The death penalty: a road paved with torture

Detailed Factsheet

WORLD DAY AGAINST THE DEATH PENALTY

This 10 October 2022, the World Coalition Against the Death Penalty (the World Coalition) and other abolitionist organizations worldwide celebrate the 20th World Day Against the Death Penalty. The World Coalition looks back on 20 years of unity and advocacy for the universal abolition of capital punishment and dedicates this 20th World Day to reflecting the relationship between the use of the death penalty and torture or other cruel, inhuman, and degrading treatment or punishment.



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INTRODUCTION

METHODOLOGY

As more countries abolish the death penalty and therefore make it an unlawful practice, the death penalty itself would cease to be accepted as a “lawful sanction” under the internationally recognized definition of torture. Prepared by The World Coalition Against the Death Penalty in partnership with the Advocates for Human Rights and with the assistance of the law firm

Fredrikson and Byron, P.A., this factsheet highlights this growing consensus, as well as examines the link between torture (or other cruel, inhuman or degrading treatment or punishment) and the death penalty.

First, we will look back at 20 years of advocating against the death penalty by reviewing measured successes from each World Day since its inception in 2002

Second, as we revisit the themes of past World Days, for this 20th World Day's topic, we highlight a common thread that seems to link the various cases and aspects of the application of the death penalty, and join several others in questioning whether a norm is emerging that the death penalty in itself amounts to torture or cruel, inhuman, or degrading treatment or punishment (CIDTP). We examine the connection between torture and the death penalty by 1) analyzing the current definition of torture and the growing international recognition that the death penalty is a form of torture; and 2) looking at current practices in various countries to illustrate modern-day issues and injustices connecting torture and the death penalty.

SOURCES

Our research focused on existing international, regional, and State-specific human rights treaties, legislation and jurisprudence, as well as humanitarian organization and non-profit work.

Our research also relied heavily on the work of The International Federation of Associations of Christians Against Torture (FIACAT), including their position paper on the topic of the death penalty and torture, as well as the Death Penalty Worldwide database and Amnesty International, among others.

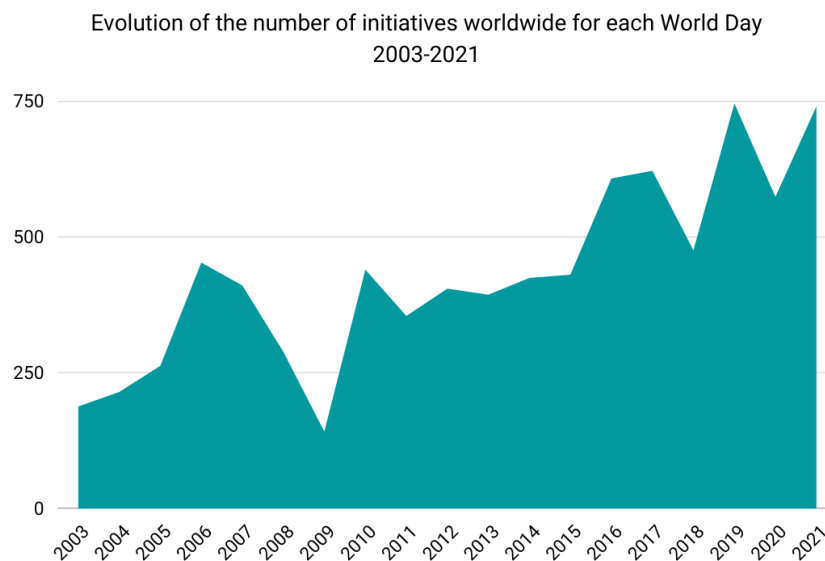
PART 1: A LOOK BACK AT 20 YEARS OF ADVOCATING AGAINST THE DEATH PENALTY¹



¹ Facts and figures from previous World Day Reports available at [WorldCoalition.org](https://www.worldcoalition.org)

