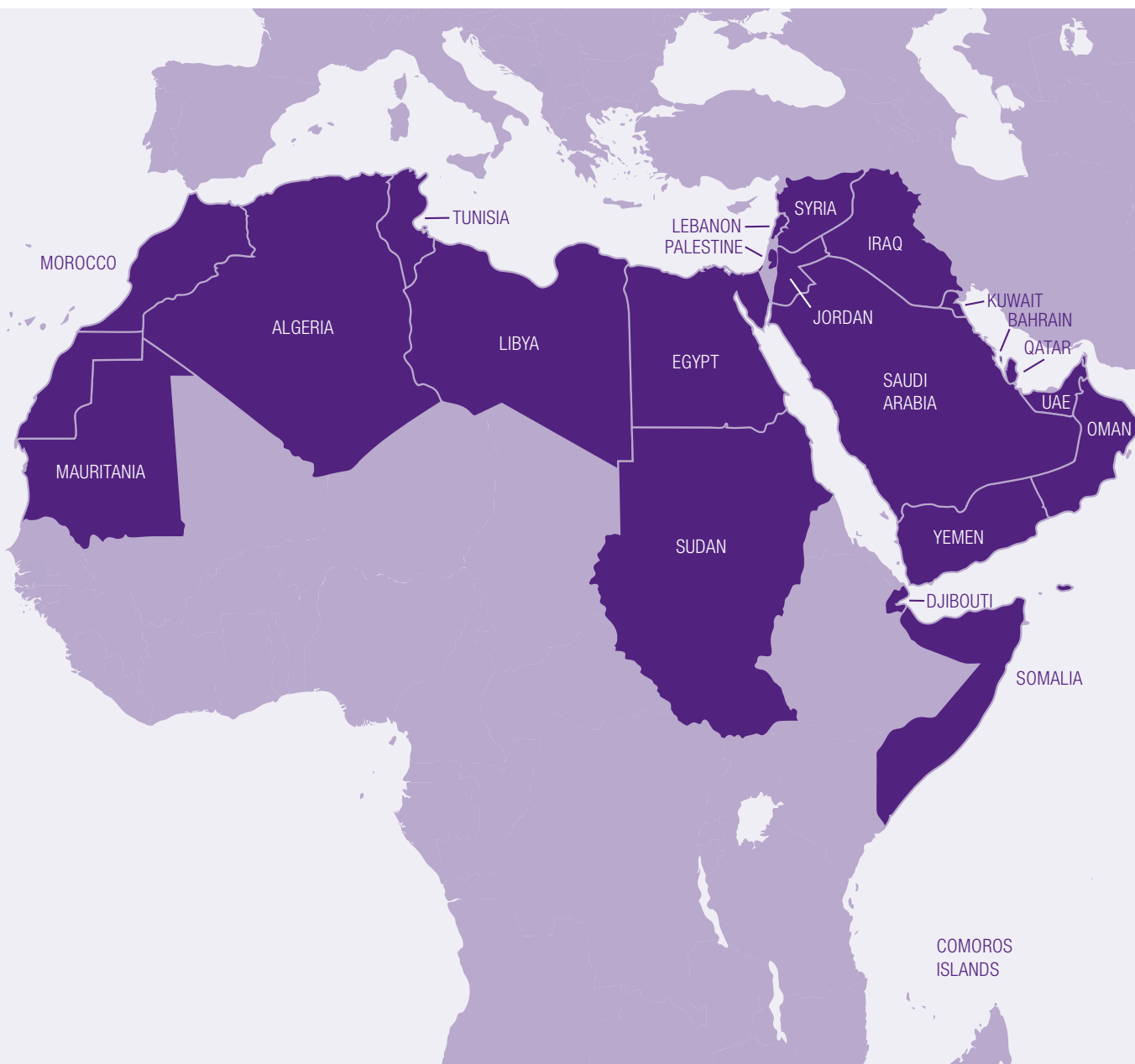


## Abolition of the death penalty in the Arab world: Effective strategies and available mechanisms

A procedural toolkit



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## **Fighting the death penalty in the Arab world: Effective strategies and available mechanisms**

### **A procedural toolkit**

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# Contents

Acknowledgements.....	3
Acronyms .....	4
Foreword by Ambassador Birgitta Holst Alani (Swedish Institute Alexandria) .....	5
Preface by Taghreed Jaber (Penal Reform International) .....	6
About Penal Reform International .....	8
About the Swedish Institute Alexandria .....	10
<b>Chapter one: An overview of the death penalty in the Arab World.....</b>	<b>11</b>
Section one: The status of the death penalty in the Arab World .....	11
<i>Table 1: Number of executions per country (2004-2011).....</i>	<i>13</i>
<i>Table 2: Number of death sentences and executions per country (2011).....</i>	<i>14</i>
<i>Table 3: Examples of the rate of executions relative to population (per million).....</i>	<i>15</i>
<i>Table 4: The number of death sentences issued and implemented in each country (2011) .....</i>	<i>15</i>
<i>Table 5: Positive legislative amendments.....</i>	<i>16</i>
Section two: Areas of concern .....	16
<i>Table 6: Negative legislative amendments .....</i>	<i>17</i>
<i>Table 7: Number of crimes punishable by death in various Arab states .....</i>	<i>17</i>
<b>Chapter two: Arguments for and against the death penalty .....</b>	<b>20</b>
Section one: Arguments in favour of abolition of the death penalty.....	20
Section two: Arguments in favour of retention of the death penalty .....	24
<b>Chapter three: International standards relating to the death penalty .....</b>	<b>28</b>
Section one: International treaties .....	28
Section two: Safeguards guaranteeing the rights of those facing the death penalty.....	29
Section three: Resolutions of the UN General Assembly .....	30
<i>Table 8: Voting record on the UN GA moratorium resolution .....</i>	<i>31</i>
Section four: Explanation of standards .....	31
<i>Table 9: Minimum international standards required for a fair trial.....</i>	<i>34</i>
Section five: Arab states' commitment to international standards.....	39
<i>Table 10: Arab states' ratification of international treaties related to the death penalty.....</i>	<i>39</i>
<b>Chapter four: International human rights mechanisms.....</b>	<b>40</b>
Section one: Treaty monitoring bodies .....	40
<i>Table 11: Latest reports submitted by country to the treaty monitoring committees.....</i>	<i>41</i>
Section two: Special procedures.....	41
Section three: The Universal Periodic Review mechanism .....	43
<i>Table 12: Universal Periodic Review by state.....</i>	<i>44</i>
Section four: Reports of the UN Secretary-General .....	44
<b>Chapter five: Europe and the fight against the death penalty .....</b>	<b>48</b>
Section one: European standards on the death penalty .....	48
Section two: How the EU works to fight against the death penalty .....	50
Section three: The EU and the Middle East and North African region .....	51
<b>Chapter six: The League of Arab States .....</b>	<b>53</b>
<b>Chapter seven: African mechanisms for the protection of human rights.....</b>	<b>54</b>
<i>Table 13: Arab states' ratification of African treaties related to the death penalty .....</i>	<i>55</i>

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<b>Chapter eight: Effective tools for fighting against the death penalty</b> .....	57
Section one: Basic principles of strategic planning.....	57
Section two: The New Tactics methodology .....	59
Section three: Progressive abolition strategy .....	68
<b>Chapter nine: Key international and regional abolitionist organisations</b> .....	70
<b>Appendices:</b> .....	72
Appendix I: UN General Assembly resolution 62/149 (2007).....	72
Appendix II: UN General Assembly resolution 63/168 (2008).....	74
Appendix III: UN General Assembly resolution 65/206 (2010).....	75
Appendix IV: Alexandria Declaration (2008).....	77
Appendix V: Algiers Declaration (2009).....	79

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PRI would also like to thank both the Swedish government – represented by the Swedish Institute Alexandria – and the European Union under the European Instrument for Democracy and Human Rights (EIDHR), for their support for this project.

The contents of this document are the sole responsibility of PRI and can in no circumstances be regarded as reflecting the position of the Swedish government or of the European Union.

March 2012

## Acronyms

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<b>ACHPR</b>	African Commission on Human and Peoples' Rights
<b>CRC</b>	Convention on the Rights of the Child
<b>ECHR</b>	European Convention for the Protection of Human Rights and Fundamental Freedoms
<b>ECOSOC</b>	United Nations Economic and Social Council
<b>EIDHR</b>	European Instrument for Democracy and Human Rights
<b>EU</b>	European Union
<b>GA</b>	General Assembly
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICDP</b>	International Commission against the Death Penalty
<b>MENA</b>	Middle East and North Africa
<b>NGO</b>	Non governmental organisation
<b>PRI</b>	Penal Reform International
<b>SWOT</b>	Strengths, Weaknesses, Opportunities, and Threats
<b>UAE</b>	United Arab Emirates
<b>UK</b>	United Kingdom
<b>UN</b>	United Nations
<b>UPR</b>	Universal Periodic Review
<b>US</b>	United States of America

## Note

Where “+” is indicated after a country and is preceded by a number, it means that the figure calculated is a minimum figure. Where “+” is not preceded by a number, it indicates that there were possible executions or death sentences (at least more than one) in that country, but it was not possible to obtain any figures. These figures have been calculated by Amnesty International

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## Foreword

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The Swedish Institute Alexandria is a branch of the Swedish Foreign Ministry, and works to promote dialogue between Europe and the Middle East and North Africa. The Institute's efforts in support of human rights initiatives in the Middle East region represent a long-term commitment.

The abolition of the death penalty is an aspiration common to many countries and human rights organisations throughout the world. Putting an end to capital punishment is considered a matter of fundamental importance in the field of human rights.

The Institute recently organised a second regional conference on the death penalty in the Middle East and North Africa, in cooperation with Penal Reform International and the Arab Centre for the Independence of the Judiciary and the Legal Profession. This conference, entitled "Death Penalty: risks, opportunities, proposed tools and strategies", was held at the Swedish Institute Alexandria from 20 to 21 September 2010, and brought together international and regional experts from the Middle East and Europe.

The second Alexandria conference was convened in pursuance of the recommendations of its predecessor, the first Alexandria conference, which was held in May 2008 and called for Arab states to adopt a moratorium on the use of the death penalty.

One of the concrete outcomes of the second conference is this procedural toolkit aimed at supporting the work of activists in the field of human rights. It comprises a range of tactics and strategies which can be employed by human rights activists in the Arab states, in addition to presenting and identifying international and regional instruments which can be employed, such as the standards and instruments of the United Nations, the policies of the Council of Europe, the methods applied by the African Commission on Human and Peoples' Rights and the Arab League's strategy in the area of human rights.

It is our hope that this toolkit will be an apposite and effective tool in supporting efforts expended towards the abolition of the death penalty.

**Ambassador Birgitta Holst Alani**  
**Director of the Swedish Institute Alexandria**

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## Preface

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Mankind has had a system of punishment since society began. Throughout the ages, the aim of inflicting punishment has been to discipline the offender and to deter criminal behaviour. However, with the development of criminology, the goal of punishment has gone through a metamorphosis. Punishment is no longer an end in itself; rather it has become one of a number of methods of preventing and 'curing' crime; putting rehabilitation and reintegration as its fundamental aim.

This change in approach has had a positive effect on the death penalty. Initially the justifications for the death penalty were retribution, deterrence and incapacitation. The developments in criminology have led to a reopening of the debate regarding the legitimacy of executions as a justifiable punishment.

Some scholars and human rights activists have called for the abolition of the death penalty on the basis that it does not realise the aims of punishment: deterrence and reformation. Furthermore, it constitutes a gross violation of the most fundamental human right: the right to life.

In the Arab world, the most significant justification of the death penalty can be summarised as the following: the death penalty is taken from the rulings on fixed penalties and retribution within Sharia law; the death penalty prevents vengeance being taken; it is a punishment which prevents the outbreak of crime and corruption; and is necessary to protect society.

The number of human rights activists in the Arab world has increased in the last few years, and their voices have multiplied in calling for a moratorium on the use of the death penalty as a preparatory step towards its full abolition in law.

However, despite the development of the abolitionist movement, and the increasing number of advocates within the Arab region, there remains a pressing need for further methodological work. Efforts must be focused within a practical, strategic framework aimed at achieving desired results through the utilisation of all available means, tools and resources, which by their nature represent fundamental support for, and underpinning of, the work of activists in the region.

This toolkit, which is both a product and summary of the second Alexandria conference (held in September 2010, in partnership between the Swedish Institute Alexandria, Penal Reform International and the Arab Centre for the Independence of the Judiciary and the Legal Profession), seeks to place into the hands of civil society organisations and human rights activists a compendium of information and facts regarding the death penalty, in addition to arguments and defences which can be employed in the fight for abolition. It draws into focus the many international and regional legal principles which call for a moratorium or abolition. It comprises a faithful illustration of the regional and international mechanisms that can be utilised in campaigns to fight against the death penalty. In an attempt to translate this knowledge and information into practical, procedural steps, this toolkit offers real-world proposals regarding means and methods of organising effective lobby and advocacy campaigns within the abolitionist framework, which civil society organisations and activists can incorporate into their various work programmes.

It is our hope that this toolkit will contribute towards a redoubling of efforts in the fight against the death penalty in the Arab world.



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This toolkit has been published in Arabic (December 2010) and in English (March 2012). It should be read in conjunction with other PRI publications, including the “Death Penalty Information Pack” (April 2011) and “Alternative Sanctions to the Death Penalty Information Pack” (April 2011), a training resource on “Advocacy tools in the fight against the death penalty and alternative sanctions that respect international human rights standards” (April 2011), and the research paper “The Abolition of the Death Penalty and its Alternative Sanctions in the Middle East and North Africa region” (March 2012). All PRI publications can be downloaded at: <http://www.penalreform.org/death-penalty-publications>.

**Taghreed Jaber**  
**Regional Director (Middle East and North Africa)**  
**Penal Reform International**

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## About Penal Reform International

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Penal Reform International (PRI) is an international, non-governmental organisation with Consultative Status at the United Nations Economic and Social Council (ECOSOC), and the Council of Europe, and Observer Status with the African Commission on Human and People's Rights and the Inter Parliamentary Union. Established in 1989, PRI has four regional offices: Amman, Astana, Moscow and Tbilisi, with its head office in London.

The Middle East and North Africa (MENA) regional office was established in Amman, Jordan, in 2006. The office is currently implementing programmes in Algeria, Bahrain, Egypt, Jordan, Lebanon, Morocco, Tunisia and Yemen.

PRI seeks to achieve penal reform by promoting the development and implementation of international human rights instruments in relation to law enforcement and prison conditions; the elimination of unfair and unethical discrimination in all penal measures; the abolition of the death penalty; the reduction of the use of imprisonment throughout the world; and the use of constructive non-custodial sanctions which support the social reintegration of offenders, whilst taking into account the interests of victims.

PRI has, over the past twenty years, worked in partnership with a number of local and international organisations to fight for universal abolition of the death penalty. In the MENA region, PRI has worked for the last six years by means of constructive partnerships with inter alia the Amman Centre for Human Rights Studies. PRI has supported the formation of a number of Arab coalitions against the death penalty (in Jordan, Egypt and Yemen).

PRI's current programme of work is to support democracy and protect human rights globally through progressive abolition of the death penalty and implementation of human rights standards in criminal justice systems. It has five key objectives:

1. To challenge society's attitudes in relation to the effect and efficacy of the death penalty and to increase public awareness toward abolition.
2. To support governments and other stakeholders in progressing towards abolition, including establishing moratoria on sentencing and executions, reducing the scope of application in law and the number of death sentences passed, and increasing awareness of the relevant international standards and norms.
3. To challenge governments to consider carefully whether sanctions intended to replace the death penalty, such as life and long-term imprisonment, comply with international standards and norms.
4. To increase human rights safeguards and promote greater transparency and accountability in the criminal justice and penal systems through holistic policy development and legal reform, including improved prison management.
5. To strengthen the capacity of civil society and other stakeholders in advocating for abolition, criminal justice reforms and in monitoring the performance of Governments for compliance under the Convention Against Torture (as set out under the Optional Protocol).

As part of its programme of work, PRI established various platforms with regard to the MENA region for debate and dialogue between civil society and government officials. These platforms most notably include:

- 
- Amman conference on 'The death penalty and the right to life': March 2007.
  - Alexandria conference on 'A moratorium on the use of the death penalty in the Arab world': May 2008.
  - Algiers conference on 'Reforming criminal punishment in Algeria and activating the UN resolutions': January 2009.
  - Roundtable at the Fourth World Congress against the Death Penalty held in Geneva: March 2010.
  - Alexandria conference on 'Death Penalty: risks, opportunities, proposed tools and strategies': September 2010.
  - Various national conferences and roundtables in Algeria, Egypt, Jordan, Lebanon, Morocco and Tunisia, which have resulted in the launching of Arab coalitions and important declarations which constitute a basis of the demands of the Arab death penalty abolition movement.

Foremost among these initiatives is the 2008 Alexandria Declaration, which calls on Arab countries to implement United Nations resolution 62/149 by establishing a moratorium on executions. The Declaration also calls on states to reduce the number of crimes punishable by death, to publish official information on the implementation of this punishment, to respect the safeguards for the protection of the rights of those sentenced to death, and to amend the text of Article 7 of the Arab Charter on Human Rights which leaves open the possibility of executions of juveniles (see Annex IV). The Alexandria Declaration was followed up in 2009 by the Algiers Declaration (see Annex V), also called on Arab states to declare a moratorium on the use of the death penalty, and to take various practical steps towards abolition.

The second Alexandria conference, held in September 2010, brought together more than fifty participants from eleven Arab states, and its recommendations reiterated the content of the Alexandria Declaration. This toolkit was a product of the discussions and recommendations of the conference participants. PRI hopes that this toolkit reflects all the key priorities raised by delegates in Alexandria, and will be of practical use in their continued abolitionist efforts at the national and international level.

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## About the Swedish Institute Alexandria

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The Swedish Institute Alexandria was established following an agreement between the governments of Sweden and Egypt in 1999.

It was inaugurated on 3 October 2000 by the Ministers of Foreign Affairs of Sweden and Egypt, Ms Anna Lindh and Mr Amre Moussa. It is housed in a building on the Corniche in the Eastern Port, which since 1925 has served as the Swedish Consulate and later also as a Seamen's institute. As part of the establishment of the Institute the building has undergone a comprehensive renovation.

The Swedish Institute Alexandria is an autonomous part of Sweden's Foreign Service, with a Board and an Advisory Committee appointed by the Swedish government. The members of the Board have a background in Foreign Service, development co-operation, cultural exchange and research, and represent Swedish government as well as non-governmental organisations.

The Advisory Committee, with members from the Middle East, North Africa and Europe assists the Board and the Director.

Funding for the Institute is provided from Sweden's allocations to international development co-operation.

The Swedish Institute Alexandria acts as a forum and meeting place for the exchange of ideas and experiences, aiming to build bridges of dialogue, understanding and knowledge between Europe and the MENA region. It pursues this aim by holding conferences, seminars and workshops which debate both value systems and social care systems, in addition to human rights, democratic values and research cooperation.

# Chapter one: An overview of the death penalty in the Arab world

## Introduction

There has been a global trend towards the universal abolition of the death penalty. 105 countries are abolitionist in law (including Djibouti – the only Arab country to have abolished the death penalty completely from legislation) and a further 35 countries are abolitionist in practice (meaning they have not carried out an execution for at least the last ten years), including Algeria, the Comoros Islands, Mauritania, Morocco and Tunisia from among the Arab states.<sup>1</sup> No fewer than 58 of the world's countries can be classed as retentionist in that they have carried out an execution in the last ten years, however only 20 of them are known to have carried out executions in 2011, among them nine Arab states.

