

KONGRES REGIONAL TENTANG HUKUMAN MATI  
ЦАА ЗААРАВАХ ЯЛЫНА СУУДЛААРХ БҮСНУТГИЙН КОНГРЕСС  
মৃত্যুদন্ড বিষয়ে আঞ্চলিক সম্মেলন  
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HỘI THẢO VỀ HÌNH PHẠT TỬ HÌNH Ở KHU VỰC CHÂU Á  
KONGRES HUKUMAN MATI DI ASIA

**KUALA  
LUMPUR  
MALAYSIA**

11<sup>TH</sup> & 12<sup>TH</sup>

JUNE 2015

RENAISSANCE  
HOTEL

# ASIAN REGIONAL CONGRESS ON THE DEATH PENALTY REPORT

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*Ensemble  
contre  
la peine  
de mort*

**ANTI  
DEATH  
PENALTY  
ASIA  
NETWORK**



NORWEGIAN MINISTRY  
OF FOREIGN AFFAIRS

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# INTRODUCTION: **BACKGROUND TO THE ORGANISATION OF AN ASIAN REGIONAL CONGRESS ON ABOLITION OF THE DEATH PENALTY**

## **ASIAN CONTEXT**

Asia remains the world's leading retentionist region. The number of people executed in Asia is higher than the total number of executions in the rest of the world. Several countries in the region do not publish any statistics regarding use of the death penalty and public opinion, which supports capital punishment, is still a major challenge to be faced. However, reflecting the international trend, abolition of capital punishment has increased over the past ten years in Asia. The number of executions has decreased, governments have imposed more rigorous restrictions to limit use of the death penalty and a more open debate has been launched. Over the last decade, five countries in the region have abolished the death penalty for all crimes: Nepal in 1997, Bhutan in 2004, the Philippines and Cambodia in 2006, and last but not least Mongolia in 2012.

In spite of this progress, there are still numerous challenges to be faced in order to abolish capital punishment in the region. Some setbacks have put recent progress into perspective: India and Pakistan resumed executions and extended the scope of capital punishment in 2012 and 2014 respectively; Indonesia and Singapore have also resumed executions.

In this context, tackling the death penalty in Asia, and particularly East and South East Asia, is an absolute priority insofar as Asia remains one of the strongholds of the death penalty across the world.

## **THE DEATH PENALTY IN ASIA: KILLER FACTS**

- Of all the executions recorded in 2015, 89% were carried out in 3 countries, 2 of them Asian: Iran and Pakistan.
- Iran, the Maldives and Pakistan sentenced juvenile offenders to death in 2015.
- Over the course of 2015, at least 6 countries resumed executions including 3 Asian States.
- China and Vietnam continued to classify figures on use of the death penalty as a State secret.
- Brunei Darussalam, Malaysia, Myanmar, Pakistan and Singapore continued to impose mandatory death sentences.
- China remained the world's leading executioner.
- The Fiji Islands abolished the death penalty for all crimes in February 2015.



## **WHY MALAYSIA? A KEY STRATEGIC LOCATION**

ECPM (Together Against the Death Penalty) chose to organise the Regional Congress on the Death Penalty in Kuala Lumpur, Malaysia, in order to make the most of its regional and strategic international influence. Organising the Congress in this leading regional capital city would facilitate the attendance of international political, legal and civil society representatives which would guarantee the diversity and richness of the academic programme.

## **A STRUCTURED AND ACTIVE ABOLITIONIST MOVEMENT**

Over the last few decades, Asian civil society's commitment to abolition has increased. Cooperation and communication within the Malaysian abolitionist movement, led by the Anti-Death Penalty Asia Network (ADPAN, co-organiser of the Regional Congress), the Human Rights Commission of Malaysia (SUHAKAM) and Bar Council of Malaysia (both partners of the Regional Congress), has strengthened. The cooperation of these bodies on the Regional Congress would reinforce and empower the existing Asian abolitionist movement, making it more visible on a global level.

# GOALS OF THE CONGRESS

## AIMS SPECIFIC TO THE REGION

The Regional Congress was aimed at both civil society and politicians, governments and regional organisations. Goals to be met were as follows:

- **Encourage the emergence of new forms of political cooperation to encourage States to come forward with concrete commitments;**
- **Support the work of civil society players and strengthen their role in the promotion of human rights and abolition of the death penalty;**
- **Assist progress in the region by:**
  - Defining a concerted strategy with clear elements in terms of progress, obstacles and outlook;
  - Breaking the isolation of abolitionist players by encouraging strategic networking;
  - Producing political, legal, and sociological arguments in support of abolition;
  - Developing concerted lobbying strategies.
- **Mobilise the media as a vector to raise awareness among citizens about the reality of the death penalty;**
- **Organise a regional debate with a view to the 6th World Congress and guarantee sufficient space for the region's players at the 6th Congress.**

## SCOPE OF THE EVENT

### **TWO DAYS OF DEBATE**

The Regional Congress was held on 11 and 12 June 2015 at the Renaissance Hotel in Kuala Lumpur, Malaysia. The academic programme included an opening ceremony, a plenary session, two roundtables, four workshops and a closing ceremony. This Congress provided the necessary space and speaking time for informal discussions between guests. More than 300 participants were expected to attend the Congress and around 55 of them were financially supported by ECPM.

### **WIDESPREAD MEDIA COVERAGE**

As with the previous World Congresses organised by ECPM, widespread media coverage was expected. ECPM mobilised the targeted countries' media – including retentionist ones – in order to ensure comprehensive coverage across Asia. The involvement of international media outlets contributed to raising public awareness worldwide.

### **LOOKING TOWARDS THE 6TH WORLD CONGRESS (OSLO, NORWAY)**

#### **ENSURE THE REPRESENTATION OF THE REGION'S PLAYERS**

The Regional Congress aimed to create momentum in Asia, particularly by strengthening the active abolitionist movement, bringing together and empowering isolated players, enhancing ADPAN's legitimacy and visibility, and integrating the region's representatives into world debates.

#### **ENSURE THE CONTINUITY OF DEBATES**

The debates which started at the Regional Congress on the following themes will be considered in more detail at the World Congress: the death penalty and drug trafficking and consumption, the mandatory death penalty, unfair trials, and the use of diplomacy as a tool in the promotion of abolition, in Asia and worldwide.



# DAY 1 - 11 JUNE 2015 OPENING CEREMONY

During the opening ceremony, the following high-level speakers took the floor.

- **YB Senator Datuk Paul Low Seng Kuan**, Minister in the Prime Minister's Department (Malaysia);
- **Mrs Chow Ying Ngeow**, Executive Committee of Anti-Death Penalty Asia Network (ADPAN);
- **Mr Raphaël Chenuil-Hazan**, Director of the NGO Together Against the Death Penalty (ECPM);
- **Mr Steven Thiru**, President of the Malaysian Bar;
- **Mr Tan Sri Hasmy Agam**, Chairman, Human Rights Commission of Malaysia (SUHAKAM);
- **Mr Constantin Nicolaysen Karamé**, First Secretary, Royal Norwegian Embassy, Kuala Lumpur;
- **Mrs Angela Mac Donald**, Deputy Head, Australian High Commission, Kuala Lumpur;
- **H.E. Mr Luc Vandebon**, Ambassador and Head of Delegation of the European Union to Malaysia.