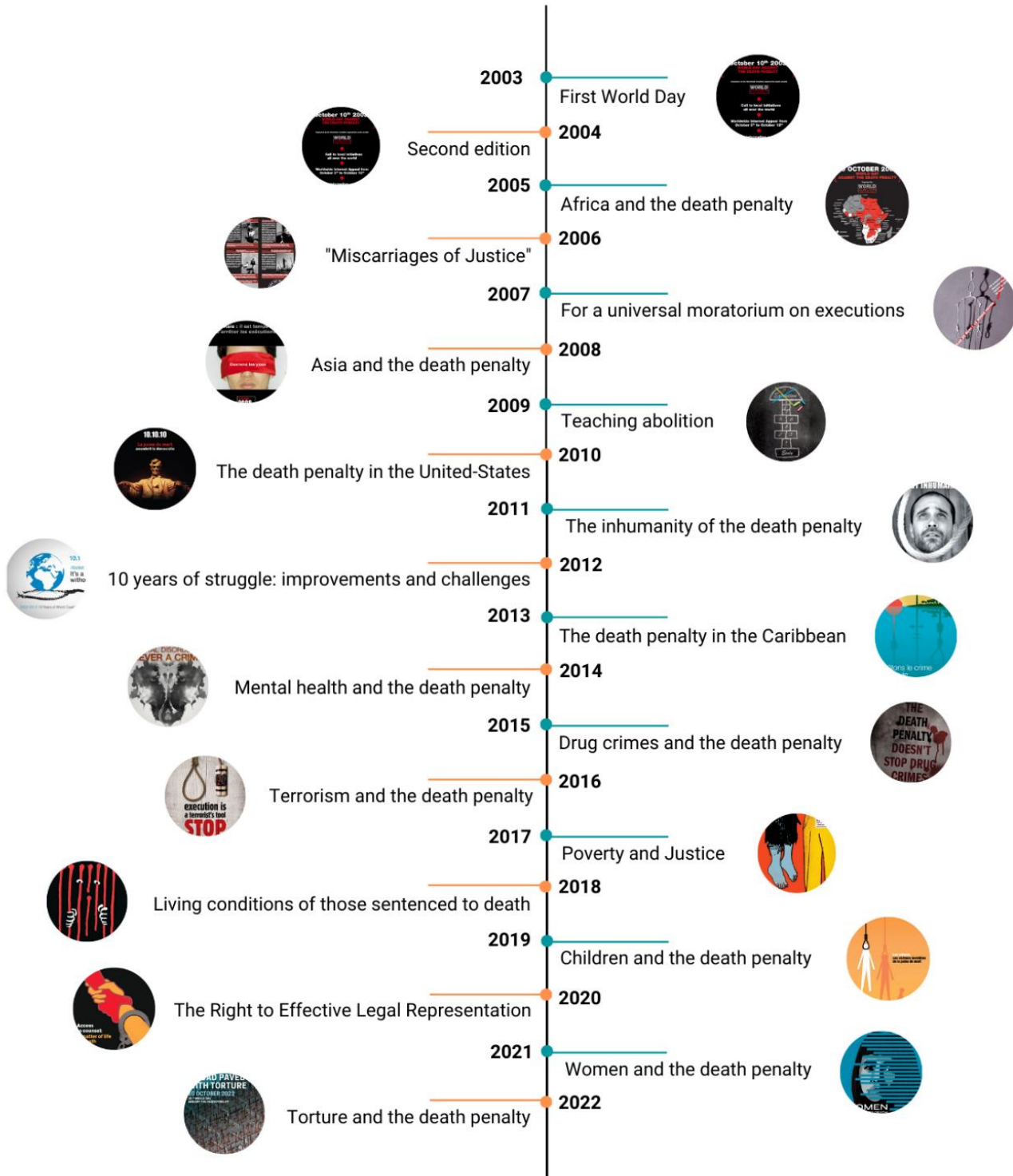
“The first edition of the World Day against the Death Penalty was celebrated on 10th October 2003. On the occasion of the 2003 and 2004 editions, the World Coalition called principally for the organization of local initiatives everywhere throughout the world in order for the World Day to be an event with a clearly international character. [...] Since 2005, the World Coalition chooses a specific theme each year so that it may suggest to its members and to all abolitionists targeted actions for awareness raising and lobbying.”²

World Days have since covered important issues in connection with the death penalty, including mental health (12th World Day), terrorism (14th World Day), poverty (15th World Day), living conditions on death row (16th World Day), and women-specific issues (19th World Day). Earlier World Days also focused on the issue of the death penalty in certain regions or States, including Africa in 2005, Asia in 2008, United States in 2010, and Caribbean in 2013. Previous World Days examined practices, treatment and conditions that amount to torture, highlighting the role that torture plays in perpetuating capital punishment. All World Day topics collectively highlight the multi-faceted and intersectional issues facing those sentenced to or impacted by the death penalty around the world.



² Summary of World Day years 1-5 (2002-2006) from *World Day Against the Death Penalty: Fifth Edition* available at <https://worldcoalition.org/wp-content/uploads/2020/09/EN-RapportJM2007-1.pdf>

World Day themes



PART 2: THE DEATH PENALTY AND TORTURE

CONTEXT

When the International Covenant on Civil and Political Rights and the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (the “Convention”) were adopted in 1966 and 1984, respectively, the authors had not yet envisioned that pain and distress resulting from lawful sanctions could constitute torture or cruel, inhuman or degrading treatment or punishment (CIDTP). Since that time, however, standards, practices and agreements by States, including the ever-increasing majority of States who are either abolitionist in law or in practice in regards to the death penalty, indicate a shift toward the total abolition of the death penalty, which shift will eventually make the practice per se unlawful, and therefore no longer excepted from the definition of torture (or CIDTP).

While recognizing we advocate for the total abolition of the death penalty worldwide, we acknowledge that there are retentionist States and that some of these States are applying the death penalty in a way that may amount to torture or CIDTP which is frequently in violation of prohibitions set out under international law and standards. To that end, we wish to raise awareness of some of these issues, and while at the same time advocating for a total abolition of the death penalty, advocating for practices and methods to be used in retentionist countries that are the most humane and directed to avoiding torture and CIDTP – and all of the unnecessary pain and suffering inflicted upon those who are sentenced to death and all other persons with a passing relationship to death penalty cases.

In this Factsheet, we will examine specific practices in connection with the death penalty that may amount to the level of torture or CIDTP, including forced confessions, and psychological torture due to secrecy, solitary confinement, or extensive Time on Death Row.

