



Promoting fair and
effective criminal justice

UN Secretary-General's 2015 report to the Human Rights Council on the death penalty Submission by Penal Reform International (PRI)

Introductory remarks

PRI,¹ together with its partner FHRI,² launched a two year multi-regional project in November 2012 on the progressive abolition of the death penalty and the implementation of humane alternative sanctions after a moratorium or abolition in four regions: East Africa, Central Asia, Eastern Europe, and the Middle East and North Africa. This programme of work has been supported by the European Union, under the European Instrument for Democracy and Human Rights (EIDHR).

PRI welcomes this opportunity to provide additional information regarding the wider impacts of the death penalty, and welcomes this focus of the Secretary-General's annual report. PRI has worked on this aspect of the death penalty over the last 18 months, in particular the impact of the death penalty on defence lawyers and prison guards who administer death rows or conduct executions, but with additional (more limited) information about the impact on judges, journalists and investigators, as well as children and families of persons sentenced to death or executed. It is our view that the death penalty has negative effects on the wellbeing of all groups who engage with or are affected by it, whether or not these negative impacts reach the level of human rights violations.

Human rights issues related to lawyers

Access of lawyers to their clients and confidentiality between lawyers and their clients are essential parts of procedural rights.³ These may be restricted in practice in cases involving

¹ Penal Reform International (PRI) is an international non-governmental organisation working on penal and criminal justice reform worldwide. It aims to develop and promote international standards for the administration of justice, reduce the unnecessary use of imprisonment and promote the use of alternative sanctions which encourage reintegration while taking into account the interests of victims. PRI works for the abolition of the death penalty and the implementation of humane alternative sanctions.

PRI has Consultative Status with the United Nations and the Council of Europe. It has Observer Status with the African Commission on Human and Peoples' Rights and the Inter-Parliamentary Union. PRI is also a registered civil society organisation with the Organization of American States. PRI is on the Steering Committee of the World Coalition against the Death Penalty.

² The Foundation for Human Rights Initiative (FHRI) is an independent, nongovernmental, non-partisan and not-for-profit human rights advocacy organisation established in December 1991. It seeks to remove impediments to democratic development and meaningful enjoyment of the fundamental freedoms enshrined in the 1995 Uganda Constitution and other internationally recognised human rights instruments. FHRI is a member of the World Coalition Against the Death Penalty and the East African Coalition Against the Death Penalty.

³ See, for example, the UN Basic Principles on the Role of Lawyers, Principles 8, 16 and 22.

the death penalty if the person sentenced to death is imprisoned in a hard to access prison or where there are restrictions on all visitors.

The ability of persons suspected or convicted of death penalty-applicable offences to access lawyers may in practice be limited: one lawyer from India stated:

Most death row prisoners are illiterate and extremely poor. They have no access to knowledge about rights, remedies, etc, and no real access to lawyers. Their families, already impoverished and defeated, have long given up hope or abandoned the prisoner to his fate ... They usually only manage to reach me just a few days or hours before the execution. It is in this very small window of time that I have to devise some way of getting an interim stay on the execution on the grounds of breach of rights or due procedure.⁴

As stated above, the welfare and mental health of lawyers can be negatively affected by participating in a case involving the death penalty, in particular when a client is executed. The draft Universal Declaration on the Independence of Justice (The Singhvi Declaration) states that among the functions of Bar Associations should be '(j) To promote the welfare of members of the profession and render assistance to a member of his family in appropriate cases'. Similarly, Council of Europe *Recommendation No. R (2000) 21 of the Committee of Ministers to Member States on the freedom of exercise of the profession of lawyer* states in Principle V/4/e that Bar associations should 'promote the welfare of members of the profession and assist them or their families if circumstances so require'. Such rules arguably mean that the negative effects of death sentences and executions on lawyers should be considered.