## Statement by

- **YB Senator Datuk Paul Low Seng Kuan**,  
Minister in the Prime Minister's Department (Malaysia):
  - *Use of the death penalty for drug offences has increased in Malaysia but this policy is not a deterrent against the phenomenon of drugs trafficking.*
  - *Court Magistrates should benefit from discretionary power before reaching a final decision on death penalty cases.*
  - *A mandatory death penalty for drugs sentences should be removed from the Malaysian Penal Code.*
  - *Necessary consultations should be dedicated to the idea of removal of death penalties to be replaced by life sentences.*
  - *Use of DNA proved to be critical for avoiding legal errors.*

## Statement by

- **Mr. Steven Thiru**, President of the Malaysian Bar:
  - *The Malaysian Bar remains on the frontline to defend constitutional rights and calls for the abolition of the death penalty in Malaysia.*
  - *Information is scarce in Malaysia with regard to the number of people on death row in the country.*
  - *The Malaysian Bar and Death Penalty Project recently embarked on a public opinion survey on the death penalty. Results: for drugs trafficking and firearms offences, the death penalty should be abolished. For murder, the use of discretionary power by the judiciary to decide the appropriate decision was favoured.*

## VIDEOS:

- **Bishop Desmond Tutu**, Nobel Peace Prize, 1984
- **Father Charlie Burrows**, Catholic Priest who has been visiting death row inmates since 2003, leading up to their executions

## DAY 2 - 12 JUNE 2015 CLOSING CEREMONY

During the closing ceremony, the following high-level representatives took the floor:

- **Mr Constantin Nicolaysen Karamé**, First Secretary, Royal Norwegian Embassy, Kuala Lumpur;
- **Mr Raphaël Chenuil-Hazan**, Director of the French NGO Together Against Death Penalty (ECPM);
- **Mr Charles Hector**, Executive Committee of the Anti-Death Penalty Asia Network (ADPAN);
- **Mrs Florence Bellivier**, Chairwoman of the World Coalition against Death Penalty (WCADP);
- **Mr Mario Marazitti**, Member of the Italian Parliament, Parliamentarians for Global Action.





# DAY 1 - PLENARY SESSION DRUGS AND DEATH PENALTY

The aim of this plenary session was to underline the inefficiency of the death penalty and to discuss the issue of the responsibility which lies with European countries and United Nations agencies when it comes to financing anti-drug programs in retentionist countries. This plenary session was moderated by ADPAN with the following key speakers: **DR RICK LINES**, Executive Director of Harm Reduction International, **MR RICKY GUNAWAN**, Director of Lembaga Bantuan Hukum (LBH) Masyarakat (Community Legal Aid Institute) of Indonesia, **PROFESSOR FRANKLIN ZIMRING**, from the School of Law, University of California, Berkeley, **MR RAVI**, Singaporean Human Rights and Anti-Death Penalty Activist, and **MRS MATILDA BOGNER**, Regional Representative for South East Asia, Office of the High Commissioner for Human Rights (OHCHR).

## CLASSIFICATION OF STATES WITH REGARDS TO THE DEATH PENALTY FOR DRUG-RELATED OFFENCES: FROM HIGH APPLICATION STATES TO SYMBOLIC APPLICATION STATES

According to the classification developed by Harm Reduction International, there are three specific types of State when it comes to death penalty for drug-related offences: high application States (China, Iran, Vietnam, Malaysia, Saudi Arabia, Singapore, etc.), low application States (Indonesia, Thailand, Taiwan, etc.) and symbolic application States (India, Sri Lanka, etc.). Symbolic application States deliver public statements underlining the fact they are strict and tough on drugs without actually putting those statements into practice. High application states are responsible for the great majority of executions.

As an example, Indonesia was categorised as a low application State but, owing to a change of governmental policy and *impetus*, Indonesia has resumed executions. This is a political choice governmental officials choose to embrace. In fact, 14 people were executed during the first half of 2015, 12 of them foreigners. The majority of drugs smugglers executed in Indonesia are therefore foreign nationals. How is that going to deter Indonesians from selling, using and consuming drugs?

In Indonesia there is a sociological background which explains why the country is resorting to the death penalty. The authorities have been developing an ideology based on hatred of drugs since the 1960s, with campaigns fostering public support. It is then easy for governments to capitalise and gain sympathy from the public. General public support also facilitates the work of law enforcement agencies dealing with drug enforcement cases. Moreover, when they arrest a drug offender society and the media celebrate their performance, thereby promoting the policy of setting target figures as a path of promotion for law enforcement officials and, as a consequence, an increase in the number of fabricated cases which became a real phenomenon. Hence, the argument that the death penalty for drug-related offences violates the right to life

does not work in Indonesia, insofar as society has been brainwashed that drugs are bad and that drug offenders should be executed.

Retentionist and pro-death penalty activists justify their position with the false argument that this policy actually stemmed from a regional approach. This statement is not valid: of the 49 countries in Asia and the Middle East and North Africa, very few States actually carry out executions. Only 1 in 7 execute drug offenders and 1 in 18 are considered high application States.

## **INTERNATIONAL DRUG CONTROL LAW: THE DEATH PENALTY AND THE MOST SERIOUS CRIMES**

International Drug Control policy is codified in three major United Nations conventions which, among other issues at stake, criminalise the entire process of drug production. The 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances creates obligations for States to adopt repressive laws against the death penalty.

Retentionist States usually argue that they do not want to abide by international law but, in the meantime, those States abide by international drug control laws. For most retentionist States, laws on the death penalty for drugs are a product of the modern drug control treaty regime and the global war on drugs. However, drug offences are not serious enough to justify the death penalty in terms of penal proportionality.

Article 3.5 of the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances defines Particularly Serious Crimes. On the basis of this definition, most executions can be considered illegal. Besides which, retentionist States often neglect the mitigating factors that heighten the severity of the crime. Without these mitigating factors, none of these crimes can actually be considered Particularly Serious Crimes. Consequently, the vast majority of executions taking place are illegal as they are for offences which do not even meet the most serious level of offences within international drug control law.

International drug control law reinforces the conclusion that drug offences are not Most Serious Crimes. We can use this as a strong basis for advocating against the use of the death penalty to combat drug trafficking issues.

## **PRESSURE ON EUROPEAN AND WESTERN STATES**

European NGOs bear a specific responsibility to look more closely at the responsibility of our European/Western governments when it comes to funding drug agendas and cooperation agreements. Those programmes can clearly lead to increased executions in recipient countries but donors are not held accountable for where they give money. Abolitionist states can be complicit in passing the death penalty in retentionist States in this way.



## DOMESTIC PUBLIC DEBATE ON DRUGS

In Indonesia there is no open and genuine dialogue on the issue of drugs. Drugs are just seen as a bad habit and local media are not a vector to be used to change this perception. As a consequence, very few lawyers want to handle drugs cases. They are reluctant to be associated or get involved with these cases, fearing social stigma. Very few legal aid organisations will take up these causes. This has a particular effect on poorer offenders.

The only way out is to start a real and open public debate on the perception of drugs. People need to understand that the policy implemented is counter-productive. Emphasis should be put on more evidence-based recommendations rather than moralistic policies in order to ensure fair trials. Needless to say, freedom of expression is vital for a healthy debate in regions where the death penalty is executed. Writers, journalists and documentary filmmakers should not be censored. From that perspective, reliable public data on the death penalty in particular is needed.

There is no conclusive evidence on the deterrent effect of the death penalty. According to research carried out by Dr Jeffrey Fagan, there were no measurable and quantitative differences before and after the last execution with regard to Hong Kong's homicide rate<sup>1</sup>. As a result, there is no credible evidence that the death penalty deters drug-related crimes any more than lengthy imprisonment. The severity of the sentence does not deter wrongdoers but the certainty of those judgments does.

## THE LEGAL PERSPECTIVE: THE LEGAL ELEMENT OF INTENTION (MENS REA) AND RESPECT FOR BASIC LEGAL GUARANTEES

In Indonesia, anyone who unlawfully exchanges, sells or distributes drugs weighing over 5g can face the death penalty. Therefore, if you have 6g of heroin and you genuinely did not know you had it you can be sentenced to death. One alarming fact is that there is a pattern of foreigners who are genuinely unaware that they have drugs in their bag. They can be prosecuted and sentenced to death. In addition, fabrication of drug-related cases is quite common practice in Indonesia.