Status of the death penalty worldwide³:

2020:

- 483 people were executed in 2020 (at least), the lowest figure that Amnesty International has recorded in at least a decade.
- Iran, Egypt, Iraq, and Saudi Arabia accounted for 88% of known executions. This figure does not include thousands of executions believed to have been carried out in China due to a lack of transparency, as the death penalty in China is classified as a state secret.
- Despite proceedings failing to meet international fair trial standards, death sentences in Bahrain, Egypt, Iran, Iraq, Malaysia, Pakistan, Saudi Arabia, Singapore, Vietnam, and Yemen have been imposed.

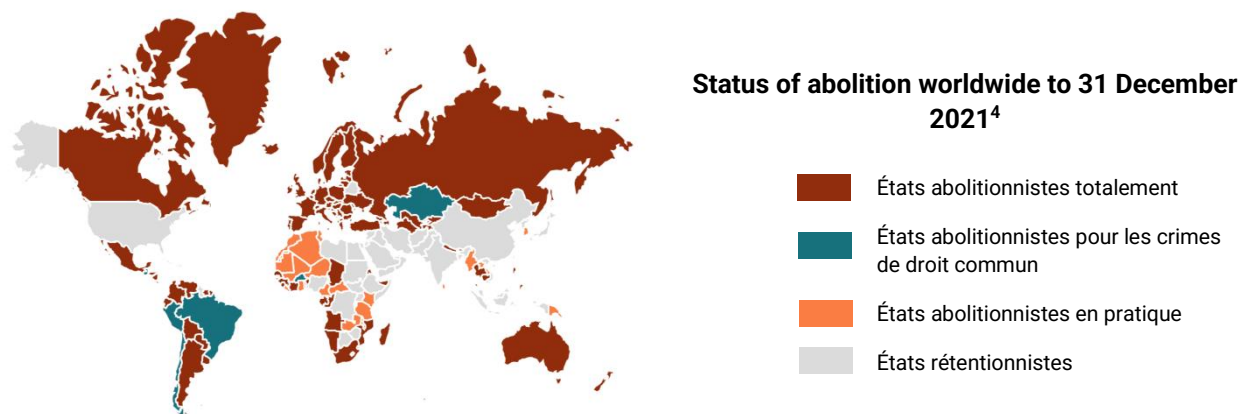
³ Data from Amnesty International's Global Report. Death sentences and executions 2020 available at <https://www.amnesty.org/en/documents/act50/3760/2021/en/>;
Data from Amnesty International's Global Report. Death sentences and executions 2021 available at <https://www.amnesty.org/en/documents/act50/5418/2022/en/>

- Individuals in Bahrain, Egypt, Iran, and Saudi Arabia were convicted due to confessions extracted through torture.
- Death sentences were imposed in Bangladesh, Democratic Republic of the Congo, and Palestine without the defendant being present.

2021:

- Global executions increased by 20% on the 2020 figure, from at least 483 to at least 579.
- Iran (at least 314), Egypt (at least 83) and Saudi Arabia (65) accounted for 80% of all known executions. Again, this figure does not include the executions believed to have been carried out in China.
- Three countries resumed executions: United Arab Emirates (since 2017), Belarus and Japan (since 2019). In the USA, two states resumed: Mississippi (since 2012) and Oklahoma (since 2015).

As of the end of 2021, 108 countries were abolitionists for all crimes, 8 countries retained the death penalty for ordinary crimes, 28 countries were abolitionists in practice, and 55 countries still maintained the death penalty.



DEFINITION: WHAT IS TORTURE?

Article 1 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the “Convention”) defines torture as

“any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of

“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”⁵

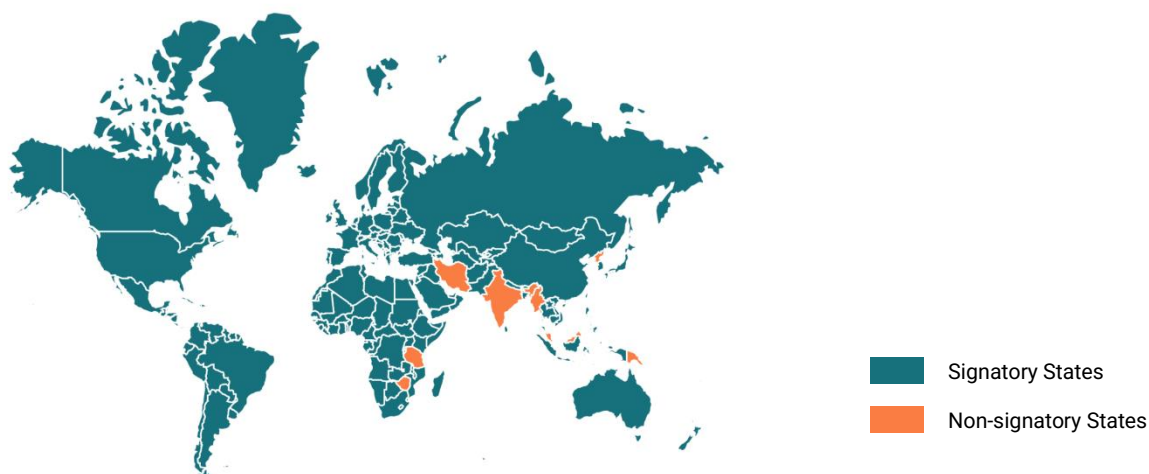
⁴ Data from Amnesty International’s Global Report. Death sentences and executions 2021 available at <https://www.amnesty.org/en/documents/act50/5418/2022/en/>

⁵ Article 5 of The Universal Declaration of Human Rights, 1948 available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>

a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”⁶

Ratified by 173 State parties and signed (not yet ratified) by four States, with 20 States having taken no action as of 11 March 2022,⁷ the Convention’s definition is recognized as the common international legal basis to define torture.

