New and updated

Death penalty Information pack

Death penalty information pack
Second edition 2014

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Penal Reform International
Head Office
60-62 Commercial Street
London E1 6LT
United Kingdom

Telephone: +44 (0) 20 7247 6515
Email: publications@penalreform.org
Twitter: @PenalReformInt

www.penalreform.org

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Graphic design and illustration by Alex Valy (www.alexvalydesign.co.uk)

Penal Reform International (PRI) is an independent non-governmental organisation that develops and promotes fair, effective and proportionate responses to criminal justice problems worldwide.

We promote alternatives to prison which support the reintegration of offenders, and promote the right of detainees to fair and humane treatment. We campaign for the prevention of torture and the abolition of the death penalty, and we work to ensure just and appropriate responses to children and women who come into contact with the law.

We currently have programmes in the Middle East and North Africa, Central and Eastern Europe, Central Asia and the South Caucasus, and work with partners in East Africa and South Asia.

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Acronyms

ACHPR	African Commission on Human and Peoples' Rights
ADPAN	Anti-Death Penalty Asia Network
CRC	Convention on the Rights of the Child
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms (commonly known as the European Convention on Human Rights)
ECOSOC	UN Economic and Social Council
ECtHR	European Court of Human Rights
EU	European Union
FHRI	Foundation for Human Rights Initiative
GA	UN General Assembly
ICCPR	International Covenant on Civil and Political Rights
MENA	Middle East and North Africa
NCADP	National Coalition to Abolish the Death Penalty
NGO	Non-governmental organisation
OSCE	Organization for Security and Cooperation in Europe
PACE	Parliamentary Assembly of the Council of Europe
PRI	Penal Reform International
Safeguard	Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
USA	United States of America
WCADP	World Coalition Against the Death Penalty

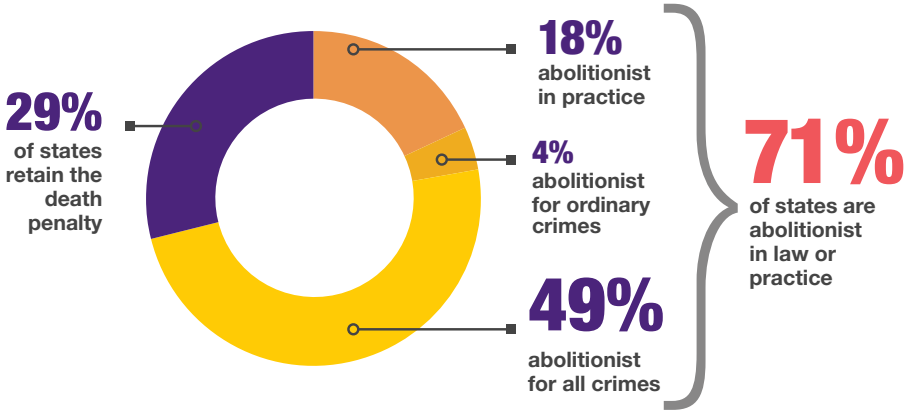
International trends towards abolition

There has been a global trend moving toward the universal abolition of the death penalty and a restriction in the scope and use of capital punishment over the last fifty years.

Two thirds of states have abolished in law or in practice

According to the 2013 death penalty report from Amnesty International, of 198 states and territories in the world, only 58 retain the death penalty. 98 are abolitionist for all crimes, 7 are abolitionist for ordinary crimes (retaining the death penalty for exceptional circumstances, such as crimes in wartime) and 35 are abolitionist in practice (retaining the death penalty, but having not executed anyone during the past 10 years).[1] This means that 140 states and territories have abolished the death penalty in law or in practice.

Extent of abolition worldwide



82 states are permanently committed to abolition

Many states have ratified international and regional instruments that provide for restrictions on the use of the death penalty and its ultimate abolition. According to the depositories of the relevant treaties, 82 states[2] have already committed themselves to prohibition of the death penalty through ratification or accession to international and/or regional treaties and covenants which prohibit the death penalty in law.

Support for a moratorium is growing

In December 2007, the UN General Assembly (GA) adopted a landmark resolution which called for a moratorium on the use of the death penalty and reaffirmed the UN's commitment towards abolition.[3] The resolution was adopted with 104 states in favour, 54 states against and 29 abstentions.

In 2008,[4] 2010[5] and 2012[6] the UN GA adopted second, third and fourth resolutions reaffirming the call for a moratorium. Each time, the number of those voting in favour increased and those voting against decreased, resulting in no less than 20 countries changing their position from voting against to voting in favour or abstaining, or from abstaining to voting in favour, over the five-year period.*

It is significant that in 2012 three countries in the Arab League voted in favour of the UN moratorium resolution (Algeria, which also co-sponsored the resolution, Somalia and Tunisia). Seven abstained or were absent and only 11 voted against the resolution. This was a noticeably more positive result than in 2007, when one Arab League country voted in favour, five abstained or were absent, and 15 voted against. No less than five countries in the League have changed their position from voting against in 2007 to abstaining or voting in favour in 2012.

Among African Union member states, no less than eight countries changed their position from voting against to abstaining or voting yes, or from abstaining to voting yes, in the 2012 resolution.†

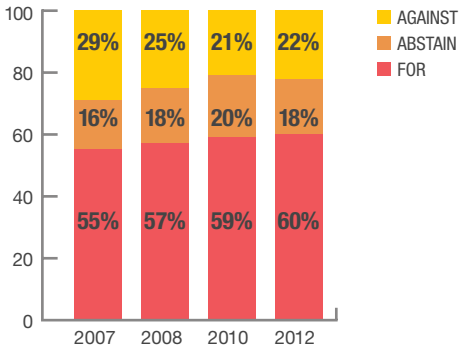
Fewer countries execute

The countries where executions continue to be carried out are fewer still. In 2013, executions are known to have taken place in 22 countries, with China, Iran, Iraq, Saudi Arabia and the USA believed to be (in that order) the world's most prolific executioners.[7]

* In 2007, 104 countries voted in favour, 54 against and 29 abstained. In 2012, 111 countries voted in favour, 41 against and 34 abstained.

† In 2007, 17 African Union states voted in favour, 11 against and 24 abstained or were absent. In 2012, 23 voted in favour, 8 against and 22 abstained or were absent.

Votes in the UN General Assembly moratorium resolutions



The USA is the only country in the Americas to carry out executions. The last time another country in that region conducted an execution was St Kitts and Nevis, which executed one person in 2008.[8] Even the USA presents a varied picture on the death penalty: of the 32 US states which still retain the death penalty (Maryland was the 18th state to abolish the death penalty, on 2 May 2013), only nine states carried out executions in 2013.* Of those nine states, Texas, Florida and Oklahoma carried out 29 of the 39 executions (74 per cent).[9]

Few countries in Africa now conduct executions. In 2013, only five countries in sub-Saharan Africa carried out executions: Botswana (1), Nigeria (4), Somalia (at least 34), South Sudan (at least 4) and Sudan (at least 21).[10]

The Caribbean remained free of executions in 2013; only five of the 53 member states of the Commonwealth of Nations carried out executions in 2013; and three of the 10 member states of the Association of Southeast Asian Nations executed in 2013.[11]

Europe as an execution-free zone

Notably, aside from Belarus,† Europe is now an execution-free zone. While executions continue to be carried out in Belarus, they have dropped considerably since the 1990s. A working group on the death penalty was established in February 2010 by the Chair of the Belarusian Parliament.

* The nine executing States were: Alabama, Arizona, Florida, Georgia, Missouri, Ohio, Oklahoma, Texas and Virginia.

† All high-level contacts with Belarusian officials have been suspended by the Parliamentary Assembly of the Council of Europe (PACE) in response to Belarus' use of the death penalty. PACE adopted resolutions 1671 (2009) and 1727 (2010), which strongly condemned continued executions in Belarus, and has made any reactivation of Belarus' special guest status for the parliament of Belarus conditional upon the introduction of a moratorium on executions (resolution 1971, paras. 19.1 and 22).

The Belarusian Supreme Court ruled in March 2004 that, under the Belarusian Constitution, the death penalty is merely a temporary measure and a moratorium on executions could be declared at any time by the President or parliament.[12]

Europe acts as a global leader in efforts to abolish the death penalty, and acts both in its bilateral relations with third countries and in multilateral fora towards universal abolition and towards progressive restriction where the death penalty still exists.[13]

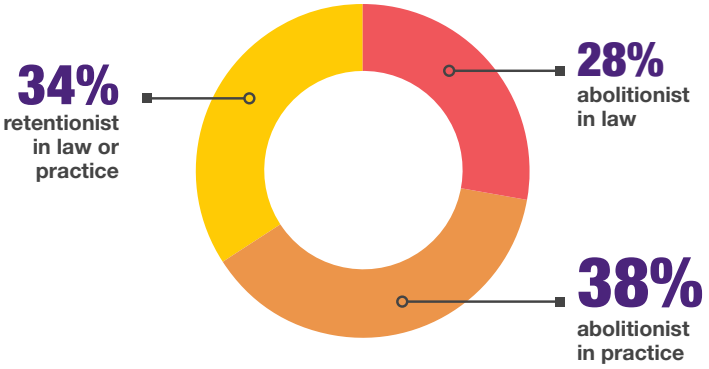
There is a growing recognition in the case law of the European Court of Human Rights (ECtHR) that the death penalty per se is a violation of human rights, usually of either Article 2 (right to life) or Article 3 (prohibition of torture and cruel, inhuman or degrading treatment). For example, in the 2010 ruling of *Al-Saadoon and Mufdhi v the United Kingdom*,[14] the ECtHR based its judgment on Article 2 of the European Convention on Human Rights to justify the duty not to expel or extradite a person who runs a serious risk of being subjected to the death penalty by the receiving country.

Status of death penalty in other regions

Of the 53 member states of the African Union, 15 are abolitionist in law. Gabon was the most recent country to abolish the death penalty in February 2010. A further 20 states are abolitionists in practice.[15]

Of the 53 member states of the Commonwealth of Nations, 33 are abolitionists in law or in practice.[16]

Status of death penalty in African Union states



Civil society and inter-governmental organisations in retentionist states

In those world regions where the death penalty still has a firm hold, coalitions and local civil society groups are emerging and raising their profile. This includes the Anti-Death Penalty Asia Network (ADPAN) in Asia and the Pacific region, the National Coalition to Abolish the Death Penalty (NCADP) in the USA, the Arab Coalition Against the Death Penalty in the MENA region, the East African Coalition Against the Death Penalty in Burundi, Kenya, Rwanda, Tanzania and Uganda, and the World Coalition Against the Death Penalty (WCADP) at the global level.

Inter-governmental or supranational bodies such as the European Union (EU), the Council of Europe, the Organization for Security and Cooperation in Europe (OSCE) and the African Commission on Human and Peoples' Rights (ACHPR) are also finding active support in their efforts to educate the public and politicians towards change.

For example, the EU Guidelines on the Death Penalty (adopted in 1998 and updated in 2008) have been instrumental in the EU's actions against the death penalty, and set out minimum standards on the use of the death penalty in situations where full abolition has not yet occurred.