In Singapore, basic legal guarantees to which detainees should be entitled were gradually shrinking (loss of the right to silence in 1976, delays in access to legal advice). In addition, several decisions lead to major difficulties in delivering proper administration of justice and impartial decisions with, for instance, the removal of the judge's discretion, the inability for lawyers to question prosecutorial discretion and the decision-making process (from three judges to one for the sake of due diligence). Moreover, since 1998 there has been no resort to clemency.

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<sup>1</sup> Hong Kong renounced capital punishment in 1933 and there have been no executions since 1966.

## **Global Trends in Asia: OHCHR report on the death penalty in ASEAN countries**

Although most States in Asia retain death penalty, South East Asia also reflects a worldwide movement towards a drop in the use of the death penalty in practice. This includes a reduction in the number of individuals sentenced to the death penalty and the number of crimes which can lead to execution of the death penalty.

In March 2015 the Office of the High Commissioner for Human Rights in Asia released a report entitled *Moving Away from the Death Penalty, Lessons in South East Asia*, in collaboration with the Ministry of Justice in Thailand. (Report available at : <http://bangkok.ohchr.org/files/Moving%20away%20from%20the%20Death%20Penalty-English%20for%20Website.pdf>)

### **THIS REPORT FOCUSED ON THE FOLLOWING FINAL RECOMMENDATIONS:**

- In line with UN bodies, expedite efforts to enforce an official moratorium and commute all capital punishment sentences.
- Create opportunities for intergovernmental organisations, NGOs and individuals to engage in discussions.
- Regional cooperation and collaboration via platforms such as the Association of South-East Asian Nations (ASEAN).
- Ensure that any decision on the death penalty is restricted to crimes which involve intentional killing; remove mandatory death penalties.
- Ensure fair trial regulations are upheld.
- Ensure that safeguards and special protections for vulnerable groups are in place (in particular regarding pregnant women, children, the elderly and the mentally disabled).
- Ensure transparency in cases of capital punishment, access to information and publish data on sentences and executions.
- Amend deportation of individuals who may be subject to persecution upon return and of individuals which may result in the death penalty.
- Retentionist States to expedite efforts to impose a moratorium on executions.



# DAY 1 - WORKSHOP 1 MANDATORY DEATH PENALTIES

The aim of this panel was to draw a clear distinction between the death penalty and mandatory death penalties as a first step towards total abolition. The issue of progress and regression of mandatory death penalties, as well as identification of steps for abolition of mandatory death penalties, were also tackled during this panel.

This workshop was moderated by ADPAN, with the following key speakers: **PROFESSOR CHAN WING CHEONG**, Associate Professor, Faculty of Law, National University of Singapore, **MR PARVAIS JABBAR**, Co-Executive Director, the Death Penalty Project, **DR AZMI SHAROM**, Professor, Faculty of Law, University of Malaya, **MR JULIAN MCMAHON**, Australian lawyer and barrister for Myuran Sukumaran and Andrew Chan, executed in Indonesia.

## MANDATORY DEATH PENALTIES AND DRUG TRAFFICKING: THE CASE OF SINGAPORE

Singapore is one of the 33 countries which retain the death penalty for drug offences and one of 13 States in the world with a mandatory death penalty. Singapore's example is interesting in many ways, particularly from an historical perspective: until 1975, the maximum sentence for drug-related cases was imprisonment or a fine or both, and caning. From 1975 onwards, the death penalty became mandatory for trafficking of heroin and morphine. In 1989, this decision was extended to trafficking of opium, cannabis, resin and cocaine, and in 1998, to trafficking of methamphetamine.

In the Singapore criminal justice system, if a person is found in possession of drugs above a certain quantity, it is presumed to be for the purposes of drug trafficking. The person is then presumed to be guilty until proven innocent. A person is presumed to know the nature of the drug if it is in his/her possession. The criminal justice system is constructed on presumptions which make it easier to prove the accused is guilty. In Singapore basic legal guarantees, particularly during the first few days following arrest, are not respected: denial to legal resources and support is commonplace. Police interrogations are not filmed. In addition, Singaporean society strongly believes that the death penalty is a meaningful tool to protect society.

Therefore, the implementation of mandatory death penalties constitutes a high risk of injustice and unfair trials, although reforms were adopted in Singapore in 2012, commuting capital punishment to life imprisonment under specific circumstances (the accused proved to be only a drugs mule, the accused suffers from a mental disability). One way to reduce the scope of mandatory death penalties is to provide judges with more discretionary powers when they deal with drug-related offences. Wrongful conviction is something a judge cannot avoid.

## **MANDATORY DEATH PENALTIES VERSUS DEVELOPMENT OF CONSISTENT JURISPRUDENCE AND RULINGS FAVOURING ABOLITION OF DEATH PENALTY.**

One strategic avenue to reduce the scope of and then abolish the death penalty is to use the judiciary to develop practises and adapt key rulings which would model national and international laws and rules.

For instance, all Commonwealth Caribbean States have abolished mandatory death penalties, with the exception of Trinidad and Barbados. Where mandatory death penalties have been abolished, the judiciary has developed specific laws which define what is legally qualified as Very Serious Crimes. However, this position has not been adopted everywhere and has faced hindrances in South-East Asia.

Mandatory death penalties for drugs are not permitted under international law. They are also outlawed for drugs insofar as the judicial process is arbitrary and discriminatory from beginning to end: the burden of proof is to be borne by the defendant and not the prosecution. Besides which, prosecutors, through prosecutorial discretion, decide who should live and who should die. Clemency is rare, despite the fact that this is the only opportunity to mitigate the sentence. From that perspective, the introduction of discretion constitutes a massive move towards abolition.

## **MANDATORY DEATH PENALTIES AND DRUG TRAFFICKING: THE MALAYSIAN EXPERIENCE**

In Malaysia, most drug-related offences do not meet international standards for the Most Serious Crimes. Mandatory death sentences also violate international rights. If Malaysian civil abolitionists want to remove mandatory death penalties from the national legal framework, religion – Islam in Malaysia's case - has to be taken into consideration. But there is a ray of hope: most Malaysians do not approve of mandatory death sentences so there is important work to be initiated and developed with regard to public opinion.

### **Testimony of Julian McMahon, barrister for Myuran Sukumaran and Andrew Chan, executed in Indonesia.**

As a barrister, Julian McMahon is convinced that if you really want to abolish mandatory death penalties, you have to consider it from all angles. One is related to educating people insofar as an informed person is much less likely to support mandatory death penalties. Abolitionists should work in teams: international and national NGOs, lawyers and academics have to be brought together and informed so that they can work on a case collectively. Relations with stakeholders and vectors such as journalists should be strengthened.



# DAY 1 - TESTIMONIES JUDICIAL OFFICIALS/JUDGES/ LAWYERS AND THE DEATH PENALTY

The aim of this panel was to give the floor to judicial officials, judges and lawyers in order to share their personal experiences when dealing with a death penalty case and, in particular, how they make their decisions, and, more broadly, what they think of the role they can play with regard to abolition of capital punishment. **MR CHIN-HSIEN CHEN**, a Judge at Tainan District Court, Taiwan, **MR JULIAN MCMAHON**, an Australian lawyer and barrister for Myuran Sukumaran and Andrew Chan, both executed in Indonesia, and **MRS NANCY YULIANA**, the lawyer for Serge Atlaoui (Indonesia) shared their own experiences.