It is evident then that the Arab world is migrating towards a situation whereby executions are rarely carried out. There has been a clear decline in the overall number of death sentences imposed over the past five years across the region, and there has also been a significant drop in the number of executions which have been carried out. In 2011, at least 215 executions were known to have been carried out in the Arab world.<sup>2</sup>

It is interesting to note that although the death penalty continues to retain a high degree of support in the majority of the Arab world, there has been an increase in the number of civil society organisations, human rights activists, Islamic Sharia experts, governments officials, and members of parliaments calling regularly for the abolition of the death penalty, or at least a moratorium on executions and a reduction in the number and type of crimes punishable by death.

In the year 2011 a total of 140 of the world's countries had abolished the death penalty in law or in practice. This includes Algeria, the Comoros Islands, Djibouti, Mauritania, Morocco and Tunisia, indicating that there is a trend in the Arab world towards de facto moratoriums on executions, migrating towards the eventual abolition of the death penalty.

NB: In this document, the term 'Arab states' or 'Arab world' refers to the 22 countries which are members of the Arab League: Algeria, Bahrain, the Comoros Islands, Djibouti, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Palestine, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, the United Arab Emirates and Yemen.

## Section one: The status of the death penalty in the Arab world

### *Abolitionist:*

- Djibouti abolished the death penalty in law in 1995 (it remains the only Arab country to have done so). It had not carried out an execution since 1977 (one death sentence was imposed then commuted to life imprisonment in 1993).

### *De facto moratorium:*<sup>3</sup>

- Mauritania has not carried out an execution for more than 24 years, since 1987.
- Tunisia has not carried out an execution for more than 19 years, since 1992.
- Algeria and Morocco have not carried out executions for more than 18 years, since 1993.

1. Death Sentences and Executions 2011, Amnesty International, March 2011, ACT 50/001/2012, p. 57.

2. Ibid, pp. 32 and 45.

3. De facto moratorium means that although the state has not established an official moratorium in law, they have nonetheless not carried out an execution for at least the last ten years.

- The Comoros Islands has not carried out an execution for more than 14 years, since 1997.

*Retentionist:*

- Jordan and Kuwait have not carried executions since 2007; Qatar has not carried out an execution since 2003.
- Lebanon resumed the death penalty in 1994 after a de facto moratorium for a period of ten years. The last execution to be carried out was in 2004. Since then, Lebanon has not resumed the practice.
- Oman executed four individuals in 2009, after not having carried out an execution since 2001.
- Bahrain resumed executions in 2006 after a de facto moratorium for a period of ten years. However, the most recent actual implementation of the punishment was in 2010 when a single execution was carried out.
- In 2011, the UAE executed for the first time since 2008.
- Iraq, the Kingdom of Saudi Arabia and Yemen impose and execute the death penalty in the largest numbers.
- In 2011 the following countries did not carry out a single death penalty despite the fact that the courts continued to impose the sanction: Bahrain, Jordan, Lebanon, Kuwait, Libya, Oman and Qatar, plus the countries which have not executed the punishment for many years, namely Algeria, Comoros Islands, Mauritania, Morocco, and Tunisia. This is of course in addition to Djibouti, which has abolished the death penalty from its legislation. In 2011, a total of 13 out of the 22 member states of the Arab League did not carry out any executions.
- In 2011, Egypt executed one person; Iraq executed at least 68 people; Palestine executed 3; Saudi Arabia executed at least 82 people; Somalia executed 10; Sudan executed at least 7 people; Syria at least 2; UAE executed 1 person; and Yemen executed at least 41.
- On the basis of official figures, it is evident that there has been a clear drop in the imposition and execution of the death penalty in these countries. For example, the number of death sentences carried out in Egypt decreased from 350 executions during the period 1994-2003, to at least 19 executions between 2004-2011.

*Table 1: Number of executions per country (2004-2011) <sup>4</sup>*

Country	2004	2005	2006	2007	2008	2009	2010	2011	Total
Algeria	0	0	0	0	0	0	0	0	0
Bahrain	0	0	3	0	1	0	1	0	5
Comoros Islands	0	0	0	0	0	0	0	0	0
Djibouti	0	0	0	0	0	0	0	0	0
Egypt	6	0	0	1	2	5+	4	1	19+
Iraq	0	3	65	33	37+	120+	1+	68+	327+
Jordan	1	15	4+	2+	0	0	0	0	22+
Kuwait	9	7	11	1	0	0	0	0	28
Lebanon	3	0	0	0	0	0	0	0	3
Libya	0	6	0	9	8+	4+	18+	0	45+
Mauritania	0	0	0	0	0	0	0	0	0
Morocco	0	0	0	0	0	0	0	0	0
Oman	0	0	0	0	0	4	0	0	4
Palestine	0	5	0	0	0	0	5	3	13
Qatar	0	0	0	0	0	0	0	0	0
Saudi Arabia	38	86	39	158+	102+	69+	27+	82+	601+
Somalia	1	1	7	5	3+	12	8+	10	47+
Sudan	2	4	65	7	5	9+	6+	7+	105+
Syria	2	0	2	7	1+	8+	17+	2+	39+
Tunisia	0	0	0	0	0	0	0-	0	0
UAE	0	0	1	0	1+	0	0	1	3+
Yemen	6	7	30	15	13+	30+	53+	41+	195+
Total	68	134	227+	238+	173+	261+	140+	215+	1456+

## Decreasing implementation

Among the Arab countries which imposed death sentences and carried out executions in 2011, a number of them implemented executions in far smaller quantities than the number of death sentences imposed by the courts. In Iraq, for example, at least 291 people were sentenced to death in 2011, while 68 were executed. Although this number is very great, it is nonetheless encouraging that the cases of execution numbered far fewer than the cases in which the punishment was imposed. In the UAE, death sentences were handed down in no fewer than 31 cases in 2011, while only one execution was carried out in the same year. During 2011, Algeria sentenced at least 51 people to death, although no executions were carried out. Jordan imposed at least 15 death sentences but also did not carry out any executions.

4. Data extracted from "Capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty", Report of the UN Secretary General to ECOSOC, 18 December 2009, E/2010/10, para. 34, table 2 (period 2004-2008). As regards figures for 2009, 2010 and 2011, see Amnesty International reports on "Death Sentences and Executions" for each year.

*Table 2: Number of death sentences and executions per country (2011) <sup>5</sup>*

State	Number of death sentences	Number of executions
Algeria	51+	0
Bahrain	5	0
Comoros	0	0
Djibouti	Abolitionist in law	Abolitionist in law
Egypt	123+	1+
Iraq	291+	68+
Jordan	15+	0
Kuwait	17+	0
Lebanon	8	0
Libya	0	0
Mauritania	0	0
Morocco	5	0
Oman	0	0
Palestinian Authority	5+	3
Qatar	3+	0
Saudi Arabia	9+	82+
Somalia	37+	10
Sudan	13+	7+
Syria	+	+
Tunisia	0	Implementation suspended (most recent execution in 1991)
UAE	31+	1
Yemen	29+	41+
Total	642+	213+

### Decrease relative to population

There has been a notable fall in the rate of executions relative to the population in the Arab world. For example, during 1994-1998, there were 2.12 executions per million people in Jordan. This fell to 2.08 per million in the period 1999-2003, and to 0.62 in 2004-2008. In Egypt the rate of executions per million people was 0.43 in 1994-1998. This rose worryingly to 1.30 in the period 1999-2003, before falling to 0.02 in the 2004-2008 period. Meanwhile in Yemen, despite the high number of executions generally, the rate of executions per million people was 0.61 in the period 2004-2008.

It is worth observing that the decrease in the number of executions relative to population demonstrates a positive trend towards the reduction in the application of the death penalty in practice, and that the majority of Arab states are applying the death penalty narrowly.

5. Death Sentences and Executions 2009, Amnesty International, 29 March 2010, ACT 50/001/2010.



*Table 3: Examples of the rate of executions relative to population (per million) <sup>6</sup>*

Country	Executions 1994-1998	Rate per million	Executions 1999-2003	Rate per million	Executions 2004-2008	Rate per million
Egypt	132	0.43	350	1.30	9	0.02
Iraq	-	-	-	-	135	0.92
Jordan	55	2.12	52+	2.08	19+	0.62
Kuwait	-	-	-	-	28	1.93
Libya	31	1.17	-	-	23	0.73
Saudi Arabia	465	4.65	403+	3.66	423	3.34
Sudan	5	0.03	53+	1.17	83	0.42
Yemen	88	1.10	144+	1.51	71	0.61

### Refraining from reintroducing capital punishment

It is abundantly clear that there is a continued rise in the number of countries refraining from carrying out the death sentence. As at the end of 2011, the Arab states which have suspended the execution of this sanction have not resumed its application.

*Table 4: The number of death sentences issued and implemented in each country (2011)*

Country	Year of most recent known execution	No. of years since last execution to 2011
Algeria	1993	18
Bahrain	2010	1
Comoros Islands	1997	14
Djibouti	1977	34
Egypt	2011	-
Iraq	2011	-
Jordan	2007	4
Kuwait	2007	4
Lebanon	2004	7
Libya	2010	1
Mauritania	1987	24
Morocco	1993	18
Oman	2009	2
Palestine	2011	-
Qatar	2003	8
Saudi Arabia	2011	-
Somalia	2011	-
Sudan	2011	-
Syria	2011	-
Tunisia	1992	19
UAE	2011	-
Yemen	2011	-

6. Report of the UN Secretary-General to ECOSOC, supra n. 4, para. 35, table 3.

## Initiatives to abolish or reduce the death penalty in legislation

An important indicator that Arab states are moving towards reducing and restricting the use of the death penalty in practice is the number of initiatives that have been launched to reduce the type and number of death penalty applicable crimes in legislation. It should be highlighted that civil society has worked with various progressive government officials and parliamentarians in many countries to take these positive steps.

*Table 5: Positive legislative amendments*

Country	Development
Algeria	In 2006 and 2008 bills were presented to Parliament for the abolition of the death penalty. Although both bills were rejected, the 2008 bill resulted in broad public discussion and debate regarding the punishment.
Egypt	In December 2009, a bill to abolish the death penalty was tabled at the Parliament's Human Rights Committee. It was, however, rejected.
Jordan	In 2006, the Law of Penalties was amended to abolish the death penalty for one crime. In April 2009, the Ministry of Justice announced that the Law of Penalties would be amended again in order to abolish the death penalty for a further three crimes. The issuance of the Provisional Amended Law of Penalties No. 12 of 2010 abolished the death penalty for arson which results in loss of life, and inciting armed insurrection against the established authorities, replacing it with life imprisonment. The Law of Narcotics and Mental Stimulants was also amended to abolish the death penalty as regards a number of drug-related offences.
Lebanon	A bill to abolish the death penalty was proposed by Justice Minister Ibrahim Najjar before the Council of Ministers in 2009. Although this has not yet been passed, it created debate and dialogue among the members of the Council of Ministers.
Morocco	A bill to amend the Criminal Code was presented to Parliament with the aim of reducing the number of crimes punishable by death from thirty-six to six. An amendment to the constitution was also proposed stating the death penalty should be removed. In addition, the major recommendations of the Equity and Reconciliation Commission, which was established with the aim of reconciling the parties involved in the political struggle during the days known as the 'Years of Lead', included several calls for the abolition of the death penalty. However neither proposal gained sufficient support.

## Section two: Areas of concern

### Expansion of the number of crimes punishable by death

Legislative amendments in a number of Arab states have broadened and increased the number of death penalty applicable crimes, in particular as regards crimes of terrorism and drug-related offences.

Despite the increasing number of voices calling for a moratorium and legislative and policy steps towards reducing the application of the death penalty in practice, there has nonetheless, been a notable increase in the number of death penalty applicable crimes across the Arab world. Regardless of whether sentences have been carried out, the vast majority of these relate to drug offences or acts of terrorism. It is also extremely concerning that a number of these legislative amendments have taken place in countries which have a *de facto* moratorium.

7. The 'Years of Lead' is a term used to describe the period of rule of King Hassan II (mainly the 1960s through the 1980s) which was marked by state violence against dissidents and democracy activists.

*Table 6: Negative legislative amendments*

Country	Development
Egypt	A 2007 amendment to Article 179 of the Constitution established that the President could refer civilians accused of acts of terrorism to appear before any court, including military courts which have the power to impose the death penalty. The amended Article 179, entitled 'Combating Terrorism', has also made it permissible for the state to gather evidence and carry out an investigation without the need to comply with Article 41 of the Constitution (Prohibition of Arbitrary Inspection, Arrest and Detention), Article 44 (Respect for the Sanctity of Homes) and Article 45 (Respect for Private Life).
Jordan	The Law of Penalties was amended in October 2001 by means of Provisional Law No. 54 of 2001 (issued by provisional royal decree in the absence of Parliament), which expanded the list of terrorist acts which may be punishable by death.
Tunisia	Legislative amendments in 2005 introduced the death penalty for crimes of terrorism and intentionally exposing shipping or aviation safety to danger resulting in death.

The number and types of crimes which may result in a sentence of death has also expanded in the Arab world, and significantly exceeds the "most serious crimes" standard.

*Table 7: Number of crimes punishable by death in various Arab states <sup>8</sup>*

Country	Number of crimes punishable by death (if known)	Laws in force which provide for the death penalty
Algeria	Number unknown	<ul style="list-style-type: none"> <li>• Law of Penalties No. 23-06 of 2006.</li> <li>• Order No. 47-75, 1975.</li> </ul>
Egypt	At least 44 articles provide for the death penalty as a punishment.	<ul style="list-style-type: none"> <li>• Weapons and Ammunition Law No. 394 of 1954.</li> <li>• Law of Penalties.</li> <li>• Narcotics Law No. 182 of 1960, amended by Law No. 122 of 1989.</li> </ul>
Jordan	At least 23 articles provide for the death penalty as a punishment.	<ul style="list-style-type: none"> <li>• Law of Penalties No. 16 of 1960.</li> <li>• Law of Military Penalties No. 58 of 2006.</li> <li>• Law of Narcotics and Mental Stimulants No. 11 of 1988.</li> <li>• Law of Explosives No. 13 of 1953.</li> <li>• Law of Protection of State Secrets and Documents No. 50 of 1971.</li> </ul>
Lebanon	At least 24 articles provide for the death penalty as a punishment.	<ul style="list-style-type: none"> <li>• Law of Civil Penalties.</li> <li>• Law of Narcotics, Mental Stimulants and Precursors.</li> <li>• Law of Preservation of the Environment against Pollution from Harmful Waste and Hazardous Substances.</li> <li>• Law of Military Justice.</li> </ul>
Morocco	365 death penalty crimes <sup>9</sup>	<ul style="list-style-type: none"> <li>• Penal Code of 1962 under Edict No. 413-59-1.</li> <li>• Military Justice Code of 1956 under Edict No. 270-56-1.</li> <li>• Law No. 03-03 on Combating Terrorism, supplementing Chapter 218 of the Penal Code.</li> </ul>
Tunisia	Number unknown	<ul style="list-style-type: none"> <li>• Penal Code: Law No. 89 of 1999; amendments in Law No. 45 of 2005, and Law No. 46 of 2005.</li> <li>• Military Procedure and Penalties Code 1957.</li> <li>• Revision of Chapter 126 of the Penal Code under Law No. 9 of 1985.</li> <li>• Maritime Disciplinary and Penal Code.</li> <li>• Railways Law No. 74 of 1998</li> </ul>
Yemen	41 articles comprising 315 death penalty crimes.	<ul style="list-style-type: none"> <li>• Law of Crimes and Penalties.</li> <li>• Law of Military Crimes and Penalties.</li> <li>• Law to Combat the Crimes of Kidnapping and Banditry.</li> <li>• Law to Combat the Illegitimate Dealing and Use of Narcotics and Mental Stimulants.</li> <li>• Law of Evidence.</li> </ul>

8. This information has been summarised from Studies on Death Penalty and the Right to Life in the Arab World, Penal Reform International and Amman Centre for Human Rights Studies, 2007.

9. The Death Penalty: Moroccan legislation and the demands of the rights movement, Nadia Ben Heydak, published in Studies on Death Penalty and the Right to Life in the Arab World, Penal Reform International and Amman Centre for Human Rights Studies, 2007, pp. 11-19.

The following are examples of the types of crime in the Arab world for which the death penalty is imposed (this list is indicative and not exhaustive):

- Attack on the life or person of the King or member of the royal family.
- Treason.
- Murder.
- Attempted murder.
- False testimony leading to a death sentence.
- Torture.
- Sorcery.
- Adultery.
- Apostasy.
- Exposing a person to danger which results in death.
- Anyone who possesses, acquires, purchases, sells, delivers, transports or offers for consumption narcotics with the intention of dealing.
- Anyone who induces others, by any coercive or fraudulent means, to consume narcotics.
- Civil servants' connivance with military organisations.
- Offences infringing the state's external or internal security.
- Espionage or spying.
- Bearing weapons against the state.
- Facilitating an enemy's entry into the country, or surrendering to him towns, fortifications, installations, sites, ports, stores etc.
- Inciting soldiers in time of war to enter into the service of any foreign state.
- Arson of public buildings or means of transportation.
- Intentionally disrupting or impeding traffic resulting in death.
- Desertion.
- Using violence against a wounded soldier.
- Surrendering to the enemy, or surrendering to him the position or the like, without all means of defence being exercised.
- Surrender by a general or commander.
- Anyone who undertakes by any means whatsoever the persuasion of a third party to perpetrate a crime punishable by death.
- Crimes of terrorism, not necessarily resulting in death.
- An attack to provoke civil war or sectarian violence, or of inciting massacre and pillaging.

### Execution of juveniles

Article 7 of the Arab Charter on Human Rights states that "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**" [emphasis added].

This means that where a state permits the execution of juveniles in their national law, they will still be compliant with the Arab Charter. This is a clear contravention of international standards which prohibit the execution of juveniles under Article 37 of the Convention on the Rights of the Child (of which all Arab states, aside from Somalia, have ratified).

#### Saudi Arabia

Saudi Arabia informed the Committee on the Rights of the Child in 2005 that "Islamic Sharia, which the Kingdom applies, categorically does not sentence to

death those below the age of puberty, irrespective of whether the crime they have committed falls under the area of retribution, fixed punishments or discretionary punishments.” The question of what exactly the age of “puberty” is however remains unanswered. Trial judges make decisions on whether a defendant is a child based on physical signs of puberty at the time of trial and not at the time of crime. This results in the imposition of the death penalty for crimes committed by those under the age of eighteen. In May 2009, two men who were 17 at the time of their alleged crimes were among five who were beheaded in Saudi Arabia.

Saudi Arabia agreed to a 2009 recommendation from the Universal Periodic Review that the Code of Criminal Procedure should be amended to stipulate that only those who are eighteen years of age and above should be tried as persons of the age of majority, and that death sentences passed against any person under eighteen at the time of committing the crime must be converted to a custodial sentence. On 24 November 2008, the Shura Council, an appointed advisory body with similar functions of a parliament, passed a measure to raise the general age of majority from 15 to 18, despite the opposition of the Council's Islamic Affairs, Judiciary and Human Rights Committee. On 4 October 2010, the Shura Council again debated the age of majority in the context of a draft law on protecting children from violence and neglect. The Saudi cabinet has passed neither measure into law and their applicability to capital punishment remains unclear.

### **Sudan**

In a positive move, Sudan amended its laws in January 2010 to set 18 years as the firm age of majority. Previously, Sudan's legal system contained ambiguous provisions allowing an individual to reach the age of majority - and thus be liable to the death penalty - as young as 15. However, the December 2008 Sudanese Supreme Court decision which confirmed the death sentence for Abdulrahman Zakaria Mohammed, a juvenile offender who was executed in 2009, was based in part on a conclusion that the prohibition of the death penalty for children did not extend to hudud offences - crimes seen as being “against God”. It is not clear whether the new 2010 law would affect the Court's ruling regarding future hudud cases.