In 1999, the ACHPR established a Working Group on the Death Penalty in Africa. The Working Group submits regular progress reports on the status of the death penalty in Africa to the African Commission, and has taken a lead in developing a strategic plan on the abolition of the death penalty in the region, including the ongoing development of a draft pan-African Protocol on the abolition of the death penalty in Africa.

At the Commonwealth level, the Commonwealth Lawyers Association has voiced its opposition to the death penalty, and has a defined policy which commits it to advocate for the abolition of the death penalty in Commonwealth jurisdictions wherever it remains as an available sentence.

The momentum is growing

The momentum towards abolition has significantly grown in the last fifty years. When the Universal Declaration of Human Rights was adopted in 1948, only eight states had abolished the death penalty, and when the International Covenant on Civil and Political Rights (ICCPR) was adopted by the UN GA in 1966, only 26 states were abolitionist.[17] In less than 50 years the number of abolitionist states (in law or practice) has gone from a minority to an overwhelming majority. States who still practise capital punishment do so in increasing isolation.

Overview of countries covered by PRI's EU project*

PRI Region	Country	Status (See notes)	Date of abolition	Date of last execution	Voting UN GA 62/149	Voting UN GA 63/168	Voting UN GA 65/206	Voting UN GA 67/176	Co-sponsor of UN GA moratorium resolutions	Status of ratification / accession to the Second Optional Protocol to ICCPR
CENTRAL ASIA	**Kazakhstan**	Abolitionist in law for ordinary crimes	2007	N/A	Yes	Yes	Yes	Yes	No	–
	Kyrgyzstan	Abolitionist in law for all crimes	2007	N/A	Yes	Yes	Yes	Yes	Yes*	6 December 2010§
	Tajikistan	Abolitionist in practice**	N/A	2003	Yes	Yes	Yes	Yes	No	–
	Uzbekistan	Abolitionist in law for all crimes	2008	N/A	Yes	Yes	Yes	Yes	No	23 December 2008§
EAST AFRICA	**Kenya**	Abolitionist in practice†	N/A	1987	Abstain	Abstain	Abstain	Abstain	No	–
	Tanzania	Abolitionist in practice†	N/A	1994	Abstain	Abstain	Abstain	Abstain	No	–
	Uganda	Retentionist	N/A	2006	No	No	No	No	No	–
MIDDLE EAST AND NORTH AFRICA	**Algeria**	Abolitionist in practice†	N/A	1993	Yes	Yes	Yes	Yes	Yes**	–
	Bahrain	Retentionist	N/A	2010	No	Abstain	Abstain	No	No	–
	Egypt	Retentionist	N/A	2010	No	No	No	No	No	–
	Jordan	Retentionist	N/A	2006	No	Abstain	Abstain	Abstain	No	–
	Lebanon	Retentionist	N/A	2004	Abstain	Abstain	Abstain	Abstain	No	–
	Morocco	Abolitionist in practice†	n/A	1993	Abstain	Abstain	Abstain	Abstain	No	–
	Tunisia	Abolitionist in practice†	n/A	1991	Absent	Absent	Absent	Yes	No	–
	Yemen	Retentionist	N/A	2010	No	No	No	No	No	–
SOUTH CAUCASUS	**Armenia**	Abolitionist in law for all crimes	2003	N/A	Yes	Yes	Yes	Yes	Yes†	–
	Azerbaijan	Abolitionist in law for all crimes	1998	N/A	Yes	Yes	Yes	Yes	No	22 January 1999§
	Georgia	Abolitionist in law for all crimes	1997	N/A	Yes	Yes	Yes	Yes	Yes†	22 March 1999§
BELARUS, RUSSIA AND UKRAINE	**Belarus**	Retentionist	N/A	2014	Abstain	Abstain	Abstain	Abstain	No	-
	Russia	Abolitionist in practice**	N/A	1996	Yes	Yes	Yes	Yes	Yes‡	-
	Ukraine	Abolitionist in law for all crimes	1999	N/A	Yes	Yes	Yes	Yes	Yes†	25 July 2007§

* PRI's EU project focuses on supporting governments and other stakeholders in progressing towards the abolition of the death penalty and the implementation of humane alternative sanctions. The programme of work is being carried out in four regions: the Middle East and North Africa (MENA), Eastern Europe, Central Asia and East Africa. The programme, funded under the European Union's Instrument for Democracy and Human Rights (EIDHR), commenced in November 2012 and will run for two years. PRI also works in the South Caucuses, though not currently on the death penalty, so this region is also included.

** Russia and Tajikistan declared official moratoriums on death sentences in 1999 and 2004 respectively. Russia's State Duma extended the moratorium in November 2006 until 2010, and at the end of 2009, the Russian Constitutional Court further extended it 'until the ratification of Protocol No. 6 to the ECHR'.

† Algeria, Kenya, Morocco, Tanzania and Tunisia are deemed abolitionist in practice because they have not carried out an execution for more than ten years.

* 2008, 2010 and 2012 resolutions

** all four resolutions. Only Arab state to co-sponsor.

† all four resolutions

‡ 2010 and 2012 resolutions

§ Accession

The trend is supported by international human rights standards and norms

This momentum toward abolition can in many ways be seen as being influenced by the growing body of international human rights law and the implementation of international and regional covenants and treaties. UN standards and the reports of human rights experts have reduced the scope of the crimes that can receive the death penalty to only include intentional killings, and the UN Special Rapporteur on Torture has stated that a new norm of customary international law may be emerging that the death penalty per se constitutes torture and is therefore prohibited under international law.[18]

Other factors have also influenced this trend, such as a better understanding of the arbitrary and discriminatory nature of the death penalty, and evidence-based studies indicating that the death penalty does not have a deterrent effect. However, one of the most profound influences on the abolition movement has been the acceptance by states, international bodies and the public that the death penalty is a cruel and inhuman punishment that has no place in a civilised society.

The wider impacts of the death penalty are being recognised

The impact of a parental death sentence on children is being recognised internationally. The UN Human Rights Council has passed resolutions recognising the rights and needs of these children, calling on states to ensure children and families 'are provided, in advance, with adequate information about a pending execution, its date, time and location, to allow a last visit or communication with the prisoner, the return of the body to the family for burial or to inform on where the body is located'.[19] It has also held a panel discussion on the human rights of children of parents sentenced to the death penalty or executed in September 2013, in which panellists spoke about the traumatising effect of living in fear of a parent's execution, the educational and social isolation such children face and their tendency to display symptoms of post-traumatic stress disorder and depression. There was a recommendation that at point of sentencing states 'had to take into account the best interest of the child and the negative effects that the death sentence could have on the children of the person executed'.[20]

International standards and the death penalty

International law does not expressly prohibit the death penalty. However, it does provide for its abolition and sets out restrictions and prohibitions for certain categories and situations.

International and regional principles of abolition

The main international standard in relation to the death penalty can be found in the UN International Covenant on Civil and Political Rights (ICCPR), a legally binding treaty, which explicitly recognises each person's right to life:

Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life. (Article 6(1))

The ICCPR also states that:

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. (Article 7)

These articles mirror principles established in the Universal Declaration of Human Rights (UDHR).

The Second Optional Protocol to the ICCPR, a legally binding document adopted by the UN General Assembly in 1989, commits state parties not to execute and to take all necessary measures within their jurisdiction to abolish the death penalty.

No one within the jurisdiction of a State Party to the present Protocol shall be executed. Each State Party shall take all necessary measures to abolish the death penalty within its jurisdiction. (Article 1)

The only exception to this requirement is that state parties may, if they make a reservation at the time of ratifying or acceding to the Protocol, retain the death penalty in time of war.*

* At the time of writing, 81 of the 193 UN member states have either acceded to or ratified the Second Optional Protocol to the ICCPR, with five states declaring reservations. Poland is the newest state party, having acceded to the Protocol on 25 April 2014 without reservation. An additional 37 states are signatories.

Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), adopted in 1982, provides for the abolition of the death penalty in Europe: the only crimes for which state parties may retain the death penalty following ratification are crimes 'in time of war or of imminent threat of war'.*

Protocol No. 13 to ECHR, adopted in 2002, goes further. It provides for the abolition of the death penalty in all circumstances, including time of war or of imminent threat of war.†

Article 2 of the Charter of Fundamental Rights of the European Union also provides that no one shall be condemned to death or executed, and abolition is now a precondition for accession to both the European Union‡ and (since 1994) the Council of Europe.[21]

The Protocol to the American Convention on Human Rights to Abolish the Death Penalty, adopted in 1990, provides for the total abolition of the death penalty. The only permissible exception is a declaration at time of ratification or accession to the Protocol that allows state parties to retain the death penalty in wartime.§ Article 4 of the American Convention on Human Rights (not its Protocol) forbids states from reinstating the death penalty once it has been abolished.

The International Criminal Court (ICC) has prosecuted some of the most serious offences that can be committed, including genocide and crimes against humanity, but the international community did not permit these offences to receive the death penalty in any circumstances. 'The most recent international criminal tribunals, for genocide and crimes against humanity committed in Rwanda, the former Yugoslavia, Sierra Leone and Lebanon, do not include the death penalty as a potential punishment; when tribunals have sought to reach 'completion' of their duties and transfer cases to national courts (as in the former Yugoslavia and Rwanda), they have done so on the condition that the national courts do not impose the death penalty. Though these decisions to preclude the death penalty were not intended to bind national courts more generally, international criminal law has proven to be influential at a national level. For example, Rwanda has gone on to abolish the death penalty altogether.'[22]

* At the time of writing 46 of the 47 states of the Council of Europe have either acceded to or ratified Protocol No. 6. The 47th state (Russia) is a signatory.

† At the time of writing, 44 of the 47 states of the Council of Europe have either acceded to or ratified Protocol No. 13. An additional one state (Armenia) is a signatory. Only Azerbaijan and Russia have neither ratified nor signed the Protocol.

‡ All 28 EU member states have abolished the death penalty in law. Only Latvia retains the death penalty, for aggravated murder committed in wartime.

§ At the time of writing, 13 of the 35 states of the Organization of American States have either acceded to or ratified the Protocol.

While the African Charter on Human and Peoples' Rights and the Arab Charter on Human Rights do not provide outright prohibitions of the death penalty, they do make provisions for the right to life and provide restrictions on its use.* Furthermore, the ACHPR's Working Group on the Death Penalty has drafted an Optional Protocol to the African Charter dealing with the abolition of the death penalty, which is expected to be presented to African governments in 2015.

Prohibited categories

While international law does not expressly prohibit the death penalty, it does specify categories of people who must not be executed.

Article 6(5) of the ICCPR provides that:

*Sentence of death shall not be imposed for crimes committed by persons **below eighteen years of age** and shall not be carried out on **pregnant women**.* [emphasis added]

Article 37(a) of the UN Convention on the Rights of the Child (CRC) provides that:

*Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by **persons below eighteen years of age**.* [emphasis added]

Article 4(5) of the American Convention on Human Rights provides that:

*Capital punishment shall not be imposed upon persons who, at the time the crime was committed, were **under 18 years of age** or **over 70 years of age**; nor shall it be applied to **pregnant women**.* [emphasis added]

Article 5(3) of the African Charter on the Rights and Welfare of the Child provides that:

*The death sentence shall not be pronounced for crimes committed by **children**.* [emphasis added] Article 2 of this treaty specifies that the term 'child' refers to anyone under the age of 18.