## MR CHIN-HSEIN CHEN (TAIWAN)

*As a Judge in Taiwan who has been practicing for 21 years, I would like to share my personal experience and how my opinion of the death penalty has changed. 21 years ago, I strongly believed that the death penalty was necessary. I participated in five death penalty-related cases and I remember that one of them was a middle-aged individual who had no prior criminal record and murdered someone in a fight. I also remember that one of them had mental disabilities. A death sentence was passed for one of those cases.*

## JUDGES AND CAPITAL PUNISHMENT IN TAIWAN

*I faced harsh criticism from my fellow colleagues; they considered that I was not harsh enough in my judgments. Such pressure is almost unbearable for judges and Taiwanese society broadly supports capital punishment. In the eyes of the public, these cases are crystal clear. As a result, there is no doubt as regards the guilt of the defendant. But the thing is that people do not realize what the death penalty entails. Society is still asking for blood and for criminals to be killed. It is difficult to change people's perception of the death penalty, particularly because not many judges advocate against the death penalty and they suffer from isolation. Judges are ill-at-ease with the possibility of triggering an injustice, to such an extent that they prefer to deny this risk.*

## THE POSSIBILITY OF A MISCARRIAGE OF JUSTICE

*What made me change my point of view was the possibility of a miscarriage of justice. What if someone is wrongly accused and wrongly executed? Wrongful conviction is something that judges cannot avoid. Wrongful execution can never be repaired. You have to face remorse alone. I strongly believe that there is no justification to trigger the deprivation of life. One way to abolish the death penalty is to consider compensation and agreements to be settled between defendants and victims. But society as a whole must embrace this process.*

**MR JULIAN MCMAHON (AUSTRALIA)**

*In the course of 2002 one of my clients was executed in Singapore. I accompanied his mother and brother to his execution. This was one of the worst moments of grief I had ever experienced. I promised myself that this would never happen again. Since then, I have decided to dedicate as much time as necessary to defend death penalty cases.*

**KILLING PUT AN END TO THE OPPORTUNITY TO REFORM**

*I am deeply convinced that capital punishment is in no way a solution. Killing put an end to the opportunity to reform. The process of rehabilitation needs to take place. In some cases prisoners convert; prison becomes a real sanctuary. Among other striking examples, one of my clients, Myuaran, became a very good painter. In his last days he produced 15 paintings. He even protected the prison's female quarters once when gangs were trying to enter.*

**THE POLITICAL USE OF CAPITAL PUNISHMENT**

*Governments clearly use capital punishment for their political agenda and in order to show their determination to eradicate any perceived evil wrongdoings such as drug trafficking. Let us take an example: en route from Bali to a place of execution, I noticed a very high military presence that was unnecessary. The purpose was clearly for the Indonesian authorities to show off government will and power.*

**MRS NANCY YULIANA, LAWYER OF SERGE ATLAOUI (INDONESIA)**

*Indonesian authorities have launched a fierce battle against drugs, regardless of the people involved and their stories. Indonesia is indeed infected by drug trafficking, a very lucrative business in which young people in particular find themselves embedded. Testimonies, supporting documents and materials are a question of price.*

*The time between a ruling and an execution is extremely long and sometimes exceeds 9 years. I, of course, strive to avoid execution and try to keep my clients alive. I also struggle to keep their stories heard.*



## DAY 2 - ROUNDTABLE 1 DISCUSSION: ELEMENTS OF UNFAIR TRIALS

The purpose of this roundtable was to discuss the topic of discrimination with regard to use of death penalty, and to highlight the lack of respect of criminal-guaranteed procedures, in particular in the following instances: unaccompanied defendants during questioning, confessions sometimes obtained under torture, etc. This roundtable was also a suitable arena to remind retentionist countries to respect the criminal procedures set up and guaranteed by Criminal Procedure Codes. Speeches and discussions were moderated by ADPAN, with the following speakers: **MR ABDUL RASHID ISMAIL**, advocate and solicitor, Former President of the National Human Rights Society (HAKAM, Malaysia); **MR SAUL LEHRFREUND**, Co-Executive Director, The Death Penalty Project, United Kingdom; **MR LEAN CHIH-HAU HUANG**, lawyer, Lionheart Attorneys-at-Law (Tawain); **MRS PURI KENCANA PUTRI**, Research Bureau, The Commission for the Disappeared and Victims of Violence (KontraS, Indonesia).

### THE INEVITABILITY OF LEGAL ERROR: THE ADMINISTRATION OF JUSTICE IN DEATH PENALTY CASES

The death penalty violates the right to live and the prohibition of torture (*ius cogens*). International law imposes basic safeguards which have to be observed for every single case. Those legal safeguards also apply to retentionist countries. Due process of law embraces the fundamental principle of a fair trial.

Cases of miscarriages of justice related to death penalty are occurring all over the world. There is no perfect criminal justice system in the world. In many countries, wrongful convictions were one of the main triggers which led to the abolition of capital punishment. This is the case in Great Britain, for example. The last execution took place in November 1964.

Even with a well-resourced legal system, miscarriages of justice still occur owing to inadequate resources or legal representation, badly-trained law enforcement agents, etc. In countries facing financial difficulties, there are also instances where no money is available to engage expert witnesses and suspects do not have regular access to psychologists/psychiatrists (and if seen, insufficient time is given for a proper diagnosis) in order to assess their psychological status and determine the level of criminal responsibility of the accused.

There is no perfect criminal justice system in the world. Any justice system is prone to being controlled by fears and bias, and influenced by public opinion. If the risk of legal error exists, and we know it does, there is simply no room for the death penalty regardless of political or public opinion positioning.

The question to be asked is not whether any individual deserves the right to be executed but rather whether States deserve the right to enforce the death penalty.

## **LEGAL REPRESENTATION THROUGHOUT THE LEGAL PROCESS: MALAYSIA**

Legal errors are inevitable when it comes to the administration of a justice system which includes death penalty cases. The right to life is enshrined in the Malaysian Constitution. However, the Malaysian authorities still retain capital punishment. According to the Malaysian Penal Code, the death penalty is mandatory for five offences but there are 70 offences where there is discretion. The death penalty is not applicable to pregnant women and minors. Unfortunately, the Malaysian Federal Court stated that mandatory death penalties were not unconstitutional.

One of the main striking features of unfair trials in Malaysia is that free legal representation for the accused is not provided. This is only the case at High Court level. People who are arrested are not systematically informed about the grounds for arrest. During court hearings there is no legal representation and suspects very often do not understand the charges which are read out to them. He/she barely has the right to challenge the legality of his/her detention and the prosecution's decision. In addition, under the 1952 Dangerous Drugs Act trials rarely respect the presumption of innocence.

In Malaysia, the Federal Constitution allows the individual to apply for clemency (pardon or commutation of sentence) only once the person concerned has exhausted all other remedies under the law and the entire appeals process. The right to clemency is not automatic. Challenging the verdict regarding clemency is possible in principle but there is no way to effectively challenge it due to pitfalls in the process. As a matter of fact, the decision-making process of the Board of Pardons looks arbitrary insofar as the verdict is not explained, there is no public hearing and no avenue for legal representation for the convicted person.

Broadly speaking, a suspect who is not represented will always have his/her rights violated. Moreover, when dealing with drug-related offences the burden of proof is on the accused. Besides which, Article 41(1) of the Federal Constitution does not set out the procedure or time limit for the process of clemency which is not a systematic right from which suspects could benefit.

This is also the case for foreign nationals, partly owing to linguistic difficulties.

## **THE PARTICULAR CASE OF FOREIGN NATIONALS IN MALAYSIA**

Pursuant to Article 36(1)(b) of the 1963 Vienna Convention, any arrested individual has the legal right to contact his/her Consulate and request legal representation. As a matter of fact, the authorities will delay identification and referral to the Consulate concerned. The Consulate will



very often find out about the arrest through local media. This is clearly a breach of international obligations. During court hearings, foreign nationals have the right to a competent interpreter, a fundamental right enshrined in the Criminal Procedural Code. In some instances, interpreters are not fully trained and the accused often find it difficult to understand legal terms. This could easily and clearly lead to a miscarriage of justice and deeply affect the fairness of the trial. Furthermore, the convicted individual does not have access to legal representation when the Pardons Board listens to the process for clemency.