Status of signature of the Convention Against Torture



This definition has had a lasting impact outside of the Convention and has been used as a model for subsequent human rights instruments, including, for example, used as the model for the definition in the Inter-American Convention Against Torture. The Convention’s definition

“... defines the elements of the crime of torture for the purpose of bringing torturers to justice in accordance with the provisions of the Convention. For example, Article 4 requires each state party to the Convention to ensure that ‘all acts of torture are offences under its criminal law’. Article 8 requires states parties to deem offences of torture to be extraditable offences between them, while Articles 5-7 deal with the application of the criminal justice system and the exercise of universal jurisdiction over torture.”⁸

Amnesty International additionally describes torture as

“... when somebody in an official capacity inflicts severe mental or physical pain or suffering on somebody else for a specific purpose. Sometimes authorities torture a

⁶ Article 1, paragraph 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>

⁷ The most up-to-date data is available from the United Nations Human Rights, Office of the High Commissioner at <https://indicators.ohchr.org/>

⁸ Amnesty International’s *Combating Torture and Other Ill-Treatment, a Manual for Action* available at <https://www.amnesty.org/en/wp-content/uploads/2021/05/POL3040362016ENGLISH.pdf>

person to extract a confession for a crime, or to get information from them. Sometimes torture is simply used as a punishment that spreads fear in society.”⁹

Although the Convention’s definition of torture is widely accepted, the application and implementation vary widely across States. The International Justice Research Center, in its article *What is Torture*, summarized this multi-faceted issue:

“Determining whether certain treatment rises to the level of ‘torture’ can be a challenge and will depend on which legal instrument applies, based on which treaties, if any, the State in question has ratified and whether the victim or advocate is engaging with the United Nations system or a regional human rights system.”¹⁰

The list of international, regional, and State-level legal instruments and/or treaties that prohibit torture and CIDTP is extensive, including:¹¹

- African Charter on Human and Peoples’ Rights (art. 5)
- American Convention on Human Rights (art. 5)
- American Declaration of the Rights and Duties of Man (art. 27)
- Arab Charter on Human Rights (art. 8)
- Cairo Declaration on Human Rights in Islam (arts. 19, 20)
- Charter of Paris for a New Europe
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention Against Torture)
- Convention on the Protection of the Rights of Migrant Workers and Members of their Families (art. 10)
- Convention on the Rights of the Child (art. 37)
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment
- European Convention for the Protection of Human Rights and Fundamental Freedoms (art. 3)
- Inter-American Convention to Prevent and Punish Torture
- International Covenant on Civil and Political Rights (arts. 4, 7, 10)
- United Nations Standard Minimum Rules for the Treatment of Prisoners (art. 31)
- Universal Declaration of Human Rights (art. 5)

Notably, the Convention’s definition of torture explicitly excludes pain and suffering arising in connection with lawful sanctions – to be clear, lawful sanctions in this context means lawful under both domestic law, as well as international law and standards.¹²

“To read the ‘lawful sanctions’ clause as permitting states to exclude any act from the definition of torture so long as the state regards it as legal under national law, would

⁹ Amnesty International, *Torture* available at <https://www.amnesty.org/en/what-we-do/torture/>; for more information, see “Combating torture and other ill-treatment: a manual for action” (Index: POL 30/4036/2016), November 2016, <https://www.amnesty.org/en/documents/pol30/4036/2016/en/>

¹⁰ International Justice Research Center, *What is Torture* available at https://ijrcenter.org/thematic-research-guides/torture/#What_is_Torture

¹¹ List compiled by the International Justice Resource center, available at https://ijrcenter.org/thematic-research-guides/torture/#What_is_Torture

¹² Amnesty International’s *Combating Torture and Other Ill-Treatment, a Manual for Action* available at <https://www.amnesty.org/en/wp-content/uploads/2021/05/POL3040362016ENGLISH.pdf>

deprive the concept of torture under international law of any substantive or independent meaning, a result that would clearly be at odds with the object and purpose of the Convention, and inconsistent with customary international law.”¹³

With the global trend towards the abolition of the death penalty (with a total of 144 States either having abolished it by law or in practice as detailed above), the notion that torture does not include pain and suffering arising in connection with lawful sanctions should be revisited in the context of the death penalty.