Article 30(1)(e) of the African Charter on the Rights and Welfare of the Child also provides that a death sentence shall not be imposed on:

*...**expectant mothers** and **mothers of infants and young children**.* [emphasis added]

* Article 4 of the African Charter on Human and Peoples' Rights protects the right to life, and Article 5 prohibits torture, cruel, inhuman or degrading punishment and treatment. Article 5 of the Arab Charter on Human Rights protects the right to life, and Article 8 prohibits torture, cruel, inhuman or degrading treatment.

Article 4(2)(g) of the Protocol of the African Charter on Human and Peoples' Rights on the Rights of Women in Africa provides that states that retain the death penalty shall not:

*...carry out death sentences on **pregnant** or **nursing women**.*
[emphasis added]

Article 7 of the Arab Charter on Human Rights provides that:

(1) *Sentence of death shall not be imposed on **persons under 18 years of age**, unless otherwise stipulated in the laws in force at the time of the commission of the crime.*

(2) *The death penalty shall not be inflicted on a **pregnant woman** prior to her delivery or on a **nursing mother within two years from the date of her delivery**; in all cases, the best interests of the infant shall be the primary consideration.*
[emphasis added]

The ECOSOC, in 1989, recommended that the death penalty be eliminated 'for persons suffering from **mental retardation or extremely limited mental competence**, whether at the stage of sentence or execution'[23] [emphasis added]. The Convention on the Rights of Persons with Disabilities, adopted in 2006, uses less outdated terminology and refers instead to 'those who have long-term […] mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others' (Article 1).

The ECOSOC also recommended that member states establish 'a **maximum age** beyond which a person may not be sentenced to death or executed'.[24] [emphasis added]

Limitations and restrictions

As well as refraining from executing certain categories of people, states that retain the death penalty are required under international law to observe a number of restrictions and limitations on its use. International law sets out the circumstances under which capital punishment may be imposed or carried out.

These restrictions and limitations have been set out in a number of international treaties and documents, most notably in the ICCPR, the CRC, the 1984 Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty[25] and the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (the Legal Aid Principles).

Safeguards include:

- The death penalty may be imposed only for the most serious crimes proscribed by law at the time of its commission. **(Article 6(2) ICCPR and Safeguard 1 and 2)**
- Sentence of death may only be carried out pursuant to a final judgment rendered by a competent court. **(Article 6(2) ICCPR and Safeguard 5)**
- Fair trial guarantees must be observed, including the presumption of innocence, the minimum guarantees for the defence and the right to adequate legal assistance at all stages of the proceedings. **(Article 14 ICCPR, Safeguard 5 and Legal Aid Principles, Principle 3)**
- Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts. **(Safeguard 4)**
- There is a right to review or appeal by a court of higher jurisdiction. **(Article 14(5) ICCPR and Safeguard 6)**
- There is a right to seek pardon or commutation of the sentence. **(Article 6(4) ICCPR and Safeguard 7)**
- Capital punishment shall not be carried out pending any appeal, pardon or commutation procedure. **(Safeguard 8)**
- Where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering. **(Safeguard 9)**

Implementation at the national level

Although international law expressly prohibits the death penalty for specific categories of persons, this is not always reflected at the national level.

While almost all states have now abolished the death penalty for juveniles, Saudi Arabia executed at least three people in 2013 for crimes allegedly committed when under 18 years of age, and Iran and Yemen may have done the same.

Iran, Maldives, Nigeria, Pakistan and Yemen have individuals facing trial or on death row for alleged crimes committed before the age of 18.[26] In Iran, judges can impose the death penalty if the defendant has attained 'majority', defined in Iranian law as nine years for girls and 15 for boys.[27] In Saudi Arabia the death penalty can be imposed on children from either puberty or 15 – whichever comes first.[28]

In Yemen, while the Penal Code sets out a maximum ten-year sentence for capital crimes committed by persons under the age of 18, determination/evidencing of minor age constitutes a problem in practice. Only 22 per cent of births were registered as of 2008 and there was minimal capacity for forensic age determinations, which meant children were unable to prove how old they were at the time of the crime.[29] In more recent years, forensic doctors and experts, some supported by Penal Reform International, have conducted training courses and provided expert statements for court cases. This has increased recognition of the importance of age determination and more systematic registration of childbirth has begun, particularly in major cities.

In 2005 the US Supreme Court in *Roper v Simmons*[30] outlawed the death penalty for juveniles who were under the age of 18 at the time of the offence, finding that this would breach the constitutional prohibition on cruel and unusual treatment; for similar reasons, in 2002 the US Supreme Court in *Atkins v Virginia*[31] prohibited the execution of the 'mentally retarded'.

However, the execution of persons with mental illness or mental disabilities still occurs in many countries.

In Uganda, for example, consideration of the mental state of a prisoner after sentence is a fairly new concept. In 2009, a local human rights NGO, Foundation for Human Rights Initiative (FHRI), undertook an assessment and found that 15 per cent of the death row population suffered from mental illness. Those with mental illness or disabilities are typically referred to a mental hospital or have their sentences reduced to long-term imprisonment. In Kenya, people who have 'become insane while on death row' are also not exempted from the death penalty.[32]

Moratorium

A moratorium is a temporary, though often indefinite, suspension of executions and/or the issuing of death sentences. It is often seen as a necessary step toward narrowing the scope of the death penalty, indicating a change of policy or a growing reluctance regarding capital punishment.

Why moratorium?

Moratoriums are often a step on the road to abolition in law. A moratorium provides states with the 'breathing room' to undertake necessary reforms, such as:

- Implementing legislative restrictions and undertaking constitutional reforms.
- Strengthening and reforming law enforcement agencies and criminal justice systems.
- Establishing alternative sanctions to the death penalty which respect international human rights standards.
- Commutation of sentences of those already sentenced to death.
- Education of the public and officials.
- The ratification of relevant international human rights treaties.

Although a moratorium is not a required step on the path to abolition, it allows states the time to consider the issues listed above, and to progressively implement them. By allowing the public to see that justice can be upheld and communities kept safe without executions, a moratorium can build support for abolition and reduce the risk of a return to the death penalty following abolition. Active involvement of criminal justice professionals, the media, NGOs, religious leaders, politicians etc. can be key to the success of this process.

Inter-governmental support for moratoriums

Inter-governmental organisations have called for states to implement and observe a moratorium as a step towards abolition.

In 1999, the African Commission on Human and Peoples' Rights (ACHPR) called upon all state parties to the African Charter on Human and Peoples' Rights to observe a moratorium on the death penalty, in Resolution 42. This was later reaffirmed by the ACHPR in 2008 with Resolution 136.

The Parliamentary Assembly of the Council of Europe (PACE) has passed resolutions calling for abolition of the death penalty since 1980,[33] and Resolution 1097, adopted in 1996, stated that 'the willingness [...] to introduce a moratorium [on executions] upon accession [to the Council of Europe] has become a prerequisite for membership of the Council of Europe on the part of the Assembly'.*

In 2005, the UN Commission on Human Rights† also called upon states that still maintain the death penalty 'to abolish the death penalty completely and, in the meantime, to establish a moratorium on executions'.[34]

The UN GA moratorium resolutions of 2007, 2008, 2010 and 2012 established international support for moratoriums on the death penalty. These resolutions mirrored the trend at the national and regional level, and were seen as a significant step in international efforts towards abolition.

The Parliamentary Assembly of the Organization for Security and Cooperation in Europe (OSCE) adopted a resolution in 2009 which called on all state parties which retain the death penalty to declare an immediate moratorium on executions.[35]

Support for a moratorium in Arab countries

In May 2008, representatives of Arab civil society and the Arab coalitions challenging the death penalty issued the Alexandria Declaration. The Declaration called on all Arab states to implement a moratorium on executions. The Alexandria Declaration was recalled and upheld in the subsequent Algiers Declaration (January 2009), Madrid Declaration (July 2009) and at the second Alexandria Conference (September 2010).

* This position has lead PACE to suspend Belarus' special guest status to the Council of Europe following continued executions.

† In 2006 the UN Commission on Human Rights was abolished and replaced with the UN Human Rights Council.

Moratoriums at the national level

Many states that retain the death penalty in law have implemented a moratorium at the national level. Some states have had a moratorium on executions in place for so long that they can be described as abolitionist in practice. This includes Democratic Republic of Congo in 2003; Tajikistan in 2004; the Russian Federation in 1999; and Algeria in 1993.

Risks associated with moratoriums

While a moratorium constitutes a positive step towards abolition, there is always a risk that executions may resume if a state does not move from a moratorium to abolishing the death penalty in law.

For example, in 2012 the Gambia resumed executions after nearly 30 years of de facto moratorium, and Taiwan resumed executions in April 2009 after a five year suspension.[36] In 2014, Indonesia resumed executions after four years, Kuwait after seven years and Nigeria after eight years.[37]

Debates on the reinstatement of the death penalty occasionally resurface in Russia, namely when a terrorist attack or other very serious offence occurs (such as a severe crime against a child). For example, the idea of reinstating the death penalty for those convicted of committing terrorist acts received significant public coverage following the Moscow Metro bombings in March 2010, and similar calls were made following the Volgograd attack in December 2013.[38] Immediately after the 2010 bombings, the Committee on Judicial and Legal Affairs of the Federation Council (the upper house of the Russian Parliament) reportedly began work on a draft law to introduce the death sentence for organisers of terrorist attacks resulting in multiple deaths.[39] Then-President Dimitry Medvedev demonstrated political leadership by stating that Russia will stand by its international obligations and not reintroduce the death penalty. However, until Russia fully abolishes it in law, there will always be a risk of this sentence being reintroduced.

Tajikistan established a Working Group on the Study of Social-Legal Aspects of the Abolition of the Death Penalty in the Republic of Tajikistan in 2010, with the aim of working towards abolition. It continues its work at the time of writing, but has not made any publicly available recommendations.[40]

Alongside the risk of revocation of a moratorium, in states that have imposed a moratorium on executions individuals often continue to be sentenced to death, and subsequently join those languishing on death row – often for an indeterminate period in day-to-day uncertainty of their fate, and frequently in inhumane conditions – while the state decides how to progress from a moratorium to abolition.

Although Algeria has not carried out any executions since 1993, death sentences still continue to be passed.[41] At least 40 death sentences were pronounced in 2013 in Algeria.[42]

The UN Human Rights Committee, the UN body tasked with monitoring the implementation and interpretation of the ICCPR, has called for the sentences of individuals already on death row when a moratorium is enacted to be commuted.[43] An example of this was in Russia, which commuted 697 death sentences to life imprisonment following the extension of the moratorium by the Constitutional Court in 1999.[44] The Human Rights Committee has also called for states to commute the death sentences of all prisoners whose final appeals have been exhausted in any country where no executions have been carried out for more than 10 years.[45]

Officials must use the space that a moratorium provides to actively engage with and educate the public on the death penalty in order to facilitate full abolition in law. While there is often reluctance to engage a public who may appear firmly opposed to abolition, politicians should not shy away from taking action to abolish punishment that is inherently cruel and inhuman.