A discussion took place on the issue of Islamic law and *hudud*<sup>2</sup> in Malaysia, insofar as the Federal Constitution allows the dual system – *shariah* law being limited to personal law – but is anticipated that it will encroach upon civil affairs.

## ELEMENTS OF UNFAIR TRIALS IN INDONESIA

In Indonesia, President Joko Widodo decided to resume executions in November 2014. This political move quite simply destroyed 17 years of effort to uphold human rights in the country. Today, Indonesia retains the death penalty for premeditated murder, terrorism and drug-related offences. Indonesia resumed with 6 executions in January 2015 and 8 others in April 2015, with, in parallel, blanket rejections of clemency requests in the course of 2014 and 2015. Within that political framework, incorrect convictions have been documented, as well as elements of unfair trials and miscarriages of justice. For example: mistaken identity of the person executed, absence of sworn interpreters during court hearings, several instances whereby confessions were obtained under duress and used during the legal process, despite international prohibition.

An execution in Indonesia costs roughly 10,000 USD which is a clear opportunity for potential corruption. Methods of execution (firing squad in particular) clearly amount to torture. Mentally ill death row inmates have been executed, clearly breaching Article 53 of the Indonesian Code of Criminal Procedure. Some poorer suspects could not gather enough money to ensure proper legal representation (violation of Article 56§1 of the Indonesian Code of Criminal Procedure on legal assistance) and were not in a position to understand the English/Malaysian translation (violation of Article 53 of the Indonesian Code of Criminal Procedure). Some convicted foreign nationals could not contact their diplomatic representation (a clear breach of Article 36 of the 1963 Vienna Convention on Consular Relations). Not forgetting accusations of corruption among court employees.

Within that framework, KontraS is strongly advocating for mandatory legal assistance to strengthen the basic legal safeguards for people facing capital punishment.

<sup>2</sup> *Hadd* (plural *hudud*): Islamic legal term for legal penalties prescribed by the Koran. There are 7 offences against morality enforced: adultery, false accusation of this crime, alcohol consumption, theft, robbery, apostasy and rebellion.

## DAY 2 - ROUNDTABLE 2

# DISCUSSION: DIPLOMACY AND THE DEATH PENALTY

This second roundtable discussion focused on diplomatic leverage as a useful tool to help advance the abolitionist cause. The role that inter-regional organizations (e.g. ASEAN) can play to promote abolition of death penalty in Asia received particular attention. This roundtable discussion was moderated by **MR RICHARD SEDILLOT**, lawyer and defender of prisoners on death row, Vice-President of the International Commission of the International Conference of the Bar Associations (CIB) and ECPM Administrator. Among the speakers at this roundtable were: **MR RAFENDI DJAMIN**, Representative of Indonesia to the ASEAN Intergovernmental Commission on Human Rights (AICHR); **MR TAN SRI MUHAMMAD SHAFEE ABDULLAH**, Representative of Malaysia to the ASEAN Intergovernmental Commission on Human Rights (AICHR); **MR LUVSANVANDAN BOLD**, Member of Parliament, Former Minister of Foreign Affairs (Mongolia).

### DIPLOMACY AND THE DEATH PENALTY: THE ROLE OF ASEAN HUMAN RIGHTS MECHANISMS

There are more than 600 million people living in ASEAN Countries and the death penalty is applied in almost all of them. ASEAN civil society is really striving to find the necessary space for discussion on capital punishment.

Use of capital punishment is not only triggered by poverty. Well-off countries such as Brunei and Singapore are still retentionist. Discussion of abolition of the death penalty within AICHR (created in 1993) is quite new. AICHR consists of 10 representatives with 14 different mandates. As a consultative intergovernmental body, AICHR's power is limited, insofar as this structure does not have any investigative powers and cannot receive complaints. AICHR's main tasks are to engage the main ASEAN stakeholders in dialogue and human rights fora, establish a framework for human rights cooperation and promote dissemination and education on human rights issues throughout ASEAN countries. AICHR bases its work on the ASEAN Human Rights Declaration adopted in November 2012. One of the principles enshrined in this declaration is the right to life.

One of the main problems lies in the fact that the vast majority of ASEAN countries are not party to the Second Protocol of the International Covenant on Civil and Political Rights (ICCPR) aimed at abolishing the death penalty<sup>3</sup>, but the Universal Periodic Review (UPR) is a suitable forum for discussing the issue of capital punishment.

Some recent positive developments should be recalled. In November 2014, a discussion on the right to life was organised in Jakarta. This was the first regional workshop on the subject. On the domestic front, emphasis should be given to the power of rehabilitation for sentenced prisoners.

<sup>3</sup> For further information, please refer to the OHCHR map available at <http://indicators.ohchr.org/>



## DIPLOMACY AND THE DEATH PENALTY: MONGOLIA

Mongolia adopted a new Constitution in 1992 in order to move to democracy. There have been no executions in the country since 2009. The fact that executions stopped did not trigger an increase in the number of crimes committed. However, on December 2015 Mongolian Members of Parliament voted in favour of a new Criminal Code which abolishes the death penalty for all crimes. The new Criminal Code will take effect from September 2016 onwards. During previous political discussions at a domestic level, several arguments were highlighted in the light of the parliamentary debate: the fact that the right to life is enshrined in the Constitution, that the death penalty does not trigger a drop in the number of crimes, and that the death penalty in itself constitutes violence.

Advocacy work developed by NGOs (Amnesty international in particular) was very instrumental and supportive to progress on the issue of abolition of capital punishment in Mongolia. Young human rights activists played a significant role as well. A large proportion of Mongolian public opinion is still convinced that the death penalty is an adequate sentence for serious crimes.

Regional cooperation and international support is key to achieving abolition of the death penalty in Asia.

## DAY 2 - WORKSHOP 2

# INGOS, DIPLOMACY AND THE DEATH PENALTY

This workshop aimed to consider how to share experience about the ways and means to incorporate international pressure and diplomacy into local campaigns. Discussions tackled the development of common strategies adapted to the particular contexts of East and South-East Asia. This panel was moderated by **MRS AURÉLIE PLAÇAIS**, Programme Director, World Coalition Against the Death Penalty, France. Among the speakers at this workshop were: **MR RAPHAËL CHENUIL-HAZAN**, Executive Director, NGO Together Against the Death Penalty (ECPM, France); **MRS HANNA GORMANN**, Head of European Commission Project (Reprieve, United Kingdom); **MRS CHIARA SANGIORGIO**, Death Penalty Researcher (Amnesty International, United Kingdom); **MR BHATARA IBNU REZA**, Operational Coordinator, The Indonesian Human Rights Monitor (Imparsial, Indonesia); **MRS VALÉRIE RÉGNIER**, Head of Delegation, France, Comunità di Sant'Egidio; **MRS MICHELLE KISSENKOETTER**, Director of Asia Desk, International Federation for Human Rights (FIDH).

### INGOS, DIPLOMACY AND THE DEATH PENALTY: LESSONS LEARNT BY ECPM

Lessons could be learnt from the particular experience of supporting Serge Atlaoui's case. From 2008 to 2014 it was decided to end any interviews or press releases about the case. As a strategy, efforts were focused on large-scale diplomatic advocacy in Indonesia (local embassies concerned, EU delegations), Paris and abroad. The aim was to build bridges with French and foreign diplomats. Strategies were discussed and agreed upon with several foreign embassies. Contact was then made with all the countries which have death row inmates in Indonesia. Contacts were also developed with countries which have particular experience in issues related to drug trafficking, such as Mexico.