### **United Arab Emirates**

Juvenile offenders continue to be held on death row in the UAE. In April 2010, the UAE Supreme Court upheld death sentences for two Emiratis and one Bangladeshi for a murder committed when each of the defendants was 17.

### **Yemen**

Despite the fact that the Yemeni Law of Penalties clearly stipulates that the execution of those under eighteen years of age is prohibited, in practice death sentences are passed against juveniles. In Yemen there is no registry of births. This means that puberty is often used as an assessment by the court of age of the accused. A person's age is estimated by means of forensic evaluation, and the rate of error is often very high. The number of forensic practitioners in Yemen is very low, and they do not cover all areas of the country. It is known that at least one juvenile was executed in February 2007.

## Chapter two: Arguments for and against the death penalty

### Section one:

#### Arguments in favour of abolition of the death penalty

The arguments in favour of abolition of the death penalty in the Arab region differ little from the rest of the world. However, it is neither understood nor justifiable that the efforts of Arab activists could be described as promoting Western ideals, aimed at destroying Islamic faith and society. Arguments are based on the universal principle of the right to life and respect for human dignity, which in no way goes against Sharia law or the foundations of Islamic society.

#### The death penalty is a cruel and unusual punishment

The death penalty is the ultimate cruel, inhuman and degrading punishment, which has never been shown to deter criminal behaviour more effectively than other punishment. The death penalty represents an unacceptable denial of human dignity and integrity. It is irrevocable, and where criminal justice systems are open to error or discrimination, the death penalty will inevitably be inflicted on the innocent. It legitimises state killing. The act of an execution itself causes both physical and mental suffering, and is often applied arbitrarily.

##### Description of an execution (1971)

“Halawi was finally able to stand, and he took small steps. Before he reached the executioner they shackled his hands behind his back. The executioner approached him with a white execution robe and dressed him in it. The security officers led him to the steps of the gallows. He stopped, then fell to his knees and prayed. He was then led up to the steps but was unable to ascend the staircase; he collapsed across them and wept. The security officers then picked him up and pushed him upwards. The executioner coiled the rope around his neck. One of the security officers came forward and tried to remove the wooden plank placed under the condemned man’s feet so that he would fall, but he did not succeed. He repeated the attempt twice more, pushing with all his might. The wooden plank twisted and Halawi fell. During the first minute, Halawi remained conscious, swaying. The executioner approached him, took him by the feet and pulled. His neck emitted an audible crack, and the executioner thought he had died. But Halawi’s feet began to move. The executioner returned and pulled him by his feet more forcefully. Halawi fell quiet for a moment, then began moving again, to the astonishment of those present. The executioner repeated this action for three minutes until the spirit surrendered.”<sup>10</sup>

#### The death penalty does not deter criminal behaviour more effectively than any other punishment

The argument that the death penalty has a strong deterrent effect on serious violent crime plays an important role in the debate in retentionist states. It can often be seen as one of the primary reasons why both the public and politicians shy away from abolition.

However, this 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,

10. Execution of Kamil Ibrahim Halawi, Annahar newspaper archives, 27 June 1971.

they will be sentenced to death rather than to a long-term prison sentence.

The argument is seriously flawed in a number of respects.

There is no substantial empirical data that proves the death penalty deters criminal behaviour more effectively than any other punishment.

Many crimes often 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 would consider the potential range of penalties or consequences for their act before it was committed.

### **Mexican drug cartels**

Prior to the abolition of the death penalty in 2005, Mexican 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.

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

Evidence from the US, Canada and other countries demonstrates that violent crime does not decrease where the death penalty is in place. In fact there is evidence to suggest that those states without the death penalty have a lower murder rate, indicating that the death penalty is less effective than life or long-term imprisonment in deterring murder.

### **Reduced crime rates following abolition in Canada and the USA**

In Canada, in 2003 – 27 years after the abolition of the death penalty – the murder rate had fallen by 44 percent since 1975 (before the death penalty was abolished).<sup>11</sup> In fact, in 2001 there were 554 serious crimes reported in Canada, compared to 721 in 1975: a 23 percent decrease. In 2009 in the US, 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.<sup>12</sup>

A 2008 study<sup>13</sup> of leading US criminologists came to a similar conclusion, with 88 percent 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 that the empirical research conducted on the deterrence question fails to support the threat or use of the death penalty."

According to the Parliamentary Assembly of the Council of Europe, the European experience of abolishing the death penalty across the whole region has also shown conclusively that the death penalty is not needed to check violent crime.<sup>14</sup>

11. Japan: "Will this day be my last?" The death penalty in Japan, Amnesty International, ASA 22/006/2006, 6 July 2006, p. 21.

12. Deterrence: States Without the Death Penalty Have Had Consistently Lower Murder Rates, Death Penalty Information Centre, <http://www.deathpenaltyinfo.org/deterrence-states-without-death-penalty-have-had-consistently-lower-murder-rates> (accessed 21 October 2010).

13. Michael L. Radelet & Traci L. Lacoock, 'Do Executions Lower Homicide Rates? The Views of Leading Criminologists', *Journal of Criminal Law and Criminology*, Vol. 99, No. 2 (2009), p. 489-508.

14. PACE document 12456 (3 January 2011).



A 2009 report by the US-based Death Penalty Information Centre showed that US 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 rate it as one of most inefficient uses of taxpayer dollars in fighting crime.<sup>15</sup>

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 law enforcement capabilities, which would increase the rate of solving serious crimes. This may include improved DNA capabilities or increased police resources.

Not only could this increase the number of violent criminals arrested and prosecuted, thereby making communities safer, it would also address impunity in justice systems that fail to convict the majority of their criminals.

### **The risk of executing innocent people**

The death penalty is irrevocable, and where criminal justice systems are open to error or discrimination, the death penalty will inevitably be inflicted on the innocent.

#### **Exonerations in the USA**

Since 1973, a total of 140 people have been released from death row after evidence of their innocence emerged.<sup>16</sup> Many of these cases were discovered not because of the normal appeals process, but rather as a result of new scientific techniques, investigations by journalists, and the dedicated work of expert attorneys, not available to the typical death row inmate. It is unknown how many innocent people have been executed, however at least ten people have been executed where there is strong evidence of their innocence.

### **The death penalty may be used for political purposes**

Arab states retain many criminal offences relating to internal and external state security. The death penalty is generally the punishment prescribed for such crimes, even if the offence does not result in loss of life or harm to people. Exceptional (or special) and non-independent courts have in many Arab states been established with jurisdiction to try these crimes in proceedings which lack fair trial guarantees. Some states have exploited this to apply the death penalty arbitrarily or to eliminate or weaken their political adversaries. Recent, and current, Arab memory retains examples of the use of the death penalty to eradicate political adversaries. The issue of defining political crimes remains among the issues of concern in the Arab world, in particular given the weakness of guarantees of the independence of the judiciary.

#### **Iraq**

The vast majority of death sentences in Iraq have been handed down by the Central Criminal Court of Iraq, which was established in June 2003 by the Coalition Provisional Authority and was granted judicial jurisdiction over crimes relating to terrorism, sectarian violence, organised crime and governmental

15. Smart on Crime: Reconsidering the death penalty in a time of economic crisis, Death Penalty Information Center, October 2009.

16. Statistics from the Death Penalty Information Centre.



corruption. However, trials before the Central Criminal Court of Iraq continually fail to meet international standards of fair trial.<sup>17</sup> Those sentenced to death have generally complained that so called 'confession' evidence used to convict them was extracted from them under duress of torture, and that they had not been allowed to choose their defence lawyer. In 2009, at least 120 executions were carried out, overwhelmingly for alleged 'terrorist' offences. In the same year, Prime Minister Nouri al-Maliki publicly called for the execution of all members of the previous Ba'ath administration of Saddam Hussein. At least 65 people were executed in the first six weeks of 2012: Justice Ministry spokesman, Haider al-Saadi, confirmed that some of the people executed were charged with acts of terrorism. A lack of transparency and fair trial protections further compound the question over the legality of these executions.

### Yemen

No fewer than 34 people alleged to be Houthi rebels were sentenced to death before the Special Criminal Court in 2009, under procedures which did not meet international fair trial standards. An additional ten were sentenced to death for various acts of terrorism, including charges of spying for Iran and for Israel.

### Sudan

In April 2009, 82 men from Darfur were sentenced to death on charges relating to an attack on Khartoum in May 2008, which according to government information led to the deaths of 220 people. However, the accused were tried by special courts established in accordance with the 2001 Terrorism Law.

### Algeria

Death sentences were issued against more than 51 people during 2011, although the authorities have upheld an unofficial moratorium on executions since 1993. The majority of these sentences were imposed against people tried in their absence for terrorism-related offences.

## The death penalty may be used arbitrarily and discriminately

The death penalty is a denial of civil liberties and is inconsistent with the fundamental values of a democratic system. In practice it tends to be applied unfairly and inequitably. The death penalty has historically been applied in an arbitrary and discriminatory fashion against the poor or minorities.

### Foreign nationals

Foreign nationals, particularly migrant workers from developing countries in Africa and Asia, are particularly vulnerable to the death penalty. Usually alone in a foreign land with no relatives to turn to for help, they often lack the language skills and knowledge to even understand the trial process, and are much less likely to receive a pardon than nationals of that country.<sup>18</sup> For example, in 2011 at least 28 foreign nationals were executed in Saudi Arabia.

17. Human Rights in the Republic of Iraq, Amnesty International Annual Report, 2010.

18. Death Sentences and Executions 2010, Amnesty International, ACT 50/001/2001, p. 33.

### **Abolition of the death penalty does not favour the criminal over the victim**

Those in favour of abolition still uphold the principles of justice. Those who commit serious crimes should be subject to punishment. However that punishment should be fair and proportionate to the seriousness of the crime committed, taking into account any mitigating or aggravating circumstances. Punishment in a modern criminal justice system should focus on reformation and rehabilitation, rather than taking a more punitive or retributive approach.

### **The creation of additional victims**

The death penalty increases the number of victims. Family members of the person executed, especially children, suffer in the aftermath of an execution. The suffering of those who have lost a loved-one through an execution is no smaller in quantity or quality than the suffering faced by victims of crime.

## **Section two:**

### **Arguments in favour of retention of the death penalty**

It should be noted that those who favour the death penalty are just as vocal as abolitionists, and when considering the types of serious crimes for which the death penalty is used (usually crimes involving the loss of life in particularly abhorrent circumstances), often garner public support for its retention. As such, arguments in favour of the death penalty have manifested in an attempt to counter the views of advocates against executions.

### **It satisfies the desire for revenge on the part of the victims and their families**

Proponents 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. Revenge and retribution can never produce genuine healing for the victims. It can only deprive them of the opportunity for forgiveness and reconciliation that is needed for the healing process.

### **The seriousness of the crime justifies an execution**

While it is undeniable that there are certain crimes that are abhorrent to a civilised society, the effects of crime cannot be dealt with by state-authorised killings. The death penalty contributes to a cycle of violence. Furthermore, not all crimes are the same. There may be mitigating or extenuating circumstances as to why an offence was committed in the first place. Therefore applying the same punishment is not always proportionate or fair.

“The ultimate weakness of violence is that it is a descending spiral, begetting the very thing it seeks to destroy. . . . In fact, violence merely increases hate. . . . Returning violence for violence multiplies violence, adding deeper darkness to a night already devoid of stars.” *Martin Luther King Jr.*

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“An eye for an eye makes the whole world blind.” *Ghandi*

### **Scientific advances have led to accuracy in criminal evidence, which has reduced the possibility of error leading to the conviction of innocent people**

This statement assumes that a criminal justice system has appropriate resources and capabilities, as well as stringent fair trial procedures to ensure that no innocent person ever gets convicted for a crime he did not commit. Scientific development, such as in DNA evidence, has played a decisive role in protecting innocent people from being wrongly executed. However, many people accused of a death penalty applicable offence tend to be disproportionately poor, and often unable to afford an effective legal defence who will be able to carry out their own forensic investigation. In fact, forensic evidence is costly, and not all criminal justice systems provide appropriate resources to ensure that it can be carried out in all cases. Furthermore, cases continue to be raised where those accused of committing a serious offence have been tortured into giving confessions, or false evidence has been submitted to the court. Judicial errors can also occur, and they are not just restricted to the acceptance of evidence. The speed of judicial procedures within contemporary systems of justice, and of summary procedures, may lead to the occurrence of sentencing errors which cannot be remedied or reviewed by ordinary means of appeal. Corruption also plays a heavy part in the sentencing of innocent people, particularly where the judiciary are influenced by the government.

#### **Exoneree case study: USA**

Anthony Graves was released from a Texas prison in October 2010 after spending 16 years on death row. Graves was convicted in 1994 of assisting Robert Carter in multiple murders in 1992. There was no physical evidence linking Graves to the crime, and his conviction relied primarily on Carter's testimony that Graves was his accomplice. Two weeks before Carter was scheduled to be executed in 2000, he provided a statement saying he lied about Graves's involvement in the crime. He repeated that statement minutes before his execution. A new trial was ordered after finding that prosecutors elicited false statements and withheld testimony that could have influenced the jurors.

#### **Exoneree case study: Taiwan**

In 1997 Chiang Kuo-ching was tried by a military court for raping and killing a five-year-old girl, and subsequently executed. However, fourteen years later, in September 2011, a military court overturned the conviction posthumously. The court found that Mr Chiang was innocent and had been tortured into a confession. Although Taiwan's defence ministry will pay a reported \$3.4m (£2.1m) in compensation to the relatives of Mr Chiang, this will never bring him back.

### **Prisoners may reoffend**

There is no accurate scientific research which links the severity of the punishment to criminal recidivism. However, scientific results indicate that it is possible to benefit from a punishment by undertaking programmes of reformation and rehabilitation so as to be effectively reintegrated back into society. However, a state must invest in rehabilitation. Failure in this can be attributed to high reoffending rates.

### Reoffending in the US

In 1972, when the US Supreme Court struck down the death penalty nationwide, 589 people were on death row. Of those, 322 were ultimately released, one third (111) of them eventually returned to prison after reoffending. Of those who reoffended, three committed another murder. While that is still three deaths that would've been avoided had those men been executed or not paroled, they represent less than one percent of those released.

### Imprisonment as opposed to execution contributes to prison overcrowding

Prison overcrowding does not arise merely from sentencing people to long periods of imprisonment, but rather from high numbers of people in pre-trial detention (which is caused by the failure of a state to apply bail, lengthy trial procedures, and a backlog of cases awaiting trial), the failure to use alternative sanctions such as community service for lesser offences, increased criminalisation of minor offences, and poor prison planning. The problem of prison overcrowding is not solved by executing prisoners, as the number of those who commit the most serious of crimes such as murder is often negligible compared to other types of offenders.

### Religion and the death penalty

Arab states share a cultural and religious heritage. Almost all of them have constitutions which explicitly provide Islam as the religion of the state, and the first source of legislation is Sharia law. Under Sharia law, the death penalty is explicitly provided for. Governments frequently use this to justify why they will not abolish the death penalty. This embedded religious bond makes the subject of the death penalty taboo across the region.

There are two schools of thought regarding for what crimes Sharia explicitly makes death penalty applicable. Most Islamic scholars have interpreted Sharia as providing three death penalty applicable crimes: apostasy, adultery, and "cutting the road" (a form of banditry which results in murder). Another small set of scholars believe Sharia also provides the death penalty for murder. In practice, however, the crimes punishable by death in the Arab world often go far beyond what has been provided for under Sharia law. Morocco, for instance, has 365 death penalty applicable crimes, and in Yemen, 98 percent of their death penalty applicable crimes do not correspond to what is set out in Sharia law. Many of those crimes are linked to acts of political oppression, for acts of terrorism, or for drug-related offences, rather than the offences set out by Sharia.

Furthermore, various schools of jurisprudence argue that the scope of the death penalty should be limited. Sharia establishes numerous restrictive rules and pre-conditions that are necessary to permit an actual execution to go ahead in practice. Sharia also makes provisions for 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 diya or "blood money".<sup>19</sup>

### A Catholic viewpoint against the death penalty

In 1995, Pope John Paul II stated that although the death penalty would be theoretically permissible in instances when it is "the only possible way of

19. Such a system continues to exist in countries such as Iran, Saudi Arabia and Yemen.

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effectively defending human lives against the unjust aggressor”, such instances are “practically non-existent” in today's world, given the resources available to governments for restraining criminals. At his 13 September 2000 general audience in St. Peter's Square, John Paul II expressed the hope “that there no longer be recourse to capital punishment, given that states today have the means to efficaciously control crime, without definitively taking away an offender's possibility to redeem himself”. Since then, both Pope John Paul II and his successor, Pope Benedict XVI, have spoken out against the death penalty.

## Chapter three: International standards relating to the death penalty

### Section one: International treaties

Any human being deprived of his life by the state is a matter of extreme seriousness. The law must therefore regulate and strictly restrict the circumstances in which the authorities can deprive any person of his life.

International law does not expressly prohibit the death penalty. It does, however, provide for its abolition and sets out restrictions and prohibitions for certain categories and situations. The main provisions related to the death penalty can be found in Article 6 of the International Covenant on Civil and Political Rights (ICCPR), Article 37(a) of the Convention on the Rights of the Child (CRC), and in the Second Optional Protocol to the ICCPR.

#### International Covenant on Civil and Political Rights

Article 6(2): “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 and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.”

Article 6(4): “Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.”

Article 6(5): “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.”

Key principles of the ICCPR regarding the death penalty restrict its application to:

1. Only the most serious crimes.
2. Crimes that were established by law at the time of its commission.
3. Crimes that are tried by a competent court.
4. Right to seek pardon or commutation.
5. Not imposed on juveniles (under 18 years of age at the time the crime was committed).
6. Not imposed on pregnant women.

Finally, the ICCPR also makes an implicit suggestion that states move towards abolition.

Article 6(6): “Nothing in this Article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.”

#### Convention on the Rights of the Child

Article 37(a): “Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age.”

### Second Optional Protocol to the ICCPR

Article 1: “(1.) No one within the jurisdiction of a State Party to the present Protocol shall be executed. (2.) Each State Party shall take all necessary measures to abolish the death penalty within its jurisdiction.”

It is important to note that while the death penalty is not prohibited by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, its implementation in practice could fall under its mandate.

### Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Article 2: “Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.”

Article 1: “For the purposes of this Convention, the term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as ... punishing him for an act he has committed or is suspected of having committed”

## Section two: Safeguards guaranteeing the rights of those facing the death penalty

The UN Economic and Social Council (ECOSOC) adopted safeguards to guarantee the protection of the rights of those facing the death penalty in resolution 1984/50 of 25 May 1984 (emphasis added):

**Safeguard 1.** 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**.

**Safeguard 2.** Capital punishment may be imposed only for a crime for which the death penalty is **prescribed by law at the time of its commission**, it being understood that if, subsequent to the commission of the crime, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.

**Safeguard 3.** **Persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death**, nor shall the death sentence be carried out on **pregnant women**, or on **new mothers**, or on persons who have become **insane**.

**Safeguard 4.** 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 5.** Capital punishment may only be carried out pursuant to a final judgement rendered by a **competent court** after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in **Article**



**14 of the International Covenant on Civil and Political Rights**, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to **adequate legal assistance at all stages of the proceedings**.

**Safeguard 6.** Anyone sentenced to death shall have the **right to appeal to a court of higher jurisdiction**, and steps should be taken to ensure that such appeals shall become mandatory.

**Safeguard 7.** Anyone sentenced to death shall have **the right to seek pardon, or commutation of sentence**; pardon or commutation of sentence may be granted in all cases of capital punishment.

**Safeguard 8.** **Capital punishment shall not be carried out pending any appeal** or other recourse procedure or other proceeding relating to pardon or commutation of the sentence.