Only for the 'most serious crimes'

States that retain the death penalty are required under international law to observe a number of restrictions and limitations on its use. One of the most fundamental restrictions relates to the categories of offences for which a person may be sentenced to death. Article 6(2) of the ICCPR provides that:

*In countries which have not abolished the death penalty, sentence of death may be imposed only for the **most serious crimes** in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant.* [emphasis added]

Definition of the 'most serious crimes'

Interpretation of the term 'most serious crimes' has led to restrictions on the types and number of offences for which death sentences can be imposed under international law.

The UN Human Rights Committee has stated:

*...the expression 'the most serious crimes' must be read restrictively to mean that the death penalty should be quite an **exceptional measure**.*[46] [emphasis added]

In fact, the UN Human Rights Committee has interpreted 'most serious crimes' not to include economic offences,[47] embezzlement by officials,[48] robbery,[49] abduction not resulting in death,[50] apostasy[51] and drug-related crimes.[52] It has also excluded political offences,[53] expressing particular concern about 'very vague categories of offences relating to internal and external security',[54] vaguely worded offences of opposition to order and national security violations[55] and about 'political offences … couched in terms so broad that the imposition of the death penalty may be subject to essentially subjective criteria'.[56]

The UN Commission on Human Rights, a subsidiary body of the UN Economic and Social Council (ECOSOC), replaced by the Human Rights Council in 2006, interpreted 'most serious crimes' as not including non-violent acts such as financial crimes, religious practice or expression of conscience and sexual relations between consenting adults.[57]

Safeguard 1 of the 1984 UN Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty also provides that:

In countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond ***intentional crimes with lethal or other extremely grave consequences****.* [emphasis added]

The UN Special Rapporteur on extrajudicial, summary or arbitrary executions stated in his 2012 report to the UN General Assembly that the death penalty should only be applied for offences of intentional killing, based on the practice of retentionist states and the jurisprudence of UN and other bodies.[58]

Failure of some states to restrict the death penalty in law

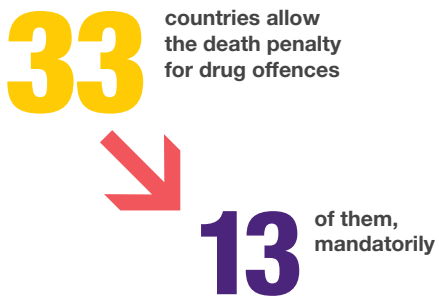
Unfortunately, a number of retentionist states go beyond the 'most serious crimes' restriction.

There were in 2012 a total of 33 countries and territories in the world with laws allowing for the death penalty to be applied for drug offences, including 13 where the death penalty was mandatory.[59]

For example, in 2008, proposed amendments to the 1976 Bahrain Penal Code to repeal the death penalty for drug trafficking were defeated by the Shura Council (the Upper Chamber of Parliament). Thailand retains the death penalty for drug-related offences and expanded its use in its 2003 'war on drugs'.[60]

Morocco has 361 crimes for which the death penalty is applicable,[61] and in Yemen capital punishment is mentioned in 315 articles spread across four laws.[62]

Beyond the 'most serious crimes' restriction



Even though in October 2002, the UN Human Rights Committee noted that some of Egypt's capital offences are in breach of the provisions of Article 6(2) of the ICCPR,[63] the list of death penalty crimes has grown since and includes drug- and terrorism-related offences.

Crimes connected to terrorism became capital crimes under Algerian law in 2002.[64]

In Saudi Arabia the death penalty may be imposed for a wide range of offences, including 'sorcery'.[65]

Uganda introduced an anti-homosexuality Bill in 2009 that included the death penalty for some homosexual acts;[66] the Act that was ultimately approved in January 2014 removed the death penalty, but imposed life imprisonment for 'aggravated homosexuality'. It was subsequently ruled unconstitutional as correct Parliamentary procedure had not been followed when passing the Act.[67] In both Uganda and Kenya robbery, treason and treachery carry a death sentence, while in Tanzania treason and military offences attract the death penalty.[68]

In Iran, the death penalty continues to be applied in political cases, in which individuals are commonly accused of 'enmity against God', and in the cases of sodomy and adultery.[69]

Pakistan allows the death penalty for crimes of blasphemy.[70]

Progress in restricting crimes attracting the death penalty

Some states have taken steps to reduce the number of death penalty applicable crimes on their law books.

In May 2010, Jordan amended the Penal Code to abolish the death penalty for two crimes: crimes against the constitutional authorities; and crimes of arson resulting in death.

On 25 February 2011, China amended its Criminal Law to remove 13 of the 68 death penalty-applicable crimes. The 13 crimes were non-violent economic offences, including smuggling valuables and cultural relics; carrying out fraudulent financial activities; and tax crimes. This was the first time the People's Republic of China has reduced the number of crimes subject to the death penalty since the Criminal Law took effect in 1979.[71]

In 2013, Uganda passed a new set of sentencing guidelines, which are intended to create uniformity in the sentences passed by judicial officials in capital cases. They also restrict the death penalty to gruesome murders and cases where there is loss of life.[72]

In 2014, Kazakhstan adopted a new set of Criminal Codes, which slightly reduced the number of death penalty-applicable offences from 18 to 17.

Right to a fair trial and administrative safeguards

The right to a fair trial is one of the cornerstones of democracy and the rule of law. It is designed to protect individuals from the unlawful and arbitrary curtailment of basic rights and freedoms, the most prominent of which are the rights to life and liberty. It is designed to ensure that all individuals are protected equally by law throughout the criminal process, from the moment of investigation or detention until the final completion of their case. **A fair trial is particularly important when the outcome could result in the state taking an individual's life**.

The International Covenant on Civil and Political Rights (referred to below as 'ICCPR') is the primary international treaty which sets forth standards for fair trial guarantees, in particular its Article 14. Safeguard 5 of the 1984 Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty ('Safeguard') also makes provisions for fair trial standards in a capital case.

Other applicable international instruments relating to fair trial standards include the UN Basic Principles on the Independence of the Judiciary ('Judiciary Principles'), the UN Basic Principles on the Role of Lawyers ('Lawyers Principles'), the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment ('Detained Persons Principles'), the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems ('Legal Aid Principles/Guidelines') and the UN Standard Minimum Rules for the Treatment of Prisoners ('SMR').

Key requirements for a fair trial include:

- All persons shall be equal before the courts.
  (Article 14(1) ICCPR)
- The right to a fair and public hearing by a competent, independent and impartial tribunal established by law.
  (Article 14(1) ICCPR and Safeguard 5, Detained Persons Principle 11, Judiciary Principle 2)
- The right to be presumed innocent until proved guilty.
  (Article 14(2) ICCPR, SMR Rule 84(2))

- The right to be informed promptly and in detail in a language which the defendant understands of the nature and cause of the charges against them.
  (Article 13(3)(b) ICCPR, Detained Persons Principles 10 and 14)
- All accused persons understand the case against them and the possible consequences of the trial. **(Legal Aid Guideline 5)**
- The right to be tried without undue delay.
  (Article 14(3)(c) ICCPR, Detained Persons Principle 38)
- The right to consular communication and assistance for foreign nationals. **(Article 36 Vienna Convention on Consular Relations, Detained Persons Principle 16(2), SMR Rule 38)**
- The right to adequate legal assistance of the defendant's own choosing at every stage of the proceedings.
  (Article 14(3)(d) ICCPR, Safeguard 5, UN ECOSOC Resolution 1989/64 (24 May 1989), Legal Aid Principles 3 and 6, Detained Persons Principle 17, Lawyers Principle 1)
- The right to have adequate time and facilities for the preparation of a defence. **(UN ECOSOC Resolution 1989/64 (24 May 1989), Detained Persons Principle 18, SMR Rule 93)**
- The right to communicate with counsel of the defendant's choosing.
  (Article 13(3)(b) ICCPR, Lawyers Principle 8, SMR Rule 93)
- The right to free legal assistance for defendants unable to pay for it.
  (Article 12(3)(d) ICCPR, Detained Persons Principle 17(2), Lawyers Principle 1, SMR Rule 93)
- The right to examine witnesses for the prosecution and to present witnesses for the defence. **(Article 14(3)(e) ICCPR)**
- The right to free assistance of an interpreter if the defendant cannot understand or speak the language used in court.
  (Article 14(3)(f) ICCPR, Detained Persons Principle 10)
- The right not to be compelled to testify against oneself or to confess guilt. **(Article 14(3)(g) ICCPR)**
- The right to have the sentence reviewed by a higher tribunal.
  (Article 14 (5) ICCPR and Safeguard 6)
- All judgments rendered in a criminal case shall be made public.
  (Article 14(1) ICCPR)

Fallibility of judicial systems

Even where all administrative safeguards are respected, there is still a risk of the death penalty being inflicted on the innocent. Criminal justice systems are not infallible. They are open to error and discrimination. Therefore, proceedings leading to the imposition of capital punishment must conform to the highest possible standards of independence, competence, objectivity and impartiality in accordance with the pertinent international standards and norms.

National attempts to improve fair trial safeguards

In 1972, the US Supreme Court in the case of *Furman v Georgia*[73] found that capital punishment was being applied arbitrarily and often selectively. Following this decision new death penalty laws were enacted in the USA to attempt to reduce the risk of error or discrimination.* The American Bar Association has developed guidelines for lawyers in death penalty cases and guidelines for the appointment and performance of defence lawyers in such cases. Sentencing guidelines have also been developed for judges and juries.

However, since 1973, 146 death penalty defendants in the USA have had their conviction overturned or been given an absolute pardon based on new evidence of innocence (the last exoneree at time of writing was released in 2014).[74] This suggests that even in an advanced criminal justice system which has safeguards in place to guarantee the rights of those facing the death penalty, innocent people may continue to be sentenced and executed. Arbitrary factors like the race or social status of the defendant and the victim, the adequacy of the legal defence, the jurisdiction where the defendant is sentenced, degree and nature of media attention to the case, or politicised factors such as an election year, can impact on the imposition of the death penalty.

* To address the unconstitutionality of unguided jury discretion, some US States removed all discretion by mandating capital punishment for those convicted of capital crimes. However, this practice was held unconstitutional by the Supreme Court in *Woodson v North Carolina* (428 US 280 (1976)). Other States sought to limit that discretion by providing sentencing guidelines for the judge and jury when deciding whether to impose death. The guidelines allowed for the introduction of aggravating and mitigating factors in determining sentencing. These guided discretion statutes were approved in 1976 by the Supreme Court in *Gregg v Georgia* (428 US 153 (1976)). In addition to sentencing guidelines, three other procedural reforms were approved by the Court in *Gregg v Georgia*. The first was bifurcated trials, in which there are separate deliberations for the guilt and sentencing phases of the trial. Only after the jury has determined that the defendant is guilty of capital murder does it decide in a second trial whether the defendant should be sentenced to death or given a lesser sentence of prison time. Another reform was the practice of automatic appellate review of convictions and sentence. The final procedural reform from *Gregg v Georgia* was proportionality review, a practice that helps the state to identify and eliminate sentencing disparities. Through this process, the State Appellate Court can compare the sentence in the case being reviewed with other cases within the State, to see if it is disproportionate.