The Human Rights Committee at General Comment No. 36, Part 51 (2018) addressed the shifting perspective and this recognition that the death penalty be considered unlawful in line with the laws and/or practices of a majority of States:

“Although the allusion to the conditions for application of the death penalty in article 6 (2) suggests that when drafting the Covenant, the States parties did not universally regard the death penalty as a cruel, inhuman or degrading punishment per se, subsequent agreements by the States parties or subsequent practice establishing such agreements may ultimately lead to the conclusion that the death penalty is contrary to article 7 of the Covenant under all circumstances. The increasing number of States parties to the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty, other international instruments prohibiting the imposition or carrying out of the death penalty, and the growing number of non-abolitionist States that have nonetheless introduced a de facto moratorium on the exercise of the death penalty, suggest that considerable progress may have been made towards establishing an agreement among the States parties to consider the death penalty as a cruel, inhuman or degrading form of punishment. Such a legal development is consistent with the pro-abolitionist spirit of the Covenant, which manifests itself, inter alia, in the texts of article 6 (6) and the Second Optional Protocol.”¹⁴

As an example of another international human rights body’s view of the death penalty, the European Court of Human rights stated that “judicial execution involves deliberate and premeditated destruction of a human being, hence causing physical pain and psychological suffering, whatever the method of execution.”¹⁵

Jus Cogens Recognition of Torture

Under Article 53 of the Vienna Convention on the Law of Treaties, a treaty is void if it conflicts with jus cogens. The concept of “jus cogens” is that a

¹³ Amnesty International's *Combating Torture and Other Ill-Treatment, a Manual for Action* available at <https://www.amnesty.org/en/wp-content/uploads/2021/05/POL3040362016ENGLISH.pdf>

¹⁴ Human Rights Committee *General Comment No. 36 on article 6 of the International Covenant on Civil and Political Rights, on the right to life* available at https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf

¹⁵ *The Death Penalty and the Prohibition of Torture and Cruel, Inhuman or Degrading Treatment or Punishment* available at <https://fiacat.org/attachments/article/3003/Position%20paper%20on%20torture%20and%20the%20death%20penalty.pdf>

“treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.”¹⁶

With the jus cogens recognition of torture, if the death penalty were to be recognized as torture (or CIDTP), it would therefore fall under a jus cogens norm. “As one of the most universally recognized human rights, the prohibition of torture has attained status as a jus cogens or peremptory norm of general international law, also giving rise to the obligation erga omnes (owed to and by all States) to take action against those who torture. As such, the prohibition may be enforced against a State even if it has not ratified any of the relevant treaties, and the prohibition is not subject to derogation, even in times of war or emergency.”¹⁷

TYPES OF TORTURE AND THE DEATH PENALTY

Besides the obvious issues (and potential of conduct rising to the level of torture) in the immediate pain and suffering that may be caused at the time of execution, there are other aspects of the death penalty that can amount to torture.

“Torture methods vary. They can be of a physical nature, like beatings and electric shocks. It can be of a sexual nature, like rape or sexual humiliation. Or they can be of a psychological nature, like sleep deprivation or prolonged solitary confinement.”¹⁸

- **Confessions Due to Torture and other ill-treatment**

In addition to death penalty arguably amounting to torture in most, if not all, instances, we must also highlight the role that torture plays in perpetuating capital punishment. Torture may be used to extract confessions, and subsequently, those confessions used to sentence individuals to death penalty.

“As recalled in the General Comment No. 36 on article 6 of the International Covenant on Civil and Political Rights (the “Covenant”), a death penalty conviction based on information procured by torture or cruel, inhuman or degrading treatment of interrogated persons would violate article 6 of the Covenant regarding the right to life, but also fair trial guarantees and the prohibition of torture.”¹⁹

¹⁶ Vienna Convention on the Law of Treaties available at https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf

¹⁷ International Justice Research Center, *What is Torture* available at https://ijrcenter.org/thematic-research-guides/torture/#What_is_Torture

¹⁸ Amnesty International, *Torture* available at <https://www.amnesty.org/en/what-we-do/torture/>

¹⁹ *The Death Penalty and the Prohibition of Torture and Cruel, Inhuman or Degrading Treatment or Punishment* available at <https://fiacat.org/attachments/article/3003/Position%20paper%20on%20torture%20and%20the%20death%20penalty.pdf>

In its 2020 Report²⁰, Amnesty International shared that torture was used to extract a confession in many countries, including Bahrain, Egypt, Iran and Saudi Arabia. Reports also include an instance in Vietnam.²¹



In Bahrain, there was evidence of torture that led to two men being convicted and sentenced to the death penalty:

The Court of Cassation reaffirmed the death sentences of Mohamed Ramadhan and Hussain Moosa in July, despite evidence that the men were tortured during their interrogation. The two men were convicted of killing a policeman in 2014 following a grossly unfair trial. Their 2015 final death sentence verdict was subject to a retrial following medical records attesting to the men's torture, which were submitted by the Special Investigations Unit affiliated to the Ministry of Health. The men had exhausted all rights of appeal and became at risk of execution.²²

The Human Rights Committee of the United Nations has also addressed the situation in its *Concluding observations on the initial report of Bahrain: Human Rights Committee*:

"The Committee is also concerned about allegations that death sentences have been imposed on the basis of confessions obtained under duress or torture or in the context of trials that did not meet the standards of article 14 of the Covenant."²³ The Committee instructed that not only should Bahrain reinstate the moratorium (a de facto moratorium lasting seven years until 2017) and consider abolishing the death penalty it altogether, it must, among other things, ensure fair trial procedures.²⁴



In Egypt in 2020, executions increased significantly to 107, which was approximately three times higher than in 2019. Almost one fourth of the men were executed in relation to "political violence following grossly unfair trials marred by forced 'confessions' and other serious human rights violations including torture and enforced disappearances."²⁵

Death sentence convictions based on confessions obtained through torture are unlawful under international law, yet widespread in countries that still use the death penalty. This give further weight to the argument that even if the death penalty is still a lawful sanction in some countries, its practice in reality, with the potential to cause pain and suffering, could be considered as unlawful under international norms.