**Safeguard 9.** Where capital punishment occurs, it shall be carried out so as to **inflict the minimum possible suffering**.

### Section three: Resolutions of the UN General Assembly

In December 2007 the UN General Assembly (GA) adopted a landmark resolution 62/149 calling for a moratorium on the use of the death penalty and reaffirmed the UN's commitment towards abolition (see Annex I). The resolution was adopted with 104 states in favour, 54 states against and 29 abstentions. In 2008 and 2010 the UN GA adopted second (see Annex II) and third (see Annex III) resolutions reaffirming the call for a moratorium. In both years, those voting in favour increased and those voting against decreased, resulting in no less than 13 countries changing their position from voting against to voting in favour or abstaining over a three year period (in 2008, 106 countries voted in favour, 40 against and 34 abstained; in 2010, 109 in favour, 41 against and 35 abstained).

The voting record of Arab states was less positive. In 2007, only one state voted in favour of the resolution (Algeria), 14 against, 4 abstained and 2 were absent (Palestine is unable to vote in the UN GA). In 2010, again only one state voted in favour, 9 against, 9 abstained (five states - Bahrain, Comoros, Jordan, Mauritania and Morocco - changed from voting against to abstaining) and 2 were absent. It is expected that a fourth resolution will be tabled at the Third Committee of the General Assembly in 2012, and abolitionists hope to increase the number of states voting in favour, and decrease those voting against.

Although the moratorium resolutions are a positive indication that the world is moving away from the death penalty, in February 2008 a statement of disassociation to resolution 62/149 was circulated as a Note Verbale (Document A/62/658) to the UN GA. Fifty-eight states placed on record their "persistent objection" to any attempt to impose a moratorium or abolish the death penalty. The 2008 Note Verbale was initiated by Singapore and signed by 58 countries. Of the Arab world, 16 states signed it, and only Algeria, Djibouti, Lebanon, Morocco and Tunisia refrained from signing it. Similar statements of disassociation have been circulated following the 2008 and 2010 resolutions. The 2010 Note Verbale was initiated by Egypt, and signed by 13 Arab states; Comoros, Jordan and Mauritania changed their position.



*Table 8: Voting record on the UN GA moratorium resolution*

State	2007	2008	2010	Observations
Algeria	For (co-sponsored resolution)	For (co-sponsored resolution)	For (co-sponsored resolution)	
Bahrain	Against	Abstention	Abstention	Positive change
Comoros Islands	Against	Against	Abstention	Positive change
Djibouti	Abstention	Abstention	Abstention	
Egypt	Against	Against	Against	
Iraq	Against	Against	Against	
Jordan	Against	Abstention	Abstention	Positive change
Kuwait	Against	Against	Against	
Lebanon	Abstention	Abstention	Abstention	
Libya	Against	Against	Against	
Mauritania	Against	Abstention	Abstention	Positive change
Morocco	Abstention	Abstention	Abstention	
Oman	Against	Abstention	Abstention	Positive change
Palestine	-	-	-	
Qatar	Against	Against	Against	
Saudi Arabia	Against	Against	Against	
Somalia	Absent	Absent	Absent	
Sudan	Against	Against	Against	
Syria	Against	Against	Against	
Tunisia	Absent	Absent	Absent	
UAE	Abstention	Abstention	Abstention	
Yemen	Against	Against	Against	

## Section four: Explanation of standards

### The “most serious crimes”

Interpretation of the phrase, the “most serious crimes” has led to restrictions on the number and types of offences for which the death penalty can be imposed under international law.

The UN Human Rights Committee, the UN body tasked with monitoring the implementation and interpretation of the ICCPR, has stated:

“The expression ‘the most serious crimes’ must be read restrictively to mean that the death penalty should be quite an **exceptional measure**”<sup>20</sup>. [emphasis added]

In fact, the UN Human Rights Committee has interpreted “most serious crimes” as not including: economic offences<sup>21</sup>, embezzlement by officials<sup>22</sup>, political offences<sup>23</sup>, robbery<sup>24</sup>, abduction not resulting in death<sup>25</sup>, apostasy<sup>26</sup>, and drug-related crimes.<sup>27</sup>

20. UN Human Rights Committee General Comment No. 6 on Article 6 of the ICCPR, adopted on 27 July 1982, para. 7.

21. Concluding observations of the Human Rights Committee: Libyan Arab Jamahiriya, CCPR/C/79/Add.101, 6 November 1998, para. 8.

22. Concluding observations of the Human Rights Committee: Sudan, CCPR/C/79/Add.85, 19 November 1997, para. 8.

23. Concluding observations of the Human Rights Committee: Libyan Arab Jamahiriya, supra n. 21, para. 8. In relation to political offences the Committee has, in particular, expressed concern about “very vague categories of offences relating to internal and external security” (Concluding observations of the Human Rights Committee: Kuwait, CCPR/CO/69/KWT, 27 July 2000, para. 13); about vaguely worded offences of opposition to order and national security violations (Concluding observations of the Human Rights Committee: Vietnam, CCPR/CO/75/VNM, 26 July 2002, para. 7); and about “political offences... couched in terms so broad that the imposition of the death penalty may be subject to essentially subjective criteria” (Concluding observations of the Human Rights Committee: Democratic People’s Republic of Korea, CCPR/CO/72/PRK, 27 August 2001, para. 13).

The UN Commission on Human Rights, a subsidiary body of ECOSOC, replaced by the Human Rights Council in 2006, has 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.<sup>28</sup>

The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has interpreted Safeguard 1 as excluding the possibility of imposing death sentences for economic and other so-called victimless offences, or activities of a religious or political nature - including acts of treason, espionage and other vaguely defined acts usually described as crimes against the state or disloyalty. His interpretation would exclude the possibility of a death sentence for actions primarily related to prevailing moral values, such as adultery and prostitution, as well as matters of sexual orientation.<sup>27</sup> The Special Rapporteur has also gone on to say that “the death penalty should be eliminated for crimes such as economic crimes and drug-related offences”.<sup>30</sup>

The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has also argued that the death penalty for non-lethal crimes and drug-related offences is in violation of international law.<sup>31</sup>

The “most serious crimes” has therefore been interpreted by various UN bodies as not going beyond intentional crimes which have lethal or other extremely grave consequences. This type of crime must involve a threat to life, meaning that death is the very probably the result of this act. This may not include:

- Economic or financial crimes, including embezzlement by officials
- Drug-related offences
- Apostasy and other activities of a religious nature.
- Activities of a political nature - including acts of treason, espionage and other acts described as crimes against the State or disloyalty.
- Sexual relations between consenting adult – including adultery or prostitution and matters of sexual orientation and homosexual acts.
- Expression of conscience.
- Robbery.
- Abduction not resulting in death.
- Non-violent or victimless offences.

The frequent imposition of the death penalty within the Arab world for terrorism-related offences has attracted particular interest on the part of UN expert panels. The comments of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, following his mission to Egypt in April 2009, appear significant in this context, and give an indication of similar fears as regards other countries of the region.<sup>32</sup>

24. Concluding observations of the Human Rights Committee: Kenya, CCPR/CO/83/KEN, 29 April 2005, para. 13.

25. Concluding observations of the Human Rights Committee: Guatemala, CCPR/CO/72/GTM, 27 August 2001, para. 17.

26. Concluding observations of the Human Rights Committee: Sudan, *supra* n. 22, para. 8.

27. Concluding observations of the Human Rights Committee: Kuwait, *supra* n. 23, para. 13.

28. Resolution 2005/59 adopted by UN Human Rights Committee, 20 April 2005.

29. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Asma Jahangir, E/CN.4/1999/39, 6 January 1999, para. 63.

30. Report by the Special Rapporteur on extrajudicial, summary or arbitrary executions, Bacre Waly Ndiaye, E/CN.4/1997/60, 24 December 1996, para. 91.

31. Report by the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, A/HRC/4/20, 28 May 2010; and Report by the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, A/HRC/11/2/Add.5, 28 May 2009.

32. Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism: Mission to Egypt, A/HRC/13/37/Add.2, 14 October 2009.

The Special Rapporteur initially expressed his concern regarding the broad definition of terrorism, which includes, in addition to acts of violence, “any threat or intimidation” aimed at “disturbing the peace or jeopardising the safety or security of society”, and indeed a broad range of purposes such as acting to “prevent or impede the public authorities in the performance of their work or thwart the application of the Constitution or of laws or regulations.” The Special Rapporteur opposed defining a terrorist organisation “on the basis of its aim to perpetrate any act which the law describes as a terrorist act, instead of committing of specific acts.” He also spoke against the imposition of the death penalty on the leadership of any organisation of this kind. The Special Rapporteur stressed that the legal provisions applied to terrorist organisations, including the criminal responsibility of their members, must rely in their essence on the use of lethal or otherwise serious violence against civilians. Any criminalisation of a terrorist organisation based solely on the organisation’s aims comprises the danger of the inappropriate broadening of the concept of terrorism.

#### **Definition of an act of terrorism**

The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism believes that it is necessary, given the absence of a comprehensive international definition of the crime of terrorism, that provisions on combating terrorism comply with an accumulated, three-part description which stipulates that in order for any act to be categorised as a terrorist act, it must:

- a) Have been committed against members of the general public or a group thereof with the intention of killing or inflicting serious bodily harm or taking hostages.
- b) Have been perpetrated with the object of spreading a state of terror, intimidating a population group, or forcing a government or international organisation to undertake or abstain from any act.
- c) Satisfy all elements of serious crime as defined in law.

#### **Right to a fair trial**

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 right 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 disposition of their case.

Article 14 of the ICCPR sets out the minimum requirements necessary to guarantee a fair trial; it is fundamental that these are not only guaranteed by domestic legislation, but are upheld and implemented in practice.

The UN Human Rights Committee has declared, in its General Comment No. 32, that the imposition of the death penalty following a trial which has failed to observe the provisions of Article 14 of the ICCPR constitutes a violation of the right to life. The execution of an innocent person represents the most serious of the possible

outcomes associated with the practise of the death penalty. The ability of the judicial system to discriminate satisfactorily between the innocent and the guilty, with fundamental reliance on the presumption of innocence, must be confirmed. Capital punishment must not be imposed, and its execution must be suspended or abolished, in cases of uncertainty.

*Table 9: Minimum international standards required for a fair trial*

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.
The right to be presumed innocent until proved guilty.	Article 14(2) ICCPR.
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 him/her.	Article 13(3)(b) ICCPR.
The right to be tried without undue delay.	Article 14(3)(c) ICCPR.
The right to consular communication and assistance for foreign nationals.	Article 36 Vienna Convention on Consular Relations.
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 and UN ECOSOC resolution 1989/64 (24 May 1989).
The right to have adequate time and facilities for the preparation of a defence.	UN ECOSOC resolution 1989/64 (24 May 1989).
The right to communicate with counsel of the defendant's choosing.	Article 13(3)(b) ICCPR.
The right to free legal assistance for defendants unable to pay for it.	Article 12(3)(d) ICCPR.
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.
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. Steps must be taken to guarantee that this appeal is mandatory.	Article 14 (5) ICCPR and Safeguard 6.
All judgements rendered in a criminal case shall be made public.	Article 14(1) ICCPR.

## Categories prohibited from execution

### *Persons who have not attained eighteen years of age*

Despite this explicit prohibition, some state parties interpret this rule as being restricted to a prohibition on the execution of persons under eighteen years of age. The Committee on the Rights of the Child has stressed that, "...under this rule the explicit and decisive criteria is the age at the time of the commission of the offence. It means that a death penalty may not be imposed for a crime committed by a person under 18 regardless of his/her age at the time of the trial or sentencing or of the execution of the sanction."<sup>33</sup>

### *Pregnant women and new mothers*

Although there is no definition of "new mothers", the Commission on Human Rights has encouraged retentionist states to make an exception for mothers of young dependent children.

### *The mentally ill*

ECOSOC has recommended that Member States should abolish the death penalty

33. Committee on the Rights of the Child: General Comment No. 10: "Children's Rights in Juvenile Justice", CRC/C/GC/10, 25 April 2007, paras. 11, 75 and 76.

as regards “persons suffering from mental retardation or extremely limited mental competence, whether at the stage of sentence or execution.” The Commission on Human Rights, in resolution 2005/59 relating to the issue of the death penalty, encouraged Member States not to impose or implement the death penalty “on a person suffering from any mental or intellectual disabilities.” The standard for protecting those with mental illnesses from execution applies even in cases where this issue does not relate to the person’s capacity at the time of the perpetration of the crime, or at the time of trial. It may in fact be the case that a person becomes mentally ill as a result of his conviction and sentencing to death; in this case the application of the execution is prohibited because they may not be able to understand the nature of the punishment and the reasons for it being executed.

### *The elderly*

Although the question of the execution of the elderly is not set out in the safeguards, ECOSOC recommended in resolution 1989/64 that countries specify a maximum age after which it is not permitted to sentence or carry out execution against a person. It is notable here that the Arab countries generally do not specify such a maximum age.

### *Mandatory death sentences*

A mandatory death sentence implies that all murders are the same, and removes the opportunity for mitigating evidence to be taken into account by a judge or jury. This may include the nature and circumstances of the offence, the defendant’s own individual history, their mental and social characteristics and their capacity for reform. 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(1) of the ICCPR, 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.<sup>34</sup>

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<sup>35</sup>, and that: the 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.<sup>36</sup>

### **Sentencing guidelines for capital offences**

Abolition of mandatory death sentences has seen a trend in the development of 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. 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 (this list is indicative and not exhaustive):<sup>37</sup>

34. *Pagdayawon Rolando v. Philippines*, views of the UN Human Rights Committee, Communication No. 1110/2002, CCPR/C/82/D/1110/2002, 8 December 2004, para. 5.2.

35. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, *supra* n. 29, para. 63.

36. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, E/CN.4/2005/7, 22 December 2004, para. 80.

37. For further information on sentencing guidelines, see *A Guide to Sentencing in Capital Cases*, Edward Fitzgerald QC and Keir Starmer QC, Death Penalty Project, 2007.

- a) Type and gravity of the offence.
- b) Nature and circumstances of which the offence was committed.
- c) Mental state of the defendant – including any degrees of diminished responsibility.
- d) Other partial excuses including provocation, undue influence, “battered wife syndrome”, etc.
- e) Lack of premeditation.
- f) Character of the defendant, including criminal record.
- g) Remorse.
- h) Capacity for defendant to reform and their continuing dangerousness.
- i) Views of the victim’s family.
- j) Delay up to the time of sentence.
- k) Guilty pleas.
- l) Prison conditions.

### Non-discrimination

The UN Commission on Human Rights, in resolution 2005/59, condemned the application of the death penalty on the basis of discriminatory legislation, policies or practices and the disproportionate use of the death penalty against people belonging to national, racial, religious and linguistic minorities.

### Minimising suffering

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, ECOSOC has stated that where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering.

In resolution 2005/59 regarding the death penalty, the Commission on Human Rights urged countries to guarantee, when imposing the death penalty, that it is executed in a manner which causes the least extent possible of suffering, and in particular to ensure that any use of cruel or inhuman methods of execution is immediately suspended.

### Method 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.<sup>38</sup> 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.”<sup>39</sup> 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.<sup>40</sup>

38. Concluding observations of the Human Rights Committee: Yemen, CCPR/CO/84/YEM, 9 August 2005, para. 15.

39. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, A/HRC/10/44, 14 January 2009, para. 39.

40. *Ng v. Canada*, communication No. 469/1991, 5 November 1993, para 16.4.



### **Lethal injection**

In the US, where the primary method of execution is by lethal injection, there have been examples of failed execution attempts. In 2009 in the state of Ohio, the execution of Romell Broom was halted on the grounds that the prisoner was suffering cruel and unusual punishment.<sup>41</sup> 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.

There is significant debate regarding whether one or other method is unacceptably cruel, inhuman or degrading. The fundamental question, for which there is no easy answer, is: how can it be known whether a particular method of execution causes no pain?

### **Public execution**

The safeguards do not deal specifically with the question of carrying out execution in public. However the UN Human Rights Committee has stated that public executions are incompatible with human dignity.<sup>42</sup> In resolution 2005/59<sup>43</sup>, the 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. However, in 2011 public executions were known to have been carried out in Saudi Arabia and Somalia.<sup>44</sup>

### **Secrecy**

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.<sup>45</sup> 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”.<sup>46</sup>

### ***Suspension of execution while awaiting appeal of the death sentence***

This ensures 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.

### ***Death row syndrome***

The period once all appeal and pardon processes have been exhausted, but before an execution takes place, is often prolonged and can cause severe mental and physical suffering for the prisoner.

Although they should enjoy the same rights as other prisoners under international standards and norms, prisoners on death row are often detained in conditions that are far worse than those for 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 treated violently and without respect for human dignity.

41. New Revelations of Inmate's Struggles During Ohio Execution Attempt, Death Penalty Information Centre.

42. Concluding observations of the Human Rights Committee: Nigeria, CCPR/C/79/Add.65, 24 July 1996, para. 16.

43. Adopted by UN Human Rights Committee on 20 April 2005.

44. Death Sentences and Executions 2011, supra n. 1, p8.

45. Concluding observations of the Human Rights Committee: Japan, CCPR/CO/79/Add.102, 19 November 1998, para. 21.

46. Report by the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, E/CN.4/2006/53/Add.3, 24 March 2006, para. 32.

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, 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 UN Human Rights Committee has expressed concern about poor living conditions of death row inmates, including undue restrictions on visits and correspondence,<sup>47</sup> small cell size and lack of proper food and exercise,<sup>48</sup> extreme temperatures, lack of ventilation, cells infested with insects, and inadequate time spent outside cells,<sup>49</sup> 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). ECOSOC has urged UN Member States to apply the Standard Minimum Rules for the Treatment of Prisoners<sup>50</sup> “in order to keep to a minimum the suffering of prisoners under sentence of death and to avoid any exacerbation of such suffering”.

### **Refraining from reinstating the punishment**

Although the ICCPR does not explicitly state that once a state has abolished the death penalty that they are prohibited from reinstating it, (as is set out in Article 4 of the American Convention on Human Rights), nonetheless the Commission on Human Rights in its interpretation of Article 6 of the ICCPR confirms that a state which has abolished the death penalty may not participate in any way in its imposition. The General Assembly also appealed in resolution 62/149 that countries which have abolished the death penalty should not reintroduce it.

47. Concluding observations of the Human Rights Committee: Japan, *supra* n. 45, para. 21.

48. Concluding observations of the Human Rights Committee: Uzbekistan, CCPR/CO/71/UZB, 26 April 2001, para. 10.

49. *Safarmo Kurbanova v. Tajikistan*, views of the Human Rights Committee, Communication No. 1096/2002, CCPR/C/79/D/1096/2002, 12 November 2003, para. 7.8.

50. Adopted by the First UN Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the ECOSOC by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.



## Section five: Arab states' commitment to international standards

The majority of the Arab states have ratified the ICCPR, the Convention on the Rights of the Child, and the Convention against Torture. None of the Arab states have expressed any special or particular reservations as regards the articles relating to the death penalty. None have ratified the Second Optional Protocol to the ICCPR.