Justice Harry Blackmun, dissenting in the 1994 US Supreme Court ruling, *Callins v Collins*, determined that, despite the Court's efforts over two decades to ensure its fairness and reliability, the death penalty remained irretrievably flawed:

'It is virtually self-evident to me now that no combination of procedural rules or substantive regulations ever can save the death penalty from its inherent constitutional deficiencies.'[75]

In 2007, China re-introduced the power of the Supreme People's Court to review all death penalty verdicts from the provincial High Courts. This decision signalled the introduction of measures, including the development of guidelines, aimed to ensure more consistency in sentencing.[76]

Inadequate legal representation

Many retentionist countries have been criticised for their lack of respect toward fair trial rights, often expressed in failure to guarantee adequate legal representation and legal aid. As stated at the Death Penalty Worldwide website:

Although legal aid is provided in theory, the quality of legal aid in practice is hampered by shortages of legal aid lawyers (as in Malawi or China), insufficient funding (e.g., in Jamaica, Zimbabwe, Sudan, Uganda, Malawi, Guinea-Conakry, United States), or overloaded public defenders (United States, India). In many countries, lawyers typically meet their clients for the first time on the day of trial. In other jurisdictions, legal aid is virtually nonexistent, and individuals may be convicted and sentenced to death without any legal representation whatsoever (e.g., South Sudan, Guinea-Conakry, Saudi Arabia). Some jurisdictions have parallel justice systems – often traditional or religious courts – where legal representation is not provided (e.g., Sudan). Even when defendants are assisted by lawyers, their delivery of a competent defense is often impaired by their inexperience and lack of training (e.g., Guatemala, India, Cameroon, Malawi, United States). Interference of the executive with the independence of lawyers or with the access of lawyers to their clients has been reported in some countries (e.g., Belarus, China, Iran, Indonesia).[77]

Adequate time between sentence and execution

In Equatorial Guinea, four men were executed in 2010 within one hour of being sentenced to death. Their trial did not meet international fair trial standards and the speed of execution denied them their rights of appeal.[78]

To reduce the risk of the innocent, or those subjected to an unfair trial, being executed, states that retain the death penalty must allow adequate time between sentence and execution to ensure that the right to appeals and petitions for clemency,[79] and available legal procedures at the international level,[80] is not undermined and can be exercised.

The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has recommended:

...that States establish in their internal legislation a period of at least six months before a death sentence imposed by a court of first instance can be carried out, so as to allow adequate time for the preparation of appeals to a court of higher jurisdiction and petitions for clemency.[81] *… Such a measure would prevent hasty executions while affording defendants the opportunity to exercise all their rights.*[82]

In 1996, the UN ECOSOC called upon retentionist states 'to ensure that officials involved in decisions to carry out an execution are fully informed of the status of appeals and petitions for clemency of the prisoner in question'.[83]

Secret executions following unfair trials

Before Tajikistan implemented an official moratorium, secret executions following unfair trials were a notorious practice.*

Belarus carries out executions in secrecy, not informing the prisoner, their families or their lawyers before or after the event. In March 2010 Andrei Zhuk and Vasily Yuzepchuk were executed while their cases were still being examined by the UN Human Rights Committee.[84]

In December 2006, the ACHPR called upon Egypt to stay the execution of three men (Muhammed Gayiz Sabbah, Usama 'Abd al-Ghani al-Nakhlawi and Yunis Muhammed Abu Gareer) convicted of terrorist offences in order to examine complaints that the trial was grossly unfair. However, reports were received that the Egyptian Government's delegation indicated to the African Commission that the legal adviser in the office of the President had advised the President to ratify the death sentences.[85] It is unknown if the sentences were carried out.

* One such example involved a case referred to the UN Human Rights Committee, where the Tajikistan authorities did not inform the family or the individual under sentence of death of the date of execution. The Human Rights Committee held that the secrecy surrounding the date of execution, the failure to inform the family of the place of burial, and the refusal to hand over the body for burial, was in violation of Article 7 of the ICCPR (the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment). See UN Human Rights Committee, 85th Session, *Communication No. 985/2001: Tajikistan*, 16 November 2005, CCPR/C/85/D/985/2001, para. 6.7.

Mandatory death penalty

In some national legislation, judges have no option but to impose the death penalty for certain crimes or in certain circumstances. This removes the opportunity to have mitigating factors taken into account, such as the nature and circumstances of the offence, the defendant's own individual history, their mental and social characteristics and their capacity for reform.

International norms

In relation to the automatic and mandatory imposition of the death penalty, the UN Human Rights Committee has stated that it:

...constitutes an arbitrary deprivation of life, in violation of article 6, paragraph 1, of the [International] Covenant [on Civil and Political Rights], in circumstances where the death penalty is imposed without any possibility of taking into account the defendant's personal circumstances or the circumstances of the particular offence.[86]

The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has stated that the death penalty should under no circumstances be mandatory by law, regardless of the charges involved,[87] and that:

...[t]he mandatory death penalty which precludes the possibility of a lesser sentence being imposed regardless of the circumstances, is inconsistent with the prohibition of cruel, inhuman or degrading treatment or punishment.[88]

The UN Special Rapporteur on torture stated in 2012 that:

...the mandatory death penalty, a legal regime under which judges have no discretion to consider aggravating or mitigating circumstances with respect to the crime or the offender, violates due process and constitutes inhumane treatment.[89]

National developments

Recent years have seen a worldwide trend in abolishing the mandatory death penalty.

The USA ruled the mandatory death penalty unconstitutional in 1976[90] for three reasons. First, the law 'depart[ed] markedly from contemporary standards' concerning death sentences. Second, the law provided no standards to guide juries in their exercise of 'the power to determine which first-degree murderers shall live and which shall die'. Third, the sentence failed to allow consideration of the character and record of individual defendants before inflicting the death penalty. The Court noted that 'the fundamental respect for humanity' required such considerations.

More recent examples of abolition of the mandatory death penalty include Guyana in 2010,* Uganda in 2009,[91] Malawi in 2007[92] and the Bahamas in 2005.[93] In March 2002, the UK Privy Council's Judicial Committee (which is the highest court of appeal for several independent Commonwealth countries) unanimously ruled that mandatory death penalty laws were unconstitutional. This ruling extended to Belize[94] and the Eastern Caribbean countries of St. Christopher and Nevis,[95] Antigua and Barbuda, St. Lucia,[96] St. Vincent and the Grenadines,[97] Grenada and Dominica. In India, provisions for a mandatory death sentence for someone already serving a life sentence were overturned by the Supreme Court.[98]

However, many states still retain the death penalty as a mandatory sentence. Singapore retains the mandatory death penalty for ordinary crimes, including murder, kidnapping, treason and drug-related offences (however, it did introduce discretion into sentences in 2013 for non-intentional murders and drug trafficking). In 2004, Trinidad and Tobago overturned a successful challenge to the constitutionality of the mandatory death penalty.[99] In Japan, inciting foreign aggression is punishable by a mandatory death sentence.[100] In Kenya, the 2010 judgment in the case of *Godfrey Ngotho Mutiso v. the Republic*[101] ruled that the mandatory death penalty for murder was unconstitutional; however, subsequent rulings have stated that the mandatory death penalty can only be overturned through legislation.[102]

* In October 2010, Guyana's parliament voted to abolish the mandatory death penalty for people convicted of murder unless they have killed members of the security forces or the judiciary.

The need for discretion and sentencing guidelines

Abolition of the mandatory death penalty has subsequently seen a trend towards developing sentencing guidelines aimed at guiding judges and juries in deciding whether this exceptional form of punishment is appropriate.

These guidelines provide a set of uniform policies for the application of the discretionary sentence of death. This helps to avoid sentencing disparities and reduce the risk of the death penalty being applied arbitrarily or in a discriminatory manner.

While it is neither possible nor desirable to compile an exhaustive list of relevant aggravating and mitigating factors, courts should retain the discretion to allow consideration of all relevant factors. The following aggravating and mitigating factors could be taken into consideration in sentencing in capital cases:[103]

- Type and gravity of the offence.
- Nature and circumstances in which the offence was committed.
- Mental state of the defendant, including any degrees of diminished responsibility.
- Provocation, 'undue influence', 'battered wife syndrome' etc.
- Lack of premeditation.
- Character of the defendant – including criminal record.
- Remorse.
- Capacity for defendant to reform and their continuing dangerousness.
- Views of the victim's family.
- Delay up until time of sentence.
- Guilty pleas.
- Prison conditions.
- Impact of a death sentence on the rights and welfare of the defendant's children.

Conditions of imprisonment for those under sentence of death

Although they should enjoy the same rights as other prisoners under international human rights standards and norms, prisoners on death row are often detained in conditions that are far worse than those of the rest of the prison population. They suffer isolation for long and indeterminate periods of time, inactivity, inadequate basic physical provisions, have limited links and contacts with their relatives and lawyers, and are sometimes treated violently and without respect for human dignity.

They are typically detained in high-security regimes based on the nature of their sentence rather than an individual risk assessment. They can be subject to excessive use of handcuffing or other physical restraints (again not based on individual risk assessments) and may have no access to meaningful activity, such as work or education programmes, because they are not seen to be entitled to rehabilitative activities.

Prisoners are often held on death row for many years while they go through lengthy appeal procedures, or when a state has suspended executions but has not abolished the death penalty or commuted existing sentences. As a result of these conditions, as well as the stress of facing a death sentence, death row prisoners are vulnerable to mental strain including 'death row phenomenon', legal frustrations, and physical and emotional neglect for months, years and even decades.

Such conditions often amount to cruel, inhuman or degrading treatment or punishment, as prohibited by Article 7 of the ICCPR, the Convention Against Torture and other international and regional standards.

Conditions contrary to international human rights standards and norms

The UN Human Rights Committee has expressed concern about the poor living conditions of death row inmates, including undue restrictions on visits and correspondence,[104] small cell size and lack of proper food and exercise,[105] extreme temperatures, lack of ventilation, cells infested with insects and inadequate time spent outside cells,[106] and has called on states to improve these conditions in line with the requirements of the provisions of the ICCPR, including Article 7 (prohibition of torture and cruel, inhuman or degrading treatment) and Article 10(1) (respect for the human dignity of persons deprived of their liberty).