- **Confessions due to Coercion**



Melissa Lucio has been on death row in Texas, USA, since 2008 in connection with the accidental death of her two-year-old daughter, Mariah. Mariah had a mild physical

²⁰ Available at <https://www.amnesty.org/en/documents/act50/3760/2021/en/>

²¹ See Committee against Torture of the United Nations, Concluding observations on the initial report of Viet Nam, CAT/C/VNM/CO/1, para. 28- 29, 28 December 2018.

²² See more at <https://www.amnesty.org/en/latest/news/2020/07/bahrain-two-men-facing-execution-lose-last-court-appeal-despite-torture-extracted-confessions/>

²³ Available at <https://digitallibrary.un.org/record/1653458?ln=en>

²⁴ Available at <https://digitallibrary.un.org/record/1653458?ln=en>

²⁵ *Amnesty International's Death Sentences and Executions 2020* available at <https://www.amnesty.org/en/wp-content/uploads/2021/05/ACT5037602021ENGLISH.pdf>

disability and died tragically days after accidentally falling down a flight of stairs. Lucio, herself a survivor of extensive sexual and domestic abuse throughout her lifetime, was convicted based on, among other things, an interrogation that began on the same night as the death of her daughter and continued for hours, until 3 am, during which detectives used coercive techniques and intimidation.²⁶ The Innocence Project details Lucio's case, including the following:²⁷

- "In the interrogation room, officers berated and intimidated Ms. Lucio, who was pregnant and still reeling from the loss of her child, for five hours. Research has shown that survivors of sexual abuse and violence, like Ms. Lucio, are more vulnerable to falsely confessing under such coercive conditions."
- "During her interrogation, detectives used coercive techniques known to lead to false confessions, including "maximization and minimization" – exaggerating the strength of or bluffing about evidence and potential charges and while also downplaying the seriousness of the situation and even implying a more lenient charge."
- "Ms. Lucio repeatedly maintained her innocence during the interrogation. When shown a photo of her daughter, sobbing, she said, 'I wish it was me.' But the interview continued until 3 a.m. and only stopped after Ms. Lucio – physically and emotionally exhausted – acquiesced to the detectives' demands, saying 'I guess I did it' in the hopes that they would end the interrogation."²⁸

Other evidence used to convict Lucio included testimony from a Texas Ranger that Lucio's body language during the interrogation evidenced her guilt, while evidence of her history of abuse and the associated impact this type of interrogation has been shown to have on survivors of abuse was not allowed to be presented. "A panel of federal judges on the Fifth Circuit Court of Appeals agreed in a unanimous three-judge opinion that Ms. Lucio was denied the right to present 'a meaningful defense.'"²⁹ Lucio's case highlights not only the injustices she faced, but the impact these injustices have on her entire family, including her 14 children, for generations to come.

- **Enhanced Interrogation**

Juan Mendez, the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment from 2010-2016. The type of torture he underwent being termed "enhanced interrogation". Mendez was subjected to being tied up, mock executions, electrocution, among other physical and psychological torture, while being asked questions throughout. "To my abusers, who interrupted this torture with question after question, this was merely 'enhanced interrogation.'" Mendez emphasizes that this term downplays the practice of torture and skews its image in peoples' minds.

²⁶ *Who is Melissa Lucio, Facing Execution in Texas* available at <https://innocenceproject.org/who-is-melissa-lucio-death-penalty-texas-execution-innocent/>

²⁷ *Who is Melissa Lucio, Facing Execution in Texas* available at <https://innocenceproject.org/who-is-melissa-lucio-death-penalty-texas-execution-innocent/>

²⁸ *Who is Melissa Lucio, Facing Execution in Texas* available at <https://innocenceproject.org/who-is-melissa-lucio-death-penalty-texas-execution-innocent/>

²⁹ *Who is Melissa Lucio, Facing Execution in Texas* available at <https://innocenceproject.org/who-is-melissa-lucio-death-penalty-texas-execution-innocent/>

“When U.S. media and political figures repeat the euphemism enhanced interrogation, they reframe the debate in a way that implicitly downplays the pain and inhumanity of torture. Instead, torture becomes a matter of rational decision making and calibrated legality. Unfortunately, this linguistic ploy is working. Torture is a crime under U.S. and international law, but enhanced interrogation hasn’t been prosecuted in the U.S.”³⁰

- **Psychological Torture**

The anticipation of execution and death is argued to be a form of psychological torture, not only for those on death row, but for the victim’s family members and the family members of those who are sentenced to death (plus all other persons with a passing relationship with death penalty cases).