*Table 10: Arab states' ratification of international treaties related to the death penalty*

State	International Covenant on Civil and Political Rights (ICCPR)	Convention on the Rights of the Child (CRC)	Second Optional Protocol to the ICCPR	Convention Against Torture (CAT)
Algeria	✓	✓	✗	✓
Bahrain	✓	✓	✗	✓
Comoros Islands	✗	✓	✗	✗
Djibouti	✓	✓	✗	✓
Egypt	✓	✓	✗	✓
Iraq	✓	✓	✗	✗
Jordan	✓	✓	✗	✓
Kuwait	✓	✓	✗	✓
Lebanon	✓	✓	✗	✓
Libya	✓	✓	✗	✓
Mauritania	✓	✓	✗	✓
Morocco	✓	✓	✗	✓
Oman	✗	✓	✗	✗
Palestinian Authority <sup>51</sup>	✗	✗	✗	✗
Qatar	✗	✓	✗	✓
Saudi Arabia	✗	✓	✗	✓
Somalia	✓	✗	✗	✓
Sudan	✓	✓	✗	✗
Syria	✓	✓	✗	✓
Tunisia	✓	✓	✗	✓
UAE	✗	✓	✗	✗
Yemen	✓	✓	✗	✓
Total	16	20	0	16

51. Because the Palestinian Authority is not a state, legally they cannot ratify or sign any international conventions according to the UN system.

## Chapter four: International human rights mechanisms

### Section one: Treaty-monitoring bodies

The human rights treaty-monitoring bodies are committees of independent experts that monitor the implementation of the core international human rights treaties. They are created in accordance with the provisions of the treaty that they monitor. There are nine human rights treaty-monitoring bodies in total.

When a country ratifies one of the human rights treaties, it assumes a legal obligation to implement the rights recognised in that treaty. But signing up is only the first step, because recognition of rights on paper is not sufficient to guarantee that they will be enjoyed in practice. The country incurs an additional obligation to submit regular reports to the monitoring committee set up under that treaty on how the rights are being implemented. This system of human rights monitoring is common to most of the UN human rights treaties. States must submit reports periodically (usually every four or five years). In addition to the government report, the treaty bodies may receive information on a country's human rights situation from other sources, including non-governmental organisations, UN agencies, other inter-governmental organisations, academic institutions and the press. In the light of all the information available, the relevant committee examines the report together with government representatives. Based on this dialogue, the committee publishes its concerns and recommendations, referred to as "concluding observations".

In addition to the reporting procedure, some of the treaty bodies may perform additional monitoring functions through three other mechanisms: inquiry procedures, the examination of inter-state complaints, and the examination of individual complaints.

The committees also publish their interpretation of the content of human rights provisions, known as general comments on thematic issues or methods of work.

#### Relevant human rights treaty bodies on the application of the death penalty

- **The Human Rights Committee:** This committee monitors implementation of the ICCPR. The state party must submit its initial report a year from accession, followed by periodic reports every two years.
- **Committee on the Rights of the Child:** This committee monitors implementation of the Convention on the Rights of the Child. The state party must submit its initial report two years after accession, followed by periodic reports every five years.
- **Committee against Torture:** This committee monitors implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The state party must submit its initial report a year from accession, followed by periodic reports every four years.

#### How can civil society work with the treaty-monitoring bodies?

NGOs can work strategically with the treaty bodies to:

- Provide information and reports highlighting errors and shortcomings in the information submitted by the state.
- Provide additional information and reactions to the list of issues; provide information verbally to the treaty bodies.
- Encourage governments to meet final deadlines for the submission of reports.
- Monitor the implementation of conclusions and recommendations at the national level.

## States' cooperation with treaty-monitoring bodies

One of the main areas of concern, in relation to the mechanism of review of reports by the treaty bodies, is the failure on the part of states to cooperate with these committees as regards their reporting requirement.

*Table 11: Latest reports submitted by country to the treaty monitoring committees*

State	Human Rights Committee	Committee on the Rights of the Child	Committee Against Torture
Algeria	2006: third report	2009: third & fourth reports	2006: third report
Bahrain	Initial report not yet submitted	2010: second report	2004: initial report
Comoros Islands	Not a state party	1998: initial report	Not a state party
Djibouti	2010: initial report	2007: second report	2011: initial report
Egypt	2002: third & fourth reports	2010: third & fourth reports	2001: fourth report
Iraq	1996: fourth report	1996: initial report	Not a state party
Jordan	2009: fourth report	2006: third report	2009: second report
Kuwait	2009: second report	2006: initial	2010: second report
Lebanon	1996: second report	2005: third report	Initial report not yet submitted
Libya	2007: fourth report	2010: third & fourth reports	1999: third report
Mauritania	Initial report not yet submitted	2008: second report	Initial report not yet submitted
Morocco	2004: fifth report	2003: second report	2009: fourth report
Oman	Not a state party	2006: second report	Not a state party
Palestinian Authority	Not a state party	Not a state party	Not a state party
Qatar	Not a state party	2008: second report	2011: second report
Saudi Arabia	Not a state party	2005: second report	2001: initial report
Somalia	Initial report not yet submitted	Not a state party	Initial report not yet submitted
Sudan	2007: third report	2010: third & fourth reports	Not a state party
Syria	2004: third report	2010: third & fourth reports	2007: initial report
Tunisia	2006: fifth report	2008: third report	2010: third report
UAE	Not a state party	2001: initial report	Not a state party
Yemen	2009: fifth report	2010: fourth report	2009: second report

## Section two: Special procedures

Special procedures are the general name given to the mechanisms established by the UN Human Rights Council to address either specific country situations or thematic issues in all parts of the world. Currently, there are 35 thematic and 10 country mandates.

Special procedures act in cases of concern related to human rights, whether as regards individual cases or more general matters, by means of direct communication with governments. They interact daily with actual and potential victims of human rights violations. They can request urgent clarification from governments regarding alleged violations (such as those relating to the death penalty or torture), and when necessary they ask governments to implement protection measures to safeguard or restore the enjoyment of human rights.

Special procedures can undertake fact-finding missions to various countries and issue reports containing recommendations. However, such missions can only be undertaken if the state has either invited the special procedure in question or accepted a request for the visit sent by this special procedure.

When particular circumstances so require, they can express their concern through the media and by means of other public statements.

They can prepare subject studies, which in effect constitute guidance to clarify rules and standards. With regards to the abolition of the death penalty, various special procedures have attempted to elaborate and interpret the relevant international standards to ensure that they are applied narrowly and restrictively.

Unlike the treaty monitoring bodies, special procedures can interfere in cases where the state has not in fact ratified the treaty in question. Furthermore, it is not required that all domestic remedies have to be exhausted before contacting special procedures; this is required as regards use of the individual and collective complaint mechanisms available under some of the treaty-monitoring mechanisms.

Special procedures are either an individual (called “Special Rapporteur” or “Independent Expert”) or a working group usually composed of five members (one from each region). Mandate-holders of the special procedures serve in their personal capacity, and do not receive salaries or any other financial compensation for their work. The independent status of the mandate-holders is crucial in order to be able to fulfil their functions in all impartiality. Most special procedures receive information on specific allegations of human rights violations and send urgent appeals or letters of allegation to governments asking for clarification.

#### **Special Procedures related to the death penalty**

- Special Rapporteur on extrajudicial, summary or arbitrary executions (Mr Christof Heyns, South Africa).
- Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (Mr. Juan Mendez, Argentina).
- Working Group on Arbitrary Detention (Chair-Rapporteur: Mr. El Hadji Malick Sow, Senegal).
- Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (Mr. Ben Emmerson, United Kingdom).
- Special Rapporteur on the independence of judges and lawyers (Ms. Gabriela Knaul, Brazil).

#### **How can civil society organisations work with the special procedures?**

Civil society can contact and work directly with special procedures, by the following means:

- Submitting individual cases to special procedures.
- Submitting information and analytical studies regarding specific areas of concern in the field of human rights. This can be performed by means of highlighting and commenting on draft bills, effective laws in force, or policies and the like.
- Providing support to country visits conducted under the special procedures framework.

- Working on the domestic or national level to support the special procedures, disseminate and monitor their reports and recommendations, and implement their works.
- Invite special procedure mandate holders to participate in civil society initiatives, for example, by inviting them to conferences or other similar activities.
- Individual meetings with mandate holders can be sought throughout the year.

### Section three: The Universal Periodic Review mechanism

The Universal Periodic Review (UPR) is a new human rights mechanism, by which the UN Human Rights Council periodically reviews the performance of each of the 192 Member States of the UN as regards its obligations and commitments in the area of human rights. The UPR is a cooperative mechanism which aims to supplement, rather than act as an alternative to, the work of the human rights conventional bodies. The UPR was created in 1996, and to date, all Arab states (aside from Palestine) has gone through one cycle of review.

The UPR mechanism makes recommendations to state parties, and recommendations have often included specific reference to the application of the death penalty in practice.

#### Saudi Arabia

Following the UPR of Saudi Arabia in March 2009, the UN Working Group submitted its report to the UN GA. Five states (Italy, Mexico, Switzerland, Sweden and New Zealand) made specific recommendations regarding the establishment of a moratorium and abolition of the death penalty. Italy, for example, recommended that Saudi Arabia:<sup>52</sup>

- a. Consider amending domestic legislation on the death penalty in order to restrict its scope and adjust it to meet the international minimum standards.
- b. Consider establishing a moratorium on the use of the death penalty with a view to its abolition.

International, regional and national non-governmental human rights organisations can participate in the various stages of this review, as can human rights defenders, academic institutions and research institutes. In order to attend the sessions of the UPR Working Group and the Human Rights Council, it is necessary to have consultative status with ECOSOC. Nonetheless, civil society organisations can contribute to the review process by various means.

One of the primary opportunities for civil society to participate in the UPR process is the submission of “parallel reports” which provide additional information to the Working Group regarding significant human rights concern within the country subject to review.

Civil society can also use the UPR process to reinforce the obligations imposed upon states under the treaties. They can utilise the UPR process as a mechanism to focus the state’s attention on the importance of monitoring the concluding observations issued by treaty bodies, in order to fulfil their human rights obligations. The UPR mechanism also presents an opportunity to rally the local population – before, during and after the review – thereby exerting a direct influence as regards the state’s obligations under the treaty.

52. Report of the Working on the Universal Periodic Review: Saudi Arabia, 4 March 2009, A/HRC/11/23, para. 46.

*Table 12: Universal Periodic Review process by state*

State	Date of review under first cycle (2008-2011)	Date of review under second cycle (2012-2016)
Algeria	2008	2012
Bahrain	2008	2012
Comoros Islands	2009	2014
Djibouti	2009	2013
Egypt	2010	2014
Iraq	2010	2014
Jordan	2009	2013
Kuwait	2010	2015
Lebanon	2010	2015
Libya	2010	2015
Mauritania	2010	2015
Morocco	2008	2012
Oman	2011	2015
Palestinian Authority	N/A	N/A
Qatar	2010	2014
Saudi Arabia	2009	2013
Somalia	2011	2016
Sudan	2011	2016
Syria	2011	2016
Tunisia	2008	2012
UAE	2008	2013
Yemen	2009	2014

## Section four: Reports of the UN Secretary-General

### Quinquennial report

In resolution 1745 of 16 May 1973, ECOSOC asked the Secretary-General of the UN to submit to it, at five year intervals, periodic updated and analytical reports regarding the death penalty. In 1995, the Council recommended that the Secretary-General's quinquennial reports should also discuss the implementation of the safeguards guaranteeing the protection of rights of those facing the death penalty.

The first report was submitted in 1975, and the most recent report (the eighth quinquennial report) was published at the 2010 thematic session of ECOSOC (it was also presented to the UN Crime Prevention and Criminal Justice Committee, at its nineteenth session, and to the Human Rights Council).

The report is based on information gathered by a questionnaire distributed by the UN Office on Drugs and Crime to Member States, inter-governmental organisations, specialist agencies within the UN system and NGOs. In the 2010 report, written reports and data were submitted by Amnesty International, Human Rights Watch, the International Harm Reduction Association, the Japanese Federation of Bar Associations, and the World Coalition against the Death Penalty.

This report is considered a source of primary importance as regards developments in relation to the death penalty, as it includes detailed information and tables regarding changes which have occurred in the area of capital punishment. This includes both general patterns and information regarding particular countries. The report also comprises information regarding international developments, in addition to detailed information on the implementation of safeguards guaranteeing the protection of the rights of those facing the death penalty. It ends with a number of very significant general conclusions and recommendations.

The report also mentions a number of abolitionist activities, including those implemented by civil society. For example, the 2010 report makes reference to the first Alexandria conference convened by PRI in May 2008, and in particular highlights the adoption of the Alexandria Declaration by Arab civil society which called upon Arab countries to implement UN GA resolution 62/149 on the establishment of a moratorium on the death penalty.”<sup>53</sup>

### **Report on the progress of the UN General Assembly moratorium resolutions**

On 18 December 2008, the UN GA adopted resolution 63/168 in which it requested the Secretary-General to prepare a report on the progress achieved in the implementation of the moratorium resolutions 106/149 (2007) and 63/138 (2008) for consideration at its sixty-fifth session (2010). In his report pursuant to resolution 63/168, the Secretary-General reviewed the situation regarding the global use of the death penalty; in particular it discussed trends towards the abolition of the death penalty and a moratorium on executions. The report also discussed reasons as stated by Member States in favour of the abolition or moratorium, including views of the process towards abolition of the death penalty. The report also referenced any state or regional initiatives towards the abolition of the death penalty.

The 2010 UN GA moratorium resolution 65/206, adopted on 21 December 2010, welcomed the Secretary-General's report on the progress achieved in the implementation of the 2007 and 2008 moratorium resolutions, and requested the Secretary-General to report to the GA at its sixty-seventh session on the implementation of the 2010 resolution. It is expected that this report will be presented at the Third Committee of the General Assembly in late 2012.

### **Yearly reports**

Finally, the UN Human Rights Council has also requested the UN Secretary-General to submit yearly reports to supplement his quinquennial report. In its decision 18/117 adopted on 28 September 2011, the Human Rights Council requested “the Secretary-General to continue to submit to the Human Rights Council, in consultation with Governments, specialised agencies and intergovernmental and non-governmental organisations, a yearly supplement to his quinquennial report on capital punishment and the implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty, paying special attention to the imposition of the death penalty on persons younger than 18 years of age at the time of the offence, on pregnant women and on persons with mental or intellectual disabilities.” The Secretary General's forthcoming report on the question of the death penalty will be submitted to the 21st session of the Human Rights Council in September 2012.

53. Report of the UN Secretary-General to ECOSOC, *supra* n. 4.



### UN Secretary-General's 2011 annual report on the status of the death penalty

In his 2011 report,<sup>54</sup> the Secretary-General referenced various developments in the Arab World on the status of the death penalty from July 2010 to June 2011. These included:

- In 2010, the Ministry of Justice of Lebanon submitted to the National Assembly a draft bill to abolish the death penalty, but it did not find majority approval.
- On 1 February 2011, the Council of Ministers of the transitional Government in Tunisia announced that it would ratify various international human rights instruments, including the Second Optional Protocol to the ICCPR.
- The establishment of the International Commission against the Death Penalty in October 2010 was supported by Algeria.
- In May 2011, the High Commissioner for Human Rights issued a press release expressing deep concern regarding the deteriorating human rights situation in Bahrain, including the sentencing to death of four pro-democracy protestors after a closed-door military trial.
- In April 2010, the Parliament of Djibouti also adopted an amendment to the Constitution abolishing the death penalty.
- In 2010, death sentences for drug-related offences were passed in Egypt, Kuwait, and UAE.
- The Human Rights Committee encouraged Jordan to ratify the Second Optional Protocol to the ICCPR and welcomed its de facto moratorium on the death penalty which has been in place since April 2007.
- The Working Group on the UPR addressed the question of the death penalty in Lebanon and Libya.
- Mauritania rejected a recommendation to abolish the death penalty, but reaffirmed its de facto abolitionist position, noting that in 17 years, no death sentence had been carried out on its territory.
- Saudi Arabia is known to have beheaded one person for smuggling Hashish in 2010.
- During the reporting period several countries, including Saudi Arabia, UAE and Yemen imposed death sentences against offenders who were under 18 years of age at the time of the offence. In Yemen, 14 juveniles were executed in the last five years, 11 juveniles are on death row and 84 are at risk of the death penalty.
- In 2010, the independent expert on the situation of human rights in the Sudan recommended that the Government of National Unity of Sudan refrain from applying the death penalty against minors and that Sudan institute a moratorium on the imposition of the death penalty.
- The Committee on the Rights of the Child expressed serious concerns that, despite the adoption of the Child Act (2010), which prohibits the passing of the death sentence on children, under Article 36 of the interim Constitution of Sudan, the death penalty might be imposed on persons below the age of 18 in cases of retribution or hudud. The Committee was also concerned at recent reports that the death penalty continues to be carried out on children, and urged Sudan to ensure that the death penalty is not carried out on children, including in cases of retribution or hudud, and to replace any death sentences already passed on persons under 18 with an appropriate alternative sanction.
- The Working Group on the Death Penalty in Africa sent letters of appeal to the relevant authorities on the situation of the death penalty in Sudan.

54. Question of the Death Penalty, report of the UN Secretary General, 4 July 2011, A/HRC/18/20.



The UN Secretary-General also made specific reference to the September 2010 regional conference on the death penalty in Alexandria, Egypt, organised by PRI and the Swedish Institute, as a way of strengthening NGO efforts towards the abolition of the death penalty in the Arab world. This MENA toolkit was referred to by the Secretary-General as a practical tool to develop appropriate advocacy strategies, identify methodologies and provide guidance to influence change at national, regional and international levels in the Arab world.

## Chapter five: Europe and the fight against the death penalty

### Section one: European standards on the death penalty

Article 2 of the Charter of Fundamental Rights of the European Union stipulates that no one shall be condemned to death or executed, and abolition is now a prerequisite for accession to the European Union (EU). All 27 Member States of the EU have abolished the death penalty in law for all crimes.

Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), which was adopted in 1982, provides for the abolition of the death penalty in Europe: state parties may retain the death penalty for crimes “in time of war or of imminent threat of war”. 46 of the 47 Member States of the Council of Europe have ratified Protocol No. 6. Russia has signed the Protocol, but has yet to ratify it.

Protocol No. 13 to the ECHR, which was adopted in 2002 and came into force in 2003, provides for the abolition of the death penalty in all circumstances, including time of war or imminent threat of war. 43 of the 47 Member States of the Council of Europe have ratified Protocol No. 13. Armenia, Azerbaijan, Poland and Russia have yet to ratify it (although Armenia and Poland have signed it).

The European Court on Human Rights is a multinational court established by the ECHR. It provides legal recourse of last resort to individuals who feel that their human rights have been violated by a nation subscribing to the ECHR.

The European Court of Human Rights has used Article 3 of the European Convention to highlight the harsh realities of the imposition and application of the death penalty: “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

In *Al-Saadoon and Mufdhi v. UK* (2010), the European Court on Human Rights ruled that the UK breached Article 3 by sending two Iraqi citizens back to Iraq knowing the likelihood that those individuals would face death by hanging. The Court held that the death penalty, which involved the “deliberate and premeditated destruction of a human being by the State authorities causing physical pain and intense psychological suffering as a result of the foreknowledge of the death, could be considered inhuman and degrading, and contrary to Article 3.”<sup>55</sup>

In 1989 the Court found the “death-row phenomenon” also constituted inhuman and degrading punishment in *Soering v. UK*. 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].”<sup>56</sup>

The EU considers the death penalty to be a cruel and inhuman punishment which constitutes an unacceptable denial of human dignity and security. The EU employs all available means, such as through diplomatic channels and raising public awareness, to realise the goal of universal abolition. The EU also works within the framework of the various international forums, such as the UN.

55. *Al-Saadoon and Mufdhi v. UK* Eur. Ct. H.R., App. No. 61498/08 (2010), para. 13.

56. *Soering v. UK*, Series A, No. 161, 7 July 1989, para. 111.

The objectives of the EU with regards to the death penalty are:

1. To work towards universal abolition of the death penalty as a strongly held policy view agreed by all EU Member States; if necessary with the immediate establishment of a moratorium on the use of the death penalty with a view to abolition.
2. Where the death penalty still exists, to call for its use to be progressively restricted and to insist that it be carried out according to minimum standards, while seeking accurate information about the exact number of persons sentenced to death, awaiting execution and executed.