Human rights issues related to prison officials

Some prison officials who have participated in overseeing death sentenced prisoners or executions have reported negative effects on their mental health, in some cases experiencing symptoms consistent with post-traumatic stress disorder (PTSD) or becoming isolated and withdrawn.⁵ In many cases, this would not necessarily be a breach of the official's human right to the highest attainable standard of physical and mental health as they would have chosen to take on this job (indeed, some jurisdictions provide additional pay to officials carrying out this role).⁶ However, in situations where serving as a prison official is non-voluntary (for example, serving in military prisons as part of compulsory military service), this may be considered a violation of human rights. Somewhat similar concerns may emerge in cases where prison officials involved in overseeing death rows or executions are discouraged from quitting through 'ridicule, bullying or demotion: one guard [in the USA] was given "weird duty, weird hours" after asking to be removed from the execution team, while others reported being threatened with lower paying, lower status jobs'.⁷

Human rights issues related to journalists

The death penalty in many countries is administered with a high degree of secrecy and lack of information being provided to families of those facing death or the wider public. Freely available information ('including accurate data on the number of persons sentenced to death,

⁴ Penal Reform International, *Fighting for clients' lives: the impact of the death penalty on defence lawyers*, London, 2015, p. 1.

⁵ Penal Reform International, *Prison guards and the death penalty*, London, 2015.

⁶ Penal Reform International, *Prison guards and the death penalty*, London, 2015, p. 3.

⁷ Penal Reform International, *Prison guards and the death penalty*, London, 2015, p. 3.

the number of persons on death row and the number of executions⁸) has been identified as necessary for the public to be able to make informed decisions about the death penalty, and certain groups or individuals (notably family members, but also lawyers) have particular rights to information. Journalists are a key group able to facilitate the dissemination of information about the death penalty, but in some jurisdictions they are unable to do so, either because information on the death penalty is unavailable or because of wider restrictions on freedom of expression.

In some jurisdictions, including China and Tajikistan,⁹ information about the death penalty is classified as a state secret. In some jurisdictions, such as Belarus, journalists are only able to receive information about executions via family members or lawyers; asking prison authorities directly may result in no information being provided.¹⁰

Human rights issues related to judges

Due to the severity and irreversibility of a death sentence, it is especially important that fair trial standards¹¹ are upheld in death penalty cases.¹² However, there have been repeated reports over many years and world regions of shortcomings in trials in military courts.¹³ Among the concerns are issues about the (lack of) independence of judges who are either serving members of the military or are appointed by a military system that is accountable to the executive branch of government. This contravenes the requirement in the UN Basic Principles on the Independence of the Judiciary that 'The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary'.¹⁴

⁸ Human Rights Council, 27th Session, *Question of the death penalty: Report of the Secretary-General*, 30 June 2014, A/HRC/27/23, para. 22.

⁹ Penal Reform International, *The abolition of the death penalty and its alternative sanction in Central Asia: Kazakhstan, Kyrgyzstan and Tajikistan*, 2012, p. 45.

¹⁰ Information from Belarus journalist.

¹¹ A complete list (produced by the UN Special Rapporteur on the independence of judges and lawyers in her 2007 report) includes:

- (a) the right to be informed promptly of the reasons for arrest;
- (b) the right to the necessary means of defence;
- (c) the right to be present during the trial;
- (d) the presumption of innocence;
- (e) the right to remain silent;
- (f) the right to an independent and impartial tribunal;
- (g) the right to appeal;
- (h) the non-retroactivity of criminal laws;
- (j) the right to present witnesses;
- (k) the principle of *non bis in idem*;
- (l) the right to have the lawyer of one's choosing;
- (m) the right to legal aid;
- (n) the right to have the judgement pronounced publicly.

¹² 'Issues in focus – Military Courts', *Website of the UN Special Rapporteur on the Independence of Judges and Lawyers*, accessed 26 March 2014 at <http://www.ohchr.org/EN/Issues/Judiciary/Pages/Issues.aspx>.

¹³ See for example the various reports of the UN Special Rapporteur on the independence of judges and lawyers and the UN Working Group on Arbitrary Detention, which detail multiple cases of arbitrariness in military justice settings.

¹⁴ UN Basic Principles on the Independence of the Judiciary, Principle 1.