The 16th World Day (2018) highlighted the issue of the physical and psychological torture of death row phenomenon and living conditions of those sentenced to death (high risk of suicide, held in solitary confinement, held in over-crowded cells, etc.) and is available here: [2018 World Day Report](#).³¹

Without revisiting these specific topics, the following quotes provide a summary of the psychological impacts the death penalty may have:

“According to the Special Rapporteur on torture, conditions of detention on death row may amount to torture or cruel, inhuman or degrading treatment or punishment. In 2012, he defined the death row phenomenon as a combination of circumstances, including the ‘lengthy and anxiety-ridden wait for uncertain outcomes, isolation, drastically reduced human contact and even the physical conditions in which some inmates are held’, which produce severe mental trauma and physical suffering. Secret detention, solitary confinement and social exclusion can also characterize the death row phenomenon and have effects on detainees ranging from various forms of anxiety, stress and depression to cognitive impairment and suicidal tendencies in violation of the prohibition of torture.”³²

“Waiting on death row and experiencing cycles of hope and desperation in conditions of heightened security and often in solitary confinement triggers protracted psychological pressure and cyclical shocks, fear, and suffering—a ‘human pressure cooker’, as convicts themselves have called it, that causes ‘death row syndrome’. An increasing number of scholars consider the death penalty as a necessarily and unavoidably cruel, inhuman, or degrading punishment, and therefore against international human rights law. An additional argument in the same direction comes from occurrences of botched executions, which occur ‘infrequently, but with regularity’.”³³

³⁰ Juan Mendez: “I Was Tortured. I Know How Important It Is To Hold The Cia Accountable” available at <https://www.amnestyusa.org/juan-mendez-i-was-tortured-i-know-how-important-it-is-to-hold-the-cia-accountable/>

³¹ 2018 World Day Report


³² *The Death Penalty and the Prohibition of Torture and Cruel, Inhuman or Degrading Treatment or Punishment by the FIACAT*, quoting the General Assembly of the United Nations, Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, and summarizing the Human Rights Council of the United Nations, Report of the Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/43/49, para. 59, 20 March 2020.

³³ *Death Penalty and the Victims*, United Nations Human Rights available at <https://www.ohchr.org/sites/default/files/newyork/Documents/Death-Penalty-and-the-Victims-WEB.PDF>

As practical examples of these psychological impacts to people on death row, we examine recent cases involving people on death row in Japan and the United States.

- **Secrecy as Psychological Torture on the Prisoners**

JAPAN:

 In Japan, a person sentenced to the death penalty learns about the date of their execution within hours of when it will take place. A Japanese prisoner, Hakamada Iwao, the longest-serving death row inmate in the world, was on death row for 46 years before being released temporarily pending a retrial. According to Amnesty International: “For 46 years Hakamada has lived under the constant fear of execution, never knowing from one day to the next if he is going to be put to death.”³⁴ Hakamada was granted a retrial on the basis that evidence used to convict him was found to not support his guilt.

Further, in November 2021, two prisoners on death row in Japan filed a lawsuit regarding the short notice of executions, citing it as inhumane and a violation of the nation’s constitution. It causes prisoners to “live in fear every morning that that day will be their last.”³⁵ The plaintiffs are demanding an end to Japan’s same-day notifications, stating it provides no time to contact legal counsel and challenge the execution and is “psychologically tortuous”. The U.N. has addressed these practices – the secrecy around the time of execution – specifically, the U.N. General Assembly addressed it in its regular resolution calling for a moratorium on executions because transparency around practices is necessary in order to be sure States are complying with international human rights laws and standards in regard to the death penalty.³⁶

Further, according to the Human Rights Committee of the United Nations, “...Failure to provide individuals on death row with timely notification about the date of their execution constitutes, as a rule, a form of ill-treatment, which renders the subsequent execution contrary to article 7 of the Covenant”³⁷

Amnesty International has repeatedly condemned Japan’s execution procedures as being “shrouded in secrecy.” In a 2009 report, the human rights group said the practice constituted “cruel, inhuman and degrading” treatment that caused prisoners to develop “significant mental illness.”

In addition to only hour(s)’ notice of execution in Japan:

1. “Often prisoners are not allowed to move about in their cell as they are required to remain squatted. No exercise is allowed inside the cell.”³⁸

³⁴ JAPAN: Appeal adds to ‘psychological torture’ of freed death row inmate Hakamada available at https://www.amnesty.or.jp/en/news/2014/0331_4529.html

³⁵ *Death-Row Prisoners in Japan Sue Over Same-Day Notice of Executions* available at <https://deathpenaltyinfo.org/news/death-row-prisoners-in-japan-sue-over-same-day-notice-of-executions>

³⁶ *Death-Row Prisoners in Japan Sue Over Same-Day Notice of Executions* available at <https://deathpenaltyinfo.org/news/death-row-prisoners-in-japan-sue-over-same-day-notice-of-executions>



³⁷ General Comment No. 36 - Article 6: right to life, CCPR/C/GC/36, para. 40, 3 September 2019, available at <https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=CCPR/C/GC/36&Lang=E>

³⁸ A Secret theatre: Inside Japan’s Capital Punishment System, C. Lane.

2. "Families are only told of an execution after it has taken place. The crime, along with the name of the individual and the place of execution are announced to the media after the prisoner's death."³⁹

- **Psychological Torture of Conditions of Detention**

NIGERIA:

  Facing similar issues to people on death row in Japan, some Nigerian death row prisoners have an indefinite waiting time on death row; of 1,000 condemned prisoners, 130 have been on death row for over ten years, and some have been on death row for over 30 years (as of 2008).⁴⁰

Among the many aspects of Juan Mendez's work as the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment from 2010-2016, he

"... highlighted that solitary confinement is a form of mental torture, psychological torture. Although many organizations were already campaigning on this very significant issue I think I contributed to making it an international concern, rather than something that can be resolved in each country, within the domestic jurisdiction alone."⁴¹

UNITED STATES OF AMERICA:



The United States' Center for Constitutional Rights has recognized the psychological torture of the death penalty:

"'[T]he intense strain of repeatedly coming within hours or days of execution' is torture.' Citing the case of Troy Davis, who was executed in Georgia in 2011 after repeated execution dates and stays, the Center remarked, 'Is there any significant difference between mock executions, long recognized as torture by the international community, and Mr. Davis's last-minute brush with death ...?'"⁴²

In a similar case of repeated execution dates and stays, a person on death row who was mentally disabled repeatedly was close to execution, within hours four times, and even got as close as being strapped to the gurney and sedated when his execution was stopped. Stuart Grassian, a psychiatrist and former Harvard Medical School professor, explained why these practices are especially detrimental to someone with mental disability: "People with mental retardation struggle with the ability to think abstractly. They have very powerful feelings but because they

³⁹ Japan: Briefing to the UN Committee Against Torture, 50th Session, May 2013 available at <https://www.amnesty.org/en/wp-content/uploads/2021/06/asa220062013en.pdf>

⁴⁰ *Waiting Endlessly on Nigeria's Death Row* available at <https://www.aljazeera.com/features/2013/12/4/waiting-endlessly-on-nigerias-death-row>

⁴¹ Interview with Juan E. Méndez available at <https://sur.conectas.org/en/juan-e-mendez-lost-sense-purpose-eliminating-torture/>

⁴² Repeated Execution Dates Called Psychological Torture, Death Penalty Information Center <https://deathpenaltyinfo.org/news/repeated-execution-dates-called-psychological-torture>

have fewer cognitive strengths they are less able to manage those feelings than others are.”⁴³ This case highlights the detrimental psychological effects and how each person may be affected by practices in different or more impactful ways.

- **Secrecy As Psychological Torture on Families of Those Sentenced**

BELARUS:



Secrecy surrounding the death penalty also impacts families and loved ones of those sentenced. An example of these practices occurs in Belarus. Ill treatment and violation of rights were recorded, including that “[f]amily members reported several instances of not being able to receive a power of attorney from their convicted relative to be able to submit an individual complaint to the UN Human Rights Committee. The cumulative outcome of these conditions is that individuals sentenced to death are kept in almost total isolation ... Since the date of the execution is kept secret from the convict and from the family, the inability to receive letters from convicted relatives constitutes a supplementary psychological pressure on families who have no other way of knowing if their family members are still alive. The fact that the detainee himself does not know the date of his execution results in psychological suffering as does the circumstance that a cell is shared by two convicts on death row. Human rights defenders received information on extreme psychological suffering of death convicts after execution of a cellmate. On at least one occasion, the guards forced a death row inmate to pick up the personal belongings of his fellow inmate after his execution.”⁴⁴

The examples of practices in Japan, Melissa Lucio’s case, and the cases in Belarus highlight the impact the death penalty has on the individuals sentences and also on third parties. This includes immediate family, such as children, but also includes caregivers and participants in the criminal justice and prison systems, such as lawyers, judges, wardens, doctors, other inmates:

“Participants in the legal proceedings leading to the execution—be they prosecutors, defense lawyers or judges—feel the pressure related to their roles and actions and may sooner or later suffer psychological consequences. Questions such as: “have I done right?”, “could I have done better?” or “who am I to decide on another person’s life or death?” often continue to haunt them for the rest of their lives and sometimes completely break them down... The psychological challenge for those who spend much time with convicted before their executions, such as wardens, medical doctors or religious counsellors, can be even worse, especially if they also witness or participate in the execution. Even when they do not want to be there, they may feel that they owe

“We cannot but conclude that the death penalty in one way or another produces a long line of victims. Of course, they are not victims of the same act, but they are still victims of the related crime and punishment cycle, which includes capital punishment.”⁴⁵

⁴³ Repeated Execution Dates Called Psychological Torture, Death Penalty Information Center <https://deathpenaltyinfo.org/news/repeated-execution-dates-called-psychological-torture>

⁴⁴ Treatment of death row prisoners in Belarus available at <https://www.fidh.org/en/issues/death-penalty/treatment-of-death-row-prisoners-in-belarus>

⁴⁵ *Death Penalty and the Victims* available at <https://www.ohchr.org/sites/default/files/newyork/Documents/Death-Penalty-and-the-Victims-WEB.PDF>

it to the person whom they have dealt with and in whose tragic destiny they have played a role. Being there may be a form of empathy, as well as of self-punishment.”⁴⁶

CONCLUSION

Article 4 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment says that each State Party shall ensure that all acts of torture are offences under its criminal law.

The topic of torture in connection with the death penalty is too broad to be covered fully within this Fact Sheet; what we hope to have demonstrated to you is that there is ample evidence that the definition of torture at the international level could rightfully exclude the death penalty from “lawful sanctions” due to 1) the rejection of the death penalty by more and more States putting in question its legitimacy as lawful punishment, and 2) the unavoidable psychological and physical impacts, arguably amounting to torture or other ill-treatment in many instances and demonstrating capital punishment’s inextricable ties to torture, to persons on death row and all persons – whether the victim, victim’s family, or others – impacted by such sentence.

⁴⁶ *Death Penalty and the Victims* available at <https://www.ohchr.org/sites/default/files/newyork/Documents/Death-Penalty-and-the-Victims-WEB.PDF>