As a second step, on the basis that we had seen no positive moves from the Indonesian authorities, we decided to go more public. A media campaign was therefore launched about Serge Atlaoui's case, while being careful not to touch upon State sovereignty, engaging other stakeholders, such as French artists, as well as representatives from the business sector.

ECPM tries to involve more and more people from ministerial level at each of the events organised (regional as well as world congresses), insofar as these events prove to be fruitful arenas for open and productive exchanges of views between stakeholders (high-level authorities, civil society representatives, parliamentarians and journalists). However, it seems difficult to bring Commonwealth and UN representatives (in particular UNODC) to the table, although tremendous effort has been made.

## INGOS, DIPLOMACY AND THE DEATH PENALTY: LESSONS LEARNT FROM REPRIEVE, AMNESTY INTERNATIONAL, COMUNITÀ DI SANT'EGIDIO AND THE FIDH

Based in London and founded in 1999 by a British human rights lawyer, Reprive provides free legal and investigative support to people facing executions and to individuals victimized by States' abusive counter-terror policies. Reprive is currently working on behalf of 70 people facing the death penalty in 16 countries and 8 men detained in Guantanamo Bay. Reprive's work tries to strengthen the anti-death penalty community and bring about international intervention. Activities include working with governments, visits to prisons and police stations, and discussions with lawyers. Discreet diplomacy is used and has proved to be instrumental with regard to individual cases.

Time on the ground is key with regard to following cases and advocacy. In this way, Reprive has managed to avoid 8 capital punishment sentences for foreigners in Indonesia.

One of the main striking strategic avenues for Amnesty International if capital punishment is to be abolished is to put pressure on countries during discussions at UN and political arenas, and request focused tangible commitments from countries such as basic access to information, attendance at international human rights fora and regular dialogue with the authorities concerned on the ground. Emphasis is also put on discussions regarding a resolution every three years. Amnesty International also advocates, as do other NGOs, for ratification of the Second Optional Protocol to ICCPR for abolition of the death penalty.

According the Indonesian NGO Imparsial, real attention must be paid to international pressure. In terms of external communication, foreign diplomacies have to do their utmost to be careful about not giving the impression that they want to infringe on or interfere in a State's sovereignty. This could have been the case with Australia when it comes to Australian inmates facing death penalty in Indonesia.

A representative from Comunità Sant'Egidio stressed the fact that discussions on capital punishment were first and foremost a question of taking an intercultural approach regarding human rights. This approach has actually been taking place since 2002 through the Cities for life initiative (a proposal for cities all around the world to illuminate a building to show opposition to the death penalty on 30th November each year. In 2014, 2,000 cities, including 70 capitals, took part in this initiative.)

For the FIDH representative, the Universal Periodic Review (UPR) is a very good tool for further engaging in diplomacy. There are many avenues for discussions about capital punishment: shadow reports from civil society organisations, side events, dialogue during the UPR process (answers to questions raised) and discreet diplomacy with EU representatives. Discussions on respect for human rights and the issue of death penalty should be part of the European Union Generalised Scheme of Preferences (GSP) + process<sup>4</sup>.

<sup>4</sup> Process through which developing countries are supported with the exporting of their products to the EU against commitments relating to respect for sustainable development, human and labour rights, and good governance.

### **More information on the Anti-Death Penalty Asia Network (ADPAN)**

As an independent cross-regional network committed to bringing an end to the death penalty across the Asia Pacific region, the Anti-Death Penalty Asia Network was founded in Hong Kong on the World Day against the Death Penalty in 2006.

ADPAN consists of NGOs, organisations, civil society groups, lawyers and individual members, not linked to any political party, religion or government. ADPAN members are located in 28 countries: Afghanistan, Australia, Bangladesh, China, Denmark, France, Hong Kong, India, Indonesia, Italy, Japan, South Korea, Malaysia, Mongolia, Nepal, New Zealand, Pakistan, Papua New Guinea, the Philippines, Singapore, Spain, Sri Lanka, Taiwan, Thailand, Tonga, Vietnam, United Kingdom, United States of America.

ADPAN supports its members through active campaigning for abolition of the death penalty. This includes participating in action including the World Day against the Death Penalty, producing major cross-regional reports, advocacy letters to governments and issuing public statements, and by being present and active on social networks such as Twitter and Facebook, or on its blog. For further information, please refer to <https://adpan.org/>



## DAY 2 - WORKSHOP 3 WORKING WITH VICTIMS' FAMILIES

The purpose of this workshop was firstly to pay tribute to the families of inmates on death row. The death penalty should not only be tackled through legal and legislative approaches. Telling stories and talking about individuals who are directly affected by the death penalty is essential to raise awareness among the media and the public. Within that framework, creating educational tools about work with victims' families is key. The workshop also aimed to stress the ways and means of working with the families concerned, from a civil society point of view, how to approach families without creating fear and to build a constructive working relationship with the families concerned and the groups working with them. This panel was moderated by an ADPAN representative. Among the speakers were: **MRS JIAZHEN WU**, Deputy Director, Taiwan Alliance to End the Death Penalty (TAEDP, Taiwan); **MR TOSHI KAZAMA**, New York-based Photographer, Journey of Hope; **MRS SABINE ATLAOUI**, spouse of a death row prisoner in Indonesia.

### **WORKING WITH VICTIMS' FAMILIES: EXPERIENCE SHARING WITH THE TAIWAN ALLIANCE TO END THE DEATH PENALTY (TAEDP)**

When dealing with the death penalty basic questions have to be asked, including who are the victims? The victims are the victims of the crimes themselves, their family members and even the offender's family members. But most importantly, wrongly sentenced and executed innocent people.

Another question to be raised: what are the needs of the victims? Sometimes it is financial support when they have lost the family breadwinner. Sometimes it is long-term counselling. Sometimes vocational training. Sometimes life-long rehabilitation for those who are seriously injured. Everyone has different needs.

Taiwan adopted the Crime Victim Protection Act in 1998. The following year, the Association for Victim Support was founded. There are currently 21 branch offices around Taiwan, falling under the district prosecution offices, with challenges in terms of staff and financial resources.

The Taiwan Alliance to End the Death Penalty (TAEDP) does not provide direct services to victims. Indeed, TAEDP is rather about lobbying for policy changes. TAEDP formed a working group called 'Shine a Light on Victims' to make sure stories from victims were heard in society through exhibitions and fora, and joint work with social workers, human rights activists and lawyers. TAEDP aims to have the death penalty abolished in Taiwan and strongly believes that creating a victim-friendly environment does not conflict with our ultimate goal of abolishing the death penalty.

## WORKING WITH VICTIMS' FAMILIES: THE USE OF ART.

Mr Toshi Kazama is not only a photographer. He is also a victim. His death penalty project is first and foremost aimed at photographing juveniles in the United States, victims' families, execution chambers and death row inmates. In the beginning, he had no idea what the death penalty would entail for families. Moreover, he had no firm conviction about opposing the death penalty when he began his project. Then he started to realise, through interviews with prisoners on death row, that execution was nothing but utterly cruel and inhuman.

According to Mr Kazama, there are a lot of misconceptions about victims' families among public opinion: families want nothing but revenge and they are wholehearted supporters of capital punishment.