The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment declared that the overcrowding, extreme temperatures, inadequate nutrition and isolation typical of the experience of death row prisoners may amount to cruel treatment.[107]

The Special Rapporteur also identified the practice of death row prisoners being handcuffed and shackled with leg irons 24 hours a day and in all circumstances (including during meals, visits to the toilet, etc.) as inhuman and degrading, and serving only as an additional form of punishment of someone already subjected to the stress associated with having been sentenced to death.[108]

Death row prisoners are entitled to the same basic conditions as other categories of prisoners, as set out in the UN Standard Minimum Rules for the Treatment of Prisoners[109] and elsewhere. Their treatment and care in prison should be determined by individual risk and need rather than the type of sentence they are serving, which may indeed require them to receive a higher standard of treatment. In resolution 1996/15, the UN ECOSOC urged UN member states to apply the Standard Minimum Rules for the Treatment of Prisoners 'in order to keep to a minimum the suffering of prisoners under sentence of death and to avoid any exacerbation of such suffering'.

Death row phenomenon

Death row phenomenon is a condition of mental and emotional distress brought on by prolonged incarceration in the harsh conditions of death row, combined with the knowledge of forthcoming execution.

In 1989 the ECtHR found that 'death row phenomenon' constituted inhuman and degrading punishment.[110] The Court found that:

...having regard to the very long period of time spent on death row in such extreme conditions, with the ever present and mounting anguish of awaiting execution of the death penalty, … the applicant's extradition to the United States would expose him to a real risk of treatment going beyond the threshold set by Article 3 [of the European Convention on Human Rights, which prohibits torture and inhuman or degrading treatment or punishment].

Both the length of time spent on death row and the conditions of imprisonment have been identified as contributing factors to death row phenomenon. Solitary confinement is believed to be a particularly powerful contributing factor to the onset of death row phenomenon, and various national and regional courts have ruled that excessive length of imprisonment on death row (in some cases also referring to inadequate conditions) constitute cruel or inhuman treatment.[111]

Uganda as an example of death row conditions

In 2009, research conducted by Ugandan-based NGO FHRI found that death row prisoners reported poor living conditions, particularly overcrowding, with little space between bodies during sleep. Other prisoners reported that the food available was not suitable for their health needs, and difficulty in accessing health facilities, especially where the health facilities were outside the prison and where the condition required a specialist. There was a shortage of medicines e.g. antiretroviral drugs for HIV inmates. Mental health problems were common. Although the prison system had a hospital referral system, there were only 12 psychiatrists in the country, so only the severe cases received treatment and only a few were transferred to the psychiatric hospital. Since then, a significant reduction in the death row population from 600 to 292 persons, due to the *Kigula* ruling (see next paragraph), has alleviated the problems found in 2009. However, it has resulted in the population of the long-term imprisonment facility at Boma prison more than doubling, with consequent pressure on its resources and infrastructure.

In the 2009 landmark ruling of *Attorney General v. Susan Kigula and 417 others*,[112] the Ugandan Supreme Court ruled that holding prisoners on death row for more than three years amounts to excessive delay, making the death penalty inappropriately severe as it then amounts to double punishment.

More than three-quarters of the death row population were eligible for mitigation hearings based on this judgment, which took place between 2009-2014 and resulted in many having their sentences commuted to life imprisonment (20 years). However, subsequent to the ruling, there was a major increase in judges giving very long sentences (of up to 100 years or more) or whole life imprisonment.

Improvements in Indian death row standards

In January 2014, the Indian Supreme Court delivered a landmark ruling in the case of *Shatrughan Chauhan & Anr. v Union of India & Others*. The Court ruled that death sentences can be commuted if the government excessively delays mercy petitions, and that inmates suffering from mental ill health may not be executed. It also prohibited solitary confinement prior to the rejection of a mercy petition, affirmed legal aid at all points up to death, detailed various ways in which the mercy process should proceed and required a 14-day notice period prior to execution to allow the condemned to 'prepare himself mentally for execution, to make his peace with god, prepare his will and settle other earthly affairs'[113] such as having a final meeting with family members.

For further information of international standards and norms related to prison conditions, see Penal Reform International's information pack on *Alternatives to the Death Penalty Information Pack*.

Clemency and pardon procedures

Clemency and pardon procedures play an important part in death penalty cases. They present the state with a final, deliberative opportunity to reassess this irrevocable punishment. Under Article 6(4) of the ICCPR all individuals sentenced to death have the right to seek pardon or commutation of the sentence; however, often this is only granted in extreme circumstances.

Access to clemency procedures

In most retentionist states, pardon or clemency can be sought both while the various appeals and confirmation procedures are pending and after a final judgment has been announced. However some jurisdictions require that all appeal processes be exhausted before pardon or clemency petitions are submitted.

Sometimes petitions are prepared without the knowledge of the prisoner, who may not even sign the document, and therefore they and/or their representatives will have no opportunity to play an active part in the process. In other jurisdictions, a pardon or clemency review will have to be requested by the person under sentence of death or by the person's attorney or relatives acting with the person's written and signed authorisation. Therefore it is essential that the prisoner's representatives have full notice of all deadlines.

Decision making and due process

In almost all retentionist countries, pardons and clemency are decided through the executive branch of government on a discretionary basis.

Where the power to pardon is held by the head of state, they often operate following the advice of a government minister (usually the minister of justice), a pardons or clemency board, a judge or advisory committee. However, in other jurisdictions the head of state has the power to make a decision without such a recommendation.

The wide discretionary power to issue pardons or clemency is considered controversial. It has often been applied inconsistently, selectively, arbitrarily, or without publicly accessible guidelines.

Some states have begun to apply due process protection to clemency and pardon proceedings, and to develop criteria for assessing such applications. This is desirable; where it applies, lawyers must be ready to present a persuasive argument to the decision-maker. Such arguments may include legal or factual claims, or be based on mitigating factors or changes regarding use of the death penalty.

Reasons for granting a pardon or clemency can be based on:

- Doubts about the defendant's guilt or reliability of the trial.
- The defendant demonstrating remorse or forgiveness by the victim/s, payment of reparations to the victim/s, the offender's own good conduct subsequent to their conviction and after, demonstration that the offender has fulfilled their debt to society.
- Issues related to changing government policy.
- Widespread public attention because of who the applicant is or the details of their case.
- Reasons unrelated to the offence, for example, prison conditions or to celebrate a national day.

Suspension of executions during pardon procedure

International law provides that while a pardon or commutation procedure is pending, executions should not be carried out.[114] Cases of executions going ahead before all avenues of appeal, clemency or pardon procedures have been completed demonstrate the importance of a full and transparent notice of any deadlines and/or dates of execution to both prisoners and their representatives (this should include both family and legal representatives). In 1996, the UN ECOSOC called upon retentionist states 'to ensure that officials involved in decisions to carry out an execution are fully informed of the status of appeals and petitions for clemency of the prisoner in question'.[115]

Clemency and pardons in national practice

Since 1976, 275 death row inmates in the USA have been granted clemency for 'humanitarian reasons' (two have so far received commutations in 2014).[116]

Humanitarian reasons include doubts about the defendant's guilt or conclusions of the State governor regarding the death penalty process. The clemency process varies from State to State, but typically involves the governor (highest State official in the executive branch of government) or board of advisors or both.[117]

In Morocco, the King regularly grants clemency to death row inmates, ordinarily to mark the festivals of Eid al-Adha and Eid al-Fitr. In July 2009, King Mohammed VI pardoned approximately 24,000 prisoners to mark the 10th anniversary of his coronation. Many people on death row had their sentences commuted to life imprisonment.[118]

The Kenyan President commuted the sentences of the country's 4,000 death row inmates to life imprisonment in August 2009.[119] In December 2010, Cuba's Supreme Court commuted the last person on death row to 30 years in prison.[120]

In Belarus, clemency is a power of the President, but has not been granted since 1994.

Execution

PRI believes that all executions constitute cruel, inhuman and degrading punishment. While states continue to defend their right to execute, international standards and norms can only seek to mitigate the suffering involved, both physical and mental. Accordingly, the UN ECOSOC has stated that where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering.[121]

Methods of execution

Current methods of execution around the world include: hanging, shooting, beheading, stoning, gas asphyxiation, electrocution and lethal injection.

The UN Human Rights Committee has called for the abolition in law of the penalty of death by stoning.[122] According to the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 'certain methods, such as stoning to death, which intentionally prolong pain and suffering, amount to cruel, inhuman or degrading punishment'.[123] While there were no reports of judicial executions by stoning in 2013,[124] this method of execution remains on the statute books in Iran, Mauritania, Nigeria (some States only), Saudi Arabia, Sudan, United Arab Emirates and Yemen.[125]

Execution by gas asphyxiation has also been addressed by the UN Human Rights Committee in *Ng v. Canada*, in 1993, where it found that execution by gas amounted to cruel and inhuman treatment.[126]

In Tanzania, the High Court found that the death penalty was unconstitutional on the grounds that execution by hanging violates the right to be treated with dignity and constitutes an inherently cruel, inhuman and degrading treatment.[127]

In the USA, where the primary method of execution is by lethal injection, there have been examples of failed execution attempts. Between January and July 2014, three executions took place in which the prisoner took unusually long to die (up to two hours) or appeared to be in extreme pain or both.[128]

The 2009 execution of Romell Broom in Ohio was halted on the grounds that the prisoner was suffering cruel and unusual punishment.[129] The technical team spent almost two hours trying to locate a usable vein in which to inject the lethal drugs. Even with the assistance of the condemned prisoner, they failed to locate a vein.

The 'tools' of execution

In 2006, the EU introduced groundbreaking controls to prohibit and restrict the international trade in equipment that could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment, through Council Regulation (EC) No. 1236/2005. The controls on the export of goods used for capital punishment reflect the EU's political and legal commitment to the abolition of the death penalty.

This EC Regulation, which is directly binding on all 28 EU member states and has the status of national law in all these states, was amended in December 2011 to control exports of certain execution drugs (including sodium thiopental and pentobarbital). Subsequently, executing jurisdictions in the USA and also in Vietnam have found it increasingly difficult to access the drugs they need to comply with their execution protocols and ensure that executions do not cause unnecessary pain or suffering. In the USA, rules about which drugs must be used have been changed and drugs sourced in secret from unregulated sources; at least three executions in 2014 were 'botched', with prisoners taking far longer to die than expected and appearing not to be properly sedated.

Notification of date of execution

The failure to notify the family and lawyers of the prisoners on death row of their execution has been found by the UN Human Rights Committee to be incompatible with the ICCPR.[130] The Special Rapporteur on extrajudicial, summary or arbitrary executions has submitted that the practice of informing death row prisoners of their impending execution only moments before they die, and their families only later, is 'inhuman and degrading'.[131]

Incompatibility of this practice with the provisions of the ICCPR was upheld in the case of *Staselovich v Belarus*, where the UN Human Rights Committee found the failure by Belarusian authorities to notify a mother of the scheduled date for execution of her son, and persistent failure to notify her of the location of her son's grave, amounted to inhuman treatment vis-à-vis the mother.[132]

Before Tajikistan implemented an official moratorium, secret executions were a notorious practice, and again the UN Human Rights Committee found the failure of Tajik authorities to inform the family of the place of burial, as well as the refusal to hand over the body for burial, was in violation of Article 7 of the ICCPR (the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment).[133]

Unfortunately other retentionist countries continue this practice. In Uganda, prisoners are given 72 hours' notice before execution. Relatives are never informed and the body is 'disposed of' by the state, not handed to the relatives.[134]

'In India, Indonesia, Japan, Malaysia and South Sudan, as well as in some cases in Iran, neither prisoners nor their families or lawyers were informed of their forthcoming execution. In Botswana, India and Nigeria, and in some cases in Iran and Saudi Arabia, the bodies of executed prisoners were not returned to their families for burial, nor were the locations of their graves made known.'[135]

Condemnation of public executions

The UN Human Rights Committee has stated that public executions are incompatible with human dignity.[136] In resolution 2005/59, adopted on 20 April 2005, the former UN Commission on Human Rights urged all states that still maintain the death penalty 'to ensure that, where capital punishment occurs, it… shall not be carried out in public or in any other degrading manner'. This means that all humiliations and parading of prisoners before execution should be prohibited.