In 1998, EU countries decided to strengthen their activities in opposition to the death penalty. To this end, they adopted the EU guidelines on the death penalty. The guidelines present the objectives and elements of EU policy on the universal abolition of the death penalty. Where abolition is rejected, the EU promotes the use of minimum standards in relation to the death penalty. The guidelines were subsequently amended in 2007, after the UN GA moratorium resolution (62/149).

#### **EU guidelines on the death penalty: minimum standards**

Where states insist on maintaining the death penalty, the EU considers it important that the following minimum standards should be met:

- i. 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. The death penalty should not be imposed for non-violent acts such as financial crimes, religious practice or expression of conscience and sexual relations between consenting adults nor as a mandatory sentence.
- ii. Capital punishment may be imposed only for a crime for which the death penalty was prescribed at the time of its commission, it being understood that if, subsequent to the commission of the crime, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.
- iii. Capital punishment may not be imposed on:
  - Persons below 18 years of age at the time of the commission of their crime;
  - Pregnant women or new mothers; or
  - Persons who have become insane.
- iv. Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for alternative explanation of the facts.
- v. Capital punishment must only be carried out pursuant to a final judgement rendered by an independent and impartial competent court after legal proceedings, including those before special tribunals or jurisdictions, which gives all possible safeguards to ensure a fair trial, at least equal to those contained in Article 14 of the International Covenant on Civil and Political Rights, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings, and where appropriate, the right to contact a consular representative.
- vi. Anyone sentenced to death shall have an effective right to appeal to a court of higher jurisdiction, and steps should be taken to ensure that such appeals become mandatory.
- vii. Where applicable, anyone sentenced to death shall have the right to submit an individual complaint under international procedures; the death sentence will not

be carried out while the complaint remains under consideration under those procedures; the death penalty will not be carried out as long as any related legal or formal procedure, at the international or at the national level, is pending.

- viii. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases of capital punishment.
- ix. Capital punishment may not be carried out in contravention of a state's international commitments.
- x. The length of time spent after having been sentenced to death may also be a factor.
- xi. Where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering. It may not be carried out in public or in any other degrading manner.
- xii. The death penalty should not be imposed as an act of political revenge in contravention of the minimum standards, e.g., against coup plotters.

## Section two:

## How the EU works on the fight against the death penalty

### General Demarches

Where relevant, the EU will raise the issue of the death penalty in its dialogues and consultations with third countries. The focus is on the non-EU country's:

- Judicial system, its functioning and transparency.
- International commitments to not use the death penalty.
- Death penalty policy developments.
- Human rights situation as reported by relevant international mechanisms.

### Individual cases

The EU may also make specific demarches, on a case-by-case basis, in individual cases where it becomes aware of violations of minimum standards.

In 2010, the EU issued statements on more than 10 individual death penalty cases and carried out 25 demarches and other measures regarding individual cases.

### Human rights reporting

The EU will act on the basis of human rights reports from EU Heads of Mission, which should include an analysis on the application and use of the death penalty in the countries concerned and an evaluation of the impact of EU activities.

### Actions in multilateral fora

The EU promotes, in relevant multilateral fora, initiatives for the introduction of a moratorium on the use of the death penalty and its eventual abolition. Furthermore, it will encourage the relevant international organisations to take action that will promote the ratification of and compliance with international treaties and standards on the death penalty.

The EU aims to encourage non-EU countries to abolish the death penalty by promoting the ratification of the Second Optional Protocol to the ICCPR. In cases where this is not possible, it works towards its aim through other initiatives, such as by:

- Promoting the ratification of other international human rights instruments, in particular those concerning the death penalty.
- Promoting bilateral and multilateral cooperation with a view to establishing a fair and impartial judicial process for criminal cases.

### Supporting initiatives in the fight against the death penalty

In 2006, the European Instrument for Democracy and Human Rights (EIDHR), which is the thematic financial instrument of the EU, was adopted. Its aim is to provide financial support for the promotion of democracy and human rights in non-EU countries. One of its key objectives is to support actions for the implementation of the EU guidelines on the death penalty.

#### EIDHR support on the fight against the death penalty

Between 1994 and 2006 the EIDHR funded 28 death penalty projects, allocating a total of €12.4 million for this work. Between 2007 and 2013 EIDHR funded 24 projects at an allocation of €18.2 million. There are 20 ongoing projects in 2011, 11 of which are managed by the European Commission in Brussels, and the other 9 by EU Delegations in country (among those 20 projects include PRI's project "Progressive abolition of the death penalty and alternatives that respect international human rights standards" which included as one of its activities the production of this toolkit). A new global call for proposals was launched in June 2011 with an allocation of €7 million. Through EIDHR, the EU is the lead donor in the fight against the death penalty.

## Section three:

### The EU and the Middle East and North African region

Further to its general policy on the death penalty, the EU promotes economic integration and democratic reform across 16 neighbourhood countries to the EU's south in North Africa and the Middle East.

#### The Euro-Mediterranean Partnership (formerly known as the Barcelona Process)

In 1995, a conference of the foreign ministers of Euro-Mediterranean states was held in Barcelona. The conference launched the Barcelona Process: a broad framework of political, economic and social relationships between EU Member States and partner countries in the Mediterranean basin.

The countries of the Euro-Mediterranean Partnership include:

- The twenty-seven Member States of the EU; and
- The 16 partner countries: Albania, Algeria, Bosnia and Herzegovina, Croatia, Egypt, Israel, Jordan, Lebanon, Mauritania, Monaco, Montenegro, Morocco, the Palestinian Authority, Syria, Tunisia and Turkey.

The first objective of the partnership is to promote the emergence of a common area of peace and stability in the Mediterranean. This objective is to be achieved through multilateral political dialogue. The partners therefore undertake to:

- Respect human rights and fundamental principles by applying the principles of the UN Charter and the Universal Declaration of Human Rights and international law, and to exchange information in these areas.
- Respect the principles of the rule of law and democracy, while recognising the right of each partner to choose and freely develop its own political, socio-cultural, economic and judicial system.
- Respect the sovereignty of States, the equal rights of peoples and their right to self-determination.
- Respect territorial integrity, the principles of non-intervention in internal affairs and the peaceful settlement of conflicts.
- Combat terrorism, organised crime and drug trafficking.
- Promote regional security, eliminate weapons of mass destruction, and adhere to international and regional nuclear non-proliferation regimes, as well as arms control and disarmament agreements.

### **The European Neighbourhood Policy**

The European Neighbourhood Policy was launched in 2003 to create a 'circle of friends' among the Mediterranean and Eastern European countries and the states of the Caucasus. This includes nine Arab states: Algeria, Egypt, Jordan, Lebanon, Libya, Morocco, Palestine, Syria and Tunisia. This has numerous aims, among them building on the benefits of the 2004 expansion of the EU in order to reinforce security and stability, develop a shared commitment to common values, improve economic relations, and bring about firmer cooperation based on the principles of the market economy and sustainable development. The European Neighbourhood Policy offers privileged relations with the neighbours of the EU on the basis of a common adherence to shared values.

On the basis of the European Neighbourhood Policy, association agreements are being formed which focus on a commitment to "common values", including the rule of law, democracy and respect for human rights, while reference is also made to the principles of the Barcelona Declaration. The EU began by preparing country reports through which it evaluated the situation in the various countries with which association agreements were desired. Country reports have been prepared on Jordan, Morocco, Palestine and Tunisia in 2004, and Egypt and Lebanon in 2005. All reports make a very brief mention of the situation on the death penalty in each country.

A detailed action plan was then developed for each country. These plans comprise short and medium term priorities, in addition to a section devoted to human rights, and an outline of the approach to the plan's implementation. On this basis, the EU supports projects founded in political dialogue, reform and the priorities of these action plans (which include human rights). Those working to oppose the death penalty must be familiar with the details of the action plan relating to their country.

Today, a number of civil society institutions are calling for a full evaluation of states to identify tangible progress in the field of democratic reforms and human rights, before the EU enters into closer relations with them. No country should be rewarded in the event that significant or gross violations of international human rights standards have occurred.

## Chapter six: The League of Arab States

### Arab Charter on Human Rights

In 2004, the League of Arab States adopted the Arab Charter on Human Rights. It entered into force in 2008. While the Charter makes specific reference to the right to life (Article 5) and the prohibition of torture, cruel, inhuman or degrading punishment (Article 8), it does make the death penalty permissible (Article 6).

#### Arab Charter on Human Rights

Article 6: “Sentence of death may be imposed only for the most serious crimes in accordance with the laws in force at the time of commission of the crime and pursuant to a final judgment rendered by a competent court. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence.”

The Arab Charter does prohibit the execution of “pregnant woman prior to her delivery or on a nursing mother within two years from the date of her delivery” (Article 7(2)). However, as stated above in chapter one, Article 7(1) of the Arab Charter does not expressly prohibit the death penalty for those under eighteen years of age.

Aside from these references in the Arab Charter, the League of Arab States has adopted no other resolutions or recommendations on the application of the death penalty.

### Arab Commission on Human Rights

However, there has been an increase in the number of bodies concerned with human rights within the League. The Arab Commission on Human Rights was formed in 1968 as provided for in Article 40 of the Charter. It comprises seven independent experts from among the ten states ratifying the Charter. The aim of the Committee is to oversee the application of the Arab Charter on Human Rights. Other bodies concerned with human rights within the Arab League include the Council of Arab Foreign Ministers, the Council of Arab Justice Ministers, the Human Rights Department, and the Legal Department.

The budget allocated by the Arab League to human rights has also increased several times over in the period 2004-2010. This constitutes a clear indication of the increase in focus and efforts expended in this field.

Furthermore, there have been various contributions by the League to international and regional anti-death penalty initiatives. The foremost contributions of the Arab League include the participation of Mr. Mahmoud Rashid, Director of the Human Rights Department, at the 2009 Madrid conference on the death penalty in the MENA region; the participation of Mr. Talib Al Saqqaf, member of the Human Rights Expert Committee, at the Fourth World Congress Against the Death Penalty in Geneva in 2009; and the participation of Mr. Mohamed Radwan bin Khadra, Legal Adviser to the Secretary General and Director of the Legal Department, in the second regional conference on fighting the death penalty in the Arab world in Alexandria in 2010. Representatives of the Arab League also participated at the first Alexandria conference in 2008.

It is important to note that the 2008 Alexandria Declaration made a specific recommendation on the Arab Charter for Human rights concerning Article 7(1) which does not comply with international standards concerning the prohibition of the death penalty for capital offences committed by juveniles under the age 18 years, and urged the Arab League to take all needed measures to take action on this (see Annex IV, recommendation 12).



## Chapter seven: African mechanism for the protection of Human Rights

### African Charter on Human and Peoples' Rights

The African Charter on Human and Peoples' Rights, which was adopted by the Assembly of African Heads of State at its eighteenth ordinary session in Nairobi, Kenya, in June 1981, represented an important lever in the construction of African mechanisms for the protection and reinforcement of human rights. Under Article 30 of the Charter, the African Commission for Human and Peoples' Rights (ACHPR) was established in 1986.

### African Commission on Human and Peoples' Rights

Since its creation, the ACHPR has taken on the responsibility of monitoring and reinforcing Member States' compliance with the African Charter. The ACHPR has the right to consider individual complaints and examine the extent of states' fulfilment of their legal obligation to protect human rights as set out in the African Charter. It is the main organ of the African Union which has responsibility for human rights.

A total of nine Arab states are members of the African Union: Algeria, Comoros Islands, Djibouti, Egypt, Libya, Mauritania, Somalia, Sudan and Tunisia. The Kingdom of Morocco withdrew its membership of the Union in 1984 following recognition – and acceptance into the Union – of the Sahrawi Republic by the states of the Union (at that time the Organisation of African Unity). All nine Arab states have ratified the African Charter on Human and Peoples' Rights.

### Prohibitions on the use of the death penalty

While the African Charter on Human and Peoples' Rights does not provide an outright prohibition on the death penalty, Article 4 makes reference to the right to life, and Article 5 prohibits torture, cruel, inhuman or degrading punishment and treatment.

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”. Article 2 of the same 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”.

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”



## Moratorium

In 1999, the African Commission adopted resolution 42 which called on States to observe a moratorium on the death penalty.

In 2008, the African Commission adopted resolution 136 which reaffirmed the 1999 resolution, and called upon states to observe a moratorium on the execution of death sentences with a view to abolishing the death penalty.

In 2012, of the 54 Member States of the African Union, 16 are abolitionist in law, including Djibouti, and a further 21 have a de facto moratorium on executions, including Algeria, Mauritania and Tunisia.

*Table 13: Arab states' ratification of regional treaties related to the death penalty*

Country	African Charter on Human and Peoples' Rights	African Charter on the Rights and Welfare of the Child	Protocol of the African Charter on Human and Peoples' Rights on the Rights of Women in Africa
Algeria	✓	✓	Signed, not ratified
Comoros Islands	✓	✓	✓
Djibouti	✓	✓	✓
Egypt	✓	✓	✗
Libya	✓	✓	✓
Mauritania	✓	✓	✓
Somalia	✓	Signed, not ratified	Signed, not ratified
Sudan	✓	✓	Signed, not ratified
Tunisia	✓	Signed, not ratified	✗
Total	9	7	4

## Initiatives of the African Commission to abolish the death penalty

In 2001 the African Commission established a Working Group on the Death Penalty. Two of the Group's members are drawn from the ACHPR, while five members are experts in the field of human rights and represent the various regions and legal systems in the African continent. The Chair of the Working Group is Commissioner Zainabou Sylvie Kayitesi.

The Working Group performs the following tasks:

- Developing a strategic plan containing the practical and legal framework for the abolition of the death penalty in Africa.
- Gathering information and monitoring the circumstances of the application and abolition of the death penalty in Africa, this may include conducting visits to countries.
- Establishing proposals regarding the financing of the Group's work.
- Submitting an intersessional activity report at each ordinary session of the African Commission.
- Cooperating with national and international partners and governmental and non-governmental bodies in order to achieve its aims.

For example, the Working Group sent a mission to Algeria in December 2010 to assess the developments made in the promotion and protection of human rights, and sent urgent letters of appeal to Sudan on the situation of four minors who had been sentenced to death in January 2011.

The Working Group published a study on the Question of the Death Penalty in Africa, which was adopted by the African Commission at its 50th Ordinary Session (24 October – 7 November 2011) in Banjul, Gambia. The report broadly looks at the historical, human rights law, and practical aspects of the death penalty in the region. It takes a comprehensive approach to the question of the death penalty, bearing in mind the need to provide the African Commission with sufficient information that will enable it to take an informed position on the matter. The report can be downloaded here: <http://www.achpr.org/en/news/2012/04/d46/>

## Chapter eight: Effective tools for the fight against the death penalty

### Section one: Basic principles of strategic planning

Advocacy is a tool that can bring about change in a democracy. Advocacy is the act of working toward a goal or defending a cause or issue. It can be used to influence governments to make changes to policy and legislation or to increase public awareness on a particular issue.

Through advocacy, organisations can speak on behalf of the rights of others who are unable to speak for themselves – for example, to be a voice of a death row inmate or life/long-term prisoner, to protect the rights of those standing trial for a capital crime, to represent victims who oppose the death penalty, as well as members of the public who believe in reforming the criminal justice system in line with international human rights standards.

Advocacy is an umbrella term and there are a number of activities that can contribute to a successful advocacy strategy. Lobbying and campaigning are two such activities that can be part of advocacy work. It is fundamentally about influencing decision-makers. It can concern the creation, reform, implementation and enforcement of policies and legislation. This can be much wider than principally influencing governments, and can include any principle or action adopted by an organisation, business or individual etc.

Advocacy is therefore the cornerstone of work undertaken by human rights activists and NGOs working toward the abolition of the death penalty, and the implementation of alternative sanctions that respect international human rights.

To be effective, advocacy has to be strategic. This can be developed through a strategic plan, which is a systematic way to evaluate and decide the key elements of how you are going to effectively approach your campaign and reach your goal.

As a first step in organising a strategy a number of questions must be clearly answered. These include:

- What do you want to achieve?
- What are the short, medium and long term goals in achieving this outcome?
- Which bodies can contribute towards achieving the required change?
- Which decision-making bodies can realise this?
- How can these bodies be reached and influenced?

This section presents a number of steps and tools which can be employed by death penalty activists in developing a successful strategic advocacy plan in the Arab world.

#### Example of an basic advocacy strategy

On 20-21 September 2010, PRI organised the second Alexandria conference on the abolition of the death penalty in the Middle East and North Africa region under the title 'Death Penalty: risks, opportunities, proposed tools and strategies', in cooperation with the Swedish Institute Alexandria and the Arab Centre for the Independence of the Judiciary and the Legal Profession. The conference brought together international and Arab experts, in addition to civil society and human rights activists. During the conference, participants worked collaboratively in workshops to develop a broad advocacy strategy applicable to the Arab world.

As part of that process, participants identified the following:

#### *Long term objective*

- Universal abolition of the death penalty.

#### *Short term objectives*

- Reduction of the number and type of crimes punishable by death in law.
- Adoption of a declaration calling for a moratorium on executions and sentences.
- A guarantee of the application of the UN minimum standards (such as the safeguards guaranteeing the protection of the rights of those facing the death penalty) and the resolutions of the UN General Assembly.
- Linking the subject of the death penalty to democracy.
- Improved transparency.
- Tackling the death penalty as part of work on broader reforms of criminal justice and the penal system.
- Relaxing the link between the death penalty and actions to combat terrorism, or to fight the war on drugs.

#### *Primary targets*

- Members of parliament: they can enact new legislation or make amendments to the law.
- The executive: they have the power to sign death warrants, and also to impose a moratorium.
- The judicial authorities: prosecutors must be persuaded not to charge people with death penalty applicable crimes, and judges not to impose the sentence. It is important in this regard to highlight and raise awareness of the international fair trial standards.

These targets do not however operate in isolation. They are influenced by public opinion, political parties, cultural and religious viewpoints, and the media. It is therefore important to work on influencing secondary targets in bringing about a change in attitudes of the primary targets.

#### *Secondary targets*

- Society: public opinion is often used as a justification for the retention of the death penalty, therefore it is important to educate the public on the effect and efficacy of the death penalty. Actions should focus on rural areas and the grassroots population.
- Civil society organisations: broad civil society representing different facets of society should be supplied with materials and resources to assist in the struggle against the death penalty. Such organisations are often linked to or are influential within political parties, and include teachers, lawyers, bar associations, university students, trade unions, women's groups, and charitable institutions.
- The media: the debate on the subject must reach broad sectors of society. It is important to use stories and case studies to humanise the issue. A number of media commentators must therefore be recruited to discuss and debate the subject in an independent and unbiased manner. This should include journalists, TV and radio personalities, bloggers etc.
- Lawyers: lawyers have a role to play in providing their client with an adequate legal defence. This should include being well trained in court room advocacy, arguing mitigating evidence, and protecting all other legal rights. Lawyers are

also able to assist in analysing and reviewing current legislation with states' human rights commitments, and drafting new legislative text.

- Religious scholars: religious scholars must be involved in campaigns against the death penalty, or at least those advocating a reduction in the crimes punishable by execution, in the Arab world. Today there are numerous studies and interpretations of Sharia law which highlight the inadmissibility of the imposition of the death penalty. Religious scholars evidently have a broad influence in changing societal opinions and official positions; it is therefore necessary to disseminate such opinions on a wide scale.

#### *Activities to reach and influence primary and secondary targets*

- Scientific reports and studies i.e. case studies on the effect of the death penalty in practice; impact of the death penalty on victims, communities and the family of those executed.
- Work with local and international media.
- Popular campaigns: posters, petitions, urgent action letters etc.
- Work with Islamic scholars to collect theological opinions.
- Utilise international and regional mechanisms: UPR, special procedures, UN Secretary-General's reports on the death penalty.
- Lobby leaders such as parliamentarians and judges.