With TAEDP's support, Mr Kazama was able to access prisons. Here is an account of what Mr Kazama witnessed, and photographed. *"This is the execution chamber in Taiwan. You have a picture of the Buddha and this is all black sand. You have to bring your own sheet, you face down and the executioner comes with a gun in his hand. If you are an organ donor, they shoot you in the back of the head. If not, they shoot you in the back of the heart. You get to have a last meal but you are watching where you are going to be executed. Again, with the picture of the Buddha in front of you."*

*"Roughly 12 years ago I became a victim myself. I picked up my daughter from school and a crazy maniac attacked me. He took me from behind and smashed my head to the pavement. I was unconscious and I was left in the ICU, unconscious. Doctors told my wife I had very little chance of surviving. I woke up on the fifth day. I saw my kids full of fear and their faces were completely different from how I knew them. I told them, I'll be okay. I'll live. I said get angry with the violence but never hate a person. What if I had decided to say, let's find this person and kill them. It's all revenge. The physical assault not only took my health away but a good part of me and my family. I didn't want that to happen. My friends said, I will find this guy and kill him. I said, please don't. All I need is a sincere apology."*

Mr Kazama does a lot of work with victims' families, bringing them from Taiwan to the USA in order to meet other victims' families. In Asian countries, if you oppose the death penalty as a victim's family, you will be stigmatised and isolated in society.

Another testimony from Mr Kazama: *"I met a judge in Mongolia. This female judge was a pro-death penalty advocate. I spoke to her for one and a half hours. I spoke as a victim and after an hour and a half she started to cry and she hugged me and said, from today on she would oppose the death penalty. She even gave a newspaper interview shortly after that expressing this viewpoint and there were shockwaves all through the country."*

Victims' families are an important part of the equation. Many states in the U.S. have been able to abolish the death penalty because of victims' families speaking out in public. They are crucial.



## THE ROLE OF FAMILY MEMBERS: TESTIMONY FROM MRS SABINE ATLAOUI, WIFE OF A FRENCH DEATH ROW INMATE IN INDONESIA

*"I want to begin by sharing the thoughts of the families of other death row inmates. I'm not a spokesperson for all of them but I want to tell you about the last 3 months living with them. They have been suffering for years and waiting for a deadline. Over the years, we kept feeding the hope. There is a lot of waiting and suffering. In Indonesia we had the hope with the abolitionist movement. But last January [2015], very suddenly that hope just totally fell apart and left all of us in total disarray. When President Jokowi came forward, we realised that something had changed and that we would have to stand up and fight for them. The first series of executions in January happened so quickly that we were not prepared. We had very little time to set up a structure and begin campaigning. And that's what I want to talk about.*

*My husband was sentenced to death in May 2007 and since then he's been on death row in Indonesia. The first thing I did, because I had no contacts in the human rights or abolitionist community, I didn't know who to turn to – so the first thing I had to do was to ask for help.*

*And so, 8 years ago I was lucky enough to meet ECPM. They guided me because I had no idea what the death penalty even meant. France abolished capital punishment many years ago so I had no idea about the atrocities of the death penalty elsewhere in the world. Through the organisation, I got contacts and started to see and understand the mechanisms of the death penalty. I'm saying this because many death row prisoners stay many, many years in prison. Despite all those years of waiting, one must always remember that the execution could happen anytime. Yes, he has been there 8 years but tomorrow he could be gone and life will change irreversibly.*

*For the last 3 months, I have also come to reassess who we are as a family with the children because that suddenly counted very, very much. I came to Indonesia on February 24<sup>th</sup> 2015. At that point, my husband's name was already on an execution list that was published in the media. So we knew he was on this list but we had no official confirmation from the authorities that this was a final list.*

*The first thing I was confronted with was the children. They are older now, they can read and they can hear. I had to counsel them and tell them not to panic, that we had no certainty whatsoever. I kept telling them that we had time. Even if his name was on the list, we had time, we have one last appeal asking for a retrial that had not been processed. But we still had to deal with the overwhelming panic. He was on the list in the media, the executions were coming and, also, as a family we had to convince ourselves. And it was in this context that I arrived in Indonesia. I travelled with 3 of the 4 children.*

*Deep in my heart, I wanted them to see their father in the visitation room, not in the execution room 72 hours before the execution with all that pressure. To organise travel from France to Jakarta for 4 people at the last minute is a big financial burden - especially at the last minute*

*when it is an emergency and you have to go. So, as a result of all those years of building relationships, trust and work, in this urgent situation I was able to turn to ECPM and say, I need your help and we need to go soon. Not only do we need to travel there; we need to stay with him as long as possible.*

*I could never have done the work for campaigning through the media without ECPM. I had to be there with him so I could relay the information to the family. ECPM allowed me to do that, on site, in Indonesia.*

*My work there started on Day 1 when I arrived. I can tell you retrospectively that I spent 3 months in one hotel room with my kids, working pretty much day and night. And the most difficult thing is that you have to assess and take one step at a time because you cannot make mistakes with the French authorities, the media and mostly for the family left in France. So for these 3 months, if you ask me where I found the energy I had my three-and-a-half-year-old son with me. In this context, you have to leave your emotions aside. You have to work. Choose the right moment, the right words and the right message. You just go forward, you have to go forward. The support I got from ECPM helped me be there in Indonesia, I could rely on the organisation to help me with communication in France. ECPM were not only help but also gave me moral support.*

*It is the battle of a lifetime. And this is what death row families go through, very often in an isolated position when the family is not in the media.*

*I want to conclude with a special thought about the families of those who were executed because now they are alone with their pain and suffering, and we need to look at those families. Even though my husband's name was removed, he is still in a precarious situation. My last words are for the families of those who were executed recently because we went through the same fate and today I think of them and want them to be remembered.*



## DAY 2 - WORKSHOP 4 TEACHING ABOLITION

This workshop considered the integration of educational workshops into academic curricula. Among the speakers on the panel were: **MRS MARIANNE ROSSI**, in charge of the project Teaching Abolition, French NGO Together Against Death Penalty, (ECPM, France); **MR MUNKHJAVHLAN BAATAR**, lecturer, National University of Mongolia, Human Rights Activist; **MRS CONNIE CHAN MAN-WAI**, senior campaigner (Amnesty International, Hong Kong); **MRS LI-SHU WENG**, Lu Jiang Elementary School teacher, Executive Board member of TAEDP, member of TAEDP Curriculum Team, Indonesia; **MR. DATUK, DR KHAW LAKE TEE**, Vice-Chairman, Human Rights Commission of Malaysia (SUHAKAM).

### TEACHING ABOLITION: THE MAIN FEATURES OF ECPM'S PROJECT

Initiated in 2009 following a decision made by the World Coalition Against the Death Penalty to stress the importance of education about the death penalty, Teaching Abolition, a project coordinated and managed by ECPM, aims to teach pupils aged between 12-18 about the death penalty through the organisation of school presentations during lesson time. A specialist interacts with pupils on the global situation of the death penalty and discusses the arguments for or against the death penalty. Then, a special guest is invited to talk about life on death row. Pupils then have the possibility to debate the issue. Curricula have been defined with teachers to create modules adapted for different school levels and different subjects in French, English, Spanish, art, history and geography.

Alongside this project, ECPM has also organised a drawing contest called "Draw me the Abolition" on the issue of the death penalty for pupils from France, Morocco, Tunisia, the Democratic Republic of Congo and Lebanon. Within that project, ECPM worked with another NGO, "Poster for Tomorrow" which organises a professional design contest on human rights every year. The classes met a graphic designer who helped every pupil create their posters to request global abolition of the death penalty. More than 350 posters were received and 42 posters were selected.

Next year, ECPM will organise a project to introduce pupils to issues linked with freedom of speech and abolition of the death penalty in cooperation with journalists. For the next World Congress Against the Death Penalty (which will take place in Oslo in June 2016), our abolition newspaper will be completely written by pupils.

In addition, ECPM has designed a board game called "Abolition Now", in which pupils have to play together to develop various strategies to abolish the death penalty. Students will have the opportunity to play the role of diplomats, presidents, judges, journalists or former death row prisoners. This board game will be available in French, English and Arabic.