Public executions were known to have been carried out in Iran, North Korea, Saudi Arabia and Somalia, during 2013.[137]

Transparency

Transparency as to the procedures surrounding death penalty cases can prevent errors or abuses and safeguard fairness at all stages. Without it the rights of those facing the death penalty are undermined. Accordingly, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions has stated that:

Transparency is essential wherever the death penalty is applied. Secrecy as to those executed violates human rights standards. Full and accurate reporting of all executions should be published, and a consolidated version prepared on at least an annual basis.[138]

A lack of transparency also denies the human dignity of those sentenced, many of whom are still eligible for appeal, and it denies the rights of family members to know the fate of their closest relatives. Moreover, secrecy prevents open and informed public debate about the death penalty and undermines reform efforts. It contradicts the claim that capital punishment is a legitimate act of government. Transparency is a fundamental requirement in death penalty cases, and retentionist states that justify the death penalty on the basis of alleged public support should be prepared to provide that public with information on state practice in relation to the death penalty.

Inter-governmental support for transparency

The UN ECOSOC urged, in 1989, all states that retain the death penalty to:

...publish, for each category of offence for which the death penalty is authorized, and if possible on an annual basis, information about the use of the death penalty, including the number of persons sentenced to death, the number of executions actually carried out, the number of persons under sentence of death, the number of death sentences reversed or commuted on appeal and the number of instances in which clemency has been granted, and to include information on the extent to which the safeguards referred to above are incorporated in national law.[139]

The 2007 and 2008 UN GA moratorium resolutions called upon states to 'provide the [UN] Secretary-General with information relating to the use of capital punishment and the observance of the safeguards guaranteeing protection of the rights of those facing the death penalty'.

The 2012 UN GA moratorium resolution calls upon all states 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'.[140]

However, the UN Secretary General has expressed concern that there has been a 'lack of transparency on the part of many governments in relation to the number and characteristics of individuals sentenced to death and executed. In some countries, this information is treated as a state secret.'[141]

At the regional level, the Parliamentary Assembly of the Council of Europe condemned the practice of carrying out executions 'in conditions of total secrecy'.[142]

The OSCE has also undertaken a commitment[143] to exchange information on the abolition of the death penalty and to make available to the public information regarding the use of the death penalty. Annual reports are prepared on the application of the death penalty covering all states in the OSCE.[144] In particular, this includes information on the legal framework, the method of execution, statistics on death sentences and executions, and the implementation of international safeguards such as fair trial guarantees, execution of minors and the granting of pardons or commutations. Starting in 2014, the OSCE expanded its list of questions to include ones about nationals facing the death penalty abroad and the impact of parental death sentences on children. It also sent the questionnaire to all member states, rather than just retentionist ones.

Lack of transparency at the national level

China is estimated to be the world's biggest executor; however, there remains a serious lack of transparency over the use of the death penalty,[145] which can still be applied for 55 crimes.[146] The Chinese government maintains that the details of national court rulings and punishments are a state secret and individuals disclosing state secrets can be held criminally responsible.[147]

The death penalty is also classified as a 'state secret' in Belarus and Vietnam, while all executions carried out in South Sudan in 2013 were done in secret.[148] The execution process in Japan has also been shrouded in secrecy, with Japanese citizens remaining uninformed about conditions on death row and the judicial process.[149]

Does the death penalty deter crime?

The argument that the death penalty has a strong deterrent effect on crime, especially serious violent crime, plays an important role in the debate in retentionist states. Often, it is the primary reason why both the public and politicians shy away from abolition.

The argument assumes that would-be criminals consider the full range of consequences of committing a criminal act, anticipate getting caught, and decide not to undertake the criminal act because they have a strong belief that if caught, they will be sentenced to death (rather than, say, to a long-term prison sentence).

The argument is seriously flawed in a number of respects.

Empirical evidence does not support the deterrence argument

First, there is no substantial empirical data that demonstrates the death penalty deters criminal behaviour more effectively than any other punishment.

Many crimes happen on the spur of the moment during times of great stress or under the influence of drugs or alcohol. This undermines the argument that the perpetrator did consider the potential range of penalties or consequences for their act before it was committed.

In relation to 'terrorist' acts, it should be noted that many terrorists act under the presumption that they themselves will be killed. Punishment by the death penalty does not deter such criminal acts and is often even welcomed as it provides welcome publicity and creates martyrs around which further support may be rallied for their cause.

In Mexico, prior to the abolition of the death penalty in 2005, officials began to understand that killers linked to drug cartels often had the mentality of 'live fast, die young', preferring to continue their criminal activities even with the knowledge that their life may be short.

Evidence from the USA, Canada and other countries suggests that those jurisdictions without the death penalty have a lower murder rate than those that retain capital punishment; this may indicate that the death penalty is not more effective than life or long-term imprisonment in deterring murder. In 2009 in the USA, the average murder rate for states that used the death penalty was 5.26 per 100,000 of the population, but in states without capital punishment the murder rate was 3.90 per 100,000.[150] In Canada, in 2003 – 27 years after the abolition of the death penalty – the murder rate had fallen by 44 per cent since 1975 (before the death penalty was abolished).[151]

According to the Council of Europe, the European experience of abolishing the death penalty across the whole region has shown conclusively that the death penalty is not needed to reduce violent crime.[152]

Justice Marshall, in the 1972 US Supreme Court ruling, *Furman v Georgia*,[153] stated:

In light of the massive amount of evidence before us, I see no alternative but to conclude that capital punishment cannot be justified on the basis of its deterrent effect.

Expert opinion on the deterrent effect

A 2009 report by the Death Penalty Information Center showed that USA police chiefs rank the death penalty last in their priorities for effective crime reduction, that they do not believe the death penalty acts as a deterrent to murder, and that they rate it as one of most inefficient uses of taxpayer dollars in fighting crime.[154]

A 2008 study[155] of leading US criminologists came to a similar conclusion, with 88 per cent believing that the death penalty is not an effective deterrent to crime. The study concluded:

...[t]here is overwhelming consensus among America's top criminologists[156] that the empirical research conducted on the deterrence question fails to support the threat or use of the death penalty.

Alternatives to deterring criminal behaviour

The death penalty uses valuable and finite resources through protracted legal battles. Those resources could be better spent on tackling causes of crime, through crime prevention programmes, or by improving the effectiveness of criminal investigations (such as forensic analysis of evidence), which would increase the rate of solving serious crimes.

Research has shown that would-be offenders are more deterred by the belief that they will be caught than by the severity of any sentence they may receive once caught.[157]

Not only could this increase the number of violent offenders arrested, prosecuted or deterred from offending, thereby making communities safer, it could address impunity in justice systems that fail to convict the majority of their criminals.

Public opinion and the death penalty

Governments in retentionist states often invoke the argument that public opinion favours the death penalty, and therefore they cannot abolish it. However, the right to life is fundamental, and should not be held hostage to public opinion. It is also important to note that the death penalty enjoyed popular support in all current abolitionist states at the time of abolition.[158]

Public opinion is often subjective and may be linked to religious, cultural, economic or political attitudes or contexts. It is linked to the amount and accuracy of information about the death penalty. It can be dependent on how the media portrays the death penalty, and may ebb and flow depending upon what high profile case has the media's attention.

While decisions on abolition should not wait upon public opinion, it is important to educate the public and raise awareness of the effect and efficiency of the death penalty, so that they have a better understanding of the arguments for abolition. It is important to demonstrate that the death penalty is not a proven answer to violent crime, and to identify what measures are effective, including tackling the root causes of criminal behaviour.

Public opinion polls

Public opinion polls can be used to gauge and demonstrate public support for or opposition to the death penalty. However, the results often depend on what question is asked or how and when a poll is conducted.

In the USA, support for the death penalty was at 60 per cent in October 2013 – the lowest for more than forty years. However, support for the death penalty is lower if Americans are offered an explicit alternative to the death penalty. In November 2010, for example, 49 per cent of Americans favoured the death penalty when 'life imprisonment, with absolutely no possibility of parole' was the alternative (46 per cent preferred life imprisonment).[159]

In Uganda, according to a baseline survey report prepared by the Steadman Group in 2008, 90 per cent of the surveyed population had some awareness about the death penalty, with 58 per cent in support of the death penalty. However 82 per cent of those polled would accept life imprisonment as an alternative to the death penalty.

Russia has had a moratorium in place since 1999;* however, officials show a reluctance to proceed to full abolition in law, citing continuing widespread support for the death penalty. However, a 2014 survey found that the number of people in favour of abolition is growing. The number of people supporting the death penalty fell to 52 per cent, down from 61 per cent in 2012 and 73 per cent in 2002. The number supporting abolition rose in two years from 24 to 33 per cent.[160]

Belarus is the only country in Europe still conducting executions. One of the justifications given for not implementing a moratorium or abolishing the death penalty has been that the public still supports capital punishment. In a 1996 national referendum, 80.44 per cent of Belarusians voted against the abolition of the death penalty;[161] however, a public opinion poll conducted on behalf of PRI in 2013 found that this had fallen to under 64 per cent, with only 36.5 per cent backing it unconditionally. Only two-thirds of people were aware that the death penalty was still permitted and used.[162] Mikalay Samaseyka, Chairman of the House of Representatives' standing Committee on Legislation and Judicial and Legal Matters, noted in 2009 that 'events that have happened in the 13 years [since the referendum] have drastically influenced public opinion… Legislative and legal circumstances have changed. In particular, the Criminal Code has been amended to declare that the use of the death penalty is of a temporary nature. The number of death sentences decreased from 47 in 1998 to two in 2008 and in 2009'.[163]

Public opinion studies in 2014 in Kazakhstan and Tajikistan (the last two countries in Central Asia to retain the death penalty) found differing results. In Kazakhstan (where the survey focused specifically on the death penalty for terrorism-related offences) 41 per cent supported maintaining the current moratorium on executions and 31 per cent wanted to resume executions: a total of 72 per cent against abolition. In contrast, the Tajikistan survey found that 67 per cent of respondents favoured total abolition of the death penalty.[164]

* Imposed by the Constitutional Court of the Russian Federation on 2 February 1999, although the last execution took place in 1996.