## Section two: The New Tactics methodology

The New Tactics in Human Rights programme, designed by the Centre for Victims of Torture, is a new methodology to assist with strategic advocacy planning. It aims to bring about an integrated action plan with specific aims. It is ordinarily used as a tool for designing effective advocacy campaigns.

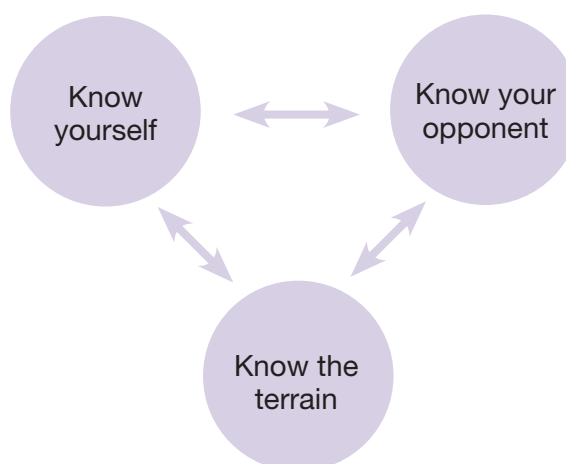
The philosophy behind the methodology is based on Sun Tzu's theories on the art of war.

#### *Sun Tzu's theories on the art of war*

"Strategy without tactics is the slowest road to victory; tactics without strategy is the noise before defeat."

Effectively this means:  
"Planning without action is futile.  
Action without planning is fatal."

Sun Tzu admonished his followers to:



*Know yourself*

You must have a realistic view of your own strengths, weaknesses, resources, capacities and supports. It is equally important to have a clear understanding of the capacities and limits of your allies.

*Know your opponents*

It is just as important to understand your opponent's strengths, weaknesses, resources and capacities. How does this match your own experiences?

*Know your terrain*

Your terrain can include legal, religious, political, economic, social and cultural conditions, or the environment in which you operate, including the physical environment. This can include human relationships, organisations and institutions.

One tool that can be used to know yourself, your opponents and your terrain is a SWOT analysis – which identifies your strengths, weaknesses, opportunities and threats.

**SWOT analysis**

In order to establish a clear and consolidated plan it might be necessary to undertake a SWOT analysis – 'Strengths, Weaknesses, Opportunities and Threats'. Once this analysis has been performed it will be clear what internal resources are available to implement your strategy, and what external situations might affect your tactics. This knowledge will enable you to make tactical decisions about what you can and can't do under your strategy, and to make strategic decisions on what tactics to undertake. It will help you to choose the best tactics and approaches in which you will have the best chances of success without duplicating the work of other organisations.

**Strengths**

Characteristics of your organisation, or project team that give it an advantage over others. Such factors may include good relations with influential individuals, government officials, parliamentarians, journalists, religious leaders, diplomatic missions; legal expertise; experience of conducting broad-ranging campaigns; experience of hosting and organising conferences or managing forums for dialogue; funding; staff; website and online resources; publications; research and data etc.

**Weaknesses**

Characteristics that place the organisation or team at a disadvantage relative to others, and therefore might limit your ability to undertake certain actions. They may in fact be a reflection of the list provided under 'Strengths', including weak relationships with key officials, or a lack of media experience, a lack of financial resources, an inability to speak foreign languages, staff shortages etc.

**Opportunities**

These are external factors which could lead to an improved performance or positive change. Examples of this may include the proposal of a new law in parliament, an election process, change of government, high profile cases, political revolutions, or a related commemorative date (such as Human Rights Day on 10 December).

### Threats

These are external circumstances which may have a negative impact. Examples of this may include the occurrence of a political or economic crisis, the existence of a powerful societal or religious movement in support of the death penalty, the presence of a lobbying campaign hostile to civil society organisations, growth in serious crimes or acts of terrorism, growing religious fanaticism, or natural disaster.

Once a SWOT analysis has been completed, and you have a better understanding of what you can and cannot achieve, the next step is to develop an effective strategy. The New Tactics methodology can then be used to develop a tactical strategy.

### Five steps for developing a tactical innovation strategy

1. Identify the problem.
2. Build a common vision and goal.
3. Define the terrain (using the Tactical Map and Spectrum of Allies tools – see below).
4. Explore and select tactics.
5. Develop a plan of action of implementation.

The process of designing a strategic plan using the New Tactics tool requires that the steps outlined above are followed. For the completion of each of these steps, the organisation doing the planning must keep in mind the possibility of working together with other organisations in a consultative and open manner, in order to gain an intricate understanding and take advantage of all available resources. This will be positively reflected in the success of the strategy.

The planning process begins at step one: the identification of the problem. Here we must be as specific as possible. It is insufficient to say that the problem is the application of the death penalty; rather, identify if the problem is related to a particular behaviour, institution, policy, law or individual.

Accordingly, the greater the detail in identifying the problem, the more accurate an understanding will be gained of the surrounding issues. Selection of the most appropriate tactics and interventions will therefore be possible.

This first step is followed by building a common vision and goal. Here we must be visionaries, linking the problem with the goal to be achieved and our future aspirations. Identifying this vision will provide a constant reminder that there is an overarching aim and message to be fulfilled, based on and derived from the rules of justice and human dignity. In the case of advocacy against the death penalty, our broader vision is the protection of the right to life.

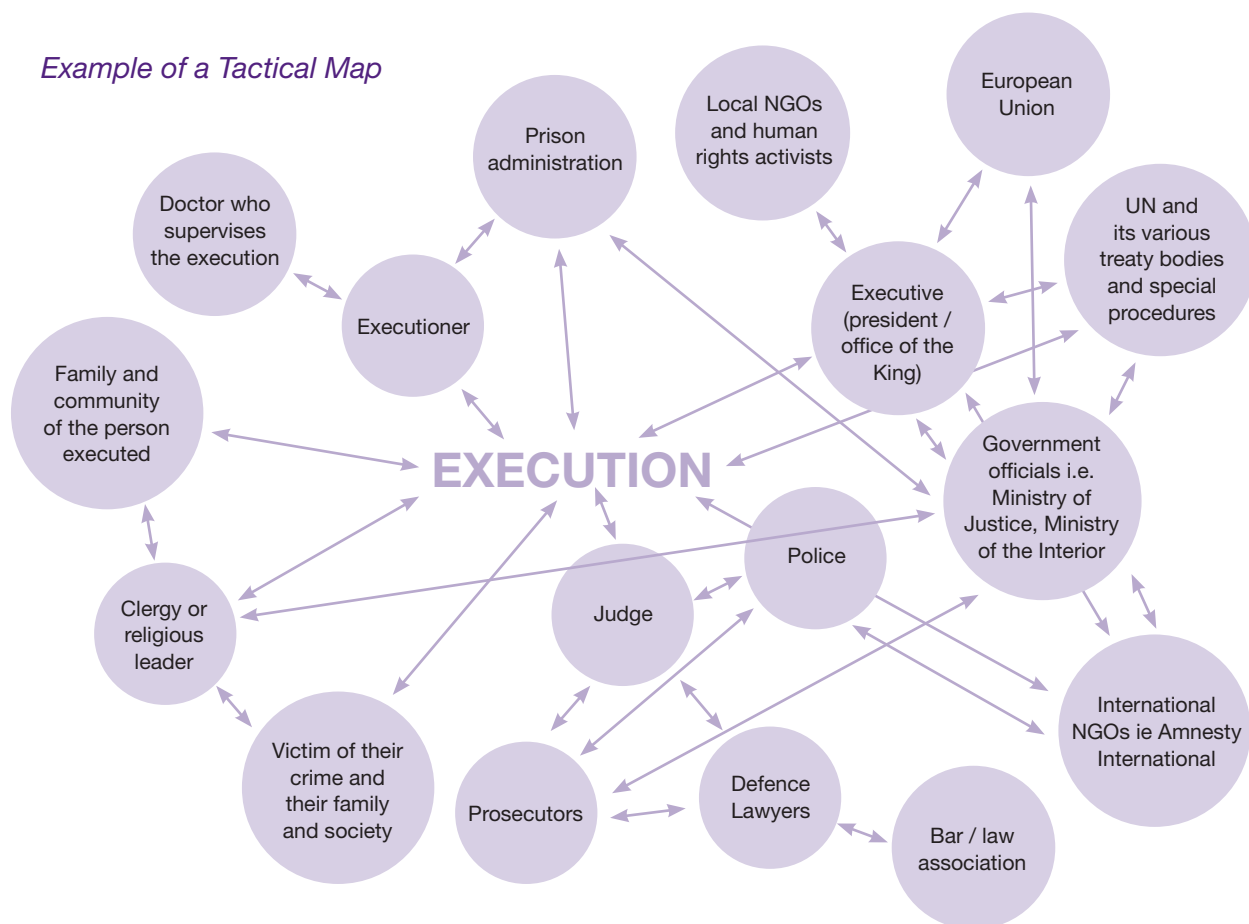
Following the completion of the first two steps, the next step is to know your terrain. This essentially means analysing who is involved, how they are connected, where can we find help, who can help us, and what tactics are currently being used?

A Tactical Map is a tool that can be used to identify the relevant relationships around the identified problem. A Tactical Map helps you to find and explore key relationships which need to be affected. This could include individuals, groups, organisations, institutions.



A Tactical Map is a tool that can be used to identify all of the relevant bodies with regard to the issue in question, and to link those different bodies with each other according to the type of relationship they might have. Where possible, it is important to be as accurate as possible in specifying names, positions and contact details of the individuals in question.

### *Example of a Tactical Map*



Once you have created your Tactical Map, you can use it to decide where to focus your tactics. This is called the target. A target is an intended individual, group, institution, or segment of society where your tactical action is directed. It is important to clearly define, analyse and evaluate the appropriateness of the intended tactic on the target and potential consequences before the final decision to carry out the tactic.

After identifying all of the relevant possible targets, the nature of the relationships between these groups must be specified and sketched out. This will make it easier in future to achieve a balance between the parties targeted and those who possess a power relationship over other decision makers.

The form and nature of the relationships which govern interaction between the various parties are diverse. It is of paramount importance that we recognise the level of influence that some organs and individuals exert over the decisions of others, to enable us to select the most suitable tactic.



It is important to note that a Tactical Map changes depending on the country or situation. For example, in one country the EU may have a degree of influence over the government, in another country interventions by the EU might be seen as hostile, and in a third country the EU and the government may have mutual interests. It is therefore important to have a good understanding of the types of relationship each body has with each other.

### The relationships on the Tactical Map

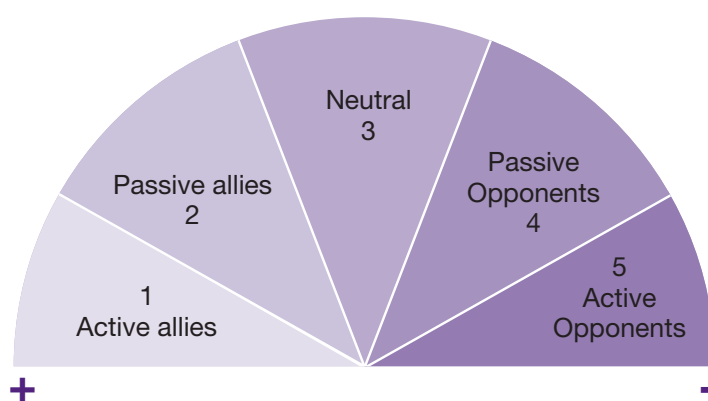
Identify the different nature of the relationships by means of using colour-coding and arrows in the tactical map. For example:

Red line	→	Power relationship
Pink line	→	Influential relationship
Blue line	↔	Mutual interests
Green line	→	Exploitive relationship
Yellow line	↔	Conflict relationship
Orange line	↔	Potential target OR more information is needed

### Identifying allies and opponents

The second phase of step three is to identify allies and opponents on a continuum. Essentially this means that after identifying all relevant parties on the Tactical Map, you should classify these persons according to their attitudes to the problem. This can be achieved through a Spectrum of Allies.

In most social change situations there is a struggle between those who want the change being proposed and those who don't. Those who want the change are allies and shown in the illustration by a + sign; those who don't want change are opponents and are shown by a – sign.



### Spectrum of Allies

This classification process involves five basic categories:

1. Active allies (believers in the issue who actively work to support it).
2. Passive allies (they sympathise with the issue but have not taken any measures).
3. Neutrals (their position on the issue has not yet been identified).
4. Passive opponents (opponents who are not acting against the issue).
5. Active opponents (those who are actively working against the issue)

In most social change situations it is not necessary to move an opponent over to your point of view, even if the power-holders are the opponent. It is only necessary to move some or all of the wedges one step in your direction. Therefore, pick targets for tactics that are based on the theory of shifting allies towards the support side of the spectrum.

Analysis using the Spectrum of Allies tool makes us better able to select a particular target group, and to recognise the scale of effort required to influence them. In the example below it can be observed that some local NGOs fall into the passive ally category. This means that they believe in the importance of fighting the death penalty, and have perhaps publicised this position, but have not adopted any measures or a set programme to oppose the punishment.

### *Example of a Spectrum of Allies*

Active Allies +	Passive allies	Neutral	Passive opponents	Active opponents -
The Special Rapporteur on torture; national coalition against the death penalty.	Human rights activists not actively working on the death penalty; human rights ombudsman; family members of those who have been executed.	The doctor overseeing the execution process; judge.	Religious leaders; prison officials; the public.	The family of the victim; office of the prosecutor; police; parliamentarians.

In this case the goal may be to encourage such organisations to move from the 'passive allies' cell to the 'active allies' cell, by urging these organisations to adopt work programmes against the death penalty.

### **Working with parliamentarians as a target**

Parliamentarians, above all others, play the most significant role in the abolition of the death penalty. In addition to the fact that they represent different groups and segments of society, and can express the attitudes of these groups towards the application of the death penalty, parliamentarians also hold the power to legislate.

Legislation is considered the essential, definitive tool in efforts to abolish the death penalty. The overall standard for a state to be deemed to have abolished the death penalty is the legislative measure, or more precisely, the national legislation being devoid of any stipulation of the death penalty for any crime. However, the reality experienced, and the desired recognition of the serious implications arising from the implementation of a single case of execution, necessitate that priority is granted to a moratorium on executions even before its abolition from legislation. Nonetheless, it is the abolition of the death penalty in law that will definitively lead to its continued abolition in practice.

Parliamentarians must therefore be given the knowledge and skills required to protect and reinforce human rights (in particular as regards the area of legislation, and its role in protecting different forms of rights and broadening their recognition), to analyse legislation and comprehend both the strengths and shortcomings within it, and to bring laws into compliance with the international human rights standards to which the state is committed to.

There must be ongoing and periodic participation in the review of legislation, in particular laws relating to criminal justice. Draft bills should be proposed, and the inadequacy of draft bills presented by the government highlighted.

Communication must be encouraged between parliamentarians, civil society organisations, and human rights activists.

The political party, or political or intellectual grouping, represented by members of parliament could also be targeted to adopt a position on the death penalty.

### Appropriate tactics

At the fourth stage of the New Tactics methodology, you should explore and select your tactics. These are the key building blocks of your strategy, “the how” rather than “the what”. This could be one specific action or a group of actions which will affect a given situation.

At this stage, creative thinking must be encouraged in choosing the tactic most suited to the target group. There are all kinds of different tactics that can be used to implement your strategy, and tactics can be diverse, and vary according to the nature of the problem (the issue) and the society and surrounding environment. Different tactics can work differently with different targets. Different tactics appeal to different stakeholders. What tactics we choose might be based on what we know how to do and what resources we have. By using a combination of these tactics you will be able to build influence.

#### Examples of tactics that can be used on the abolition of the death penalty

- Lobbying, including international and regional lobbying and grassroots lobbying.
- Drafting policy briefings and commenting on other policy documents.
- Publication of research, scientific studies and reliable statistics.
- Legal challenges.
- Letter writing, organising petitions, demonstrations and other types of popular mobilisation campaigns.
- Use of social networks to reach the public.
- Media work.
- Use of other visual means, such as posters, billboard, documentaries.
- Providing training to key people, educating your audience about myths and hypocrisies / rebuttal of opponent’s arguments / correcting misinformation.
- Sharing good practices and lessons-learned from other countries / regions.
- Use of speaking events (conferences / workshops).
- Use of experts, commentators and a wide range of organisations.
- Joining coalitions and networks.
- Case studies which can add a human element to your message: such cases involving innocent people being sentenced to death, legal errors or other fair trial issues.
- True stories regarding the effect of execution on the family of the person executed.
- Providing forums for debate and dialogue, such as seminars and roundtables.

- Attracting religious scholars to enter into dialogue on the subject, and utilising studies and analyses written from a religious perspective.
- Engaging with the UN mechanisms.
- Sending information to other countries which may have a bilateral influence. Such information and demands for action must not be restricted to specific cases; rather general information and analyses must also be supplied.

Usually no one tactic will enable you to reach your goal for change. It takes a number of tactics, each one designed to reach a different audience or to increase the participation level of the population in taking action on the problem. Tactics are developed by a process of analysing your Spectrum of Allies, but also by studying the tactics available to you. Once you are able to develop a range of tactics designed for particular audiences, you will be ready for the final and fifth step, developing a plan of action for implementation.

### *Identification of tactics*

<p><i>The problem:</i></p> <ul style="list-style-type: none"> <li>• Politicians support the death penalty.</li> <li>• Public opinion in favour of the death penalty.</li> </ul>	<p><i>Possible activities:</i></p> <ul style="list-style-type: none"> <li>• Meetings with political leaders.</li> <li>• Publishing religious studies on Sharia position.</li> <li>• Popular campaigns.</li> </ul>	<p><i>Possible activities:</i></p> <ul style="list-style-type: none"> <li>• Working with the media.</li> <li>• Statements from political leaders.</li> <li>• Scientific studies.</li> </ul>	<p><i>Possible activities:</i></p> <ul style="list-style-type: none"> <li>• Stories of the families of victims of execution.</li> <li>• Stories of victims of crime opposed to execution.</li> <li>• Action on the part of other governments.</li> </ul>	<p><i>The result:</i></p> <ul style="list-style-type: none"> <li>• Public opinion against the death penalty changes.</li> <li>• Politicians oppose the death penalty.</li> <li>• Parliamentarians amend legislation to abolish the death penalty.</li> </ul>
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### **Plan of action for implementation**

Finally, once you have identified your problem, built a common vision and goal, defined the terrain including identifying allies and opponents and their relationship to the problem, and you have explored and selected the relevant tactics, the final step is to devise an implementation plan. This is the point where you develop a work plan of specific tasks, assignments, budgets and deadlines which effectively moves your strategy towards your goal. When devising your plan of action, you should ask yourself the following questions:

- What is my goal?
- What is my target?
- What is my chosen tactic?
- What are the tasks needed to carry out the tactic?
  - What steps are needed?
  - When will it happen?
  - Who is responsible?
  - What resources are needed?

The action plan should be subject to periodic evaluation and review to identify which tactics are working and which are not, and why.

## Plan of Action

Your problem: xxx Your objective (for target): xxx Your target: xxx					
What is the action or task?	How will you implement this tactic/action?			What resources are needed (human, economic, material etc)?	
	What steps are needed?	Where/when will it happen?	Who is responsible?	What do you have?	What do you need?

## Significant dates

In devising your work plan, you should have regard for any significant dates which might impact or affect implementation of the action, such as elections, public holidays or national days. They can also be used as focal points for campaign activities.