## TEACHING ABOLITION FROM THE SOUTH-EAST ASIAN PERSPECTIVE: LESSONS LEARNT

In Mongolia, philosophy is a instrumental vector to raise awareness about human rights issues, particularly the death penalty. This has led to educational projects developed with Amnesty International, with students competing, giving arguments for or against capital punishment. There are also projects bringing together 8 universities with discussions about the ethical aspects of human rights and movie discussions are organised. The opinions of some students with regard to capital punishment changed after seeing the film.

Hong Kong abolished the death penalty in 1993. The last execution took place in 1966. Amnesty International has produced a short film for schools on the death penalty. During the first half of 2015, 35 group talks were organised with university students. Alongside, talks were also organised with teachers. The difficulty faced in Hong Kong is that the death penalty is not a popular topic, insofar as the subject is not included in the curriculum. One lesson learnt is the need to integrate the issue of the death penalty into the foreign languages curriculum taught at university level. Petitions on individual cases are also made available to students. Hong Kong is also part of the Cities for Life initiative on 30th November.

In Malaysia, advocacy programs are developed with the cooperation of the EU delegation in Kuala Lumpur and the Malaysian Bar. In 2011, a public seminar on the death penalty was organised, as well as debates and advocacy competitions. Work was also developed with Mr Toshi Kazama and his photographic work was displayed. A public survey was conducted with a team from Malaya University. In parallel, research projects were initiated, one of them related to access to healthcare in prison (including for death row inmates).

### **More information on the Taiwan Alliance to End the Death Penalty in Taiwan (TAEDP).**

The Taiwan Alliance to End the Death Penalty Taiwan (TAEDP) is a coalition of various local abolitionist non-governmental organisations (NGOs) and research institutes. Launched in September 2003, the Alliance works to promote reform of Taiwan's penal system, advocates for abolition of the death penalty, and seeks to foster a conducive environment to create a floor for open discussion within society on various abolition issues, organising symposiums and using the arts (movies, photographs). TAEDP consists of four working groups: Advocacy and Strategy, Education and Communication, Research and Study, and Death Watch. For further information, please refer to <http://www.taedp.org.tw/en/about>



## DAY 2 - SIDE EVENT

# THE DEATH PENALTY IN IRAN

Speaker: **Mahmood Amiry-Moghaddam**, Spokesperson, Iran Human Rights

Over the past 10 years, there has been an increasing trend in the number of executions in Iran, as documented by Iran Human Rights (IHR) annual reports. In 2014, IHR registered 753 executions. From January to May 2015, IHR reported 511 executions, mostly for drug-related offences, and many are secret executions. In 2014, 61% of executions in Iran were said to be unofficial. At least 14 juvenile offenders were executed in the course of 2014. Violations of basic judicial guarantees are routine. Conditions of detention are appalling. There are roughly 7,000 people on death row in Iran, among them a significant proportion of ethnic minorities and Afghan citizens. Several Western countries, as well as the United Nations Office on Drugs and Crime (UNODC), support Iran's fight against drugs which clearly led to the increase of capital punishment.

For more information on the death penalty in Iran, please refer to the Iran Human Rights 2014 Annual Report, [http://iranhr.net/media/files/Rapport\\_2014\\_BDEF02.pdf](http://iranhr.net/media/files/Rapport_2014_BDEF02.pdf) and ECPM's specific edition of the *Cahier de l'Abolition* on Iran called *The death penalty in Iran*, released in November 2014 and available at [http://www.abolition.fr/sites/default/files/cahier-iran-gb-160215c\\_2.pdf](http://www.abolition.fr/sites/default/files/cahier-iran-gb-160215c_2.pdf).

# FINAL DECLARATION

WE,

- the over 300 participants in the First Asian Congress on the Death Penalty, taking place in Kuala Lumpur (Malaysia), on June 11th and 12th, 2015, co-organized by the Association Together Against the Death Penalty (ECPM) and the Anti-Death Penalty Asia Network (ADPAN), in partnership with the Human Rights Commission of Malaysia (SUHAKAM) and the Bar Council Malaysia; ADOPT the following Declaration;

WE EMPHASIZE:

- that every human being has the inherent right to life. This right must be protected by law;

WE ARE PLEASED:

- that over the last decades, five countries in the Asia region have abolished the death penalty for all crimes, Nepal, Bhutan, Philippines, Cambodia and Timor Leste;
- that Mongolia committed to the abolition of the death penalty by ratifying the 2nd Optional Protocol to the International Covenant on Civil and Political Rights of the United Nations (ICCPR);
- that some countries are abolitionist in practice (Brunei Darussalam, Lao PDR, Myanmar, Sri Lanka, Maldives, Papua New Guinea, South-Korea, Thailand);
- that the relationships between civil society, National human rights institutions, bar councils, academics, jurists, journalists, and prominent figures for the abolition of the death penalty are being strengthened;

WE REGRET THAT:

- Asia remains the continent with the highest number of executions in the world.
- Since the beginning of 2015, some countries have resumed executions after the death penalty was suspended, such as Pakistan (more than 150 executions), Singapore and Indonesia (14 executions), while others plan to reintroduce the death penalty such as Sri Lanka and Papua New Guinea;
- The death penalty is still applied for non-most serious crimes with reference to the ICCPR's definition and international standards;

WE CALL ON:

Asian Retentionist States:

- To work toward the abolition of the death penalty to comply with the resolutions for a moratorium on executions, pending the abolition of the death penalty, passed by the General Assembly of the United Nations since 2007;
- To publish transparent, regular and reliable information on their implementation of the death penalty;
- To reform the justice criminal systems to ensure fair trials and stop the use of mandatory death penalty: "the automatic and mandatory imposition of the death penalty constitutes an arbitrary deprivation of life, in violation of Article 6, paragraph 1 of the ICCPR", and is fundamentally incompatible with the right to fair trial and due process guaranteed in Article 14;



- To reduce by law the list of crimes punishable by death, including those related to the drug trafficking and the fight against terrorism in accordance with the “most serious crimes” provision of the ICCPR;

Intergovernmental regional organizations and international organizations:

- To continue and intensify their cooperation with States toward abolition;
- To collaborate with Asian and international civil society to promote the universal abolition of the death penalty;

Asian Abolitionist States:

- To commit, beyond words, to concrete and stronger actions in favour of the universal abolition of the death penalty, especially in their diplomatic relations with retentionist States and with the intergovernmental regional organisations;
- To take the lead of the abolitionist movement among regional human rights bodies;
- To sign and ratify the Second Optional Protocol to the ICCPR and to call on other Asian States to do the same;
- To provide assistance and support to national citizens on death row abroad;

People’s representatives (Parliamentarians, Congressmen, Deputies):

- To gather in national, regional and international networks and bring the abolitionist debate into the heart of retentionist Parliaments;

National Human Rights Institutions:

- To work jointly at a national and regional level to bring the issue of the abolition of the death penalty among their priorities and recommendations;

Bar Councils:

- To mobilize, raise awareness and train lawyers and jurists everywhere in Asia on the fight against the death penalty, including on defences in capital cases, for due process and fair trials in retentionist countries;
- To use their discretionary power to individualize sentences, to not sentence to death or to encourage juries to decide not to sentence to death;

Abolitionist actors from civil society and the academic field:

- To call on NGOs, lawyers, academics and human rights defenders in Asia-Pacific to join the Anti-Death Penalty Asia Network (ADPAN) to promote human rights and the abolition of the death penalty;
- To act jointly with, and eventually join, the World Coalition Against the Death Penalty and strengthen interactions;
- To undertake educational activities in favour of abolition with the public, including policy makers, students; and to celebrate every year the annual World Day Against the Death Penalty on October 10th and the Cities for Life on November 30th;
- To actively continue in our work towards abolition of the death penalty including supporting and attending the upcoming World Congress Against the Death Penalty in Oslo in June 2016.

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