Politicians as leaders

While it is important that governments listen to the views of the electorate, they are also expected to lead and decisions should not be driven by populism. This requires governments to inform the public about the reality of the situation and calm unjustified fears about the effects of abolition. They need to take what might be unpopular decisions that are for the greater good of society. Therefore, it is important that politicians gather evidence, act on the basis of evidence and along with other high-profile individuals, institutional groups and the media, provide appropriate forums for public debate at the national level, provide information and inform the public about arguments in favour of abolition.

While some politicians may be concerned that taking a stance for abolition may harm them politically or electorally, experience has shown this is unlikely to be the case. According to the PACE, the European experience has shown conclusively that 'political leaders who led the way towards abolition did not suffer any backlash from public opinion',[165] while Vivien Stern, Chair of the UK's All-Party Parliamentary Group on the Death Penalty, stated: 'I've never heard of anyone not being elected purely because of their death penalty attitudes'.

Victims' rights

Supporters of the death penalty frequently do so in the name of the victims. They argue that victims of violent crime and their loved ones have a right to see 'justice carried out' through the execution of the perpetrator. However, not only does this argument undermine the voices of those victims who oppose the death penalty, it also perpetuates the myth that justice is focused solely upon the idea of revenge rather than the principles of deterrence, rehabilitation and public safety.

Discriminatory treatment for victims who oppose the death penalty

The suffering of victims of violent crime and their loved ones should be recognised and helped. All victims, including those who openly oppose the death penalty, should be treated with sympathy, respect and equality throughout the criminal process. Unfortunately, victims who oppose the death penalty are often marginalised and discriminated against. This includes not receiving full access to relevant victims' assistance funds, not being fully informed of relevant court proceedings by prosecutors or even being excluded from giving testimony.[166]

In the US State of New Hampshire, a Crime Victims Equality Act was passed in 2009. This Act – the first of its kind in the USA – provides 'the right to all federal and state constitutional rights guaranteed to all victims of crime on an equal basis, and notwithstanding the provisions of any laws on capital punishment, the right not to be discriminated against or have their rights as a victim denied, diminished, expanded, or enhanced on the basis of the victim's support for, opposition to, or neutrality on the death penalty'.[167] The goal of this law is equitable treatment for all victims. According to Renny Cushing, Executive Director of Murder Victims' Families for Human Rights and a New Hampshire State Representative (whose father was murdered in 1988):

It is unacceptable to have hierarchies of victims within the criminal justice system, with those who favor the death penalty receiving more favourable treatment than those who oppose it. The legislation is about the right of everybody to hold their own position on the death penalty and not be denied victims' rights because of it.[168]

Giving a voice to victims of violent crime

In the USA, groups such as Murder Victims' Families for Human Rights, Murder Victims' Families for Reconciliation, and Journey of Hope have done groundbreaking work in this area, bringing national and international awareness to the needs and voices of victims while fighting against the death penalty. One such voice is Marie Deans, whose mother-in-law was murdered in 1972. She has stated that:

After a murder, victims' families face two things: a death and a crime. At these times, families need help to cope with their grief and loss, and support to heal their hearts and rebuild their lives. From experience, we know that revenge is not the answer. The answer lies in reducing violence, not causing more death. The answer lies in supporting those who grieve for their lost loved ones, not creating more grieving families [by executing their relative]. It is time we break the cycle of violence.

Renny Cushing, Executive Director of Murder Victims' Families for Human Rights, has said:

…we are people who have lived through unspeakable horror, whose lives have unfurled rapidly, and we've come to the conclusion that filling another coffin doesn't bring our loved ones back, it just gives birth to another broken, grieving family.[169]

The lengthy death penalty trial, appeals and clemency procedures, which are necessary to ensure fair trial rights where a life is at stake, often further prolong the tragedy and traumatise victims who relive their pain and suffering for many years.[170] This can divide grieving families where family members hold disparate views of the death penalty. An alternative penalty, such as life imprisonment, can spare victims years of being linked to the perpetrator through trials and appeals procedures.

Creation of additional victims

The death penalty also creates additional victims who are often forgotten, marginalised or stigmatised in their communities – the family members of those who have been sentenced to death or executed. When an individual is executed, little thought is given to the suffering of or support for their families.*

* For more on this issue, see for example: Child Rights Connect, *Children of Parents Sentenced to Death or Executed: How are they affected? How can they be supported?*, September 2013, accessible in six languages at http://quno.org/resource/2013/9/children-parents-sentenced-death-or-executed-how-are-they-affected-how-can-they-be.

People don't understand that the death penalty has an impact on families that is so far reaching … My mother has never gotten over it [the execution of her son]. She has changed so much since it happened. All of the kids have a hard time understanding it. The death penalty creates so many more victims.

Jonnie Waner (her brother, Larry Griffin, was executed in Missouri, USA, in 1995)

Children are affected from point of arrest to years after an execution, with many experiencing emotional, behavioural and mental health problems. They can face difficulties in school and in the community, and may hide the fact of a parent's offending and execution even decades later, due to the stigma attached to being the child of someone on death row.[171]

Other groups may also be affected, such as the lawyers defending those facing death* and the prison staff who oversee and administer death row. Lawyers who work on this issue have spoken of their isolation from colleagues and the burden they feel of having a client's 'life on my shoulders' – and the devastating impact of having a client executed.[172] One lawyer in India said:

I specialise in end-stage death cases … I dread these cases, and shudder every time a new one comes my way. Having taken it on, I feel I am living with a coffin tied to my back. It takes over my life, dominates my thoughts during the day, corrupts all pleasure and invades my dreams at night. I habitually have nightmares of executions, some of which I imagine are taking place in my apartment or just on the ledge outside the balcony where a scaffold has been erected, and the prisoner is being dropped from the balcony ledge with a rope tied to his neck. While preparing the case, I sometimes get so afraid that I am unable to work, and have to curl up under a blanket and go to sleep. Alcohol has a soothing effect on my nerves, and I have to stop myself from having more than one drink in the evening, or beginning the day with a gin and tonic. Ever since I started doing this work, people have been telling me that I age six years in six months.[173]

* For more on this issue, see PRI's briefing paper *Fighting for clients' lives: the impact of the death penalty on defence lawyers*, available at http://www.penalreform.org/resource/fighting-clients-lives-impact-death-penalty-defence-lawyers/.

The death penalty and victims in Islamic law

Islamic law makes specific provisions for victim forgiveness through a system that allows relatives of the murder victim's family to pardon the murderer in return for financial compensation or forfeited rights of inheritance – otherwise known as *diyya* or 'blood money'. Such a system continues to exist in countries such as Iran, Pakistan, Saudi Arabia and Yemen.

There are many rules that control the *diyya* system in Islam, which was initially created as a means of avoiding the death penalty in *Qesas* crimes.* *Diyya* is an ancient form of restitution for the victim or family, and has been compared to the financial compensation which exists in many states' criminal and civil laws. The Quran appeals for such forgiveness from the victim's family, preferring this option to the punishment of death.[174]

According to many Islamic scholars, the amount of money for *diyya* is fixed, which aims to guarantee equality between victims.

However, the UN Human Rights Committee has stated that the 'preponderant role of the victim's family in deciding whether or not the penalty is carried out on the basis of financial compensation ("blood money") is also contrary to the Covenant [ICCPR]'.[175]

The system of *diyya* can be seen to make the administration of the death penalty arbitrary and discriminatory. Punishment is not only dependent upon how forgiving a victim's family is but also on the economic status of the perpetrator or their family, because those with money are able to pay the families of the victims.

Where *diyya* exists in Saudi Arabia, it has been pointed out that this procedure much better protects Saudi nationals than it does foreign workers sentenced to death, many of whom do not have the family, tribal base or monetary resources to save them from execution.[176]

* A *Qesas* crime is one of retaliation. The damage that was inflicted on the victim is inflicted on the accused. It is based on the scriptural principle of 'an eye for an eye and a tooth for a tooth'. The victim has a right to seek retribution and retaliation. The exact punishment for each *Qesas* crime is set forth in the Quran. Traditional *Qesas* crimes against the person include: intentional or premeditated murder; quasi-intentional murder; unintentional murder (manslaughter); intentional injury; and quasi-intentional or non-intentional injury.

12 steps to abolition of the death penalty in law for all offences

01 Narrow the provisions for the use of the death penalty. This means:

- Reduce the number of death penalty-applicable offences to only the 'most serious'.
- Abolish the mandatory death penalty.
- Prohibit the execution of juveniles, pregnant women, mothers with young children, those suffering from mental or intellectual disabilities or extremely limited mental competence and the elderly.

02 Introduce, and/or ensure access to, fair trial safeguards for all those accused of death penalty-applicable offences, at all stages of trial, appeal and clemency or pardon proceedings.

03 Review practices to ensure that death sentences are not being imposed or applied in a discriminatory or arbitrary fashion.

04 Where executions do occur, put in place measures to ensure that it is carried out so as to inflict the minimum possible suffering. For example, ensure death row conditions comply with international human rights standards, abolish death penalty by stoning, abolish public executions, and ensure executions are not carried out in secrecy.

05 Take real steps towards abolition, such as strengthening law enforcement agencies, ensuring fair trial standards are in place and upheld, making sure that prison conditions for those convicted of the most serious crimes are appropriate for the risk each individual poses, and undertaking legislative and constitutional reforms to bring about abolition.

06 Uphold the strongest principles of transparency and accountability in the death penalty process, including publishing details on the number of persons sentenced to death, the number of persons on death row and the number of executions carried out, the number of foreign nationals facing death and the number of children with parents sentenced to death or executed.

07 Pending full and final abolition, establish an official moratorium on executions and death sentences.

08 Engage in a public debate on the effect and efficiency of the death penalty, and instil confidence that abolition will not undermine justice or public safety. Actively involve the media, NGOs, religious leaders, politicians, judges, and the police etc. to educate the public.

09 Establish a humane alternative sanctions regime to replace the death penalty that respects international human rights standards and norms.

10 Commute death sentences for those already on death row; ensure humane conditions for those under sentence of death and those who have had their sentences commuted in line with international standards and norms for the treatment of prisoners.

11 Sign and ratify binding international and regional instruments that commit to abolishing the death penalty. These include the International Covenant on Civil and Political Rights (ICCPR), the Second Optional Protocol to the ICCPR, the Convention on the Rights of the Child, the Convention Against Torture, and Protocols 6 and 13 to the European Convention on Human Rights or the Protocol to the American Convention on Human Rights to Abolish the Death Penalty, where applicable.

12 Abolish the death penalty for all crimes in law, and ensure that it cannot be legally reinstated.

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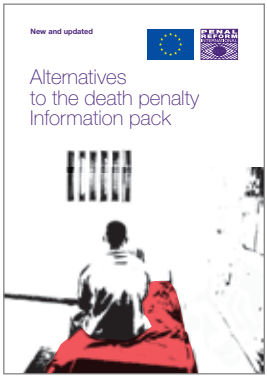

Penal Reform International
60–62 Commercial Street
London E1 6LT
United Kingdom

+44 (0) 20 7247 6515
www.penalreform.org
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