### Significant dates for death penalty work

- World Day against the Death Penalty: 10 October.
- World Human Rights Day: 10 December.
- Arab Human Rights Day: 16 March.
- Cities for Life Day: 30 November.
- Universal Children's Day: 20 November.
- Arab Children's Day: 1 October.
- International Women's Day: 8 March.
- Arab Women's Day: 1 February.
- International Day in Support of Victims of Torture: 26 June.

## Other members of the abolitionist community

In devising your tactical strategy, you should have regard for other NGOs and coalitions working in your country, region and at the international level. There are many short- and long-term benefits of working in collaboration with other like-minded organisations

### Benefits of working with other abolitionist organisations

- Enlargement to your support network and connections; gives strength in numbers, you can achieve more together than you can alone.
- Provides safety for advocacy efforts rather than taking action alone, particularly when operating in a hostile or difficult environment.
- Magnifies existing financial and human resources by pooling them together and by delegating work to others in the coalition. Becoming a partner in a coalition can open many resources, such as new skills, new knowledge, new equipment and facilities, new services, and become exposed to new methods, new ways of working and new ideas.
- Enhances the credibility and influence of an advocacy campaign, as well as that of individual coalition members.

- Consistent and reliable information exchange and a better understanding of policy and legislation, as well as thematic and geographical issues / contexts.
- Coordinated needs assessment: a coalition can better identify the gaps in policy / legislation. They can identify more critical problems and set a course of action that makes better use of available resources.
- Improved communications.
- Improved public image.
- Improved evaluation of programmes.

### Section three: Progressive abolition strategy

One possible strategy is to take a progressive approach to abolition of the death penalty. Although universal abolition of the death penalty in law for all crimes is our overall goal, sometimes small political and legal steps that, over time, reduces the application of the death penalty in practice to only the most narrowest and restrictive occurrences, eventually moves a state naturally towards abolition in law for all crimes.

This approach can often be more appealing to both politicians and the public. It also ensures that there is time and space for society to debate and discuss what the alternative sanction to the death penalty should be.

#### The Republic of Azerbaijan

Following its independence from the Soviet Union, the Republic of Azerbaijan established an official moratorium on executions in 1993. In December 1994, the death penalty was abolished for women. The new Azerbaijani Constitution was adopted by referendum in November 1995, stating that “prior to its complete abolition, capital punishment as a supreme measure of punishment can be applied to the gravest offences against state, life and health of other persons.” In 1996, the Azerbaijan parliament made legislative amendments to the Criminal Code, and abolished 19 death penalty applicable offences. At the same time, the Criminal Code created a new restriction on the application of the death penalty to men aged over 65 at the time of committing the offence. In January 1998, the President commuted all 128 persons who were on death row to 20 years imprisonment. Then in February 1998, the law on the abolition of the death penalty was adopted. Azerbaijan ratified the Second Optional Protocol to the ICCPR (aiming at the abolition of the death penalty) in January 1999, and Protocol No. 6 on the Elimination of the Death Penalty to the Council of Europe Convention on Human Rights in May 2002.

Thus, in a period of less than ten years, Azerbaijan moved from being a retentionist state to abolitionist by taking a number of positive political and legal steps that took them inevitably towards the goal of abolition of the death penalty.

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

1. Narrow the provisions for the use of the death penalty. This means:
  - Reduce the number of death penalty applicable crimes 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.
2. Introduce, and/or ensure access to, fair trial safeguards for all those accused of “the most serious crimes”, at all stages of trial, appeal and clemency or pardon proceedings.
  3. Review practices to ensure that death sentences are not being applied in a discriminatory or arbitrary fashion.
  4. 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.
  5. Take real steps towards abolition, such as strengthening law enforcement agencies, undertaking necessary judicial reforms, reviewing prison practice with regard to those convicted of the most serious crimes, and undertaking legislative and constitutional reforms to bring about abolition.
  6. Uphold the strongest principles of transparency and accountability in the death penalty process, including publishing full information on the application of the death penalty.
  7. Pending full and final abolition, establish an official moratorium on executions and death sentences.
  8. 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.
  9. Establish a humane alternative sanctions-regime to replace the death penalty. This should respect international human rights standards and norms.
  10. Commute death sentences for those already on death row, or at least ensure humane conditions for those under sentence of death in line with international standards and norms for the treatment of prisoners.
  11. Sign and ratify binding international and regional instruments that commit them to abolish the death penalty. This should 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 the Rome Statute on the International Criminal Court.
  12. Abolish the death penalty for all crimes in law, and ensure that it cannot be legally reinstated.



## Chapter nine: Key international and regional abolitionist organisations

Civil society has played a vital role in the abolitionist movement at both the national and international level. There are hundreds, if not thousands, of civil society organisations who work on the fight against the death penalty, including inter alia human rights activists, NGOs, lawyers, academics, students, and the media. Some of the key organisations at the international and regional level include the following:

### International organisations

#### *Amnesty International*

Amnesty International is a global movement of more than 3 million supporters, members and activists in more than 150 countries and territories who campaign to end grave abuses of human rights.

Amnesty International opposes the death penalty in all cases without exception regardless of the nature of the crime, the characteristics of the offender, or the method used by the state to kill the prisoner.

Amnesty International has continuously monitored developments relating to the use of the death penalty for the last three decades.

One of the key resources it produces is an annual report on the state of the death penalty and executions. It provides analysis of the number of death sentences and executions from around the globe. It is relied upon by the international abolitionist community, and the most recent report covering the 2011 period can be downloaded here: <http://www.amnesty.org/en/death-penalty>

#### *World Coalition against the Death Penalty (Paris, France)*

The World Coalition against the Death Penalty, an alliance of more than 130 NGOs, bar associations, local authorities and unions, was created in Rome on 13 May 2002. It was founded as a result of the commitment made by the signatories of the Final Declaration of the First World Congress against the Death Penalty organised by the French NGO Together against the Death Penalty (ECPM) in Strasbourg in June 2001.

The World Coalition advocates for a definitive end to death sentences and executions in those countries where the death penalty is in force. In some countries, it is seeking to obtain a reduction in the use of capital punishment as a first step towards abolition. The World Coalition is striving to achieve these aims in the following ways:

- By lobbying international organisations and States.
- By organising international campaigns, including the World Day against the Death Penalty.
- By supporting national and regional abolitionist forces.

In 2010 the Coalition published the second edition of its book “Fighting against the Death Penalty in the Arab World: Protagonists, Arguments and Prospects”, which is available in Arabic at: <http://www.mediastroika.com/hosting/coalition/media/resourcecenter/WCADP-ArabWorldReport2010-en.pdf>

The World Coalition has a resource centre, which was developed to help facilitate the easy finding of reliable information on the death penalty. It contains over one thousand resources in over 15 languages. The Resource Centre includes NGO

reports, academic articles, international instruments and reports, and tools to assist with campaigning, lobbying, building coalitions, working with the media and other practical activities: <http://www.worldcoalition.org/resource-center.html>

#### *International Commission against the Death Penalty (ICDP) (Geneva, Switzerland)*

In 2010, the Spanish Government launched an initiative to establish the ICDP in order to reinforce the fight against the death penalty in all regions of the world and in order to establish a moratorium on the use of the death penalty, with a view to its complete abolition. The initiative is supported by 15 countries representing all the regions of the world, including Algeria.

Its mandate is to undertake complementary actions to the ones carried out by international and regional organisations, civil society and representatives of the political world, who favour the abolition of the death penalty.

The added value of the ICDP lies in the importance of its members, their independence in decision-making and broad geographical representation, giving it a high profile in the international arena, as well as a strategic and selective character when carrying out its objectives, with a view to achieving tangible results. Further information on the activities of the ICDP can be found here: <http://www.icomdp.org/>

## Regional organisations

At a regional conference on the abolition of the death penalty, held in Jordan in July 2007, PRI and the Amman Centre for Human Rights Studies announced the creation of an Arab Coalition against the Death Penalty.

#### *Arab Observatory against the Death Penalty (Amman, Jordan)*

The Amman Centre for Human Rights Studies is host to the Arab Observatory against the Death Penalty, which issues news, reports and studies, in addition to information on symposiums and conferences and news of the various Arab coalitions. It also provides important links, among them the web addresses of the Arab coalitions. Further information on the activities of the Arab Observatory can be found here: <http://www.dp.achrs.org/index.html>

Today there are also a number of national Arab coalitions against the death penalty: they can be found in Bahrain, Egypt, Iraq, Jordan, Mauritania, Morocco, Palestine, Syria, Tunisia and Yemen.

#### *The Moroccan Coalition against the Death Penalty (Rabat, Morocco)*

The national coalition brings together seven local NGOs with the objectives of:

- Abolition of the death penalty from Moroccan legislation.
- Moratoriums on death sentences.
- Commutation of death sentences.
- Ratification of the Second Optional Protocol to the ICCPR.
- Ratification of the Rome Statute of the International Criminal Court.

#### *The National Tunisian Coalition against the Death Penalty (Tunis, Tunisia)*

The national coalition was founded in response to the 2007 World Congress against the Death Penalty, where abolitionist activists were encouraged to organise at the national and regional levels. The Coalition conducts research and actions to achieve abolition at the national level.

## Appendices

### ANNEX I: UN General Assembly resolution 62/149 (2007)

#### Moratorium on the use of the death penalty

*The General Assembly,*

*Guided by the purposes and principles contained in the Charter of the United Nations,*

*Recalling the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child,*

*Recalling also the resolutions on the question of the death penalty adopted over the past decade by the Commission on Human Rights in all consecutive sessions, the last being resolution 2005/59 of 20 April 2005, in which the Commission called upon States that still maintain the death penalty to abolish it completely and, in the meantime, to establish a moratorium on executions,*

*Recalling further the important results accomplished by the former Commission on Human Rights on the question of the death penalty, and envisaging that the Human Rights Council could continue to work on this issue,*

*Considering that the use of the death penalty undermines human dignity, and convinced that a moratorium on the use of the death penalty contributes to the enhancement and progressive development of human rights, that there is no conclusive evidence of the deterrent value of the death penalty and that any miscarriage or failure of justice in the implementation of the death penalty is irreversible and irreparable,*

*Welcoming the decisions taken by an increasing number of States to apply a moratorium on executions, followed in many cases by the abolition of the death penalty,*

1. *Expresses its deep concern* about the continued application of the death penalty;
2. *Calls upon* all States that still maintain the death penalty:
  - a. To respect international standards that provide safeguards guaranteeing protection of the rights of those facing the death penalty, in particular the minimum standards, as set out in the annex to Economic and Social Council resolution 1984/50 of 25 May 1984;
  - b. To provide the 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;
  - c. To progressively restrict the use of the death penalty and reduce the number of offences for which it may be imposed;
  - d. To establish a moratorium on executions with a view to abolishing the death penalty;

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3. *Calls upon* States which have abolished the death penalty not to reintroduce it;
  4. *Requests* the Secretary-General to report to the General Assembly at its sixty-third session on the implementation of the present resolution;
  5. *Decides* to continue consideration of the matter at its sixty-third session under the item entitled “Promotion and protection of human rights”.

*76th plenary meeting  
18 December 2007*

## ANNEX II: UN General Assembly resolution 63/168 (2008)

### Moratorium on the use of the death penalty

*The General Assembly,*

*Reaffirming* its resolution 62/149 of 18 December 2007 on a moratorium on the use of the death penalty,

*Welcoming* the decisions taken by an increasing number of States to apply a moratorium on executions and the global trend towards the abolition of the death penalty,

1. *Welcomes* the report of the Secretary-General on the implementation of resolution 62/149, and the conclusions and recommendations contained therein.
2. *Requests* the Secretary-General to provide a report on progress made in the implementation of resolution 62/149 and the present resolution, for consideration during its sixty-fifth session, and calls upon Member States to provide the Secretary-General with information in this regard.
3. *Decides* to continue consideration of the matter at its sixty-fifth session under the item entitled "Promotion and protection of human rights".

*70th plenary meeting  
18 December 2008*

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## ANNEX III: UN General Assembly resolution 65/206 (2010)

### Moratorium on the use of the death penalty

*The General Assembly,*

*Guided* by the purposes and principles contained in the Charter of the United Nations,

*Recalling* the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child,

*Reaffirming* its resolutions 62/149 of 18 December 2007 and 63/168 of 18 December 2008 on the question of a moratorium on the use of the death penalty, in which the General Assembly called upon States that still maintain the death penalty to establish a moratorium on executions with a view to abolishing it,

*Mindful* that any miscarriage or failure of justice in the implementation of the death penalty is irreversible and irreparable,

*Convinced* that a moratorium on the use of the death penalty contributes to respect for human dignity and to the enhancement and progressive development of human rights, and considering that there is no conclusive evidence of the deterrent value of the death penalty,

*Noting* ongoing national debates and regional initiatives on the death penalty, as well as the readiness of an increasing number of Member States to make available information on the use of the death penalty,

Noting also the technical cooperation among Member States in relation to moratoriums on the death penalty,

1. *Welcomes* the report of the Secretary-General on the implementation of resolution 63/1684 and the recommendations contained therein;
2. *Also welcomes* the steps taken by some countries to reduce the number of offences for which the death penalty may be imposed and the decisions made by an increasing number of States to apply a moratorium on executions, followed in many cases by the abolition of the death penalty;
3. *Calls upon* all States:
  - a. To respect international standards that provide safeguards guaranteeing protection of the rights of those facing the death penalty, in particular the minimum standards, as set out in the annex to Economic and Social Council resolution 1984/50 of 25 May 1984, as well as to provide the Secretary-General with information in this regard;
  - b. To make available relevant information with regard to their use of the death penalty, which can contribute to possible informed and transparent national debates;

- c. To progressively restrict the use of the death penalty and to reduce the number of offences for which it may be imposed;
- d. To establish a moratorium on executions with a view to abolishing the death penalty;
- 4. *Calls upon* States which have abolished the death penalty not to reintroduce it, and encourages them to share their experience in this regard;
- 5. *Requests* the Secretary-General to report to the General Assembly at its sixty-seventh session on the implementation of the present resolution;
- 6. *Decides* to continue its consideration of the matter at its sixty-seventh session under the item entitled "Promotion and protection of human rights".

*71st plenary meeting  
21 December 2010*



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## Annex IV: Alexandria Declaration (2008)

### **Alexandria Declaration calling upon the Arab countries to implement the United Nations General Assembly resolution 62/149 on the establishment of a moratorium on executions**

1. We, the representatives of the Arab civil society and the Arab coalitions challenging the death penalty, have met in Alexandria, the Arab Republic of Egypt, from 12 to 14 May 2008 at the kind invitation of the Swedish Institute in Alexandria and in partnership with Penal Reform International, in corporation with Amman Centre for Human Rights Studies and MAAT Centre for Lawyers and Constitutional Studies, with the participation of representatives from the Cairo EC delegation, the UN High Commissioner for Human Rights, the Arab League and Amnesty International, for discussion and consultation on the implementation of the UN General Assembly Resolution 62/149 of 23 December 2007 concerning the establishment of a moratorium on executions.
2. Convinced that the death penalty is a violation of the most fundamental human right, i.e. the right to life; and that it did not succeed in any country in deterring criminality or in preventing it.
3. Believe that the death penalty amounts to torture and is a cruel, inhuman and degrading treatment. It contravenes the principle that consecrates the sanctity of human life. Life is God given and he alone could take it back.
4. Note with regret that the Arab judicial systems are abusively using the death penalty at the time most countries are abandoning it.
5. Recall that the tolerant Islamic Sharia'a has prescribed the death penalty as a deterrent, but sought to restrict the scope of its application to a very limited number of cases and by imposing strict conditions related to the infallibility of the witnesses, the absolute fairness of the judges and even then left room for possible forgiveness and reconciliation. In practice, this amounts to an effective establishment of a moratorium on executions in Islam.
6. Underline that such a penalty is being used in Arab positive laws extensively going far more than what the Sharia'a sought to impose.
7. Note with concern that the Arab legislations' prescribing death penalty are ambiguous and leave room for wide interpretation in the categorisation of acts punishable by death, such as organised crime, terrorism, treat to state security and other crimes of political nature.
8. Remind that most of the legal and judicial systems in the Arab World are undergoing reforms, implicitly acknowledging some of their intrinsic disfunctionality. Such an imperfect justice system should not be empowered to apply death penalty.
9. Considering that the Arab world is part of the international community and since Arab countries have participated in the discussion and adoption of the United Nations Resolution 62/149, we call upon all Arab States to respect the said resolution and establish a moratorium on executions.

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10. Request the Arab governments, each according to its own circumstances, to fully comply with the United Nations General Assembly Resolution 62/149 by:
    - a. “Respect[ing] international standards that provide safeguards guaranteeing the protection of the rights of those facing the death penalty, in particular the minimum standards, as set out in the annex to Economic and Social Council resolution 1984/50 of 25 May 1984;
    - b. Provide[ing] the Secretary-General with information relating to the use of capital punishment and the observance of the safeguards guaranteeing the protection of the rights of those facing the death penalty;
    - c. Progressively restrict[ing] the use of the death penalty and reduce[ing] the number of offences for which it may be imposed;
    - d. Establish[ing] a moratorium on executions with a view to abolishing the death penalty”.
  11. Appeal to the Arab judges to comply, in the exercise of their profession, with the international standards of fair trial, to refrain from the use of the death penalty and to use alternative punishments instead.
  12. Urge the member states of the Arab League to consider amending Article 7 of the Arab Charter on Human Rights in order to eliminate any possibility of applying the death penalty to the under 18 of age.
  13. Furthermore, appeal to the Arab states which have observed a de facto moratorium to remove this punishment from their legislation in order to prevent its circumstantial use.
  14. Also appeal to the Arab journalists and human rights activists to fully play their role in the awareness raising and combat bad customs and practices such as revenge, violence in all its forms, and the dissemination of human rights culture, particularly the right to life.
  15. Emphasise the need for the civil society to continue intensifying its activities to convince the public that narrowing and eventually abolishing the death penalty serves the ambition of the Arab masses in fulfilling their aspiration to justice and human rights.

Alexandria, 14 May 2008

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## ANNEX V: Algeria Declaration (2009)

### **Algeria Declaration on the implementation of the United Nations resolutions on a moratorium on the use of the death penalty**

We, national human rights committees, representatives of civil organisations opposing the death penalty, and Arab alliances, meeting in Algeria 12-13 January 2009 in the regional symposium on implementation in the Arab world of the UN recommendations for a moratorium on the use of the death penalty, at the invitation of the Algerian National Consultative Committee for the Advancement and Protection of Human Rights, in participation with Penal Reform International declare the following:

1. We note and value the position of Algeria in adopting and voting for UN resolutions 62/149 and 63/168 related to a moratorium on the use of the death penalty, and call for their implementation at the earliest possible date.
2. We urge the Arab world, as an integral part of the international community and in view of its role in discussing the above resolutions, to implement them.
3. We call on members of the Arab League to introduce amendments to Article 7 of the Arab Charter for Human Rights absolutely to prohibit the sentencing to death and execution of those under the age of eighteen.
4. We urge human rights activists in the Arab world to play their part in making society aware of what relates to abandoning a culture of violence and revenge and the spread of a culture of human rights, especially the individual's right to life and physical safety.
5. We insist on the need for civil society, and national and regional alliances to continue and intensify their activities aimed at raising public awareness so that public opinion is influenced to accept the elimination of the death penalty, and to restrict and abolish it in line with the particular circumstances and readiness of each country, thus supporting the ambition of citizens to achieve justice, while working towards strengthening and protecting human rights.
6. We encourage Arab countries to declare a moratorium of the use of the death penalty and to establish this in law.
7. We call upon Arab countries to ratify the Second Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty.
8. We call on the judiciary to limit the use of the death penalty and to guarantee that international standards for a fair trial are not violated.
9. We encourage the media, given its effective and influential role in raising public awareness and sensitivity, to play its part in ensuring that people understand the principles underlying this issue.

Algiers, 13 January 2009





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